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**HINDU MARRIAGE ACT ,1955**

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## **HINDU MARRIAGE ACT ,1955**

### **OBJECTIVE**

The main purpose of the act was to mend and codify the law relating to marriage and divorce and Hindus and others. This brought uniformity of law for all sections of Hindus.

### **IMPORTANT PROVISIONS: (in short)**

#### **SECTION 1: Application of act :**

- to any person who is Hindu by religion
- to any person who is a Buddhist, Jaina or Sikh by religion, and
- to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

**SECTION 5 : CONDITIONS FOR A HINDU MARRIAGE** —A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party—
  - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
  - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
  - (c) has been subject to recurrent attacks of insanity
- (iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of 3 [eighteen years] at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

## **SECTION 9 :— Restitution of conjugal right.—**

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation: When any of the partner leaves the company or society of others, then this right can be used by other partner to restore the marriage.

This section is not only applicable to company of both but also the society which includes family members and all such people who make society of spouse.

The burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

**Section 10. Judicial separation.**—judicial separation means married couples formally separated without being legally married.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

## **Nullity of marriage and divorce**

**Section 11. Void Marriages:** If any of these contravenes, one party can file a petition against the other party

- (i) Either party has spouse living any the time of marriage.
- (ii) can be prohibited if custom or usages governing each of them of marriage between the two.
- (iii) Parties are sapindas of each other.

**Section 12. Voidable Marriages:** Any marriage shall be voidable and may be annulled by a decree of nullity on any of the following grounds:

- (a) That the marriage has not been consummated owing to the impotence of the respondent.
- (b) That the marriage is in contravention of the condition specified in clause (iii) of the section 5.
- (c) Where consent of petitioner or guardian was taken by force or by fraud.
- (d) That the respondent was pregnant by some other person.

**Section 13. Divorce:**(1) may be dissolved by a decree of divorce on the ground that

- (i) sexual intercourse with any person other than his or her spouse.
  - (ia) after the solemnisation, treated petitioner with cruelty.
  - (ib) has deserted the petitioner for 2 years preceeding immediately before petition has been filed.
- (ii) has ceased to be a Hindu by conversion to any other religion
- (iii) unsound mind , suffering from mental disorder of such a kind that it is impossible to live with respondent.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

- (i) In the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner.
- (ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or [bestiality; or]
- (iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living

apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

- (iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

#### **Section 14. No petition for divorce to be presented within one year of marriage.—**

(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one one year has elapsed] since the date of the marriage.

(2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year].

#### **Section 15. Divorced person when may marry again-**

When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

**Section 17. Punishment of bigamy.**—Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code 1860 .

18. Punishment for contravention of certain other conditions for a Hindu marriage.—Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), 7 [and (v)] of section 5 shall be punishable—

(a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.

(b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both;

### **Section 19. Court to which petition shall be presented**

Every petition under shall be presented the district court within local limits.

- (a) Where marriage was solemnized
- (b) The respondent , at the time of petition, resides.
- (c) The parties to the marriage resided together
- (d) 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.

### **Section 22. Proceedings to be in camera and may not be printed or published.—**

(1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.

## **RECENT AMENDMENTS**

Parliament passed an Amendment Bill ,2008 (to remove leprosy as a ground for divorce in 5 personal laws which includes Hindu Marriage Act .The Hindu Widows' Remarriage Act, 1856 legalized re-marriage of Hindu widows. The Child Marriage Restraint Act, 1929 made child marriages, a penal offence. The minimum age for marriage under this Act was originally 15 years for the Bride and 18 years for the Bridegroom. In 1978, through an amendment these limits have been raised to 18 years and 21 years respectively and validated the marriages though solemnized in contravention of these age limits. The Prohibition of Child Marriages Act, 2006 made such marriages voidable. The Hindu Marriage Disabilities Removal Act 1946 validated inter-caste marriages .The provisions of the Act have now merged in the Hindu Marriage Act 1955. The Hindu Marriage Validity Act, 1949 validated inter-caste marriages between Hindus, Jains and Sikhs. These provisions have now merged in the Hindu Marriage Act, 1955.

### **Suggestions:**

1. The two clauses under Section 13(1-A) of the Hindu Marriage Act, 1955 should be retained under Section 13 (1) as original clauses (viii) and (ix) of the Act, thereby making the remedy available only to the affected party. Otherwise, the guilty party will take advantage of this provision; and thereby the chances of its misuse will be more. Section 13(1-A) should be repealed. Or the relief should be made available only to the affected party/ decree holder.
2. Section 13-B should be repealed from the Hindu Marriage Act, 1955 since it allows the parties to dissolve their marriage for no fault. Such a facility will create disputes and abets the parties to dissolve their marriage. A marriage should be dissolved only on the basis of wrong on the part of one of the party to the marriage. It should not be dissolved simply by mutual consent.
3. Only one ceremony should be prescribed for all Hindu marriages for its validity. And it should be informed to all through various means.
4. Awareness should also be brought about usefulness and necessity of registration of marriage.
5. To apply for divorce, the time limit should be at least 2 years from the date of marriage.

6. Section 13-A of the Act of 1955 [passing of a decree of judicial separation instead of passing of divorce] should be frequently used to protect the institution of marriage. This burden is on the judiciary.

7. The courts should be very keen about breach of section 23(1) (a) of the Act of 1955 [taking advantage of one's own wrong] by the wrong-doer.

8. By giving effect to section 23(2) of the Act of 1955, [Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the cases to make every endeavour to bring about reconciliation between the parties] we can preserve the sacramental nature of Hindu marriage. Granting of divorce should be very strict. It should be granted in cases where it is inevitable.

9. Finally, to protect the sanctity attached to the institution of Hindu marriage, it should be seen that, no further amendments be done in the law of divorce to liberalize divorce thereby destroying the sacramental nature of Hindu marriage and sanctity attached to the institution of marriage.

## **CONCLUSION**

Hindu marriage joins two individuals for life, so that they can pursue dharma together. It is a union of two individuals as husband and wife, and is recognized by law. In Hinduism, marriage is followed by traditional rituals for consummation. In fact, marriage is not considered complete or valid until consummation. Under every form of marriage women have been given a lower status than men. There are instances where women were kidnapped, sold or forcefully married to a man. The old Hindu law has been patriarchal in nature favouring men in every aspect. Alongside this the concept of love marriage was also not recognized. But in recent years, with the onset of dating culture in India, arranged marriages have seen a marginal decrease, with prospective brides and grooms preferring to choose a spouse on their own and not necessarily only the one whom their parents find agreeable.



## About the Author



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I'm AaroHi Adbe, student of B.A.LLB 3rd year from Manikchand Pahade law college Aurangabad, Maharashtra. Amazing experience interning with LEGALEAGLE LAW FORUM and got to increase my knowledge. People were very supportive and were always there to solve the queries. Every work was on time which actually motivated me to complete my work before deadline.