

**(2006) 10 DEL CK 0019**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No's. 15079, 15080 and 15081 of 2006

Vikram Aditya Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 11-10-2006

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 19, 8, 8(1)  
Prisons Act, 1894 — Section 30, 30(2), 56

**Citation :** AIR 2007 Delhi 101 : (2006) 92 DRJ 650 : (2007) 1 ILR Delhi 930 : (2007) 1 RCR(Civil) 718

**Hon'ble Judges :** Mukul Mudgal, J;J.P. Singh, J

**Bench :** Division Bench

**Advocate :** V.P. Singh and M.I. Chaudhary, for the Appellant; Zubeda Begum and Rajive Mehra, for R-1, for the Respondent

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## **Judgement**

Mukul Mudgal, J.—Rule. With consent of the learned Counsel for the parties the writ petition is taken up for final hearing.

2. This writ petition challenges Sub-clause (vi) of Clause 7 in Form A of the Delhi Hindu Marriage Registration Rules, 1956, as being ultravires of Section 8 of the Hindu Marriage Act, 1955 as well as being contrary to the mandate of the judgment of the Hon'ble Supreme Court in Smt. Seema Vs. Ashwani Kumar, .

3. The relevant facts necessary for disposal of the present writ petition are as follows:

(a) The petitioner No. 1 got married with petitioner No. 2 in Delhi according to Hindu rites and ceremonies and both the petitioners are citizens of India. The petitioners approached the Office of Register of Marriages, New Delhi for the purpose of registration of their marriage which had been solemnized at New Delhi. However, the Registrar of Marriages declined to register their marriage on the ground that the petitioner No. 1 and 2 and their parents were not residents of Delhi. This led to petitioners approaching the Office of the Registrar of

Marriages, NOIDA, where the parents of petitioner No. 2 resided. However, the Registration of Marriages, NOIDA declined to register their marriage on the ground that the marriage of the petitioner No. 1 and 2 was not solemnized within his jurisdiction and, furthermore, the petitioner No. 1, i.e., the husband, did not reside within his jurisdiction. Similar fate met the petitioners when they approached the Office of Registrar of Marriages at Jaipur, though at that time, parents of the petitioner No. 1 were residing in Rajasthan.

(b) Petitioner No. 1 and 2 who were at that time in Maldives where the petitioner No. 1 was working in a hotel, also sought the registration of their marriage with the Ambassador of India in Maldives, but the said prayer was declined by the Ambassador on the ground that he had no powers to register the marriage.

4. Consequently, it is submitted by Mr. V.P. Singh, learned Senior Advocate, appearing on behalf of the petitioner that the registration of marriage is necessary because of a child which is soon expected and non-registration of marriage may create problems for seeking a passport for the new arrival. He further submitted as in any event the Hon"ble Supreme Court in *Seema v. Ashwini Kumar* (supra) has already laid the law as follows:

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 solemnization 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 be in the interest of the society if marriages are made compulsorily registrable. The legislative intent in enacting Section 8 of the Hindu Act is apparent from the use of the expression "for the purposes of facilitating the proof of Hindu marriages.

17. Accordingly, we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized.

5. Mr. Singh has further submitted that the Hon"ble Supreme Court in connection with the interpretation of Section 8 of the Hindu Marriage Act, 1955, has thus held that marriage should be registered in the State, where the marriage is solemnized and consequently, no rule or a form could stipulate terms contrary to the said binding position of law.

6. In so far as the present case is concerned, the impugned amendment in so far

as this writ petition is concerned reads as follows:

Amendment of Form A - In the Delhi Hindu Marriage Registration Rules, 1956, Form A, Clause 7, for Sub Clause (vi), the following sub-clause shall be substituted, namely-

(iv) One of the parties or his/her parent is residing within the jurisdiction of the Registrar, for more than thirty days.

7. The relevant Form reads as follows:

APPLICATION FOR REGISTRATION OF MARRIAGE u/s 8 OF THE HINDU MARRIAGE ACT, 1955

(Central Act-25 of 1955)

1. NAME & PARENTAGE OF THE PARTIES HUSBAND ..... FATHER'S NAME ..... WIFE ..... 2. AGE/DATE OF BIRTH FATHER'S NAME ..... HUSBAND ..... WIFE ..... 3. PERMANENT DWELLING PLACE, IF ANY HUSBAND ..... WIFE ..... 4. PRESENT DWELLING PLACE HUSBAND ..... WIFE ..... 5. RELATION OF ANY PARTIES BEFORE MARRIAGE ..... 6. A Hindu Marriage was solemnized between ..... and Smt ..... on .....at ..... Accordingly without customary rites and environment and we declare that we have been living together as husband and wife ever since the date noted above.

7. We hereby declare that:

(i) Neither of us had a spouse living at the time of marriage. (ii) Neither of us is an idiot or a lunatic at the time of marriage. (iii) Both of us had completed the age of Eighteen Years ..... and husband had completed the aged of Twenty-one ..... the wife had completed the age of Eighteen years at the time of marriage and the consent of the guardians of the wife, viz ..... hereunder the name and parentage and relationship of the guardians had been obtained for the marriage. (iv) We are not within the degrees of prohibiting relationship according to the custom of usage having the force of law governing each of us/ Marriage between us is permitted though we are within the degrees of prohibited relationship. (v) We are not sapindas of each other. (vi) One of the parties or his/her parent is residing within the jurisdiction of the Registrar, for more than thirty days. 8. Marital status at the time of marriage of the parties. Husband ..... wife ..... NOTE: Score out whichever is not applicable. We also declare that the above particulars are true to the best of our knowledge and belief. Signature ..... (Husband) Signature..... (wife) Station: ----- Dated: -----

8. The plea of the petitioner is the insertion of Sub-clause (vi) emphasized above is causing the problem for registration of marriage of the petitioners in spite of the fact that the marriage of the petitioners was solemnized in Delhi. It is submitted that the marriage is not being registered in Delhi notwithstanding the fact that it was solemnized in Delhi on the specious plea that the parents or one of the parties to the marriage is not residing in Delhi.

9. Section 8(1) of the Hindu Marriage Act, 1955 read as follows:

(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

10. It is thus submitted that this rule making power u/s 8 could not be utilized to add Sub-clause (vi) in Form A because the said addition, as sought to be read, is contrary to the aforesaid judgment of the Hon"ble Supreme Court.

11. Ms. Zubeda Begum, the learned Counsel appearing on behalf of the respondent contended that the Hindu Marriage Act provides for marriages and not registration and accordingly, the Clause (vi) was added only for sub serving that purpose and thus Clause (vi) is legal and valid.

12. In our view, this plea cannot be sustained as we have already noticed that the rule u/s 8 can not travel beyond the mandate of Section 8. In this context, it is relevant to quote Section 19 of the Hindu Marriage Act, 1955 which reads as follows:

19. Court to which petition shall be presented - Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction-

(i) the marriage was solemnized, or

(ii) the respondent at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

13. This Section clearly provides that every petition under the Hindu Marriage Act, 1955 is required to be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized. In our view, Section 19 of the Hindu Marriage Act, 1955 furnishes a clue to the interpretation of Section 8. Accordingly, even when a petition under Hindu

Marriage Act, 1955 as provided by Section 19 is required to be presented to a court within whose jurisdiction marriage was solemnized, we see no reason why Section 8 should be interpreted in a different manner for super-imposing the condition sought to be brought in by the impugned addition of Clause (vi) to Form A. Furthermore, we can not lose sight of the binding position of law laid down by the Hon''ble Supreme Court in *Seema v. Ashwini Kumar* (supra) and are bound to apply this position of law which would lead to the invalidity of Sub-clause (vi) impugned in this petition. Accordingly, we are of the view that normally, this Court would have had no option but to strike down the impugned provision. However, reliance can be placed on the judgment of the Hon''ble Supreme Court in *Sunil Batra Vs. Delhi Administration and Others etc.*, , in which it has been held that the Court can read down a statute to prevent it from being rendered unconstitutional. The relevant paragraphs of the said judgment reads as follows:

34. Batra puts in issue the constitutionality of Section 30(2) of the Prisons Act, 1894 (the Act, for short) while Sobraj impugns the virus of Section 56. But, the Court does not "rush in" to demolish provisions where judicial endeavor, amelioratively interpretational, may achieve both constitutionality and compassionate resurrection. This salutary strategy of sustaining the validity of the law and softening its application was, with lovely dexterity, adopted by Sri Soli Sobrabjee appearing for the State. The semantic technique of updating the living sense of a dated legislation is, in our view, perfectly legitimate, especially when, in a developing country like ours, the corpus Jurisdiction is, in some measure a Raj hand-over.

36-A Read Dickerson has suggested:

... the Courts are at least free from control by original legislatures. Curtis, for one, has contended that consistently with the ascertained meaning of the statute, a court should be able to shake off the dust of the past and plant its feet firmly in the present.

...The Legislature which passed the statute has adjourned and its members gone home to their constituents or to a long rest from all law making. So, why bother about what they intended or what they would have done? Better be prophetic than archaeological, better deal with the future than with the past, better pay a decent respect for a future legislature than stand in awe of one that has folded up its papers and joined its friends at the country club or in the cemetery....

...Let the Courts deliberate on what the present or a future legislature would do after it had read the court's opinion, after the situation has been explained, after the Court has exhibited the whole fabric of the law into which this particular bit of legislation had to be adjusted.

39. The jurisprudence of statutory construction, especially when a vigorous break with the past and smooth reconciliation with a radical constitutional value-set are the object, uses the art of reading down and reading wide, as part of

interpretational engineering. Judges are the mediators between the societal tenses. This Court in *R.L. Arora v. State of Uttar Pradesh* and in a host of other cases, has lent precedential support for this proposition where that process renders a statute constitutional. The learned Additional Solicitor General has urged upon us that the Prisons Act (Sections 30 and 56) can be a vehicle of enlightened values if we pour into seemingly fossilized words a freshness of sense.

It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution, and if another interpretation would render them unconstitutional, the Court would lean in favor of the former construction.

We can and indeed are duty bound to read down the import and impact of Sub-clause (vi) to bring it in consonance with the mandate of the Hindu Marriage Act and the law laid down by the Hon''ble Supreme Court in *Sunil Batra v. Delhi Administration and Ors.*(supra).

14. By applying the above position of law laid down by the Hon''ble Supreme Court, we hold that the amendment leading to addition of Clause (vi) which reads as: "(vi) One of the parties or his/her parent is residing within the jurisdiction of the Registrar, for more than thirty days" to the Delhi Hindu Marriage Registration Rules, 1956 Form A, cannot be so interpreted so as to deny the registration of the marriage of parties whose marriage is solemnized in Delhi whether or not the parties to the marriage or their parents are residents of Delhi, so as to escape of vice of unconstitutionality as well as being ultravires Section 8 of the Act and vocative of the principles laid down by the Hon''ble Supreme Court in *Seema v. Ashwini Kumar* (supra).

15. In view of the position of law laid down above, we direct that the marriage of the petitioner shall now be registered by the respondent not later than 15 days from today, i.e., on or before 26th October, 2006.

16. The writ petition stands disposed of accordingly.