



## HINDU MARRIAGE ACT, 1955: LEGAL CHALLENGES IN REGISTERING TRANSNATIONAL HINDU MARRIAGES

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### ABSTRACT

*Marriage is a fundamental social institution that signifies the legal and spiritual union of two individuals. In Hinduism, marriage is not merely a contractual arrangement but a sacrament, embedded in religious and cultural traditions. Across cultures and legal systems, marriage is governed by a mix of religious customs, personal laws, and statutory provisions. In India, personal laws play a crucial role in regulating marriages, with different religious communities governed by distinct legal frameworks. Among them, the Hindu Marriage Act, 1955 (HMA) serves as the primary legislation for Hindus, Buddhists, Jains, and Sikhs, laying down essential principles for a valid Hindu marriage. Among its key provisions, Section 8 of the Act pertains to the registration of Hindu marriages, raising important legal questions, particularly in the context of transnational marriages involving Hindu foreign nationals. With increased globalization and a growing Indian diaspora, the legal recognition of Hindu marriages involving foreign nationals has become a complex issue, leading to jurisdictional disputes and ambiguities in statutory interpretation. The question of whether Hindu foreign nationals fall within the ambit of the Hindu Marriage Act and whether a refusal to register such marriages violates constitutional principles, particularly Article 14 (Right to Equality), remains a contentious issue.*

*This research critically examines the legal challenges and implications of registering transnational Hindu marriages under Section 8 of the HMA. Through an analysis of legislative provisions, judicial precedents, and comparative legal perspectives, the study highlights inconsistencies in marriage registration laws, the role of domicile in determining legal*

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*applicability, and the implications of non-registration for legal rights, including inheritance, divorce, and spousal recognition in foreign jurisdictions.*

**Keywords:** Hindu Marriage Act 1955, Hindu Foreign Nationals, Marriage, Section 8 of HMA, Domicile and Jurisdiction.

## INTRODUCTION

The institution of marriage has historically been one of the most fundamental building blocks of human society, serving as a conduit for social, economic, and legal relations. However, the legal framework governing marriage has undergone significant transformation across different societies and cultures, reflecting broader changes in social structures, religious ideologies, and legal systems. As legal scholar William Eskridge astutely observes, marriage is fundamentally "an institution constructed, not discovered, by societies,"<sup>1</sup> Highlighting its dynamic and evolving nature. From its origins as a deeply religious and patriarchal institution to its modern-day status as a legal contract based on principles of equality and individual autonomy, marriage has been shaped by the changing contours of human civilization.<sup>2</sup>

In the context of Hinduism, marriage holds a unique and sacred status, far exceeding the bounds of a mere civil contract. It is regarded as one of the essential samskaras (sacraments), an indissoluble and eternal bond that transcends mortal existence.<sup>3</sup> Rooted in Hindu theological and social frameworks, the sanctity of marriage is emphasized in sacred texts such as the Manusmriti and the Dharmashastras, which outline the religious duties and obligations of married individuals. Unlike Western conceptualizations of marriage that often center around mutual consent and contractual obligations, Hindu marriage has traditionally been viewed as a divine and spiritual union, reflecting the interconnectedness of dharma (duty), artha (prosperity), and moksha (liberation).

However, with the advent of colonial modernity and the post-independence codification of personal laws, the legal regulation of Hindu marriage underwent significant reform. The enactment of the Hindu Marriage Act, of 1955 marked a pivotal moment in India's legal history, seeking to harmonize traditional Hindu marital customs with contemporary legal principles.

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<sup>1</sup> W. N. Eskridge Jr., A History of Same-Sex Marriage, 79 Va. L. Rev. 1485 (1993).

<sup>2</sup> R. Grossi, Looking for Love in the Legal Discourse of Marriage, [https://doi.org/10.26530/OAPEN\\_502537](https://doi.org/10.26530/OAPEN_502537) (2020).

<sup>3</sup> <sup>3</sup> Indira Sharma, Balram Pandit & Ors., Hinduism, Marriage and Mental Illness, Indian J. Psychiatry, 2.1 JCLJ 70 (2021).

While preserving the religious and sacramental character of Hindu marriage, the Act introduced formalized procedures for registration, recognition, and dissolution of marriages. Particularly relevant in this context is Section 8 of the Hindu Marriage Act, which mandates the registration of marriages, thus ensuring legal recognition and documentation within the broader framework of India's civil and constitutional law. Marriage-related matters fall within the category of "vital statistics" as enumerated in Schedule VII, List III, Entry 30 of the Indian Constitution<sup>4</sup>, signifying the legal imperative to regulate and maintain records of matrimonial unions.

One of the most pressing issues that has emerged in recent years is the application of Section 8<sup>5</sup> Of the Hindu Marriage Act to marriages involving Hindu foreign nationals. With globalization and increased transnational mobility, the Hindu diaspora has expanded significantly, leading to a rise in cross-border Hindu marriages. These marriages often present complex legal and procedural challenges, particularly in jurisdictions where Hindu personal laws do not apply. Questions regarding the recognition of Hindu marriage ceremonies performed abroad, the eligibility of foreign nationals under the Act, and the procedural hurdles in registering such marriages in India have generated significant legal debate. Given the interplay between traditional Hindu marriage rituals and contemporary legal frameworks, the registration of Hindu marriages involving foreign nationals raises crucial issues concerning jurisdiction, proof of marriage, and compliance with statutory requirements.

This research seeks to critically examine the challenges and legal implications surrounding the registration of marriages for Hindu foreign nationals under Section 8<sup>6</sup> Of the Hindu Marriage Act. The analysis will explore the complexities arising from the intersection of Hindu religious traditions, statutory mandates, and the globalized nature of modern matrimonial unions. By delving into judicial interpretations, legislative provisions, and comparative legal frameworks, this study aims to contribute to the broader discourse on the evolving nature of Hindu marriage law in an increasingly interconnected world. Understanding these nuances is essential not only for legal scholars and policymakers but also for individuals navigating the intricate landscape of transnational Hindu marriages and their legal recognition.

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<sup>4</sup> Ind. Const. sched. VII, List III, Entry 30.

<sup>5</sup> Hindu Marriage Act, No. 25 of 1955, § 8, Acts of Parliament, 1955 (India).

<sup>6</sup> Ibid. 5

## HISTORICAL EVOLUTION OF HINDU MARRIAGE LAWS

**Early Conceptions in Ancient India:** The early origins of the institution of marriage can be delineated in the Vedas, particularly the Rig Vedic marital rites and traditions, such as the *Saptapadi* (seven steps). The initial Hindu texts did not present a consolidated law but did form the cultural and religious bedrock of Hindu matrimonial customs. Thereafter through the Dharmaśāstras, including the Manusmriti, Yājñavalkya Smriti, and Nārada Smriti, introduced detailed prescriptions regarding forms of marriage, the sacramental nature of marriage, and the duties of spouses. These texts remained predominant as customary law for centuries.<sup>7</sup> Hindu marriage practices historically varied across regions and castes, often adhering to local customs (*deshācāra*) and family traditions (*kula dharma*).<sup>8</sup> These customs were legally binding within their communities without a uniform codified legal system.

**The Colonial Effect (1757–1947):** With the advent of British rule and their establishment of control over the majority of the Indian sub-continent, they largely abstained from interfering in the personal laws of Hindus and Muslims, except in cases where social practices were deemed heinous, such as Sati. British courts in the late 18th and early 19th centuries often relied on Pundits or Shastris to interpret Sanskrit texts for adjudicating Hindu matrimonial disputes in the various Presidency towns. During the Colonial Era, myriad legislations were passed<sup>9</sup> in the form of the Hindu Widows' Remarriage Act of 1856 (Act XV of 1856), which legalized the remarriage of Hindu widows, which had previously been restricted by custom.<sup>10</sup> Similarly, the Child Marriage Restraint Act of 1929 (Sarda Act) was applied to all communities, setting minimum marriageable ages to curb child marriage.<sup>11</sup> Despite these reforms, Hindu marriage law remained an amalgam of Dharmaśāstric rituals, provincial customs, and judicial pronouncements. This complex colonial legal pluralism paved the way for reformers and lawmakers of the time to demand a more consistent and homogeneous Hindu Personal Law framework.

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<sup>7</sup> J. Duncan M. Derrett, *Hindu Law: Past and Present* (A. Mansell 1962).

<sup>8</sup> I. Chakraborty, *Hindu Marriage: An Aspect of the Atharva Veda*, 1 Int'l Proceeding on Religion, Culture, L., Educ. & Hindu Stud. 166 (2023).

<sup>9</sup> Nandini Bhattacharyya-Panda, *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal* (Oxford Univ. Press 2008).

<sup>10</sup> Carroll, *Law, Custom, and Statutory Social Reform: The Hindu Widows' Remarriage Act of 1856*, 20 Indian Econ. & Soc. Hist. Rev. 363 (1983).

<sup>11</sup> Neeraj Hatekar et al., "Legislating" Social Change: Strange Case of the Sarda Act, 42(2) Econ. & Pol. Weekly 145 (2007).

## REFORM MOVEMENTS AND PRE-INDEPENDENCE LEGISLATIVE DEVELOPMENTS

A reformation period was marked by social reformers like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar, who advocated for legal reforms to address polygamy, widow remarriage, and women's rights in marriage and inheritance.<sup>12</sup> The Arya Samaj Movement (founded by Swami Dayanand Saraswati in 1875) further challenged orthodox practices and promoted Vedic marriage rites. By the early 20th century, growing momentum for women's rights and uniformity in personal laws led to calls for comprehensive reform. In the 1940s, under British auspices, the B.N Rau Committee was appointed to study the feasibility of codifying Hindu law, culminating in initial drafts of what became known as the "Hindu Code Bill."<sup>13</sup>

**Post-Independence Codification:** With India's independence in 1947 and the coming into force of the Constitution of India in 1950, social justice and equality became explicit goals of the state. Article 44 of the Constitution<sup>14</sup> enjoined the state to work toward a Uniform Civil Code. The original Hindu Code Bill was intended to reform Hindu personal laws comprehensively. However, political resistance led to its division into separate statutes governing marriage, succession, guardianship, and adoption among Hindus. Resulting in the enactment of:

1. Hindu Marriage Act, 1955 (HMA)<sup>15</sup>, which standardized marriage laws for Hindus, Jains, Buddhists, and Sikhs, abolishing polygamy and introducing divorce provisions.
2. The Hindu Succession Act, 1956<sup>16</sup> Codified inheritance laws.
3. The Hindu Minority and Guardianship Act 1956<sup>17</sup>, defined guardianship and custody rules.
4. The Hindu Adoptions and Maintenance Act, 1956<sup>18</sup> Established legal adoption and maintenance rights.

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<sup>12</sup> Bhupinder Kaur & H.S. Rakesh, Impact of the Reform Movements on Indian Society, 3(4) Int'l J. Acad. Res. & Dev. 206 (July 2018).

<sup>13</sup> Renuka Ray, The Background of the Hindu Code Bill, 25(3) Pac. Aff. 268 (1952),

<sup>14</sup> Ind. Const. art. 44.

<sup>15</sup> Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

<sup>16</sup> Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

<sup>17</sup> Hindu Minority and Guardianship Act, 1956, No. 32, Acts of Parliament, 1956 (India).

<sup>18</sup> Hindu Adoptions and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

These four statutes, collectively called the Hindu Code, were pivotal in modernizing and bringing uniformity to Hindu personal law.

Amendments and Judicial Developments of the Hindu Marriage Act, 1955. The Hindu Marriage Act, of 1955 underwent amendments to accommodate evolving societal needs. For instance, the Hindu Marriage (Amendment) Act of 1976 introduced changes to the grounds for divorce and facilitated quicker legal remedies for marital disputes. Indian courts, particularly the Supreme Court, have played a crucial role in interpreting and extending the scope of the Act. Landmark judgments have clarified definitions of "Hindu," the validity of inter-caste marriages, and the extraterritorial applicability of the Act.<sup>19</sup>

While the Hindu Code reforms were groundbreaking, debates continue regarding the need for a Uniform Civil Code (UCC) under Article 44. Proponents argue that personal laws remain problematic and discriminatory. At the same time, opponents stress the need to uphold religious freedom and cultural diversity.<sup>20</sup> Notably, when enacted in 1955, the Act did not attempt to define the status of foreign nationals or non-resident Indians. This is likely due to the lack of international immigration at the time. Nonetheless, owing to the rise of the Indian diaspora abroad and the overall increase in globalization, there have been more discussions regarding the extraterritorial scope of the Act and its application to foreign nationals.

### **SCOPE AND APPLICABILITY OF THE HINDU MARRIAGE ACT, 1955**

The Hindu Marriage Act, 1955 (HMA) extends its applicability to individuals who identify as Hindus by religion, including Buddhists, Jains, and Sikhs, as outlined in Section 2(1)(a)<sup>21</sup>. The Act also encompasses individuals who are Hindu by birth, irrespective of their active religious practice. Additionally, Section 2(1)(c)<sup>22</sup> Broadens its scope to include persons who are neither Muslim, Christian, Parsi, nor Jew but are nonetheless governed by Hindu law. This expansive definition suggests that persons of Indian descent who practice Hinduism may be subject to the provisions of the Act, even if they do not hold Indian citizenship. Consequently, the question of whether foreign nationals who identify as Hindus fall within the ambit of the HMA remains an area of legal interpretation.

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<sup>19</sup> Lakshmbai vs Ayodhya Prasad, AIR 1966 SC 95; Yagnapurushdasji vs Muldas Bhudardas Vaishya, AIR 1966 SC 1119.

<sup>20</sup> Law Commission of India, Consultation Paper on Reform of Family Law (2018) p. 126, para 5.12.

<sup>21</sup> Hindu Marriage Act, No. 25 of 1955, § 2(1)(a), Acts of Parliament, 1955 (India).

<sup>22</sup> Hindu Marriage Act, No. 25 of 1955, § 2(1)(c), Acts of Parliament, 1955 (India).

Judicial precedents have played a pivotal role in clarifying the applicability of the HMA to non-citizens. In *Sondur Gopal v. Sondur Rajini*,<sup>23</sup> The Supreme Court held that for the Act to apply, at least one party must be an Indian citizen and a Hindu, thereby excluding two foreign nationals who identified as Hindus but lacked Indian citizenship. Similarly, in *Satya v. Teja Singh*,<sup>24</sup> The Court examined the issue of conflict of laws, ruling that Indian courts have jurisdiction over matrimonial disputes under the HMA only if at least one party has a substantial connection to India. Furthermore, in *Y. Narasimha Rao v. Y. Venkata Lakshmi*,<sup>25</sup> The Supreme Court reaffirmed that Hindu marriages are governed by Hindu personal law and emphasized that foreign divorce decrees must conform to Indian legal principles. These ruling highlights the potential reliance on the HMA by foreign Hindus in transnational matrimonial matters while reinforcing the territorial and jurisdictional limitations of the Act.

### **DEFINING ‘NON-CITIZEN’ AND THE RELEVANCE OF DOMICILE**

The term ‘non-citizen’ generally refers to individuals who do not hold Indian citizenship as defined under the Citizenship Act of 1955. In the context of the Hindu Marriage Act, 1955 (HMA), this can include the following categories:

1. Non-Resident Indians (NRIs): Indian citizens residing permanently or temporarily abroad.
2. Persons of Indian Origin (PIOs): Individuals of Indian ancestry who may hold foreign citizenship but retain cultural and familial ties to India.
3. Overseas Citizens of India (OCIs): Foreign nationals of Indian origin who have obtained OCI status, granting them certain legal privileges but not full citizenship.
4. Foreign Nationals Practicing Hinduism: Individuals who follow Hinduism but have no Indian citizenship or ancestry.

Domicile becomes a crucial legal concept that determines the jurisdiction applicable to an individual. It is defined under Section 1(2) of the HMA<sup>26</sup>, which states that the Act applies to:

1. Hindus in India.

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<sup>23</sup> (2013) 7 SCC 426.

<sup>24</sup> (1975) 1 SCC 120.

<sup>25</sup> (1991) 3 SCC 451.

<sup>26</sup> Hindu Marriage Act, No. 25 of 1955, § 1(2), Acts of Parliament, 1955 (India).



2. Hindus outside India who are Indian citizens.

Since the HMA does not explicitly apply to foreign Hindus, domicile becomes a key factor in determining whether a marriage can be solemnized or governed under the Act.

### **TYPES OF DOMICILES**

Under Indian and international private law, domicile is classified into:

1. Domicile of Origin: The domicile a person acquires at birth, typically inherited from their parents.
2. Domicile of Choice: The domicile a person acquires by voluntarily settling in a country to make it their permanent home.
3. Domicile by Law: The domicile assigned by legal provisions often applies to minors and individuals lacking legal capacity.

For the HMA to be applicable, at least one party must have an Indian domicile if they are not an Indian citizen. This ensures that Indian courts have jurisdiction over matrimonial matters involving foreign Hindus.

### **ANALYSIS AND DISCUSSION**

The authors seek to critically examine the legal recognition and registration of transnational Hindu marriages under the Hindu Marriage Act, 1955 (HMA), focusing on the jurisdictional, procedural, and constitutional challenges that arise in such cases. While Section 8 of the HMA provides a framework for marriage registration, its applicability to foreign nationals, non-resident Indians (NRIs), and individuals of Indian descent remains an area of legal ambiguity and debate. The main issue the authors of this article will be discussing is whether the spouse, who is a Hindu but a foreign national, comes under the ambit of the Hindu Marriage Act, of 1955. The second issue is whether the registration of such marriage can be denied on the grounds of the Husband's non-citizenship. The third issue is whether such a denial of marriage registration for a foreign national who solemnized marriage in India constitutes a violation of the right to equality under Article 14 of the Constitution of India.<sup>27</sup>

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<sup>27</sup> Ind. Const. art. 14.



To understand the extent of applicability of the Hindu Marriage Act 1955, we have to examine section 1 (2),<sup>28</sup> which reads ‘.....and also applies to Hindus domiciled in the territories to which this Act extends who are outside the said territories.’ Section 2(1)(a)<sup>29</sup> reads ‘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.’ The Hindu Marriage Act of 1955 applies not only to Hindus living in India but also to those who are Hindus by religion and are living abroad. According to Section 2(1)(a)<sup>30</sup>, the Act covers anyone Hindu in any form, including followers of various Hindu sects, including Arya Samaj. This should mean that a marriage between a Hindu and a Hindu Foreign National should be valid. It can also be understood that Arya Samaj's marriage is recognized under the act. It may not be a legal document. However, after getting the Arya Samaj marriage certificate, the marriage can be valid by recording at the sub-divisional magistrate's office.

In a case, the petitioner sought a marriage certificate for his union with a Japanese national, asserting that their marriage was solemnized according to Hindu customs and under the Hindu Marriage Act, 1955 (HMA). He argued that, as per Section 2(3) of the HMA.<sup>31</sup>, his wife, being a Buddhist, qualifies under the Act, which includes persons of Buddhist, Jaina, or Sikh religions. The Court, however, ruled against the petitioner. It held that the HMA applies only to marriages between Hindus who are domiciled in India. Since the petitioner's wife was not a permanent resident of India, the Act did not apply to their marriage. The petition was dismissed because the marriage could not be registered under the HMA due to the wife's non-domicile status and the failure to meet the registration deadline.<sup>32</sup> However, the Supreme Court, in another case, held that when two persons who are Hindu by religion and profess Hinduism come to a place where the Act of 1955 is applicable and solemnize their marriage, as per the conditions of Sections 5<sup>33</sup> and 7<sup>34</sup> Of the Act of 1955, their marriage is treated as a valid marriage.<sup>35</sup>

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<sup>28</sup> Ibid. 16.

<sup>29</sup> Ibid. 11.

<sup>30</sup> Ibid. 11.

<sup>31</sup> Hindu Marriage Act, No. 25 of 1955, § 2(3), Acts of Parliament, 1955 (India).

<sup>32</sup> P. Ramesh Kumar v. Secretary, Kannapuram Grama Panchayat, 1997 SCC OnLine Ker 138.

<sup>33</sup> Hindu Marriage Act, No. 25 of 1955, § 5, Acts of Parliament, 1955 (India).

<sup>34</sup> Hindu Marriage Act, No. 25 of 1955, § 7, Acts of Parliament, 1955 (India).

<sup>35</sup> Organo Chemical Industries Ltd. Vs. Union of India (1979) 4 SCC 573.

Furthermore, Section 8 of the Hindu Marriage Act of 1955<sup>36</sup> Deals with registering marriages among Hindus. It is to be noted that the section does not specify that it applies exclusively to Indian citizens, nor does it make registration a mandatory requirement for the validity of a marriage. The provision primarily facilitates the registration of marriages to provide legal proof and documentation, but it does not restrict this process to citizens or impose it as a compulsory condition.

In a case where both spouses were Hindu by religion and solemnized their marriage in India according to the provisions of the Hindu Marriage Act, of 1955. The Husband was employed in Canada, while the wife was a native of Kannur District in Kerala. However, the Corporation of Kochi refused to register their marriage because one of the spouses had a Canadian domicile. The Court held that the concept of domicile cannot be applied to the marriage of two Hindus who are married in India according to Hindu rites. The Court further stated that the non-applicability of the Hindu Marriage Act 1955, would only occur in extreme cases where both spouses do not reside in India and have both established domiciles outside of India.<sup>37</sup>

In another case, one spouse was Canadian, and the other was British. Both of them applied online, but the software rejected their application because of citizenship. The Delhi High Court directed the registrar to register the marriage and directed the authorities to take the necessary steps to update the software.<sup>38</sup>

One key point to highlight in this context is Section 3 of the Rajasthan Compulsory Registration of Marriages Act, 2009<sup>39</sup>, which mandates that "Registration of every marriage solemnized between persons who are citizens of India in the State of Rajasthan after the commencement of this Act shall be compulsory." This provision makes it mandatory for Indian citizens to register their marriages in Rajasthan. However, it is essential to note that this requirement does not extend to non-nationals. Despite this, the Act does not explicitly state that one must be a citizen of India to register for marriage in the state.

The primary focus in registering marriages under the Hindu Marriage Act of 1955 should be verifying whether the marriage was solemnized correctly rather than on the specifics of who is eligible to apply for registration. In a 2024 case, the Supreme Court held marriage registration

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<sup>36</sup> Ibid. 5.

<sup>37</sup> Vinaya Nair & Anr. Vs. Corporation of Kochi 2020 SCC OnLine Ker 4153.

<sup>38</sup> Bhumika Mohan Jaisinghani & Anr. V. Registrar of Marriage & Ors. 2019 SCC OnLine Del 6538.

<sup>39</sup> Rajasthan Compulsory Registration of Marriages Act, 2009, § 3, Acts of Rajasthan, 2009 (India).

is invalid without the proper performance of ceremonies stated under the Hindu Marriage Act, 1955.<sup>40</sup>

The purpose of registration is to legally recognize the marriage and provide documented proof that it was solemnized according to the law. The key test to be applied when registering a Hindu marriage is whether both parties are Hindu by religion in any form. This includes ensuring that the conditions outlined in Section 5 of the Act.<sup>41</sup>, such as the legal age of marriage and the absence of a living spouse from a previous marriage, have been met. Additionally, it must be confirmed that the marriage was conducted following the traditional Hindu ceremonies prescribed in Section 7<sup>42</sup> Of the Act. These ceremonies may include customary rites such as the 'Saptapadi' (seven steps) and other rituals recognized under Hindu law. The Supreme Court encouraged the compulsory registration of all marriages in India, regardless of the religious affiliation of the parties involved. The Court also recommended the formulation of rules to facilitate this process in all states and union territories.<sup>43</sup>

### **COMPARATIVE LEGAL PERSPECTIVE**

Marriage registration laws vary significantly across jurisdictions, reflecting differences in legal traditions, cultural norms, and state control over civil status documentation. Some countries mandate compulsory marriage registration to ensure legal recognition and state oversight, while others allow voluntary registration, relying on customary or religious recognition of matrimonial unions. The extent to which marriage registration is enforced influences legal rights, spousal protections, inheritance laws, and conflict resolution mechanisms in cases of marital disputes.

Compared to other countries, China is unique because it provides no option for voluntary marriage registration. China enforces a strictly centralized and compulsory marriage registration system, leaving no room for voluntary registration. Under Chinese law, a marriage is only considered valid if it is registered with the local Civil Affairs Bureau. Like in different places, possessing valid identification and any other documents is necessary; however, the actual marriage registration happens on the premises of the local Civil Affairs Bureau. The

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<sup>40</sup> Dolly Rani v. Manish Kumar Chanchal, 2024 SCC OnLine SC 754.

<sup>41</sup> Ibid. 23.

<sup>42</sup> Ibid. 24.

<sup>43</sup> Seema v. Ashwani Kumar, (2006) 2 SCC 578.

Marriage Law of the People's Republic of China (1980, amended in 2001)<sup>44</sup> Explicitly stipulates that unregistered marriages hold no legal validity, even if solemnized through traditional or religious ceremonies. After the registration, both parties are issued a marriage certificate, marking their marriage as legal and formally established.<sup>45</sup> Unlike the common practice of allowing voluntary marriage registration, the United Kingdom has made marriage registration compulsory. The United Kingdom mandates compulsory marriage registration under the Marriage Act of 1836<sup>46</sup>, which was later reinforced by the Marriage Act of 1949<sup>47</sup> and the Civil Partnership Act of 2004<sup>48</sup>. Notice regarding the marriage must also be reported to the local office beforehand, in addition to the actual wedding ceremony. Once the marriage has been solemnized, the same office will document it, and a marriage certificate will be issued.<sup>49</sup>

While a marriage can easily be registered with a local authority, the marriage is not legally recognized if one does not have a marriage certificate. Under Indonesian marriage law (Law No. 1 of 1974 on Marriage)<sup>50</sup>, Muslim marriages are typically registered through the Office of Religious Affairs (Kantor Urusan Agama - KUA), while non-Muslim marriages must be registered with the Civil Registry Office (Kantor Catatan Sipil). While religious ceremonies hold cultural and social legitimacy, legal recognition is granted only when the marriage is formally registered with the appropriate government office. The regional civil registry office can obtain a marriage certificate to remedy this in Indonesia. This document is vital as it allows the couple to take advantage of legal entitlements like inheritance, amongst other things.<sup>51</sup>

France enforces a strict secular approach to marriage registration, with civil marriage taking precedence over religious ceremonies. Under French law (Code Civil, Articles 144-227)<sup>52</sup>, a couple must first undergo a civil marriage at the town hall (Mairie), officiated by a government

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<sup>44</sup> Marriage Law of the People's Republic of China, (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 10, 1980, effective Jan. 1, 1981) (amended 2001).

<sup>45</sup> J. W. Engel, Marriage in the People's Republic of China: Analysis of a New Law, 46 J. Marriage & Fam. 955 (1984).

<sup>46</sup> Marriage Act 1836, 6 & 7 Will. 4 c. 85 (UK).

<sup>47</sup> Marriage Act 1949, 12, 13 & 14 Geo. 6 c. 76 (UK).

<sup>48</sup> Civil Partnership Act 2004, c. 33 (UK).

<sup>49</sup> P. Ramji Kumar, A Critical Analysis on Compulsory Registration of Marriage and Essentiality upon Its Mandate and Adherable Procedure in Indian Context with Special Reference to Other Countries, 5 INT'L J.L. Mgmt. & Human. 840 (2022).

<sup>50</sup> Undang-Undang Perkawinan, No. 1 of 1974 (Indon.).

<sup>51</sup> Stijn Cornelis van Huis & Theresia Dyah Wirastri, Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws, 13 AUSTL. J. ASIAN L. 87 (2012).

<sup>52</sup> Code Civil [C. civ.] arts. 144-227 (Fr.).

official. Only after completing the civil marriage registration may couples opt for a religious ceremony, which remains purely symbolic from a legal standpoint.

### **LEGISLATIVE INITIATIVE**

The first report to mention marriage registration was the 18th Law Commission of India report.<sup>53</sup> They were mandated to deal with child marriage and marriage registration issues, as noted by the directions of the Supreme Court in *Seema v. Ashwani Kumar*<sup>54</sup>. The Commission identified serious challenges emanating from the heterogeneity of laws on marriage registration in different states and central regulations. It noted that the then-prevailing legal framework, represented by acts like the Births, Deaths, and Marriages Registration Act of 1886, was confusing and inconsistent. This prompted its call for a single legislative solution to simplify the registration process and recommend passing an overarching "Marriage and Divorce Registration Act" that will be applied countrywide to all citizens, irrespective of religion.

The Commission also pointed to the inadequacies of existing registration legislation, which deals with birth and death registration almost exclusively, leaving marriage registration in a fragmented and poorly regulated form. It observed that several personal laws and state-specific legislation did not uniformly treat marriages that were not registered. Therefore, it was suggested by the 18th Law Commission Report.<sup>55</sup> To amend the current laws, especially the Special Marriage Act, of 1954 and the Foreign Marriages Act, of 1969, so that compulsory registration would be provided without compromising personal or religious traditions. This was intended to provide a more consistent system while considering the necessity for inclusivity in registration.

In its proposals, the Commission suggested repealing the Births, Deaths, and Marriages Registration Act of 1886 and renaming the Births and Deaths Registration Act of 1969 to include marriage registration. It emphasized that the focus should be on amending the registration of marriages for record-keeping purposes rather than the ceremonial aspects of marriage. The intention was to ensure that the registration process did not disturb the many

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<sup>53</sup> Law Commission of India, Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws, Report No. 205 (2008).

<sup>54</sup> (2006) 2 SCC 578.

<sup>55</sup> Law Commission of India, Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws, Report No. 205 (2008).

traditional practices but provided a more uniform mechanism for recording marital status, thereby increasing legal certainty and diminishing administrative complexity.

The latest paper on the subject, Law Commission of India Report No. 270 (July 2017)<sup>56</sup>, calls for the compulsory registration of marriages without changing the methods of their solemnization. The report suggests that the Compulsory Registration of Marriages Bill aims to implement a uniform registration system, as in the current regime for registering births and deaths. This method aims to ensure uniform recording of marriages while maintaining the integrity of different marriage laws and personal statutes so as not to disrupt settled matrimonial practices and traditions.

## CONCLUSION

The registration of marriages under Section 8 of the Hindu Marriage Act, 1955, particularly concerning Hindu foreign nationals, raises fundamental questions about the intersection of personal law, nationality, and constitutional rights. The inconsistencies in judicial interpretation and administrative application reflect broader challenges in India's legal framework concerning transnational marriages. While courts have attempted to clarify the applicability of the HMA, the persisting legal ambiguities highlight the urgent need for legislative intervention and reform.

The Delhi High Court's progressive stance recognizing the validity of Hindu marriages based on religious solemnization, rather than nationality, signals a shift toward a more inclusive interpretation of Hindu marriage law. However, without uniform legal clarity, marriage officers retain discretionary power, often leading to arbitrary denials of registration for foreign Hindu nationals. This not only creates procedural hurdles but also undermines fundamental rights under Article 14 of the Indian Constitution by allowing inconsistent application of the law.

Beyond domestic concerns, the lack of a streamlined registration process also poses practical difficulties for Hindu foreign nationals regarding spousal rights, inheritance, and international legal recognition. Given that marriage laws worldwide increasingly emphasize registration as a means of ensuring legal security, India's current approach appears outdated. The comparative legal frameworks of China, the UK, and Indonesia demonstrate that marriage registration is no longer merely a bureaucratic formality but a critical aspect of legal identity and protection.

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<sup>56</sup> Law Commission of India, Report No. 270, Compulsory Registration of Marriages (July 2017).

The repeated recommendations of the Law Commission of India underscore the necessity of a Uniform Marriage Registration Framework, which would provide clear guidelines on the registration of Hindu marriages involving foreign nationals. The failure to implement these recommendations has left many individuals in a legal vacuum. Moving forward, a comprehensive legislative overhaul is essential—one that harmonizes personal laws with contemporary global legal standards, ensuring clarity, consistency, and equal access to legal rights for all individuals, irrespective of nationality.

### **KEY RECOMMENDATIONS**

Several bills, proposals, and reports in the legislature have emphasized the urgent need to simplify and reform marriage registration procedures in India. To effectively address the current inconsistencies and ambiguities in the law, it is important to introduce targeted reforms that implement a uniform, simplified, and accessible marriage registration system.

**Enactment of a Uniform National Law for Marriage Registration:** There needs to be a national law on the registration of marriages to create uniformity in the processes in all the states and union territories of India. This would bring clarity and be beneficial to all citizens irrespective of their religious affiliations or the personal laws under which their marriages are governed. Unlike the Uniform Civil Code (UCC), which addresses a broader spectrum of personal laws, this proposed law would address only the registration of marriages and the documentation thereof. By being free from religious doctrines, such a law would cater to potential religious sensitivities and communal tensions, while also allowing for all marriages across all religions to be legally registered and recorded.

**Mandatory Registration of Marriages with Enforcement Mechanisms:** While registration of marriage needs to be made compulsory, the enforcement mechanisms need to be geared towards ensuring compliance without invalidating marriages that are not registered. For incentivizing compliance with registration requirements, nominal penalties may be imposed for delay or non-compliance. Additionally, India's status as a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (UNCEDAW) under Article 16(2) obligates the country to implement compulsory registration of marriage. Aligning national policy with this international commitment would further reinforce legal protection for citizens, particularly women, in marriage matters.



**Inclusion of Foreign Nationals in the Registration Process:** The scope of marriage registration has to be brought under the purview of Non-Resident Indians (NRIs), Persons of Indian Origin (PIOs), and foreign nationals who have their marriages solemnized in India. The inclusion would see all marriages involving foreign nationals duly recognized and documented, clearing legal ambiguities in cases about the rights of spouses, visa applications, inheritance of property, and divorce proceedings under Indian as well as international laws.

**Clarification of Registration Requirements and Procedures:** To eliminate procedural ambiguities, clear and specific guidelines must be established for the requirements of marriage registration. The guidelines must comprehensively outline the documents required, verification procedures, and eligibility criteria, making them transparent and simple to fulfill for all applicants. Standardization of the process would prevent discretionary interpretations by marriage registrars and thereby reduce inconsistencies and bureaucratic delays.

**Expansion of Registrar's Role and Jurisdiction:** In the interest of administrative efficiency, the roles of marriage registrars have to be integrated into the existing system of registrations of births and deaths, as recommended by the Law Commission of India. This integration of functions would have the consequence of bringing all the significant life events together under a single administrative head. However, while registrars should be in a position to verify the authenticity of documents provided, their power should be limited to procedural conformity and not cover the determination of whether the marriage itself is valid.

**Implementation of a Centralized Digital Marriage Registration System:** To modernize and streamline the registration process, a centrally designed e-portal for the registration of marriages needs to be developed. Such an online portal would facilitate the online filing of applications, electronic submission of documents, status tracking, and digital issuance of marriage certificates. This system will reduce bureaucratic delays, remove inefficiencies, and enhance access, particularly for those located abroad or outside their home states. By adopting technology-enabled governance, India can offer greater transparency, access, and efficiency to the marriage registration system.

These recommendations cumulatively aim to harmonize marriage registration procedures with global legal standards, introduce more legal protection for individuals, and establish a more transparent, accessible, and simplified system that responds to both domestic and international matrimonial concerns.

## **FINAL THOUGHTS**

The registration of Hindu marriages involving foreign nationals is an evolving legal issue that requires a nuanced approach balancing religious traditions, statutory law, and contemporary legal needs. While judicial precedents provide some clarity, legislative reforms are essential to eliminate uncertainties surrounding transnational Hindu marriages. The legal system must ensure that marriage registration is accessible, transparent, and aligned with global best practices, thereby protecting the rights of Hindu couples across jurisdictions.

Given India's growing diaspora and increasing cross-border matrimonial unions, the harmonization of personal laws with modern legal frameworks is not just a legal necessity but also a socio-cultural imperative. By addressing these legal gaps, India can ensure greater legal certainty, fairness, and protection of matrimonial rights in an increasingly interconnected world.