

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

HUMAN RIGHTS CASE NO.32642-P OF 2018

(In the matter regarding non-registration of Christian Marriages)

In attendance: Syed Nayyar Abbas Rizvi, Addl. Attorney General
Mr. Razzaq A. Mirza, Addl. A.G. Punjab
Mr. Usman Yousaf Mubeen, Chairman, NADRA
Brig. (R) Nasar Mir, D.G. Operation, NADRA
Mr. Saqib Jamal, Director Law, NADRA
Mr. Umer Ali, A.D. Legal, NADRA
Mr. Naveed Ahmed Goraya, Sr. Law Officer, HR,
Punjab
M. Naeem, A.D. Legal, Local Govt. Dept. Punjab
His Excellency, Dr. Alexander Jan Malik, Bishop of
Lahore
Very Reverend Shahid P. Meraj, Dean of Cathedral
Lahore

Date of hearing: 10.9.2018

JUDGMENT

MIAN SAQIB NISAR, CJ.- The instant issue has come before this Court pursuant to an application submitted by the Very Reverend Shahid P. Meraj, Dean of the Cathedral Church of the Resurrection, Lahore. The grievance propounded in the application is that of non-registration of Christian marriages with the Union Councils of the Province of Punjab and the National Database and Registration Authority (*NADRA*). Clarification and resolution of the matter was sought from the relevant authorities numerous times and a list of Clergy authorised to solemnise marriages was submitted to the Director General of the Local Government Punjab who, despite assuring the applicant that the matter would be resolved, has not taken any practical steps to redress the stated grievance. We find it pertinent to mention at this stage that in the judgment rendered in **S.M.C. NO.1 OF 2014 etc. (PLD 2014 SC 699)** pursuant to *suo motu* action taken by the

Supreme Court regarding the suicide bomb attack of 22.09.2013 on the Church in Peshawar and regarding the threat being given to the Kalash tribe and Ismailis in Chitral, the issue of non-registration of Christian marriages was brought before the Court.¹ It was noted therein that “[t]he learned Acting Advocate General, Punjab, submitted that in terms of the Christian Marriage Act, 1872, 150 Pastors and Bishops already stand registered in 20 Districts and any Christian marriage solemnized by a license holder under the afore-mentioned Act from the concerned Church / denomination is duly registered under the Punjab Local Government Act and the Rules framed thereunder.”² However unfortunately, this perhaps is not the ground reality and the matter remains unresolved till date.

2. His Excellency Bishop of Lahore submitted that as per Sections 28, 29, 30 and 37 of the Christian Marriages Act, 1872 (*Act*) various persons are authorised to register marriages in the registers maintained by them; once each marriage register is complete, the said individuals send copies of the details of the marriages so registered to the Registrar General of Births, Deaths, and Marriages from time to time, according to Section 34 of the Act. He stated that this process continued for many years without any problems, however, once Union Councils were established under the respective local government laws of the Provinces, the registrations of births, deaths and marriages was now to be done by Union Councils. According to him, in practice, Union Councils register Christian births and deaths, but not Christian marriages. When questioned, the representative of the Union Councils stated that such lapse was due to the fact that they (*Union Councils*) have not received any direction or authorisation from the local government to do so. Be that as it may, it is the applicant's case that individuals authorised by the Church should not need to apply and get licenses for solemnisation of marriages as their ordination itself authorises them to solemnise marriages according to the laws of their individual churches. Furthermore, it was

¹ Paragraph No.2(ix) of **S.M.C. NO.1 OF 2014 etc.** (*supra*).

² Paragraph No.4 of **S.M.C. NO.1 OF 2014 etc.** (*supra*).

pointed out by the Chairman, National Database and Registration Authority (NADRA) that according to Section 5 of the Act, five types of individuals are authorised to solemnise Christian marriages, whereas the Union Councils of Punjab only recognise three such categories for the purpose of registration of marriages.

3. Before proceeding further, it is important to note the difference between solemnisation and registration of marriages. Solemnisation of a marriage entails the performance of the ceremonial aspects of the marriage whereas registration is the completion of a marriage certificate and lodging or filing of it with the appropriate institution or authority. However, as we shall see below, both processes are closely intertwined in the Act, as in some instances the individual who solemnises the marriage is then responsible for registering it according to the corresponding provisions of the Act. The addition of the Union Councils and NADRA to the bodies concerned with registration of marriages contributes to the already rather unclear and complex method of registration of marriages. Hence, it appears that the non-registration of marriages by Union Councils and NADRA is due to uncertainty regarding the applicable law, therefore examination and clarification of the same is necessary. The primary statute on the subject is the Act which governs solemnisation and registration of marriages between citizens of Pakistan who belong to the Christian faith, the provisions whereof are to be followed to ensure that the marriage is legally valid. In this regard, Section 4 of the Act is relevant which reads as under:-

4. Marriages to be solemnised according to Act. Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

The Act provides for the persons who can solemnise marriages (*Section 5 of the Act*), whether such persons require any license or authorisation etc. in order to solemnise marriages under the Act (*Section 6 to 9 of the Act*), the solemnisation procedure (*Section 5, and the relevant provisions contained in Parts III, V and VI of the Act*), and the registration procedure (*the relevant provisions of Parts IV, V and VI of the Act*). The following table is an overview of the general scheme of the Act produced for ease of reference³:-

Who can solemnize marriages in Pakistan	Whether license, etc. required for solemnization of marriage	Solemnization procedure	Registration procedure under the Act
	<p>Section 5(1). By any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a minister.</p>		<p>Part IV 27. Marriages when to be registered.– All marriages hereafter solemnized in Pakistan between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, be registered in the manner hereinafter prescribed.</p>
	<p>Section 5(2). By any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland.</p>		<p>28. Registration of marriages solemnized by Clergymen of Church of England.– Every Clergymen of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the Third Schedule hereto, annexed, every marriage which he solemnizes under this Act.</p>
<p>Section 5(3). By any Minister of Religion licensed under this Act to solemnize marriage.</p>	<p>Section 6. Grant and revocation of licenses to solemnize marriage.– The Provincial Government so far as regards the territories under its administration, and the Central Government so far as regards any Acceding State may, by notification in the official Gazette, grant licenses to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may by a like notification, revoke such licenses.</p>	<p>Part III 17. Issue of certificate of notice given and declaration made.– Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required issue under his hand a certificate of such notice having</p>	<p>29. Quarterly returns to Archdeaconry.– Every Clergyman of the Church of England shall send four times in every year return in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or tithing the limits of which such place is situate. ... The said Registrar upon receiving the said returns shall send one copy thereof to the <u>Registrar General of Births, Deaths and Marriages.</u></p> <p>30. Registration and returns of marriages solemnized by clergymen of Church of Rome.– Every marriage solemnized by a Clergyman of the Church of Rome shall be</p>

³ This table contains only the provisions of the Act relevant for the purposes of this opinion and should not be construed to be exhaustive. The other provisions of the Act not mentioned in the table would nonetheless be applicable.

		<p>been given and of declaration having been made. ...</p> <p>25. Solemnization of marriage.— After the issue of the certificate by Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt: Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.</p> <p>26. Certificates void if marriage not solemnized within two months.</p>	<p>registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate, in which such marriage is solemnized, and such person shall forward quarterly to the <u>Register General of Births, Deaths and Marriages</u> returns of the entries of all marriages registered by him during the three months next preceding.</p> <p>31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland.— Every Clergymen of the Church of Scotland shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act, and shall forward quarterly to the <u>Registrar General of Births, Death and Marriages</u>, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.</p> <p>32. Certain marriages to be registered in duplicate.— Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof be registered in duplicated by the same; (that is to say) in a marriage register-book to be kept by him for that purpose, according to the form contained in the Fourth Schedule hereto annexed and also in a certificate attached to be marriage-register-book as a counterfoil.</p> <p>33. Entries of such marriages to be signed and attested.— The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization. ...</p> <p>34. Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.— The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall cause such certificate to be copied into a book to be kept by him for that purpose.</p>
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<p>Section 5(4). By, or in the presence of a Marriage Registrar appointed under this Act.</p>	<p>7. Marriage Registrars.— The Provincial Government may appoint one or more Christians, either by name or as holding any office for any district subject to its administration. Senior marriage</p>	<p>Part V 41. Certificate of notice given and oath made.— If the party by whom the notice was given requests the Marriage Registrar to issue the certificate</p>	<p>Part V 54. Registration of marriage solemnized under Part V.— After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate that is to say, in a marriage-register-book, according to the form of the Schedule hereto annexed, and also in a certificate attached to the marriage-book as a counterfoil.</p>

	<p>Registrars. Where there are more marriage Registrars than one in any district, the Provincial Government shall appoint one of them to be the Senior Marriage Registrar. Magistrate when to be Marriage Registrar. When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or, ill, or when his office is temporarily vacant, the Magistrate of the district shall act, as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.</p> <p>8. Marriage Registrars in Acceding States.— The Central Government may, by notification in the official Gazette appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within any Acceding State.</p>	<p>next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Register shall issue under his hand a certificate of such notice having been given and of such oath having been made: ...</p> <p>52. When Marriage not had within two months after notice, new notice required.— Whenever a marriage is not solemnize the marriage nor shall any Marriage Registrar enter the same, until, new notice has been given, and entry made, and certificate thereof given, at the time and the manner aforesaid.</p>	<p>The entry of such marriage in both the certificate and the marriage-register- book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witness other than the Marriage Registrar and person solemnizing the marriage.</p> <p>Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.</p> <p>55. Certificates to be sent monthly to Registrar General.— The marriage shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the <i>Registrar General of Births, Deaths and Marriages.</i></p> <p>Custody of register-book. The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the Registrar General of Births, Deaths and Marriages, to be kept by him with the records of his office.</p> <p>56. Officers to whom Registrars in Acceding States shall send certificate.— The Marriage Registrar in Acceding States shall send the certificates mentioned in section 54 to such officers as the Central Government from time to time by notification in the official Gazette appoints in this behalf.</p>
<p>Section 5(5). By any person licensed under this Act to grant certificates of marriage between Native Christians.</p>	<p>9. Licensing of persons to grant certificates of marriage between Native Christians.— The Provincial Government or (so far as regards and Acceding State) the Central Government may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificate of marriage between Native Christians. Any such license may be revoked by the authority by which it was granted, and every such grant or</p>	<p>Part VI 60. On what conditions marriages of Native Christian may be certificated.</p> <p>61. Grant of certificate.— When, in respect to any marriage solemnized under this Part, the conditions, prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has</p>	<p>Part VI 62. Keeping of register-book and deposit of extract therefrom with Registrar.— (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Provincial Government by which he was licensed may from time to time prescribe, a register-book of all Marriage solemnized under this Part in his presence, and shall deposit in the territories under the administration of the said Provincial Government in such form and at such intervals as the Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.</p> <p>(2) Where the person keeping the register-book was licensed as regards an acceding State by the Central Government, references in sub-section (1) to the Provincial</p>

	<p>revocation shall be notified in the official Gazette.</p>	<p>been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.</p> <p>The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.</p>	<p>Government therein mentioned shall be read as references to the Provincial Government to whose <u>Registrar General of Births, Deaths and Marriages</u> certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (2) of the Births, Deaths and Marriages Registration Act, 1886.</p>
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4. According to the Act, individuals falling under Section 5(1) and (2) *supra* do not require a license from the Local Government to solemnise marriage, rather they must follow the rules, rites, ceremonies and customs of their respective churches. Section 5(2) *supra* refers to any Clergymen of the Church of Scotland in particular, and the term "Church of Scotland" has been defined in Section 3 to mean "*the Church of Scotland as by law established*", however Section 5(1) *supra* refers generally to **any person who has received Episcopal ordination**, who is to solemnise the marriage in accordance with the rules, rites, ceremonies and customs of the **Church of which he is a minister**, and "Church" has been defined in Section 3 *supra* as including "*any chapel or other building generally used for public Christian worship*". However, those individuals who fall in the categories defined in Section 5(3), (4) and (5) are to be licensed according to the provisions of the Act itself, i.e. Sections 6, 7, 8 and 9 *supra*, in order to solemnise marriages. To elaborate, Ministers of Religion can solemnise marriages according to the procedure provided in Part III of the Act (*see Sections 17, 25 and 26 of the Act as reproduced in the table*) once granted a license by the Provincial Government under Section 6 of the Act; Marriage Registrars can solemnise marriages in accordance with the procedure

provided in Part V of the Act (*see Sections 41 and 52 of the Act as reproduced in the table*) once duly appointed by the Provincial and Central Governments under Sections 7 and 8 of the Act respectively; while any Christian, either by name or as holding any office for the time being, granted a license by the Provincial Government (*by the Central Government with respect to an Acceding State*) under Section 9 of the Act can grant certificates of marriage between Native Christians (*defined in Section 3 of the Act*) as per the procedure provided in Part VI of the Act (*see Sections 60 and 61 of the Act as reproduced in the table*). In other words, the individual mentioned in Section 5(3), (4) and (5) of the Act derive their power to solemnise marriages not from ordination, but from the Act itself.

5. With respect to registration of marriages, those solemnised by persons under Section 5(1), (2) and (3) *supra* are to be registered as per the procedure provided in Part IV of the Act which begins with Section 27 which states that “[a]ll marriages hereafter solemnized in Pakistan between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, be registered in the manner hereinafter prescribed.” The particular provisions which are relevant are provided in the fourth column of the table above. Those marriages solemnised by or in the presence of a Marriage Registrar [*Section 5(4) supra*] are to be registered in accordance with the provisions contained in Part V of the Act, particularly Sections 54 and 55 thereof. While those marriages solemnised by persons licensed under Section 9 of the Act [*Section 5(5) supra*] are to be registered according to the provisions in Part VI of the Act, particularly Section 62 thereof. Without going into the minute details of registration which are contained in the various provisions of the Act as highlighted above, according to all the relevant provisions for registration, the information of all the marriages solemnised under the Act (*save for those by Clergymen of the Church of England*) are to be transmitted, either directly or through the Clergyman or Marriage Registrar, etc. by the persons authorised under Section 5 *supra* to solemnise marriages under the Act, to

the Registrar General of Births, Deaths and Marriages (*see the provisions in column No.4 of the table*), who according to Section 3 *supra* is a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886 (*Act of 1886*).

6. Be that as it may, it would be appropriate to understand the historical context of the Act and the Act of 1886. The Act was promulgated on 18.07.1872 in the Indian Subcontinent to consolidate and amend the law relating to the solemnisation of the marriage of persons professing the Christian religion (*Preamble to the Act*). Subsequently the Act of 1886 was promulgated in order to provide for, *inter alia*, more effectual registration of marriages under various statutes including those under the Act, and for the establishment of general registry offices for keeping registers of those marriages. Such Registrar Generals of Births, Deaths and Marriages were to be appointed by the Government. But the Act of 1886 did not provide for the registration of Muslim marriages. After partition, Pakistan retained the Act and the Act of 1886, therefore, Christian marriages continued to be solemnised and registered under the respective frameworks provided by the said Acts. However thereafter, for the Muslim community, the Muslim Family Laws Ordinance, 1961 (*Act of 1961*) was promulgated which provided for the registration of Muslim marriages in Section 5 thereof which read (*as originally promulgated*) as under:-

“5. Registration of marriages.- (1) *Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.*

(2) *For the purpose of registration of marriages under this Ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrars, but in no case*

shall more than one Nikah Registrar be licensed for any one Ward.⁴

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(5) The form of nikah nama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriages shall be registered and copies of nikah nama shall be supplied to the parties, and the fees to be charged therefor (sic), shall be such as may be prescribed.

(6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.”

It is clear from the above provisions that, from the very beginning, the Nikah Registrars so appointed by Union Councils were to register Muslim marriages and that the records were to be preserved by the Union Councils. This is in contradistinction to the position vis-à-vis registration of Christian marriages which, as highlighted above, fell within the domain of Registrar Generals appointed under the Act of 1886.

7. However, the legal position changed after the introduction of local governments in the Provinces and the creation of NADRA. Firstly, all the matters pertaining to the Act have been allocated to the Human Rights & Minorities Affairs Department (*HR&MA Department*) as per Rule 3 of the Punjab Rules of Business, 2011 (*Punjab Rules of Business*) read with Entries No.4, 11 and 12 of the Second Schedule which are reproduced below:-

“3. Allocation of Business.- (3) *The business of the Government shall be distributed amongst several Departments in the manner indicated in the Second Schedule.*

⁴ The words “*but in no case shall more than one Nikah Registrar be licensed for any one Ward*” in Section 5(2) of the Act of 1961 were subsequently deleted by the Punjab Muslim Family Laws (Amendment) Act, 2015.

Second Schedule
Distribution of Business among Departments
Human Rights and Minorities Affairs Department

4. *Functions assigned under the Christian Marriage Act, 1872 and rules framed thereunder.*

11. *Administration of the following laws and the rules framed thereunder:*

- i. *The Christian Marriage Act, 1872 (XV of 1872).*
- ii. *The Hindu Gains of Learning Act, 1930 (XXX of 1930)*

12. *Matters incidental and ancillary to the above subjects.”*

Furthermore, according to Entries No.4(a) and 8 of the Second Schedule of the Punjab Rules of Business, “[m]atters relating to Local Governments/Local Councils” and “[p]olicy matters regarding registration of births, deaths and marriages by local governments” respectively have been allocated to the Local Government and Community Development Department (LG&CD Department). The law governing local governments is the Punjab Local Government Act, 2013 (Act of 2013), Sections 72(1)(m) and 81(2)(x) whereof provide for the relevant function of Union Councils and Municipal Committees respectively regarding registration of marriages which read as under:-

72. Functions of the Union Council.- (1) A Union Council shall:

(m) *arrange for registration of births, deaths, marriages and divorces and pass on such information about births, deaths and marriages and divorces in the Union Council to such persons and institutions as may be prescribed.*

81. Municipal Committees.- (2) A Municipal Committee shall:

(x) *arrange registration of births, deaths, marriages and divorces and pass on such information about births, deaths,*

marriages and divorces in its territorial jurisdiction to such persons and institutions as may be prescribed.

[Emphasis supplied]

According to Section 2(jj) of the Act 'prescribed' means "*prescribed by the rules*" and the rule-making power of the Government of Punjab is contained in Section 144 thereof. However, admittedly no rules have been prescribed in this regard. Nonetheless it is pertinent to note Section 148 of the Act which provides as follows:-

"148. General powers of local governments.- Notwithstanding any specific provision of this Act, a local government shall perform its functions conferred by or under this Act and exercise such powers and follow such procedures as are enumerated in Eighth Schedule."

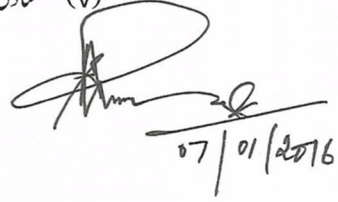
The Eighth Schedule provides the general powers of local governments which means "*a Union Council, a Municipal Committee, a Municipal Corporation, the Metropolitan Corporation, a District Council or an Authority*" [Section 2(v) of the Act] and Clause 90 thereof is relevant which states that:-

"90. Birth, deaths, etc.- A local government shall register all births, deaths, marriages and divorces within the limits of its local area and information of such births, deaths, marriages and divorces shall be given by such persons or authorities and shall be registered in such manner as the bye-laws may provide."

The Government of Punjab, Local Government & Community Authority Department, have issued the Union Councils Nikah/Marriage Registration (Model) By-laws, 2016 (*By-laws*), the relevant portion wherefrom is scanned hereinbelow:-

4- غیر مسلم افراد کی شادی کی رجسٹریشن کا طریقہ کار۔

- (i) صرف محکمہ انسانی حقوق و اقلیتی امور حکومت پنجاب کا بااختیار فرد ہی یونین کونسل میں غیر مسلم کی شادی کا اندراج کروانے کا مجاز ہوگا۔
- (ii) بااختیار فرد غیر مسلم کی شادی کا اندراج متعلقہ یونین کونسل میں عرصہ 30 یوم میں کروانے کا پابند ہوگا۔
- (iii) یونین کونسل میں شادی کے اندراج کے بعد شادی کے مندرجات میں کسی قسم کی تبدیلی یا درستگی کے لئے عدالت سے رجوع کرنا ہوگا۔
- (iv) بائی لا (ii) کی خلاف ورزی کی صورت میں محکمہ انسانی حقوق و اقلیتی امور حکومت پنجاب، بااختیار فرد کا لائسنس بغیر وجہ بتائے فوری طور پر منسوخ کرنے کا مجاز ہوگا۔ ناظم / ایڈمنسٹریٹر اس ضمن میں محکمہ انسانی حقوق و اقلیتی امور حکومت پنجاب کو بروقت مطلع کریں گے۔
- (v) شادی کے مندرجات میں کسی قسم کے غلط اندراج کا ذمہ دار بااختیار فرد ہوگا۔



Finally, NADRA issues computerised marriage certificates and in this regard Section 21(2) of the National Database and Registration Authority Ordinance, 2000 (*Ordinance*) provides as under:-

“21. Information relating to births, deaths, marriages, divorces, etc.- (2) The marriage or divorce of a citizen or any other prescribed persons or class thereof, shall be reported to the District Registrar by such authority or officer as may be prescribed by regulations.”

8. According to Clause 4(i) of the by-laws regarding registration of marriages of non-Muslims, only those persons who have been granted a license by the HR&MA Department are authorised to get non-Muslim marriages registered with the Union Councils. The report submitted to this Court on behalf of the Secretary HR&MA Department outlines the process for granting solemnisation licenses as follows:-

II) That the Human Rights & Minorities Affairs Department issues Christian Marriage Licenses under section 9 of the Christian Marriages Act, 1872 to the persons recommended by

the respective churches and accordingly they solemnize marriages of the Native Christians. The list of all the license holders is circulated by the Local Government & Community Development Department to the respective districts in order to facilitate the registration of marriages at Union Councils”

III) “That the Human Rights & Minority Affairs Department, Government of the Punjab intimates Local Government & Community Development Department whenever a new license is issued or an existing (license) is renewed for solemnisation of marriages to the Christian in accordance with the prescribed policy. The Local Government & Community Development Department forwards the same to the concerned District Administration for intimation to the Union Councils. Hence, the marriages of the Christian residents in Punjab are being duly registered with the concerned Union Councils and the NADRA.”

Furthermore, it is stated in the letter dated 17.03.2014 [No. SO(M) HR&MA-4-34/2013(P-I)-249] of the HR&MA Department that the said department “...issues licenses for solemnizing marriages between Christians according to Section 5(iii), 5(iv) and 5(v) of the Christian Marriage Act, 1872...” It appears that the precise issue of non-registration of Christian marriages by the Union Councils and the subsequent non-issuance of computerised marriage certificates by NADRA, as pointed out by the Chairman NADRA, is because the Union Councils refuse to register marriages solemnised by those persons mentioned in Section 5(1) and (2) of the Act as they, and the HR&MA Department, are under the wrong impression that such persons require a license to do so. As observed in paragraph No.4 of this opinion and at the risk of repetition, the Act is clear in that individuals falling under Section 5(1) and (2) *supra* are not required to apply for a formal license from the HR&MA Department to solemnise marriages because under canon law, ordination itself confers an inherent power to solemnise marriages and this position is reflected in the Act, and it is only those

individuals mentioned in Section 5(3), (4) and (5) *supra* who require a license under the Act to solemnize marriages. Both sets of persons, i.e. those under Section 5(1) and (2) *supra* on one hand and those under Section 5(3), (4) and (5) *supra* on the other, are eventually authorised to solemnise marriages, the former of whom derive their power to solemnise marriages from ordination and the latter from the Act. The HR&MA Department and/or the local government cannot refuse to recognise certain classes of individuals who solemnise Christian marriages as this is disregarding the law. Additionally, the local government statutes of the Provinces of Sindh, Khyber-Pakhtunkhwa and Balochistan all contain similar provisions which empower the local government to register Christian marriages. It is an admitted fact that in the other Provinces, Union Councils have not raised any objection to registering Christian marriages in this regard and in light of the Article 25 of the Constitution of the Islamic Republic of Pakistan providing that “[a]ll citizens are equal before law and are entitled to equal protection of law”, it is discriminatory that Punjab, where around 80% of the total Christian population of Pakistan resides, should refuse to do so.

9. Moreover, as explained in the report (*relevant sections reproduced earlier in this opinion*) submitted by the HR&MA Department, Union Councils are informed when new licenses are issued and when existing licenses are renewed, the list of license holders is circulated among Union Councils. Therefore, in light of our findings in the preceding paragraph, the HR&MA Department is directed to introduce a procedure whereby they receive the names of all the persons who fall within the provisions of Section 5(1) and (2) of the Act and are duly authorised to solemnise marriages after which the said Department should prepare lists of such names based on the jurisdiction of the concerned local government; the lists should be forwarded to the concerned local government (*including Union Councils*) so that

they are aware that such individuals are duly recognised as persons authorised to solemnise marriages according to the law and capable of registering such marriages with the local government without holding a formal license to that effect. Thereafter, the local government shall, in accordance with law, report/pass on such information of a Christian marriage to NADRA which shall issue the requisite computerised marriage certificate. Therefore:-

- i. Union Councils are directed to register Christian marriages in accordance with law;
- ii. NADRA is directed to issue computerised marriage certificates in accordance with law; and
- iii. The LG&CD Department and the HR&MA Department of the Government of Punjab are directed to promulgate the necessary rules, etc. and make the necessary amendments in the by-laws, notifications, letters, etc. to reflect the legal position outlined in this opinion.

10. In the light of the above, this application is accordingly disposed of.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court
on **16.1.2019** at **Islamabad**
Approved for Reporting
M. Azhar Malik