

MATRIMONIAL REMEDIES OF HINDU MARRIAGE ACT, 1955

BY- SHREYA SHEKHER

ABSTRACT

India is a cosmopolitan country. It allows each citizen to be governed under personal law in accordance to their religious views. This is extended to all of the personal laws in the matter of marriage and divorce.

The Hindu marriage act was enforced by parliament in 1955 to amend and to codify marriage laws between Hindus and also for regulating the institution of marriage (including conditions regarding invalidity and validity of marriage), other aspects of personal life among Hinduism is also regulated the applicability of such in wider Indian society.

Guidance is provided by the Hindu marriage act for Hindus to be in a systematic marriage bond. It gives a proper definition to marriage, all the rights of both the brides and grooms and a cover to their children's and family members so that they don't have to suffer because of their personal issues.

INTRODUCTION

All the laws of our India were divided into two parts i.e. personal law and territorial law. In personal law all the law related to family affairs, i.e. divorce, marriage, succession etc comes and in territorial or country law all the laws which are within the territory of our India except the family affairs they all come into this.

What is family and why we need this?

The term family is derived from the Latin word i.e. "familia"¹ which means a group of people. So, when two or more people comes together and form some specific kind of relationship in

¹ The word has been taken from translate.google.co.in/

between them like husband and wife and started sharing common ancestors then that will be referred as a family.

Family is one of the most important thing for every individual , as family is needed for the procreation of the social status as well as to share our emotions and feelings with them because it is not possible to share each and everything with others like relative, friends etc .

Types of family: -

1. Patriarchal family: - In this the authorities lies mainly on the hand of male member i.e. on the hand of the father.
2. Matriarchal family: - In this the authorities lies mainly on the hand of female member .i.e. on the hand of the mother.
3. Patrilocal family: - In this the family lives in the house of the male member. I.e. in the house of the father.
4. Matrilocal family: - In this the family lives in the house of the female member. I.e. in the house of the mother.
5. Patrilineal family: - In this the inheritance were traced out from the side of male member. i.e. from the side of the father
6. Matrilineal family: - In this the inheritance were traced out from the side of female member. I.e. from the side of the mother.
7. Joint family: - In this more than two generation of people live together in one roof sharing common economic, social and religious regulations it can be from any side i.e. either from paternal line or maternal line.
8. Nuclear family: - In this two or less than two generation of people live together in one roof and sharing common economic, social and religious regulations. I.e. father, mother and their children.

Who is Hindu? From where the term Hindu has been derived?

The term Hindu is derived from the Greek word i.e. “Indoi”. The Greek used to call the inhabitants of Indus valley as Indoi.

All the person will consider as a Hindu if they were falling under the below points: -²

1. “Any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, jains or Sikhs by religion;
2. Any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
3. Any person who is a converts or re-convert to Hindu, Buddhist, Jain or Sikh religion”.

What is marriage under Hindu law?

Marriage is a state when two opposite sex person i.e. Boy and girl wants to marry according to the procedure of all rites and virtues of the marriage with their full consent and if that procedure were valid under the Hindu marriage act 1955 than that will be consider as a legal marriage.

Hindu marriage act was enacted by parliament in 1955 to amend and codify the law of the Hindus. This act provides guidance for a Hindu people about the meaning of marriage, how to be in a systematic bond, about cohabiting rights for both husband and wife, about safety of the family and children so that any type of issues or difficulties do not arise in between them.

Applicability of the marriage: -

According to Section 2 of the Hindu marriage Act Except the state of Jammu and Kashmir, Hindu marriage act 1955 is applicable to all Hindus (Buddhist, Jain or Sikh) who were permanent resident in India .Hindu can be of any type either Hindu by birth or Hindu by conversion this act will be applicable on them.

Conditions for marriage: -

² PROF. G.C.V. SUBBA RAO'S of Family law in India, 10th edition,p.148,shri J.D. GOGIA publication

According to section 5 of the Hindu marriage Act all the conditions which were mentioned under this must be fulfill for considering the valid marriage if this conditions were not fulfill then the marriage will be not consider as a valid under the eyes of the law.

Restitution of Conjugal Rights: -

Section 9 of the Hindu marriage 1955, talks about the conjugal rights in this it simply means that when any of one the spouse leaves the another one from the matrimonial society without giving the reasonable excuse, then in this the deserted spouse can file a petition in the district court for the restitution of the conjugal rights.

Krishnamurthy vs. Syamanthakamani(AIR 1977) : -In this the court said that, the person who has withdraw the spouse from the society he/she has only has to face the burden of proving and give the reasonable excuse to the court that why he/she has done that.

Parbia Ram vs. Thopali³: - In this case the court said that, the parties were not legally married or the marriage was not subsisting at the time of the petition, so the question of granting restitution of conjugal rights does not arise.

Ranjan Vinod Kumar KujIwal vs. V.K. Kujiwal⁴: -In this the court said that, the wife itself said that her marriage was not valid in the eyes of law so the question of granting a decree of restitution of conjugal rights was not maintainable.

Judicial separation: -

Section 10 of the Hindu marriage act 1955, talks about the judicial separation, and it simply means suspension of conjugal rights for some time. I.e. one year.

Section 10(1) of the Hindu marriage act 1955, said that whether the marriage of the party was solemnized before or after this act, may present the decree of judicial separation on any ground

³ 1966 AIR 644,1966 SCR (1)430

⁴ AIR 1977 Bom 300,1998(1) BomCR 268, II(1997)DMC 523

which were specified under sub-section (1) of section 13, and in case of wife they can also file under any ground which were specified under sub-section (2) of the section 13.

*Shyam chand vs. janki*⁵: - In this case husband claim for judicial separation on the ground of desertion but all the evidence which was shown to the court from that basis court came to the conclusion that husband has the malafide intension for filing the case that is why court did not grant the judicial separation.

*Shankuntala vs. Om prakash*⁶: - In this case court said that for filing the case of judicial separation or divorce there must be the entire gap of two years before preceding the date of the case.

Void marriage: -

⁷Section 11 of the Hindu marriage act talks about the void marriage, and according to this act the marriage will be consider as void if the following below points gets infringed: -

1. “Neither party has a spouse living at the time of marriage. [sec. 5 (i)].
2. The parties are not sapindas. [sec.5 (ii)].
3. The parties are not within degree of prohibited relationship. [sec. (iv)].”

*Umashankar vs. Radhadevi*⁸ and in *Trilochand vs. Om Prakash*⁹ - Court said that second wife can file a suit for perpetual injunction restraining the husband from contracting a second marriage, under sec 9 of C.P.C read with section 54 of specific Relief Act,1963.

⁵ AIR 1966 HP 70, 1966 CriL J 1438

⁶ AIR 1983 Delhi 53, 19 (1981) DLT 64

⁷ PROF. G.C.V. SUBBA RAO'S OF Family Law in India,10th Edition,P.220, J.D. GOGIA publication

⁸ 15 september,1966

⁹ AIR 1983 Delhi 53, 19 (1981) DLT 64

M.M Malhotra vs. Union Of India¹⁰: - In this case court said that, if the first marriage of the man was in the subsistence, then he can go for the second marriage and that second marriage will consider as valid.

Voidable marriage: -

¹¹section 12 of the Hindu marriage act, 1955 talks about voidable marriage, the term voidable marriage means in this “ one of the party can be avoided the option of one of the parties of the marriage. It remains valid for all practical purpose until and unless its validity is questioned”.

Section 12(1) (b) says that “any marriage shall be voidable and may be annulled if the marriage is in contravention of the condition specified in section 5 (ii) of the act.”

Shewanti vs. Babrao (AIR 1971): - In this court said that, incapacity owing to congenital deformities to beget/conceive children would not amount to impotency.

Babai Panmato vs. R.A. singh (AIR 1968): - In this case due to the misrepresentation of the fact fact 16 year old girl marry with 60 year old man by under the believe that he was 25 year old so in this court grant the divorce because the consent of the girl was taken fraudly.

Divorce: -

section 13 of the Hindu marriage act 1955, talks about divorce and the term divorce refer to the dissolution of the marriage or ending the marriage permanently, and after the dissolution of the marriage the parties will become single and they were also free to marry again.

Grounds of divorce for both men and women¹²: -

1. Adultery 13 (i): - If the person is maintaining the sexual relationship with another person i.e. Other than his or her spouse.

¹⁰ 4 October,2005

¹¹ PROF.G.C.V. SUBBA RAO'S Of family law in India, 10th edition,P.225,Shri J.D.GOGIA

¹² PROF.G.C.V. SUBBA RAO'S OF FAMILY Law In India, 10th edition, P.241,Shri J.D.GOGIA

2. Cruelty 13(I)(a): - If the person mentally or physically torture him or her for a continuous period of time i.e. not less than two years.
3. Conversion to another religion 13(ii): - if the person is changing or converting into another religion.
4. Unsound mind 13 (iii): - if the person is not mentally stable.
5. Disease 13 (v): - if the person is suffering from any incurable disease.
6. Presumption of death: - if the person is not heard from more than 7 years.
7. Desertion 13(i) (b): - if the person is deserted not less than 2 years.
8. No resumption of cohabitation after a decree of judicial separation 13 (1A)(i): - it shall not be less than one year.
9. Renunciation of world 13 (vi): - if the person has renounced the world by entering any religious order.
10. Leprosy 13(iv): - if the person is suffering from virulent and incurable leprosy.

Ground of Divorce for women alone : -

1. Bigamy 13(2) (i): - if the person have more than one wife in a same particular period of time.
2. Sexual offences i.e. Rape, sodomy, bestiality 13(2) (ii): - if the person is guilty for sexual offence viz., rape, sodomy, bestiality etc.
3. Non- resumption of marriage after decree of maintenance 13 (2) (iii) : - In this the husband awarding maintenance to the wife notwithstanding:
 - She was living apart.
 - Cohabitation between the parties has not done more than one year.
4. Repudiation of marriage/option of puberty 13(2) (iv): - whether the marriage was solemnized before or after the act, if the woman was below the age of 15 years. It is just and reasonable if seeks this benefit even after attaining 18 years, if the marriage is not consummated.

Srivastava vs. Srivastava¹³ - In this the husband has already the knowledge about the wife being guilty for the cruelty of adultery but still in spite of that husband cohabitates with the wife so, the court did not grant the divorce.

Shobhadevi vs. Bhima¹⁴ - In this case, due to the intemperate and violent behavior of husband after drinking considered as cruelty and by this ground court granted her divorce.

N.Sreepadachandra vs. Vasantha¹⁵ - In this case, wife always abuses and insults her husband in front of the public that was considered as cruelty and court granted him divorce.

Conclusion: -

Hindu marriage is considered as a sacramental. According to the Manu,¹⁶ “husband and wife are united to each other not merely in this life but even after the death, in the other world. The rule is that, once is a maiden given in marriage. A true wife must preserve her chastity as much after as before her husband’s death.”

Hindu marriage act, 1955 does not prescribe any specific form of marriage it just simply lays down some criteria for a valid marriage. All the conditions and criteria which were mentioned under the old Hindu law were considered as very strict in nature. But after the commencement of the Hindu marriage act 1955 it modifies all the conditions and criteria of the old law and also makes the law more liberalized. According to the new law, it gave the permission for marrying in different caste and community and it also abolished all the restrictions which were made on inter-caste, sagotra, inter-sub-caste and sapravarā marriages. According to the new law, any two different sex persons who were Hindu by religion and fulfilling all the terms and conditions of this act then they can do the marriage.

¹³ SCC 285:(AIR 1986 SC 1043)

¹⁴ AIR 1975 Ori 180

¹⁵ AIR 1970 Kant 232, AIR 1970 Kant 232, ILR 1969 KAR 690

¹⁶ Manu smriti, V, 160-161; Dr. Paras Diwan on Hindu Law, 2nd edn. P.547, Orient Publishing Company.

Thus, the new act of 1955 modifies the old Hindu law of marriage and makes the procedure and performance of the marriage more easier and this is the welcomed changed which is happily accepted by the present society.

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