

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/SA/A/2016/001556

Shashi v. PIO, Sub Divisional Magistrate (Civil Lines)

Important Dates and time taken:

RTI: 13.08.2015	FAA: 22.09.2015	
SA: 13.06.2016	Hearing: 29.07.2016	Decided on: 01.08.2016
Result: Directions issued		

Parties Present:

1. Appellant is present. Public authority- not present.

FACTS:

2. Appellant had sought following questions through his RTI dated 13.8.2015 :
 1. copy of rules/procedures for registration of marriages,
 2. documents to be submitted for registration of marriages
 3. copy of rules/office order which shows no requirement for sending notice of intended marriage to parents of girl before registration
 4. who are competent persons to be witness to such marriage registration
 5. action taken on cases of fraudulent or forced marriages
 6. fee chargeable for registration of marriages.

FAA directed PIO/SDM- Civil Lines to provide information.

Decision:

3. The appellant wants information about procedure for solemnization of marriage and its registration under Special Marriage Act. The appellant had raised concern about young girls and boys getting married without informing their parents. According to him some of the parents are denied their right to information about the marriage of their sons and daughters. He stated that when parents bring up their children with love and care and take all possible steps for the welfare of child, giving custody, supervision, physical and psychological protection, health and safety, education etc. their relationship does not cease on children attaining majority age. Parental authority still subsists and they should have a right to know their choice of marriage. He stated that generally the parents apprehend the repercussions of immature decisions, incapacity to distinguish love from fraud, leading to serious troubles to their children, their marriage and families. Why should not parents be informed about proposed registration of marriages of their children about their selection of life-partner?
4. There is some merit in appellant's contention. Generally notice is an essential aspect of procedure for marriage under this Act. Under law, registration serves both the purposes - as a notice to the society in general about proposed marriage and then as a proof of marriage, without necessitating parties to procure evidence of ceremonies of marriage to prove it in court of law. There are several kinds of marriages as per ancient customs and practices. They are: "*Brahmo Daivastha Daivaarshah Gaandharvo Rakshasaschaiva Paishacha Asthamotthamaha*". 1. *Brahmam*: when parents invite a knowledgeable and good groom and gift the bride it is *Brahmam* kind of marriage (Eg. *Shanta & Rishyashringa*). 2. *Daivam*: Gifting a bride to *Rithwik* in a *Yagna* is *Daivam*. 3. *Aarsham*: If parents take couple of cows

from *tapasvi* groom and gift bride, it is *Aarsham*: 4. *Praajapatyam*: If parents advise bride and groom to practice dharma together, *Prajaapatyam*. (Eg. Lord *Ram* and *Seetha*). 5. *Asuram*: If one takes money from groom and gives bride, it is *Asuram* (*Kaikeyi* was given like this to *Dasarath*) 6. *Gaandharvam*: If groom and bride love each other and marry without following any mantra procedure is *Gaandharvam*. Eg. *Shakuntala* and *Dushyanth*). 7. *Raakshasam*: Winning a war and taking bride to a distant place and marrying her is called *Raakshasam* (Eg *Raavan* wages a war, and takes *Mandodari*). 8. *Paishacham*: Snatching a girl while asleep to marry is *Paisaachikam*. Among these 8 methods, *Brahmam* is considered the best, *Praajapatyam* is as per Dharma and the prohibited forms are *Raakshasam* and *Paishacham*. Modern love marriages are akin to *Gaandharva* marriages. The Marriage being a significant turning point in life, the partners and their parents should be assured of fair, honest and valid marriage contracts to be executed for peaceful marital life. Especially when fraudulent marriages are increasing including where NRI partners are involved, the state and law has to ensure proper registration of marriages with sufficient notices.

5. Generally notice is required to prevent marriage between persons within degrees of prohibited relationship, bigamous marriages, i.e., while a spouse is living without obtaining valid divorce, marriages without valid consent (not having age of giving valid consent), with person of insanity, or persons not attaining prescribed marriageable age etc. If one of the parties has a spouse living, the notice about marriage of that party will enable such spouse, or any other person having knowledge about existence of spouse or sustenance marriage or relationship or agreement to marry to raise objection. The notice should be real and effective. If it is confined to a

corner of the office of Registrar of Marriages, its reach may not be sufficient and wide. In arranged marriages, invitation card distribution is the 'notice', Ceremonies, Baarath reflect a kind of declaration of relationship and thus a form of an effective notice and registration. When technology is available the notice of marriage should be given wide reach through the web-publication.

6. Any couple, whether Indian, NRI, or a foreigner who wants to marry in India has to either perform religious marriage ceremony or civil marriage ceremony. Even if the marriage is celebrated under Hindu Marriage Act, Muslim Marriage Act, Christian Marriage Act and for the Parsee Marriage and Divorce Act. Such Religious Marriage Ceremony in India is a legally valid marriage but it needs to be registered compulsorily. For VISA and immigration purposes a Marriage Certificate from Registrar of Marriages is a requirement.
7. If groom and bride belong to different religions or countries, they have to marry under Special Marriage Act, 1954 as they are not permitted to marry under personal marital laws or persons may not desire to perform marriage as per religious customs and prefer marriage under Special Marriage Act. The 30-day notice is required to be given in India, if one partner is permanently and other partner is temporarily residing in India. Marriages between Indian and foreign national also shall be registered under this Act. If one partner is residing in foreign country, the 'Marriage Notice' form has to be filled by the partner in India and also partner in foreign country, which has to be resubmitted by partner in India to Registration office. Parties need to submit valid documents like passport, birth certificate, death certificate of deceased spouse, if one party is widower, and if one is divorced, copy of the

final decree of divorce, besides documentary evidence of stay in India for more than 30 days (either ration card or report from the concerned SHO) need to be furnished.

8. For instance, if an American citizen wishes to wed in a civil marriage ceremony he may be required to present to the marriage officer a 'no objection letter' from the US Embassy or Consulate, as well as proof of termination of any previous marriage, if any. Similarly, a citizen of any other foreign country is required to present the no objection letter from the Embassy or Consulate of his/her country. The parties has to wait at least 30 days from the date of initial application to formalize the marriage so that the marriage officer can publish a notice, which might even include a newspaper publication for giving opportunity for any objections to the marriage to be voiced.

9. Under section 5 of Special Marriage Act, 1954, there is a provision for giving notice of intended marriage, it says:

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.

10. Section 5 of Special Marriage Act leaves enough scope for raising any challenge to a proposed marriage to be brought within specified period from date of notice, which needs to be affixed on notice board of the office of Sub-Divisional Magistrate in whose jurisdiction marriage is to be solemnized.

11. For solemnization of marriage under Special Marriage Act, presence of both the parties is required after submission of documents for issuance of notice of intended marriage. A copy of the notice has to be pasted on the office notice

board by the SDM. Any person may within 30 days of issue of notice, can file objection to the intended marriages. In such a case, the SDM shall not solemnize the marriage until he has decided the objection, within 30 days of its receipt. If the SDM refuses to solemnize the marriage, any of the parties may file an appeal within 30 days to the District Court. If none filed any objection, the SDM solemnizes the marriage after 30 days of the notice. Both bride and groom with 3 witnesses shall be present on the prescribed date of solemnization of marriage. They need to submit names of witnesses at least one day in advance. Section 9 prescribed powers for inquiries:

Section 9: Powers of Marriage Officers in respect of inquiries.—

(1) For the purpose of any inquiry under section 8, the Marriage Officer shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and inspection;

(c) compelling the production of documents;

(d) reception of evidence of affidavits; and

*(e) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer **shall be deemed to be a judicial proceeding** within the meaning of section 193 of the Indian Penal Code (45 of 1860).*

Explanation.—For the purpose of enforcing the attendance of any person to give evidence, the local limits of the jurisdiction of the Marriage Officer shall be the local limits of his district.

(2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof, to the parties to the intended marriage, and any order for costs so made may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the Marriage Officer has his office.

- 12. Appellant argued that it is essential that public notice should be published on the official website of public authority so that any person is given adequate information to challenge such marriages, if entitled. Office of registration, being a public authority, has to provide necessary information to the people in general by giving proper notices of intended marriages beyond limits of the premises of the office or its notice board. Giving notice, receiving**

objections, inquiring and deciding on objections is the judicial process and thus Marriage Officers have to give reasoned orders, and those reasons should be informed to the affected persons as per RTI Act. Before Registration of marriage, officer has to rule out illegality of the marriage based on objections and should register marriage only if it is legal. Thus, besides the Special Marriage Act, this obligation of informing the people in general is further fortified by the Right to Information Act, 2005, especially section 4(1)(b).

13. It is the duty of public authority to provide information, to actively disclose, disseminate and publish, as widely as possible, information of such general public interest. The state has a duty to prevent fraudulent or sham marriages or marriages between non-permissible relationships, or void or voidable marriages, in view of increasing problematic or fraudulent marriages. He hoped that greater transparency by issuing a widely published notice of marriages under Special Marriage Act will help young couple to avoid these risks. If not issuing direct notices to the parents of proposed couples, the cyber notice on official website of the office of Registration of Marriages is within the procedure prescribed by law.
14. However, there is a negative angle to this. Violent social consequences of inter-caste and inter-religious love marriages cannot be ignored. The khap panchayats and their mandates coupled with honour killings are shocking developments emanating from the exercise of freedom of choice of life partner. If right of parents to (information) have notice of marriage of their children is honored, it might result in deprivation of their life or liberty, in gross violation of Article 21. The 1954 law does not have any provision to

save the fiancées from different castes or religions against will of their parents. The 'notice' meant for good cannot be fatal for groom or bride.

15. In April, 2011 a bench of justices Markandeya Katju and Gyan Sudha Mishra of Supreme Court deprecated the caste system, declared illegal 'khap panchayats' which often decree or encourage honour killings or other institutionalized atrocities against boys and girls of different castes and religions who wish to get married or have married. It held that the trends of kangaroo courts, honour killings, "khap" panchayaths in northern India and "katta" panchayats in Tamil Nadu were barbaric and illegal, the perpetrators of which required the harshest punishment. Terming honour killings as shameful, the apex court said, "There is nothing honorable in honour killing or other atrocities and, in fact, it is nothing but a barbaric and shameful murder...Atrocities with respect to personal lives of people, committed by brutal, feudal minded persons deserve harsh punishment." (<http://www.thehindu.com/news/national/stamp-out-khap-panchayats-court/article1710337.ece>)

16. In July 2014, in another PIL filed by Vishwa Lochan Madan [(2014) 7 SCC 707] SC held that like khap panchayats the fatwas of Shariyat courts were not enforceable. A Bench of Justices Chandamauli K Prasad and PC Ghose held that diktats issued by Shariat courts or a mufti or qazi would have no legal standing. The Bench opined to place onerous responsibility on revenue and police officials to prevent incidents of honour killings.

"If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State government concerned is directed to immediately suspend the District Magistrate/Collector and the SSP/SPs of the district as well as other officials concerned and chargesheet them and proceed against them departmentally if they do not prevent the incident if it has not already occurred but they have knowledge of it in advance, or if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as, in our opinion, they will be deemed directly or indirectly accountable in this connection."

17. During 2012, the Law Commission has prepared a consultation paper saying "panchayats gathered on caste lines assume to themselves the authority to deal with "objectionable" matrimonies and exhibit least regard for life and liberty and are not deterred by the processes of administration of justice. The penal law lacks direct application to the illegal acts of such caste assemblies and needs to be amended". Law Commission opined that same gotra

marriages are not prohibited by law, and the Hindu Marriage Disabilities Removal Act, 1946 was enacted to dispel any doubts in this regard.

18. It has drafted a bill “the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011” proposing that “no person or any group of persons shall gather with an “intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has dishonored the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.” As per this draft ‘marriage’ includes a proposed or intended marriage. The Collector or the District Magistrate should be entrusted with the responsibility of ensuring the safety of the persons targeted in case any illegal decision is taken by the khap panchayat and he/she shall take necessary steps to prohibit the convening of such illegal gatherings. It proposed that any violation of the Bill will attract imprisonment up to three years and a fine of up to Rs 30,000. All offences under the proposed Act will be cognizable, non-bailable and non-compoundable. The cases will be tried in Special Courts presided over by a sessions judge or additional sessions judge. The Special Court can take *suo motu* cognizance of the cases.

19. The Law Commission also took the notice of a spurt in illegal intimidation by self-appointed bodies for bringing pressure against *sagotra* (same gotra) marriages and inter-caste, inter-community and inter-religious marriages between two consenting adults in the name of vindicating the honour of family, caste or community. In a number of cases, such bodies have resorted to incitement of violence and such newly married couples or couples desirous of getting married have been subjected to intimidation and violence which has also resulted into their being hounded out of their homes and sometimes even murdered. “Although such intimidation or acts of violence constitute offences under the IPC, yet, it is necessary to prevent assemblies which take place to condemn such alliances,” the proposed Bill said, adding it seeks to nip the evil in the bud and prevent spreading of hatred or incitement to violence through such gatherings. Criminal intimidation will have the same meaning as is given in Section 503 of the IPC. The Bill further said that any member of an unlawful assembly who alone or in association with other such members counsels, exhorts or brings pressure upon

any person or persons so as to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or creates an environment of hostility towards such couple shall be deemed to have acted in endangerment of their liberty.

http://www.thehindu.com/news/national/law-commissions-new-draft-wants-khap-panchayats-on-marriages-declared-illegal/article2829231.ece?utm_source=

[InternalRef&utm_medium=relatedNews&utm_campaign=RelatedNews](http://www.thehindu.com/news/national/law-commissions-new-draft-wants-khap-panchayats-on-marriages-declared-illegal/article2829231.ece?utm_source=InternalRef&utm_medium=relatedNews&utm_campaign=RelatedNews)). It's unfortunate that this Bill has lapsed and forgotten, while would be partners are being pressurized and victimized by unlawful assemblies called Khaps and Shariat Courts or Caste Elders or Religious bodies. The Government has a responsibility to prevent fraudulent or illegal or invalid marriages on one hand and to protect genuine lovers from the violence of parents and caste/religious heads. State's responsibility extends to provide safe circumstances to youth of the nation to exercise their constitutionally guaranteed right of choosing life partner and to register their marriages, if legal, after giving due notice to interested parties to raise and verify their objections.

20. The Commission recommends both the Governments- Union and States, to consider:

- a) **Incorporating a column or leaving sufficient space for declaration in the application form for registration about reasonably apprehended threat to their life or liberty for exercising their choice and request for protection, and direct Marriage Officers to get the report from the concerned Station Housing Officer after due enquiry of the allegations of threat and secure their lives, if SHO concludes the threat is prima facie real, or**
- b) **Take any other adequate measures to offer protection to would be partners, including taking up the draft Bill referred above with necessary changes.**

21. The Commission, as per Section 19(8)(a)(iv), require public authority i.e., the Marriage Officers or SDMs, to:

- a) **incorporate declaration about apprehended threat in the application form, and provision for due enquiry by SHO,**
- b) **provide necessary protection in the standard operative practice or procedure,**
- c) **add a warning against assaulting the liberty of would be partners in the form of notice for solemnization & registration of marriage, and**
- d) **ensure wide reach to the mandatory notices to be issued under law, by placing the same on the official website, in an easily accessible link, highlighting under the title of 'marriage registration notices' as that is mandatory duty of public authorities under Section 4(1)(d) to facilitate the interested persons (including parents or guardians) to know and raise objections, if any, to safeguard the interests of the partners to the proposed marriage.**

22. The Commission directs the respondent authority to provide point-wise information as sought by the appellant, within 21 days from the date of receipt of this order.

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
Sub Divisional Magistrate (Civil Line),
Room No. 27, 28 Old Civil Supply Building,
Second Floor, Tis Hazari Court Complex,

Delhi-110054.

2 . Ms. Shashi,
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West, New Delhi-110059.