

(2014) 10 MAD CK 0168

In the Madras High Court

Case No : HCP Nos. 2767/2013 and 2141/2014 and M.P. No. 1/2014 in HCP 2767/2013

S. Balakrishnan Pandiyan

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Advocates Act, 1961 — Section 35
Constitution of India, 1950 — Article 15, 15(3)
Hindu Marriage Act, 1955 — Section 14, 2(e), 24(1), 5, 6(1)(a)
Penal Code, 1860 (IPC) — Section 186, 506
Tamil Nadu Registration of Marriages Act, 2009 — Section 5, 7, 8

Citation : (2014) 5 LW 207 : (2014) 7 MLJ 651

Hon'ble Judges : S. Rajeswaran, J;P.N. Prakash, J

Bench : Division Bench

Judgement

P.N. Prakash, J.—Sitting in the Habeas Corpus jurisdiction, we frequently came across cases filed by young men between 21 and 25 contending that, the given detinue is his wife having married and registered the marriage either in the Office of the Marriage Registrar, Chennai North (Joint-I) or Marriage Registrar, Royapuram, and further alleging that the parents are keeping the detinue in illegal custody.

2. On the strength of the Marriage Certificate produced by the petitioner, we were routinely issuing Rule Nisi for the production of the detinue in order to check if she was in the illegal custody of her parents. In several cases we found the detinue, when produced before us, telling that she has not undergone any solemnisation of marriage with the petitioner and even repudiated the very Certificate of Marriage as a bogus one.

3. In HCP No. 2767/2013, S. Balakrishnan Pandiyan, the petitioner, has stated in his affidavit that he hails from Theni District and had fallen in love with the detinue and that they got married on 14.06.2013 at Arulmighu Vadapalani Murugan Temple in Chennai and that the marriage was registered under the

Tamil Nadu Registration of Marriage Act, 2009 with the Registrar of Marriages, Chennai North (Joint-I), on the same day. We issued notice to the respondents and directed production of the detenue. The detenue appeared before us on 05.12.2013 and told us that, though she knew the petitioner, she had not married him at all and the Marriage Certificate that was produced in support of the claim of marriage has been obtained without her knowledge and consent.

4. On carefully scrutinizing the Marriage Certificate, we found that the place of solemnisation of the marriage has been given as No. 154, Angappa Naicken Street, Chennai 600001, whereas, in the affidavit of the petitioner he has stated that he got married in Arulmighu Vadapalani Murugan Temple, which is at Vadapalani and not anywhere near the address given in the Marriage Certificate. All this aroused strong suspicion in our mind and therefore, we passed a detailed order on 05.12.2013, the relevant portion of which is extracted below:

"5. Before parting with the matter, we find that almost in all Habeas Corpus Petitions where the boys/husbands, alleged to have married the detenues/young girls, produce Marriage Certificates in proof of their marriage issued by the Sub Registrar, Royapuram. After notice, the detenues come before this Court and deny any relationship with the boys. Whereas, the boys state that the said Marriage Certificates have been obtained with the consent and knowledge of the detenues/girls. We do not know how these Certificates are issued by a Government Office, without any proper identification and verification of the parties concerned. Moreover, the issuance of such Marriage Certificates by the said office would also impair the reputation and status of the girl's family. Besides that, the said certificates can also be utilised by the alleged husband by filing cases and the girl's family will be unnecessarily put to great difficulty and hardship on account of that. It is further informed that there are other two institutions, viz., [1] a Christian Organisation functioning in Royapuram, Chennai and [2] a Hindu Organisation functioning in Kodambakkam, Chennai, who do solemnise such marriages and issue certificates, similar to the one issued by the Sub Registrar, Royapuram. Since this has become an order of the day, we would like to take serious note of this fact and to consider passing appropriate orders.

6. Therefore, in order to nip it in the bud, we direct the DIRECTOR

GENERAL OF POLICE, CBCID HEADQUARTERS, SIDCO ELECTRONIC COMPLEX, GUINDY, CHENNAI -600032 to appoint a competent authority in the rank of the Superintendent of Police, to enquire into the matter, viz., to find out the modus operandi of these offices as to how they issue such Marriage Certificates; whether the parties are appearing before them and signing any register, whether the consent of the girls are obtained, so on. The Superintendent of Police concerned shall enquire these aspects and submit a report in this regard to this Court in a SEALED COVER within a period of thirty days [30 days] from today to enable this Court to pass appropriate orders."

5. In HCP No. 2141/2014, R. Ram Prasath, the petitioner, has stated that he was

in love with the detainee and they both got married on 30.06.2014, which was registered in the Office of Registrar of Marriages, Chennai North, (Joint-I) on the same day and that after the marriage, the detainee went back to her parents house. He has further alleged in his affidavit that the parents of the detainee are keeping her in illegal custody and trying to get her forcibly married to someone and therefore, he has sought for issuance of Writ of Habeas Corpus for her production and release from illegal detention. On the strength of the Marriage Certificate produced by the petitioner, we issued notice to the respondents. The detainee appeared before us and stated that the petitioner, a Carpenter by profession, was employed by her father to carry out certain interior decoration in her house and thus she got acquainted with him. She further stated that she was preparing for Civil Service Examinations and at that time, the petitioner told her that if she prays to a certain "god man", she will be able to clear the examination and so he took her to a "god man", who performed some ceremonies and mesmerised her. She also filed a counter narrating the sequences of events and in para 7 of her affidavit, she has stated as follows:

"7. The petitioner has averred that a marriage certificate was issued by an advocate Sivakumar. I have never met the advocate nor visited his office. These certificates relied upon by the petitioner have been obtained by fraud and collusion and I have never married the petitioner or consented to the same."

6. The Marriage Certificate produced by the petitioner shows that, the marriage was performed at No. 117/118 Angappa Naicken Street, Chennai-1, which is also shown as the address for service of the counsel on record M/s. A. Arul Deepan and L. Ramu in the Vakalatnama. From this it is obvious that the alleged marriage has been performed by the Advocate in his office premises.

7. One N. Arun has filed M.P. No. 1/2014 in HCP No. 2767/2013 through his counsel Mr. C. Vijayakumar, Advocate, wanting to get himself impleaded in this litigation in order to place before this Court his own experience in which he became a victim of a bogus marriage that was registered in the office of the Marriage Registrar, Royapuram. According to him, he is a Hindu by birth, but a Marriage Certificate has been given by one Rev. A.M. Cedric Beno of "Jesus with Us Church" as if he had solemnised the wedding of N. Arun with one Felshya Jansi Rani. Apart from making other allegations, he has made the following allegation in para 10, which may be relevant to the scope of enquiry in this case.

"10. I humbly submit that when I along with my father visited the Sub Registrar office, Royapuram to get the certified copies of the documents, we have found out that a group of persons with white shirts and black pants along with other group of persons in collusion with the staff of the SRO at Royapuram are regularly involved in running the racket of registering bogus marriages and earning huge amount of money through the fraudulent deeds and transactions and the innocent public belong to both the sexes are victims."

8. Pursuant to the directions given on 05.12.2013, Mrs. M.V. Jaya Gowri, IPS,

Superintendent of Police, CB-CID, Cyber Cell, Chennai was appointed as the Enquiry Officer by the Additional Director General of Police, CB-CID. Mrs. M.V. Jaya Gowri, IPS, conducted a thorough enquiry and submitted a Report dated 14.02.2014 to this Court. The Enquiry Officer has conducted enquiry in respect of marriages registered in the Offices of the Registrar of Marriages at Chennai North [Joint-I] and at Royapuram for the period from 01.01.2013 to 12.12.2013. In Annexure-I of the Report, she has given the names of 120 Advocates along with their office address, who have totally registered 1559 marriages during that period in the Office of the Registrar, Chennai North [Joint-1]. She has also given the number of marriages solemnised and registered by each Advocate on each working day in every month. For example, more number of marriages have been solemnised and registered during April, May and June when compared to other months. In April 2013-177; May 2013-214 and June 2013-284. In April 2013, Neelanarayanan, Advocate has solemnised and registered 24 marriages and on 15th April 2013 itself he has solemnised 8 marriages, as could be seen from Annexure-I. Similarly in Annexure-II, she has given the names of 48 Advocates who have totally solemnised and registered 1937 marriages in Royapuram Registrar Office between 01.01.2013 and 12.12.2013. Here also the peak season is April-164; May-169, June-100 and July-302. One Advocate by name S. Narasimhan, has solemnised and registered 16 marriages on 14th February, 2013.

9. On a perusal of Annexure-I and II, it is obvious to us that there is a spurt in the registration of marriages during April, May, June and July when compared to other months. Perhaps this is because, that is the time when the academic year closes and young lovers while leaving College, will have to part company, before which they were under compulsion to register the marriages preemptively. We read the Report and found it to be very shocking. The Report disclosed the existence of a Marriage Registration Cartel run by Advocates, operating near the High Court. The following findings of the Enquiry Officer, will be self-explanatory.

"14. It is true that huge number of marriages were registered under Tamil Nadu Registration of Marriages Act 2009 in the Registrar office Royapuram since the Act was invoked and at the ORB, Chennai North a heavy increase in number of marriages registered under this Act in the year 2013. During this enquiry details of all the marriages registered both the Registrar's office at Royapuram and Chennai North (ORB) was obtained and it was found that in most of the cases the addresses of the parties to marriage are outside Chennai City only. Addresses of the parties to marriage belong to various districts of Tamil Nadu were selected and enquiry was conducted discreetly with the couples and their respective families and it was found that those marriages were registered at Chennai due to the following reasons.

- i) Though the permanent/ native addresses are in various districts most of them were either working or studying in Chennai and its surroundings.
- ii) Most of the marriages were registered out of love affairs between the parties

to marriage and not known to the parents at the time marriage registration.

iii) Out of 2128 marriages registered under Tamil Nadu Registration of Marriages Act 2009 in ORB Chennai North in the year 2010 (upto 12.12.2013) 1559 marriages have been solemnised in the offices of the Advocates in the local jurisdiction and the certificates to that effect were issued by 120 various Advocates on various dates (as per Annexure-1).

iv) Out of 3313 marriages registered under Tamil Nadu Registration of Marriages Act 2009 in Royapuram in the year 2013 (upto 13.12.2013), 1937 marriages have been solemnized in the offices of the Advocates in the local jurisdiction and the certificates to that effect were issued by 48 various Advocates on various dates (as per Annexure-2)."

One Advocate by name, Loganathan has solemnised 205 marriages in 2013 in the G.T. Court Bar Association room.

10. Unlike Pandora, who unwittingly opened the box and let out the vermins, we consciously decided to open the can of worms keeping public interest in mind and for endeavouring to clean the Augean stable in the best interest of the Bar. Therefore, we appointed Mr. V. Raghavachari as amicus curiae to assist us and we also sought the assistance of Mr. R.C. Paul Kanagaraj, President of the Madras High Court Advocates Association and Mr. K.R. Tamizh Mani, President of the Madras Bar Association. We also issued notice to the Secretary, Bar Council of Tamil Nadu, who appointed Mr. S.Y. Masood, Advocate to represent the Bar Council. We furnished them a copy of the entire Report. We also issued notice to the Registrar of Marriages, Royapuram and Registrar of Marriages, Chennai North functioning under the Tamil Nadu Registration of Marriages Act, 2009. We permitted the stake holders to file counter affidavit, if any, in order to explain their stand vis-a-vis the Enquiry Report. Counter affidavits were filed on behalf of the Secretary, Bar Council of Tamil Nadu and Puducherry, Registrar of Marriages, Chennai North and Registrar of Marriages, Royapuram.

11. We heard all the counsels and also permitted others to air their views.

12. Mr. K.R. Tamizh Mani, culled out certain startling statistics from the Report submitted by the Enquiry Officer which we are extracting below:

"Details of marriages conducted by Advocates in 2013 (346 days)

S. No.

Name of Advocate

Annexure I

Annexure II

Office Address

1

Athitham*

99

219

Two

2

K. Ameerbatcha

55

92

Two

3

R. Ananthapandian

9

89

Two

4

G. Saran

-

61

One

5

N. Neelanarayanan*

173

209

Two

6

Md. Ghouse

53

15

Two

7

L. Sundaramoorthy

31

76

Two

8

S. Venkatesan*

8

269

Two

9

P.S. Loganathan

205 [At G.T. Court Bar Association room

54

Two

10

Narashiman*

139

537

Two

11

S. Alamelu*

269

-

One

12

B.B. Venkatesan

154

90

Two

13

Saran Raj

110

-

One

14

Shyed Sha

143

-

One

15

Chander

63

27

Two

Hence total in 346 days

1. Narashiman 676

2. Neelananarayanan 382

3. Athitham 318

4. S. Venkatesan 277

5. Alamelu 269 "

13. We are reproducing below the principled stand taken by the Secretary, Bar Council of Tamil Nadu and Puducherry in the affidavit sworn to by him:

"2. I submit that this Honourable Court issued notice to the Bar Council of Tamil Nadu and Puducherry to explain the duty of the advocates. I have gone through the report filed by the Enquiry Officer. It is stated in the report as follows:

"number of marriages running into thousands had been conducted in the office of advocates and out 3313 marriages registered under the Tamil Nadu Registration of Marriages Act, 2009, in Royapuram in the year 2013, 1937 marriages have been solemnized in the office of advocates in the local jurisdiction and certificates to that effect were issued by 48 various advocates on various dates."

At the outset, the advocates are not entitled or permitted to conduct marriages in their office. Neither the provisions of Advocates Act nor the Rules framed thereunder permits the advocates to perform marriages. Honourable Mr. Justice

V.R. Krishna Iyer in his judgment observed as follows:-

"The Bar is not a private guild like that of barbers, butchers and candlestick makers, but by bold contrast, a public institution committed to public justice and pro bono publico service."

So, the advocates are expected to do only judicial work and not any other work. Therefore, the condition for enrolment is that the candidate should not hold any post for monetary gain in Government organisations or private sectors. The full attention of the advocates should be only in the judicial work. Any deviation from this work will amount to unbecoming of an advocate. The marriages conducted by the advocates in the respective office in large numbers is not permitted under the Advocates Act or the Rules framed by the Bar Council of India. The advocates are liable to be proceeded under Sec. 35 of Advocates Act for professional misconduct or other misconduct. So far, the Bar Council has not received any complaint like this nature. Only the investigation report reveals such illegal activities of the advocates and that the advocates are the officers of the High Court and in delivering justice, the advocate role finds place.

3.....

4.....

5. I respectfully submit that based on the rules framed by the Bar Council of India about the dignity and etiquette of the legal profession, the members of the legal fraternity are not expected to indulge such kind of activities and tarnish the image of the legal profession as contemplated under the Bar Council of India. If such an act is proved, an appropriate action will be initiated under Sec. 35 of the Advocates Act for punishment of professional misconduct. So far, the Bar Council of Tamil Nadu and Puducherry have not received any such complaint regarding the conducting of marriages by the advocates. If any such complaint is received, the Bar Council will take action according to Advocates Act as well as Rules framed by the Bar Council of India."

14. The two Registrars of Marriages in their affidavits have stated the procedure that is adopted by them while registering marriages under the Tamil Nadu Registration of Marriages Act, 2009. When we pointedly questioned them as to how they could permit such mass registration of marriages on a single day by a single Advocate, they merely stated that they did not have the power to look into the validity of the solemnisation ceremony and if the documents set out in the Rules framed under the Tamil Nadu Registration of Marriages Act, 2009 are submitted, they have no other option, but to register the same, refusal of which will lead to unpleasant incident with Advocates.

15. The summum bonum of their submission is:

A group of Advocates have taken solemnisation and registration of marriages as a special branch of practice.

Even if it is subjectively clear that there is something foul in the marriage, they cannot refuse registration, if the documents produced by the Advocates who solemnised the marriage are ex facie proper and in accordance with the Rules.

Any genuine query raised would immediately result in a commotion by the practitioners, sometimes amounting to abuse and threat of physical violence. To corroborate this, they gave CC TV footages recorded in their office and when we viewed them we were indeed disheartened. We saw and heard a member of the noble profession hurling choicest abuses on the helpless Registrar and even threatening him physically.

The practitioners have a cyclostyled format for issuing Marriage solemnisation Certificate, a sample of which we give below:

"N. NEELANARAYANAN, B.Com., B.L.,
Advocate No. 154, Angappa Naicken Street,
Chennai 600001

Date:.....

CERTIFICATE

This is to certify that the Hindu Marriage was solemnized between Selvan..... Son of....., and SELVI..... Daughter of Mr..... on..... In my presence the bridegroom and Bride are garlanding themselves, at No. 154, Angappa Naicken Street, Chennai 600001, under the Hindu Seerthirutha Marriage Customary Act.

Sd/-.....

N. NEELANARAYANAN, B.Com., B.L.,
Advocate
No. 154, Angappa Naicken Street
Chennai 600001."

16. From the statistics provided by the Enquiry Officer in the Report, it is evident that a group of lawyers have developed a new field of practice, namely "Solemnisation and Registration of Marriages" and have carved for themselves a niche in that domain. It is said "Marriages are made in Heaven", but to our chagrin we find marriages are being made in Advocate's Offices and Bar Association rooms.

17. Mr. R.C. Paul Kanagaraj, President of MHAA though did not support such high handedness by lawyers, but expressed his own reservations about the conduct of the Registering Officials and alleged their complicity in the Registration process for extraneous consideration. Be that as it may, in our opinion, one wrong cannot justify another wrong. All the learned counsels were uniformly critical on the

conduct of lawyers and expressed their anguish in no uncertain terms in the deterioration in professional standards and genuinely sought the intervention of this Court to set right the malady. We are conscious of the fact that, marriage as an Institution has different contours in today's society, where there is even statutory recognition of live-in relationships. What was considered to be a holy cow a few decades back, does not hold the same sanctity now. As long as parties do not knock the doors of the Courts challenging the validity of a marriage, Courts cannot venture into passing general decrees annulling such marriages in the pretext of cleansing the legal profession.

18. Now let us examine the law on the subject.

We do not want to go into the ancient law of marriages for that has almost lost its relevance after the introduction of various statutes governing marriage and divorce. Suffice to refer to Section 7A of the Hindu Marriage Act, which permits Suyammariyathai or Seerthiruththa marriages. Section 7A reads as follows:

"7-A: Special Provision regarding Suyammariyathai and Seerthiruththa marriages.- (1) This section shall apply to any marriage between any two Hindus, whether called Suyammariyathai marriage or Seerthiruththa marriage or by any other name, solemnized in the presence of relatives, friends or other persons--

(a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife, or as the case may be, her husband; or

(b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(c) by the tying of the thali."

19. The history of this amendment needs no re-statement as it is well known. In short, this amendment was introduced to legitimise the marriages performed without Saptapadi, since Saptapadi was considered as an Aryan ritual.

20. At this juncture, we would like to refer to the meaning of the expression "solemnised" that is used both in Section 7 and in Section 7A of the Hindu Marriage Act as expounded by the Supreme Court in Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another, .

"The word "solemnize" means, in connection with a marriage, "to celebrate the marriage with proper ceremonies and in due form". It follows, therefore, that unless the marriage is "celebrated or performed with proper ceremonies and due form" it cannot be said to be "solemnized".

21. We are very clear in our mind that even the protagonists of the Suyammariyathai/Seerthiruththa form of marriage did not visualise marriages being solemnised in secrecy. The very idea of performing marriages with celebration is to publicly declare the marital status of the parties. Even Thanthai Periyar used to conduct Suyammariyathai form of marriages publicly so that the

world recognised the status of the couples. Hence, celebration of marriage is not antithetical to Suyammariyathai/Seerthiruththa form of marriage. Therefore, we are of the opinion that a marriage conducted in secrecy with few strangers around, be it Suyammariyathai form, will not amount to solemnisation, as required under Section 7 and 7A of the Hindu Marriage Act.

22. In Smt. Seema Vs. Ashwani Kumar, , the Supreme Court opined that marriages should be compulsorily registered and directed the State Governments to enact a law for compulsory registration of marriages. The reason for such a direction is evident from the following passage from the said judgment:

"15. As is evident from narration of facts, though most of the States have framed rules regarding registration of marriages, registration of marriage is not compulsory in several States. If the record of marriage is kept, to a large extent, the dispute concerning solemnisation of marriages between two persons is avoided. As rightly contended by the National Commission, in most cases non-registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. That being so, it would in the interest of the society if marriages are made compulsorily registrable."

23. Pursuant to this order, the State legislature enacted the Tamil Nadu Registration of Marriages Act, 2009 [Tamil Nadu Act 21 of 2009] which came into force on 24.11.2009. By notifications, G.O. Ms. No. 987, Home (Courts-IV) Department, dated 24.11.2009, the Government appointed the District Registrars and Sub Registrars appointed under the Registration Act, 1908 to act as Registrars of Marriages in their Districts and Sub Districts for registration of marriages under the Act. The Government also framed the Tamil Nadu Registration of Marriages Rules, 2009 in exercise of the powers under Section 24(1) of the Act. It may be necessary to extract a few provisions of the Act:

"2(e) "Priest" means any person who performs a marriage or any person present in the marriage referred to in section 7A of the Hindu Marriage Act, 1955 (Central Act XXV of 1955).

5. Memorandum of marriage.- (1) The parties to a marriage shall prepare a memorandum in such Form as may be prescribed in duplicate and shall deliver it in person or send in the manner as may be prescribed, to the Registrar or the area where the marriage is performed within ninety days from the date of the marriage:

Provided that the memorandum may be delivered or sent to the Registrar within a further period of sixty days after the expiry of the said ninety days with the

payment of additional fee as may be prescribed.

(2) Nothing in the proviso to sub-section (1) shall affect the liability of any person to any penalty under clause (a) of sub-section (1) of section 14.

6. Signature on memorandum and fees to be paid.- Every memorandum referred to in section 5 shall be signed by the parties to the marriage and by the priest and two witnesses and shall be accompanied by such fee as may be prescribed."

24. Though the word "Priest" would mean an ordained minister in Christian theological nomenclature, colloquially it refers to a religious person who performs ceremonies and rites. In States where there is no analogous provision like 7-A of Hindu Marriage Act, the definition of the word "Priest" may not pose a serious problem. Section 7A repudiated Saptapadi and in its place gave legal recognition to marriages performed without the aid of the priestly class. Since Section 6 of the Tamil Nadu Act 21 of 2009 makes it compulsory for the Priest who performed the marriage to sign in the memorandum, it became necessary to enlarge the scope of the definition of the word "Priest", so as to include any person who was present in the marriage that was solemnised under Section 7-A of the Hindu Marriage Act. Neither the Supreme Court nor the State can be blamed for developing the marriage jurisprudence and making registration of marriages of all religious faiths compulsory. The law cannot be blamed, only the lawyers can be blamed for abusing a statute that was introduced to achieve laudable objectives.

25. Though Section 8 of the Hindu Marriage Act which was already in existence, provided for registration of marriages, yet the Rules framed under that law was little obfuscatory in nature, as it insisted upon the presence of the parties to the marriage at the time of submission of memorandum of marriage. Whereas, Section 5 of Tamil Nadu Act 21 of 2009 states that, the memorandum may be delivered in person or sent in the manner as may be prescribed, within 90 days from the date of the marriage. While marriage jurisprudence was so developing, the social scenario also was undergoing a silent, but sea change. Young boys and girls from both urban and rural areas cutting across caste and religious lines, but caught in the vortex of adolescence hangover infatuation, hook up into love affairs and to prevent their parents from causing obstruction, seek asylum of the legal community for advice. As strongly suggested by the Supreme Court in *Lata Singh Vs. State of U.P. and Another*, it is the duty of the legal community to foster and encourage inter-religious and inter-caste marriages for bringing social harmony and breaking the rigours of the caste system. To that extent the lawyer has to play a very pro-active role as a person in public service. When he performs such a marriage, he does not act in the capacity of an Advocate, but in the capacity of a respectable member of the Society, though he may derive respectability as a practitioner of law. On the contrary, it is unfortunate for the legal community to look upon such youngsters as potential clients and adorn the role of a Priest and issue a Marriage Certificate, as if the marriage was solemnised in the lawyer's office or in the Bar Association room. Neither the

Office of an Advocate, nor the Bar Association room is a public place and entry into it is only by licence. In some cases, after the marriage is so registered, the boy and the girl go to their parental homes and live as if nothing had happened. Only when parents innocently scout for marriage alliance for their wards, does the fact that the ward had already married surfaces. Sometimes it comes to light only when one of the parties approaches this Court for Habeas Corpus or approaches the Family Court for restitution of conjugal rights. At that juncture, the entire family gets shattered and peace ruined, resulting sometimes even in violence. Is it not the duty of Advocates to give proper counselling to such young asylum seekers, instead of hurrying to register their marriage and pushing them into deep trouble? The Preamble of the Standards of Professional Conduct and Etiquette, framed by the Bar Council of India, reads as follows:

"An advocate shall, at all times, comfort himself in a manner befitting his status as an officer of the Court, a privileged member of the community; and a gentleman, bearing in mind that what may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned in both letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet a specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned."

26. If the lawyer is convinced that the asylum seeker needs his help and protection, he should leave no stone unturned to stand by the couple like a titan and support the wedding weathering all storms publicly and not clandestinely. Only such display of courage will enhance the prestige of the profession in the eyes of the common public. Information called for by us from the Family Court, Chennai shows that in the year 2013, 134 cases relate to annulment of marriage on the ground that the marriage Certificate is a fraudulent one. When the trials in these cases are taken up, will not the Court call upon the Advocate-cum-Priests to appear and give evidence about the solemnisation of the marriage? Will not the Advocate-cum-Priests be subjected to grilling cross examination by another member of the same fraternity? or, Will not the common litigant fear that Advocates as a class will protect one another and will not do anything to injure another member of their ilk? Will not this thought bring the whole legal community under suspicion? We are quoting the following lines from Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others, .

"9..... The members of the legal profession should stand free from suspicion. In the matter of An Advocate, Page, C.J. in an off-quoted passage after extolling the ideals that an advocate ought to set before him, and the ancient noble conception of his office, observed:

"From this conception of the office of an advocate it follows that the public are

entitled to receive disinterested, sincere, and honest treatment and advice from the advocates to whom they repair for counsel and succour in their time of need; and it is for this reason that Lord Mansfield laid down, and the Court has always insisted, that members of the legal profession "should stand free from all suspicion."

27. When the prestige of the legal profession falls, it does not fall alone, it takes with it the entire Court system to the crematorium and on the funeral pyre, there will be dance of anarchy. A Priest-cum-Lawyer will also be liable for disciplinary action before the Bar Council, on the complaint of the aggrieved.

28. As regards the usage of the Bar Association address as a place of solemnisation of marriages, we asked the Bar Presidents as to whether they would approve of this. Mr. R.C. Paul Kanagaraj, the President of the MHAA boldly and candidly said that, his Association would expel the member who uses the Association premises for such solemnisation. We record his unequivocal submission and we commend him for this bold initiative.

29. Rule 47 of the Standards of Professional Conduct and Etiquette framed by the Bar Council of India states that, an Advocate shall not personally engage in any business. In our view, such large scale solemnisation and registration of marriages by Advocates is a business and it is prohibited by Rule 47. Mr. Ravi Paul, Advocate, drew our attention to somewhat a similar case that arose in the High Court of Karnataka, Manoj vs. State of Karnataka and others [W.P. (HC) No. 136/2014], wherein the High Court noticed that, Notary Publics in Bangalore were issuing declaration of marriage for parties and issued the following directions:

"6. In the circumstances, we direct the Registrar, City Civil Court to inform all the Notaries of Bangalore and also Notary Public in the State not to notarise the declaration of marriages henceforth. A similar direction is also issued to the Law Secretary to see that the Circular is issued to Notaries throughout the State. We are issuing such a direction in order to ensure that henceforth the people shall understand the declaration of marriages notarized before the Notary Public to claim themselves as legally wedded husband and wife is illegal and unlawful."

30. Now coming to the Rules relating to Registration, we are extracting the following Rules from the Tamil Nadu Registration of Marriage Rules, 2009:

"4. Power and duties of the Registrar.-- The Registrar shall-

(a) verify the memorandum for registration of marriage.

5. Procedure for Registration of Marriage.--

1.....

2.....

3.....

4.....

5.....

6. After verification of the memorandum and after being satisfied about the identity of the parties to the marriage and witnesses, the Registrar shall file the memorandum in the File of memorandum in the format given below consisting of blank butts serially numbered:-.....

7.....

8. In case, the Registrar is not satisfied about the identity of the parties or the witnesses, or about the correctness of the statements made in the memorandum, the Registrar may, after hearing the parties and after recording the reasons in writing, pass an order of refusal to register the marriage in Form-IV and send a copy thereof to the District Registrar."

31. Mr. K.R. Tamizh Mani, the President of the Madras Bar Association placed reliance upon the definition of the word "verify" as given in Black's Law Dictionary [West Publishing Company, 1990], which reads as follows:

"Verify: To confirm or substantiate by oath or affidavit. Particularly used of making formal oath to accounts, petitions, pleadings, and other papers. The word "verified," when used in a statute, ordinarily imports a verity attested by the sanctity of an oath. It is frequently used interchangeably with "sworn."

32. Basing his argument on this definition, Mr. K.R. Tamizh Mani submitted that, though Section 5 of the Act says that the memorandum can be delivered in person or sent to the Registrar in the manner as may be prescribed, still for the purpose of verification of the memorandum, the party should have to be necessarily present.

33. In support of Mr. K.R. Tamizh Mani's submission, Mr. V. Raghavachari, learned amicus curiae submitted the following chart highlighting the Rules in other States, which require compulsory presence of parties during Registration.

A

B

C

D

E

S. No.

State

Act

Procedure

Physical Presence

1

Delhi

The Delhi Compulsory Registration of Marriages Order 2014

Rule 4-Joint application within 60 days of marriage, along with documentary evidence

Rule 4(d) Registrar must fix a date for the appearance of parties and witnesses

Rule 4(e) satisfaction to be recorded only on personal appearance and scrutiny of documents

2

Kerala

Kerala Registration of Marriages (Amendment) Rules 2010

Rule 11 mandates the personal appearance of parties at least once before

Registration

3

Maharashtra

Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act 1998

Section 6(1)(a) Duty of husband to submit memo within 90 days

Section 6(1)(b) personal appearance of parties and three witnesses

There is much force in this argument of the learned counsels, because verification in absentia will be an empty formality and would serve no purpose. We are fortified in drawing this inference from Rule 5(6) which says that the Registrar should be satisfied about the identity of the parties, which means that the presence of the parties is sine quo non.

34. Tamil Nadu Registration of Marriages Act, 2009 is a secular law and it makes registration of marriages performed under all religious faiths compulsory. Since Pardaneshin ladies of Muslim community would not choose to appear in person for such registrations, Legislature thought it fit that the Memorandum of Registration could be sent through post. Sometimes, it may also happen that immediately after the marriage, one of the parties may be required to go abroad for joining duty and in such circumstances, it may not be feasible for both the parties to the marriage to be present for registration. These are all exceptional situations. Keeping in mind such contingencies, we hold that the Registrars in the State of Tamil Nadu can register the marriage without the presence of the parties, only under exceptional circumstances, for reasons to be recorded in

writing and not otherwise. Section 7 of the Tamil Nadu Registration of Marriages Act, 2009 states as follows:

"7. Power to refuse registration of marriage.-

(1) Where the Registrar, before whom the memorandum is delivered or sent under section 5 on scrutiny of the documents filed with the memorandum or, on the other facts noticed or brought to his notice, is satisfied or has reason to believe that,-

(a) the marriage between the parties is not performed in accordance with the personal laws of the parties, or any custom or usage or tradition; or

(b) the identity of the parties or the witnesses or the persons testifying the identity of the parties and the performance of the marriage is not established beyond reasonable doubt; or

(c) the documents tendered before him do not prove the marital status of the parties, he may, after hearing the parties and recording the reasons in writing, refuse to register the marriage and may,--

(i) call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses or correctness of the information or documents presented to him, or

(ii) if deemed necessary, also refer the papers to the local police station within whose jurisdiction the parties reside, for verification.

(2) Where, on further verification as provided in sub section (1), the Registrar is satisfied that there is no objection to register the marriage, he may register the same. If in the opinion of the Registrar, the marriage is not fit for registration, he may pass an order of refusal in writing, recording the reasons therefor."

35. Section 7(1)(a) and (b) empowers the Registrar to refuse registration if he finds that the performance of the marriage is not established beyond reasonable doubt. We are really surprised as to how the Registrar did not have any doubt when one lawyer by name Narasimhan registered 676 marriages in a period of one year excluding Saturday, Sunday and other Government holidays! We hold that it is within the power of the Registrar to refuse registration, if it arouses a reasonable doubt in his mind about the genuineness of the entire process.

36. Mr. Jayaprakash Narayanan, learned Special Government Pleader appearing for the Registration Department submitted that, there is no security to Registration Officials against bullying and intimidation by lawyers, when registration is refused. If the Registration Officials adopt a uniform yardstick and not a discriminatory approach while refusing registration, they need to fear none. Provisions of Indian Penal Code, Sections 186 and 506 IPC will come to their aid on giving information to the police. The Registering Authority is required to give his reasons in writing and pass an order refusing registration after hearing the parties, aggrieved by which an appeal is provided by Section 8 of the Act before

the District Registrar.

37. The following consequences will ensue on account of our holding that, marriages performed secretly in the chambers of Advocates and Bar Association rooms will not amount to solemnisation within the meaning of Sections 7 and 7A of the Hindu Marriage Act;

[a] Males may take undue advantage of this and repudiate the very marriage and abandon the girls in the lurch.

[b] Girls who were lured into it and would want to come out of this quagmire, would also use this statement of law by us to get liberated from such sham marriages.

38. "The choices for a Judge are often limited to the lesser harm rather than the greater good", remarked I am McEwan in the Article "A Judge's dilemma-the Law versus religious belief." Young girls, out of infatuation and loss of reasoning guided by the strong will of the boy, who are mostly elder to her in age, become victims of such marriages and a ventilator needs to be provided for their escape route. We have no inhibition in importing the principle underlying the concept of undue influence found in Contract law, because valid consent is an essential element in the Hindu Marriage Act. In these marriages, the male positions himself in such a manner that he is able to dominate the will of the female who just then breathes freedom from the rigours of parental care and very easily persuades her to undergo such instant marriages without giving her sufficient time to rationally reflect the ensuing consequences. A girl who attains the age of 18 may satisfy legal requirements of marriage but how far she will be able to assume the multi tasking responsibilities of a wife, mother, home maker and at times the sole breadwinner is something which we are unable to fathom. Though Article 15 of the Constitution of India states that there shall not be any discrimination on the grounds of sex, yet Article 15(3) empowers the State to make special provisions for women and children. Women need to be emancipated in this Country and we should encourage young girls to acquire more educational qualifications and adorn high responsibilities in the Society than get entwined into emotional relationships and become sexually exploited, resulting in they becoming breeding machines and later turn out into brooding species. In Swami Vivekananda's words "Women will work out their own destinies___ much better, too, than men can ever do for them. All the mischief to women has come because men undertook to shape the destiny of women." Thanks to the toil of great visionaries, both in the political and judicial firmament, we have slowly brought to close the eight forms of vedic marriage namely, the Brahma, the Daiva, the Arsha, the Prajapatya, the Asura, the Gandharva, the Rakshasa and the Paisacha forms, and now we cannot permit a ninth form of Advocate-cum-Priest marriage to gain sanctity. This Court believes that it has got a duty to protect women and it will not hesitate to. In Prithipal Singh etc. Vs. State of Punjab and Another etc., , the Hon''ble Supreme Court has said:

"50. Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures. In B.P. Achala Anand Vs. S. Appi Reddy and Another, this Court observed: (SCC p. 318, para 1)

"1. Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice."

Thus, it is evident that while deciding the case, the court has to bear in mind the peculiar facts, if so exist, in a given case."

39. Our declaration of law that, marriages performed in secrecy in the Office of Advocates and Bar Association Rooms cannot amount to solemnisation within the meaning of Sections 7 and 7A of the Hindu Marriage Act, cannot be used as a sword by the males for cutting the nuptial knot in matrimonial proceedings, but can be used only by the fair sex to get liberated from sham marriages of this nature. We also hold that the Certificate of Solemnisation issued by Advocates will not be per se proof of Solemnisation of Marriage in a matrimonial dispute.

40. Coming to the propriety of Advocates going to the Registration Office and presenting the Memorandum of Registration of Marriages, Mr. R.C. Paul Kanagaraj submitted that, there is no bar for the Advocates to present the papers for Registration and he drew parallels by citing the practice of Advocates presenting documents like sale deed etc. for registration before the Registration Officials.

We are unable to agree with this submission of the learned counsel for the following reasons:

[a] Under the Tamil Nadu Document Writers Licence Rules, 1982, all non-testamentary documents should have to be prepared only by a Document Writer licensed in this behalf and it shall be duly attested by him with his full name and licence number. The Rules define "Document Writer" as a person engaged in the profession of preparing documents. Preparation of document requires legal acumen and therefore, this falls within the province of the professional duties of an Advocate. The Registrar is required to go through the recitals in the document and also check the valuation etc. At that time, when there is a doubt in law, he will have to clarify it from the person who had drafted the document. Therefore, the presence of Advocate for Registration of documents becomes essential.

[b] An Advocate before registering a marriage, issues a Solemnisation Certificate in his capacity as Priest, as defined by Section 2(e) of the Act. Neither the Act nor the Rules insist upon the presence of the Priest during Registration. The scope of Registration is to check the identity of the parties and the witnesses and the enquiry is only factual. There is no question of law or legal question involved in such an enquiry for the Advocate to be present and give clarification to the Registrar of Marriages. The Registrar of Marriages is performing a public duty and

the Act itself provides that he should give reasons for refusing to register a marriage and the order passed by him is an appealable one. We find there is no scope for the presence of the Lawyer-cum-Priest for effecting registration of a marriage. When the Registrar entertains any doubt with regard to the performance of the marriage, he may call upon the parties to produce further information to satisfy himself and only at that juncture, the necessity of the Priest to appear before the Registrar may arise and not otherwise. Therefore, we do not approve of Advocates appearing before the Registrar and presenting the Memorandum of Registration, for that would definitely lower the dignity of the Bar in the eyes of the public. The Preamble of the Bar Council Rules extracted above clearly states that, what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate.

41. To sum up:

[a] Marriages performed in secrecy in the chambers of Advocates and Bar Association Rooms, will not amount to solemnisation and only women who are victims of such marriage can question the same in matrimonial proceedings before the appropriate Court as a question of fact.

[b] No registration of marriage can be done under the Tamil Nadu Registration of Marriages Act, 2009 without the physical presence of the parties to the marriage before the Registrar, except under special circumstances after recording the reasons.

[c] If a complaint is made by a party to the marriage to the Bar Council of Tamil Nadu and Puducherry against a Priest-cum-Advocate, the Bar Council shall take appropriate action in accordance with law.

[d] On complaints lodged by the Registering Authorities seeking protection, the police are directed to afford sufficient protection immediately.

These Habeas Corpus Petitions are disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

42. We place on record our sincere thanks to Mrs. M.V. Jaya Gowri, IPS, Superintendent of Police, CB-CID for assiduously collecting the materials and systematically collating them and submitting a detailed report, if not for which we would never have known of this deep rooted malaise.

We thank Mr. V. Raghavachari, learned amicus curiae, Mr. K.R. Tamizh Mani, President of the Madras Bar Association, Mr. R.C. Paul Kanagaraj, President of the Madras High Court Advocates Association, Mr. S.Y. Masood for the Tamil Nadu and Puducherry Bar Council, Mr. Ravikumar Paul, Mr. Vijayakumar and Mr. Jayaprakash Narayanan, learned Special Government Pleader, for the invaluable assistance that was rendered by them dispassionately to this Court. We are also aware that the members of the Bar are also conscious that certain elements are bringing disrepute to the entire legal fraternity by their questionable conduct.

This anxiety in the minds of the Bar members has been reflected in a short film titled "Sutham Sei, Yutham Seithu" that has been taken by the members of the Madurai Bar which commendably depicts the morass into which the legal profession has fallen into and ends with a positive note that the Advocate Community will not permit the profession fostered by Mahathma Gandhi, Dr. Ambedkar and V.O. Chidambaram Pillai to fall into the hands of crooks. After seeing this film we are confident that the youngsters in the Bar will bring about a renaissance and restore the glory.