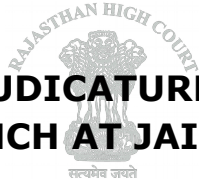




RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 2657/2010

1. Smt. Ashwani Sharad Pendese

2. Shri Singh Manohar Tej

-----Petitioners

Versus

1. Registrar of Hindu Marriage, Nagar Nigam, District Ajmer (Raj.)

2. State of Rajasthan through District Collector, District Ajmer (Raj.)

-----Respondents

For Petitioner(s) : Mr.Anirudh Tyagi, Advocate on behalf of Mr.Kapil Mathur, Advocate.

For Respondent(s) : Mr.Ishan Kumawat, Advocate.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON : 23/11/2023

PRONOUNCED ON : 07 /12/2023

Order

REPORTABLE

BY THE COURT:

1. In Ancient Mythology, it was believed worldwide that **"Marriages are made in Heaven, but celebrated on Earth, Unity of two unknown souls, written right from birth."**

2. The above idiom means that **"the fate or destiny of whom one marry is decided by a High Power, such as God, and not by human choice or action."** It is often used to express the belief



that marriage is a sacred and divine institution and that married couples have a special bond that transcends earthly matters. Marriage is often regarded as a sacred bond, holds a unique significance in culture, echoing the age-old belief that certain unions are made in Heaven.

3. Marriages are pious knots in which two people are tied, not only physically but also emotionally, mentally and psychologically. Marriage is a legal formality or a sort of accord between two people, who agree to take care of each other. In other words, the act of marriage can be put as development of relationship which brings together two people, two souls, two families, two tribes and two races.

4. Marriage is the process through which two people make their relationship public, official and permanent. It joins two people in a bond that putatively lasts until death.

5. The petitioners are claiming themselves a Hindu married couple and petitioner No.1 is a resident of India, while the petitioner No.2 is a resident of Belgium. Both are seeking direction of this Court to Registrar of Marriage to register their marriage and issue a marriage certificate to them. The Registrar has refused to register their marriage by observing that their marriage cannot be registered because the petitioner No.2 is a Foreign National and he is not a resident of India. Now, the issue in this petition is "Whether the Registrar of Marriage can refuse to register a marriage only on the ground that one person of the couple is not citizen of India?" The other issue involved in this petition is "Whether denial of registration



of a foreign national, who solemnized marriage in India amounts to violation of his right of equality under Article 14 of the Constitution of India?" It is in this background, the issues involved in this petition are required to be considered.

6. The factual matrix of the case, as per the contents of the writ petition is that the petitioner No.1 is a resident of India, while the petitioner No.2 is a resident of Belgium and is a frequent traveller in India. Both the petitioners are claiming themselves as Hindu and as per their claim, they have performed marriage as per the Hindu rites and rituals, as per the Hindu Marriage Act, 1955 (for short "the Act of 1955") on 18.01.2010. As per the contents of the petition, Arya Samaj, Ajmer has issued a certificate in this regard and thereafter, they submitted an application on 20.01.2010 before the Registrar of Marriage for getting their marriage registered and obtaining a marriage certificate but the Registrar refused to register their marriage orally, on the ground that one of the petitioners i.e. the husband is a foreigner and is not a citizen of India. Hence, under these circumstances, the petitioners have knocked the doors of this Court by way of invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, with the following prayer:-

"It is therefore most respectfully prayed that this Hon'ble Court:-

1. May be pleased to direct the respondents to register the marriage of the petitioners.
2. Cost of the petition may be quantified in favour of the petitioner.
3. Any other relief and direction which this Hon'ble Court deems fit and proper may be granted."



7. The respondents have submitted a very short reply with regard to the maintainability of the petition only on the ground of Section 3 of the Rajasthan Compulsory Registration of Marriages Act, 2009 (for short "the Act of 2009"). The sole objection of the respondents in their reply is that one of the persons in the couple is not a citizen of India. Hence, their marriage cannot be registered.

8. Associate counsel of the arguing counsel has put appearance in the matter and he pleaded no instructions on behalf of the petitioners. He submitted that the petitioners are not in his contact and touch since long, hence he has no instructions to plead on their behalf.

9. Per contra, the counsel for the respondents opposed the prayer and contents of the petition and has also taken the objection again that no valid proof with regard to the marriage, as per Section 5 of the Act of 1955, has been produced for registration of marriage and the marriage cannot be registered, as per Section 3 of the Act of 2009 because the petitioner No.2 is not a citizen of India. Counsel submitted that the certificate issued by Arya Samaj, Ajmer is not a valid certificate of marriage, as per the judgment passed by the Allahabad High Court in the case of **Ashish Morya Vs. Anamika Dhiman** reported in **2023 DMC 156 (All)**. Counsel submitted that in view of the submissions made hereinabove, this petition is liable to be rejected.

10. Looking to the nature of controversy involved in the petition and looking to the fact that matter relates to registration of marriage alleged to have been solemnized in the year 2010 and



looking to the fact that the matter is pending since 2010 for adjudication and looking to the peculiar facts and circumstances of the case, this Court deems it just and proper to decide the issues involved in this petition without issuing notice to the petitioners to engage other counsel.

11. This Court has carefully perused the contents of the petition and the documents available on record and the submissions made by the counsel for the respondents.

12. The Hindu Marriage Act, 1955 came into force in the year 1955. The main object of this Act was to amend and codify the law relating to marriage among Hindus and others. Section 2 deals with the applicability of the Act, Section 4 deals with overriding effect of this Act, Section 5 deals with conditions of a Hindu marriage, Section 7 deals with ceremonies for a Hindu marriage and Section 8 deals with registration of Hindu marriages. The provisions contained under Sections 1, 2, 4, 5, 7 & 8 of the Act of 1955 are reproduced hereunder:-

“1. Short title and extent.—(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act.— (1) This Act applies—

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by





any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions.— XX XX XX

4. Overriding effect of 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 in so far as it is inconsistent with any of the provisions contained in this Act.

5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party—
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) 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

(c) has been subject to recurrent attacks of insanity,

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

6. Guardianship in marriage.— XX XX XX

7. Ceremonies for a Hindu marriage.— (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

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 conditions 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, any 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."





13. Perusal of the sub-clause (2) of Section 1 of the Act of 1955 indicates that the provisions contained under the Act of 1955 are also applicable to the Hindus domiciled in the territories to which this Act extends who are outside the said territories. Giving interpretation about applicability of Section 1 of the Act of 1955, the Hon'ble Supreme Court in the case of **Organo Chemical Industries Ltd. Vs. Union of India** reported in **AIR 1979 SC 1803** has held that where two persons who are Hindu by religion and professes Hinduism, comes to a place where the Act of 1955 is applicable and solemnize their marriage, as per the conditions of Section 5 and 7 of the Act of 1955, their marriage is treated as valid marriage. Interpreting the above provisions of the Act of 1955 and the above judgment, the Division Bench of Kerala High Court in the case of **Vinaya Nair & Anr. Vs. Corporation of Kochi** reported in **AIR 2006 Ker 275** has held that the idea of domicile can never be imported into the marriage of two Hindus married in India according to Hindu rites. The Court held that non-applicability of the Act of 1955 would be in an extreme case where both the spouses did not remain in India and both spouses have domiciled outside India.

14. Section 5 and 7 of the Act of 1955 never say that the Hindu who is solemnizing the marriage under the Hindu Marriage Act, 1955 should have domiciled in India. Meaning thereby this Act is applicable upon both the Hindus, domiciled in the territories to which the Act extends who are outside the territories. In the case of **Vinaya Nair (supra)** both the spouses were Hindu by religion and solemnized their marriage in India, as per the provisions of the Act



of 1955. The husband was employed in Canada and the wife was a native of Kannur District in Kerala. But the Corporation of Kochi refused to register their marriage because one person of the couple has Canadian domicile. Interpreting Sections 2 and 5 of the Act of 1955, the Kerala High Court held as under:-

“6. Though Section 1(2) states that the Act extends to the whole of India except the State of Jammu and Kashmir and also to Hindus domiciled in the territories to which the Act extends, the word "domicile" does not figure in Sub-clauses (a) and (b) of Section 2(1). Sub-clause (a) of Section 2(1) states that the Hindu Marriage Act applies to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj. Sub-clause (b) of Section 2(1) states that the Act applies to any person who is a Buddhist, Jaina or Sikh by religion meaning thereby Clauses (a) and (b) require the form of Hindu to make the Act applicable. Sub-clause (c) states that the Act applies to any other person domiciled in the territories to which the Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of the law. A conjoint reading of Sections 1 and 2 of the Act would indicate that so far as the second limb of Section 1(2) of the Act is concerned its intra territorial operation of the Act applies to those who reside outside the territories. First limb of Sub-section (2) of Section 1 and Clauses (a) and (b) of Section 2(1) would make it clear that the Act would apply to Hindus reside in India whether they reside outside the territories or not. The word "Hindu" as such is not defined in the Act. All the same, Sub-section (3) of Section 2 says that the Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom the Act applies by virtue of the provisions contained in the Section. Section 5 as we have already indicated, deals with conditions for a Hindu marriage. It is not a condition in Section 5 that the Hindu who is solemnising the marriage under the Hindu Marriage Act should have domiciled in India. We may in this connection refer to the applicability of the Hindu Succession Act, 1956. Section 1(2) of the Act states that it extends to the whole of India except the State of Jammu and Kashmir. Section 2(1) deals with the applicability of the provisions of the Act and also the jurisdiction of the court. There is no second part to Sub-section (2) providing for extra territorial operation. Section 2 of the Hindu Succession Act also does not contain any reference to domicile. When we compare the provisions of the Hindu Marriage Act and the Hindu Succession Act, 1956 it is clear that the concept of domicile has been brought only in the





second limb of Sub-section (2) of Section 1 of the Hindu Marriage Act read with Section 5(1) of the Act. So far as the present case is concerned, clause applicable is the first limb of Sub-section (2) of Section 1 read with clause (a) of Sub-section (1) of Section 2 of the Act. Test to be applied is whether both the parties are Hindus by religion in any of its forms and whether they have satisfied the condition laid down in Section 5 of the Hindu Marriage Act and whether they have followed the ceremonies of Hindu Marriage Act as provided in Section 7 of the Hindu Marriage Act. The concept of domicile as we have already indicated would apply only in a case where the second limb of Section 1(2) of the Hindu Marriage Act read with sub-clause (a) of Section 2(1) is attracted. We are of the view the petitioners have satisfied the conditions laid down in Section 5 of the Act and also the first limb of Sub-section (2) of Section 1 read with clauses (a) and (b) of Section 2(1) of the Hindu Marriage Act, 1955.

7. In such circumstances, we are of the view, marriage between the parties is a valid marriage solemnised following the provisions of the Hindu Marriage Act and therefore the Corporation is not justified in not registering the marriage. We are of the view Ramesh Kumar's case has not been correctly decided. We therefore overrule the said decision. Reference is answered accordingly. Writ Petition is disposed of with a direction to the Corporation to issue the marriage certificate at the earliest."

15. The similar issue came before the Delhi High Court in the case of **Bhumika Mohan Jaisinghani & Anr. Vs. Registrar of Marriage & Ors.** reported in **2019 SCC OnLine Del 6538**, where one spouse was citizen of Canada and other another spouse was a resident of Britain and both were working with the British High Commission, New Delhi since 2017. Both of them online applied for registration of their marriage but the software did not accept their application because they were not citizen of India. Resolving the controversy, the Delhi High Court held in para Nos.9 to 16 as under:-

"9. The petitioners further assert that they also made the declaration as required under Section 12 of the Act. It is also not disputed that the Registrar of Marriages duly informed the petitioners that they were married. The petitioners also



exchanged rings in his presence and in presence of the witnesses.

10. Subsequently, the petitioners were informed that the system is not accepting their citizenship details as indicates that at least one party has to be an Indian Citizen. Since, both the petitioners were not Indian citizens, the software did not accepted their details for generation of a certificate of marriage.

11. The learned counsel appearing for respondents does not dispute that the marriage between two foreigners cannot be registered under the Act. Thus, clearly, the software being used by the respondents for generation of the certificate and/or for maintaining the records of the marriages requires to be modified. Clearly, the issuance of the marriage certificate as per the Act cannot be withheld on account of the software being used by the respondents for the said purpose.

12. Sections 12 and 13 of the Act are relevant and are set out below:-

"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 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 have been complied with."

13. Admittedly, the marriage between the petitioners have been solemnized and further, the petitioners have also made the declaration as required in terms of the proviso to Sub-section (2) to Section 12 of the Act.



14. In view of the above, the respondent is required to issue a certificate in the form as set out in the Fourth Schedule of the Act.

15. In view of the above, the present petition is allowed and the petitioners along with witnesses are required to appear before respondent no.1 on 29.01.2019 at 10:30 a.m. Respondent no.1 is directed to issue a Certificate of Marriage in the form as specified in the Fourth Schedule and also ensure that a copy of the same as well as other necessary details are preserved in the records maintained at his office.

16. The respondents are further directed to take the necessary steps for modification of the software being used for registration of marriages and issuance of certificates. The details of the marriage between the petitioners shall be entered into by respondent no.1 as and when the software is modified without the presence of the petitioners or the witnesses."

16. The Delhi High Court not only directed the Registrar of Marriages to register the marriage of the two foreigners (not citizens of India) but also directed the authorities for taking necessary steps for modification of the software, which was being used for registration of marriages and issuance of certificates.

17. Again the same situation was faced by two foreign nationals who solemnized marriage at New Delhi but the authorities did not register their marriage under the Special Marriage Act. For redressal of their grievance, they approached the Delhi High Court by way of filing **Writ Petition (C) No.7951/2021** titled as **Aryan Arianfar & Anr. Vs. State Government of NCT of Delhi & Ors.** wherein following order was passed on 11.08.2021 at paragraph 5, which reads as under:-

"5. In the light of the aforesaid facts, the respondent No.2 is directed to communicate a date for a physical appointment to the petitioners within the next three days, in order to facilitate the registration of their marriage. The said communication be also sent to the learned counsel for the petitioner. It is expected that in the meanwhile, the respondents will take expeditious steps for amending the relevant guidelines and





make the necessary changes in the e-portal to enable foreign nationals, whose marriages are solemnized in Delhi, to apply on the e-portal for registration of their marriage.”

18. It appears that in spite of issuance of clear and specific directions by the Delhi High Court in the cases of **Bhumika Mohan Jaisinghani (supra)** and **Aryan Arianfar (supra)**, neither the portal or software was modified nor fresh guidelines were issued by the Government of NCT of Delhi. Again similar difficulties were faced by two persons out of which one was Canadian and another was American Citizen, who were working and residing in Delhi and they were inclined to solemnize their marriage and register the same under the Special Marriage Act, 1954, but the website of the concerned department did not accept their application and the pop-up message came on the site that ‘at least one party should be Indian’. Again interpreting the provisions contained under Section 4 of the Special Marriage Act, 1954, the following observations were made and certain directions were issued by the Delhi High Court in their case titled as **Arushi Mehra & Anr. Vs. Govt. (NCT of Delhi) & Anr.** reported in **2023 SCC OnLine Del 187** in paragraphs 9 to 15, which are reproduced as under:-

“9. A perusal of the decisions extracted above shows that the order passed by the Id. Single Judge makes it clear that the Respondents have to take expeditious steps for amendment of the guidelines and make the required changes to the e-portal to enable foreign nationals whose marriages are to be solemnized and registered in Delhi to apply online for the same. The relevant provision in the Act which enables the same is Section 4 of the Act. Section 4 of the Act is extracted 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 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.

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--

- (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."

10. A perusal of Section 4 of the Special Marriage Act, 1953 leaves no doubt that any two persons can seek solemnization of their marriage so long as conditions therein are fulfilled. Sub-Sections (a), (b), (c) and (d) of Section 4 do not make any reference to citizens. It is only in Sub-Section (e) of Section 4, where the statute requires that in case of marriages solemnized in Jammu and Kashmir, both parties have to be citizens of India.

11. The statute having made a clear distinction between 'any two persons' in the initial part, in contradistinction with 'citizens' in Sub-Section (e) of Section 4, it is clear that the





requirement of at least one party being a citizen of India is not required under the Special Marriage Act.

12. The Guidelines for Issuance of Marriage Registration Certificate issued by the Revenue Department, Government of NCT of Delhi are given on the following URL:

https://edistrict.delhigovt.nic.in/eDownload/Eligibility/Guidelin_e_9073.pdf

13. The said guidelines elucidating the eligibility criteria of marriages under the Special Marriage Act, 1953 read as:

“III. The applicant is entitled for Marriage Registration Under and Special Marriage Act, 1954 if –

- One party either Groom or Bride must be a citizen of India.
- Marriage has been solemnized within the territorial jurisdiction of NCT of Delhi.
- Marriage has been solemnized between any two persons of different religion.
- The groom should be of 21 years of age and the bride of 18 years. (As on Marriage Date).
- Neither party has at the time of registration more than one spouse living. Neither party
- is incapable of giving a valid consent of it in consequence of unsoundness of mind; or
- 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
- has been subject to recurrent attacks of insanity or epilepsy;
- The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two
- The parties have been living together as husband and wife.
- The parties have been residing within the district in Delhi of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.
- Both the parties (Bride and Groom) shall be present in person along with three witnesses bearing proof of permanent resident of Delhi who shall certify to the solemnization of such marriage on the day of appointment with Marriage officer.”

14. Therefore, it is clear that the directions given by various orders of the Delhi High Court have not been implemented by the Respondent Authorities and the guidelines are contrary to the statutory provisions as also the decisions of this Court extracted above. Accordingly, the following directions are issued: -





- (i) The Petitioners are permitted to approach the SDM Defence Colony on 17th January, 2023 in order to submit their form for solemnization and registration of marriage along with the requisite fee.
- (ii) The SDM shall process the same in accordance with the prescribed procedure without taking the objection that one of the persons has to be a citizen of India. Rest of the prescribed procedure shall be followed and the marriage shall be solemnized and registered in accordance with law.
- (iii) A status report shall be placed on record by the Secretary of the concerned Ministry GNCTD giving the details of the steps taken for amending the guidelines as also the steps taken for editing the requirements in the e-portal under the Special Marriage Act so as to ensure that the requirement of one of the parties being a citizen is not insisted upon.

15. Considering the fact that the directions of this Court date back to the year 2019, the status report indicating compliance with direction (iii) above shall be filed within four weeks, failing which, a senior official who is aware of the matter, shall join the proceedings either virtually or physically.”

19. Section 8 of the Hindu Marriage Act, 1955 deals with the process of Registration of Hindu Marriages and a complete mechanism has been provided for the State Government for compulsory registration of the marriages. But it has no where mentioned that a foreign national Hindu cannot get his marriage registered in India, if he/she has solemnized marriage, as per the requirement of Section 5 and 7 of the Act of 1955. Hence, it is clear that provisions contained under Section 3 of the Act of 2009 are not in consonance with the provisions contained under Section 8 of the Act of 1955.

20. During the course of arguments, the counsel for the respondents has submitted a format of application for Registration of Marriage, issued by the Department of Economics and Statistics, Government of Rajasthan and the same is reproduced as under:-





“Application for Registration of Marriage

(Fill the application for registration of marriage both in Hindi & English)

The Marriage Registrar

I have to apply for marriage registration. Particulars are given below:-

(A) Details of Bridegroom

Name of husband: _____

Name of husband's father: _____

Name of husband's mother: _____

Caste: _____ Citizen _____ Qualification _____

Permanent Address _____

Distt: _____ State _____ Pin Code: _____

(B) Details of Bride

Name of wife: _____

Name of wife's father: _____

Name of wife's mother: _____

Caste: _____ Citizen _____ Qualification _____

Permanent Address _____

Distt: _____ State _____ Pin Code: _____

(C) Details of Marriage

Address of place of Marriage: _____

Distt: _____ State _____ Pin Code: _____

4x5 cm passport size		Seal of amount deposited		4x5 cm passport size
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I – Witness

Signature _____

Name _____

Father's name _____

Address _____

Mob.No. _____ Aadhar _____

II – Witness

Signature _____

Name _____

Father's name _____

Address _____

Mob.No. _____ Aadhar _____

Declaration

I _____ son/daughter of _____ aged ____ resident of _____ do hereby declare that the information & details furnished in the application are true and correct. If any information & details are found to be incorrect then I would be responsible for the action taken against me.

Applicant's signature/thumb impression _____

Full name of the applicant & Address _____

Pin Code: _____

Relation of applicant with Husband/Wife _____

Mobile No. of applicant _____”

20. Perusal of the above format of application form indicates that even there is no column which prohibits any foreign national to get



registration of his/her marriage. Only details of permanent address of the bridegroom and bride are required to be filled with the details of the couple and place of their marriage. This application format nowhere indicates that both the bride and the bridegroom must be citizens of India. Hence, the action of the respondents in denying registration of a married couple only on this ground that one of them is not a citizen of India is not sustainable in the eye of law and the same is contrary to their own application form.

21. In view of the above legal pronouncements, it is explicit and *ipso facto* clear that for getting registration of marriage, it is not necessary that the party must be Citizen of India. The issue No.1 is answered accordingly.

22. Now this Court proceeds to decide the second issue that when a foreign national has solemnized marriage in India, as per the provisions contained under the Act of 1955, whether the denial of his/her marriage registration amounts to violation of his/her right of equality under Article 14 of the Constitution of India?

23. Fundamental rights are the basic human rights, enshrined in Part-III (Articles 12 to 35) of the Constitution of India, which are guaranteed to all citizens. The fundamental rights, contained under Articles 15, 16, 19, 29 and 30 are exclusively reserved for the citizens of India and the same are not available to foreign nationals.

These rights are:-

- a) **Article 15** – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- b) **Article 16** – Equality of opportunity in matters of public employment.



- c) **Article 19** – Protection of certain rights regarding freedom of speech, etc.
- d) **Article 29** – Protection of interests of minorities.
- e) **Article 30** – Right of minorities to establish and administer educational institutions.

But except the above fundamental rights, the other rights are available not only to the citizens of our country but the same are available to the non-citizens as well. Since, India was signatory of the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10.12.1948, therefore, a detailed endeavour was undertaken by the Constituent Assembly of India to harmonize the fundamental rights, enumerated in Part-Three of the Constitution of India with the principles delineated in the Universal Declaration of Human Rights. Thus, fundamental rights are open to both citizens of India and foreigners. However, certain rights, contained under Articles 15, 16, 19, 29 and 30 of the Constitution of India are solely available to Indian Nationals as fundamental rights. The majority of sovereign Nations adhere to natural justice principles and grant basic rights to foreign nationals. The Founders of the Constitution were concerned not to deny any basic right to non-citizens that would be damaging to their existence or deprive them of liberty and equality. It is vital to understand the distinction between the rights of citizens and those of foreign nationals to assess whether their rights have been violated. The fundamental rights of citizens, persons and non-citizens are as follows:-

- a) **Article 14** – Equality before law.
- b) **Article 20** – Protection in respect of conviction for offences.
- c) **Article 21A** – Right to education.



- d) **Article 22** – Protection against arrest and detention in certain cases.
- e) **Article 23** – Prohibition of traffic in human beings and forced labour.
- f) **Article 24** – Prohibition of employment of children in factories, etc.
- g) **Article 25** – Freedom of conscience and free profession, practice and propagation of religion.
- h) **Article 26** – Freedom to manage religious affairs.
- i) **Article 27** – Freedom as to payment of taxes for promotion of any particular religion.
- j) **Article 28** – Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Meaning thereby, the above fundamental rights are available to both citizens and non-citizens except enemy aliens. The fundamental rights for foreigners in India are conditional and the same are not absolute, they can be subjected to reasonable limits rather than absolute. Except for the rights protected by Article 20 and 21 of the Indian Constitution, the rest rights can be suspended during operation of any national emergency.

24. The constitution guarantees these rights without prejudice against any individual. They are meant to spread the concept of political democracy. They defend the people's freedom and liberties. The fundamental rights contained under Articles 15, 16 and 19 of the Constitution of India confer these rights on the "citizens" only while Articles 14 and 21 of the Constitution of India confer fundamental rights on "any person". This distinction between a "citizen" and a "person" was engrafted in our Constitution by its framers with a specific intent – to grant certain fundamental rights to its "citizens" and to grant certain rights to any "persons". There is





no ambiguity in the language of the Articles referred above and the intent is expressed with sufficient linguistic precision.

25. The fundamental rights are available to all the "citizens" of the country but a few of them are available to the persons i.e. "non-citizens" as well. In the case of **STC of India Ltd. Vs. CTO** reported in **AIR 1963 SC 1811**, the Hon'ble Apex Court has held that the word "citizen" in Article 19 of the Constitution of India has not been used in a sense different from that in which it has been used in Part-II of the Constitution dealing with "citizenship". It has been held in this case that the words "all citizens" have been deliberately used to keep out all "non-citizens" which would include "aliens".

26. Similarly, in the case of **Anwar Vs. State of J&K** reported in **(1971) 3 SCC 104** the Hon'ble Supreme Court has held that the rights under Articles 20, 21 and 22 of the Constitution of India are available not only to "citizens" but also to the "persons" which would include "non-citizens".

27. Dealing with the issue of availability of fundamental rights to the "citizens", "persons" and "non-citizens", the Hon'ble Supreme Court in the matter of **Chairman, Railway Board & Ors. Vs. Chandrima Das (Mrs.) & Ors.** reported in **(2000) 2 SCC 465** has held in paragraph No.28, 29, 34, 35, 37 as under:-

"28. The Fundamental Rights are available to all the "citizens" of the country but a few of them are also available to "persons". While Article 14, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to "person" which would also include the "citizen" of the country and "non-citizen" both, Article 15 speaks only of "citizen" and it is specifically provided therein that there shall be no discrimination against any "citizen" on the ground only of religion, race, caste, sex, place of birth or any of them nor shall any citizen be subjected to any disability, liability,





restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and places of public resort on the aforesaid grounds. Fundamental Right guaranteed under Article 15 is, therefore, restricted to "citizens". So also, Article 16 which guarantees equality of opportunity in matters of public employment is applicable only to "citizens". The Fundamental Rights contained in Article 19, which contains the right to "Basic Freedoms", namely, freedom of speech and expression; freedom to assemble peaceably and without arms; freedom to form associations or unions; freedom to move freely throughout the territory of India; freedom to reside and settle in any part of the territory of India and freedom to practise any profession, or to carry on any occupation, trade or business, are available only to "citizens" of the country.

29. The word "citizen" in Article 19 has not been used in a sense different from that in which it has been used in Part II of the Constitution dealing with "citizenship". (See *STC of India Ltd. v. CTO*). It has also been held in this case that the words "all citizens" have been deliberately used to keep out all "non-citizens" which would include "aliens". It was laid down in *Hans Muller of Nuremburg v. Suptd., Presidency Jail AIR at p.374* that this Article applies only to "citizens". In another decision in *Anwar v. State of J & K* it was held that non-citizen could not claim Fundamental Rights under Article 19. In *Naziranbai v. State and Lakshmi Prasad v. Shiv Pal* it was held that Article 19 does not apply to a "foreigner". The Calcutta High Court in *Sk.Md. Soleman v. State of W.B.* held that Article 19 does not apply to a Commonwealth citizen.

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34. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to "Life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens.

35. The rights guaranteed under Part III of the Constitution are not absolute in terms. They are subject to reasonable restrictions and, therefore, in case of non-citizen also, those rights will be available subject to such restrictions as may be imposed in the interest of the security of the State or other important considerations. Interest of the Nation and security of the State is supreme. Since 1948 when the Universal Declaration was adopted till this day, there have been many changes - political, social and economic while terrorism has disturbed the global scenario. Primacy of the interest of Nation





and the security of State will have to be read into the Universal Declaration as also in every Article dealing with Fundamental Rights, including Article 21 of the Indian Constitution.

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37. Now, Smt. Hanuffa Khatoon, who was not the citizen of this country but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as "Right to Life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of Govt. employees who outraged her modesty. The Right available to her under Article 21 was thus violated. Consequently, the State was under the Constitutional liability to pay compensation to her. The judgment passed by the Calcutta High Court, therefore, allowing compensation to her for having been gang-raped, cannot be said to suffer from any infirmity."

28. In view of the discussions made hereinabove, it is explicitly clear that denial of registration of marriage of the petitioner No.2, being a foreign national, amounts to violation of Right to Equality (Article-14). The respondents cannot refuse to register the marriage of the petitioners only on this count that one of the couples i.e. the petitioner No.2 is not a citizen of India and he is a foreign national.

29. 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





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





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