

Research Article

A Brief Note on Assam's Muslim Marriages and Divorces Bill – 2024.

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Abstract

In the recent past (on August 29, 2024) the 126 – member Assam Legislative Assembly passed the 'Assam Compulsory Registration of Muslim Marriages and Divorce Bill, 2024 seeks to prevent child marriage, check polygamy, and to put an end the role of Qazis in the process of registration of marriages and to make the registration of Muslim marriages and divorce with the government compulsory . Terming the bill historic, Chief Minister Himanta Biswa Sarma said the government aimed to do away with the Qazi system apart from preventing child marriage among Muslims. "We have neither touched the Muslim Personal Law nor interfered with Islamic marriage rituals. The Act brings the Sub-Registrar into the picture instead of the Qazis for registration". Some have termed the new procedure progressive and some other commented the new procedure creates unnecessary cumbersomeness.

Keywords: Sustainable, development, water, conservation, need, important.

Introduction

In the recent past Assam Legislative Assembly passed the Assam Compulsory Registration of Muslim Marriages and Divorces Bill, 2024, a proposed law with the declared objectives of preventing "child marriages" and "marriages without the consent of the parties", and to "check polygamy", will replace the British-era Assam Moslem Marriages and Divorces Registration Act, 1935.

Objective: "The Assam Compulsory Registration of Muslim Marriages and Divorces Bill, 2024, will now make it mandatory to register marriages with the government and cannot contravene the legal age of marriage of 18 years for girls and 21 years for boys. It will also act as a strict deterrent and improve the overall growth of girls," the Chief Minister said.

The Chief Minister said all marriages would be registered according to an order of the Supreme Court in Seema Vs. Ashwant Kumar. He also told the House that the Assam State has 90 Qazis, most of them government teachers.

The Assam Revenue and Disaster Minister Jogen Mohan had said the previous Assam Moslem Marriages and Divorces Registration Act was adopted by the British Indian government in the erstwhile Assam Province for Muslim religious and social arrangements. He said the 1935 Act largely made the registration of Muslim marriages and divorces informal, not mandatory. "There remains a scope of registering marriages of an intended person below 21 years (in case

of male) and 18 years (in case of female) and hardly any monitoring (is) made for (the) implementation of this Act throughout the State which attracts and invite huge amount of litigation in the criminal/civil court," the Minister said.

"There is a scope of misuse by an authorised licensee (Muslim marriage registrars) as well as by citizens for underage/minor marriages and forcefully arranged marriages without the consent of the parties," he said.

The Law - now in existence

As of now, the registration of marriages and divorces between Muslims in Assam had been taking place under the British - made Assam Muslim Marriage and Divorce Registration Act, 1935. It consists of 25 sections and 04 schedules. The aim of this Act is to provide for the voluntary registration of Mosiem Marriages and Divorces. This Act was in accordance with Muslim personal law, and authorised the state to grant a licence to "any person, being a Muslim" to register such marriages and divorces. There were, altogether 95 such Muslim registrars or kazis across the state, and they were deemed to be public servants.

Why Government repealed 'Mosiem Marriages and Divorces Act'- 1935

The Assam cabinet decided to repeal the law in February this year. In March, 2024 the government of Assam notified an Ordinance repealing the 1935 Act with immediate effect. There has been no legislation governing the registration of marriages and divorces between Muslims in Assam since then.

On 21-08-2024, the Assembly passed the Assam Repealing Bill, 2024 to replace the Ordinance.

The government's main contention for doing away with the 1935 Act was that it allowed the registration of marriages of and between minors.

It had in particular pointed to section 8 of the repealed Act that lay down the procedure to make an application to the registrar, which said, ".....provided that if the bride and bride groom, or both, be minors, application shall be made on their behalf by their respective lawful guardians....."¹.

Section 10 of the Act, which laid down the procedure for making entries in the marriage registrar, had the same provision.

The Bill passed by the Assembly regulates marriage between two Muslim persons which "includes 'nikah' or any other ceremony by which two persons are made husband and wife following Muslim personal law and Islamic rituals".

End of Kazis role in registering marriages: There is no role for kazis in registering marriages under the new law. The registering officer shall be the government's Marriage and Divorce Registrar in that jurisdiction, who is the sub-Registrar.

Conditions required for registration of marriage: For a marriage to be registered under the new law, seven conditions must be fulfilled. Important among these conditions: the woman should have attained 18 years of age and the man 21 years of age before the marriage; " the marriage has been solemnized on free consent of both parties"; at least one of the parties must be resident within the district of the Marriage and Divorce Registrar for 30days before giving notice of registration to the officer; and the parties shall not be within the prohibited degree of relationship as per Muslim law.

1. Sadiq Alikhan Vjai Kishori (1928) 30 Bom.L.R.!346,109J.C -387, A.P.C.152

Prior notice to the registering officer: The parties are required to give the registering officer at least 30 days' notice before the intended registration, with documents attesting to their identities, age, and place of residence. This provision is similar to one in the Special Marriage Act.²

Objections to the marriage: Objections to the marriage are allowed within the 30 days period on grounds of violation of any of the conditions laid down in the Bill, which will then be inquired into by the Registrar. If the Registrar after inquiry refuses to solemnize the marriage, the Bill provides for two states of appeal, to the District Registrar and then, the Registrar General of Marriages.

Initiating appropriate legal action: The registering officers must act if they find that either of the parties is under age. If the officer makes this discovery during the scrutiny of documents, she must immediately report it to the jurisdictional Child Marriage Protection Officer appointed under the Prohibition of Child Marriage Act, 2006, and transmit all relevant records "for the effective prosecution of persons contravening the provisions of the ...Act and for initiating appropriate legal action".

Erring officers liable to be imprisoned and fined: An officer who "knowingly and wilfully" registers a marriage that violates any of the conditions is liable to be imprisoned for up to a year and fined up to Rs.50,000/-.

The provisions of this Bill are not in derogation of the provisions of the prevailing Muslim personal laws: The Bill states that its provisions "shall be in addition to and not in derogation of the provisions of the prevailing Muslim personal laws". However, under Muslim personal law, the marriage of a bride who has attained puberty is considered valid – and puberty is presumed, in the absence of evidence, on completion of the age of 15 years. Earlier in the month of August, the Supreme Court agreed to an early hearing of a plea by the National Commission for the Protection of Child Rights seeking an authoritative pronouncement on whether Muslim personal law allowing child marriages will prevail over the Prohibition of Child Marriage Act, 2006. On this question different High Courts have made different observations.

Objections against the bill: A member from AIUFD, during the debate in the assembly, questioned the need to repeal the 1935 Act if the primary objective was to prevent child marriages – this objective could have been achieved by amending sections 08 and 10 of the old Act. Further, the member made a mention that the 1935 Act had been amended as in 2010 to make registration compulsory under the Act compulsory; it had been voluntary originally.

The government made it clear that these amendments would not have sufficed, and that the government's intention was also to end the role of the kazis. The government took action against child marriages last year, in which more than 4,000 people had been arrested – mostly men who had married under age girls, and their relatives and religious functionaries who had solemnized these marriages.

".....The government found that the kazis register child marriages...when the cases came up in the High court, they said that they have the power to register child marriages ...and...the High court gave them bail because kazis have the power to register child marriages under the

² . A.Abdual Rahim Vs Julaiga Beevi, (2001) 2 MLJ

Muslim Marriage and Divorce Registration Act...It means that they (kazis) are not opposed to child marriage in principle”, the government said, adding that registration by a government officer will increase accountability.

The government referred to the Supreme court’s 2006 verdict in Seema Vs. Ashwani Kumar³ in which the court had directed the central and state governments to ensure compulsory registration of marriages. “That means that the state has been given the responsibility of getting marriages registered. The state can’t rely on a kazi arrangements for this”, the government said, referring to kazis as “private entities”.

The member also said that the simpler process of registering under the older Act had been replaced by more complex one, drawn from the provisions of the Special Marriage Act.

“Most of the provisions have been drawn from the Special Marriage Act which is an option for inter-religious marriages...It can be terrible...to make the registration of marriages between two Muslims so difficult”, he said, pointing out that “lakhs of people” would be impacted.

Conclusion:

Inspite of criticism it a progressive a law, which is in tune with honourable Supreme Court judgement. It protects the health of women and safeguards from compulsion. The process of registration of marriages with government authorities streamline the records. It not against the provisions of special marriage act or personal law. As alleged by the member of All India United Democratic, this legislation is not at all harm the interests any particular community. It reflects the changing socio-cultural patterns of present days and repeals age old colonial law.

References:

- 1.The Hindu News Paper
2. The Tribune News Paper
3. Mulla ‘Principles of Mahomedan Law by Sir Dinshaw Fardunji Mulla
4. Kumad Desai, Indian Law of Marriage and Divorce, 09th edition.

Citation: S. Someswara Rao 2024. “A Brief Note on Assam’s Muslim Marriages and Divorces Bill – 2024”. *International Journal of Academic Research*, 11(4): 1-4.

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³ (2006) 2 SCC 578