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Institution of Marriage under Hindu Law

Rooted in ancient scriptures and continually shaped by legal statutes, customs, and evolving societal paradigms, the institution of marriage under Hindu law presents a compelling landscape for exploration and analysis. The Hindu Marriage Act, a pivotal legal framework governing matrimonial alliances, delineates rights, responsibilities, and the sanctity of this union. However, within its provisions lie complexities reflecting a convergence of tradition and modernity, the interplay of societal expectations, and the quest for gender equality.

Marriage as a Sacrament

Since dharma is ingrained in Hinduism, it is also observed in marriage. Hindu marriage is seen as a sacrament in a number of ways.

First of all, the Vedas declare that a man and his wife must practice dharma together. The householder must, as man, fulfill his responsibilities to his family and religion by doing Panch Mahayajnas, and this he could only accomplish by getting married. Secondly, being a religious rite, marriage must be performed in front of God in order for it to be deemed solemnized. Religious rituals are crucial to the legitimacy of a union. Lastly, it was believed that sexual fulfillment was necessary for the bodily desire to be fulfilled through marriage. According to Hindu Dharmasastra marriage is a sacrament, a holy union—a permanent and indissoluble union—between a man and a woman for the performance of religious duties¹. When marriage was observed as a sacrament throughout the Hindu era, there were several types of marriage. These are the (authorized) Brahma, Daiva, Arsha, and Parjapatya, and the (unapproved) Gandharva, Ausra, Rakshasa, and Pisacha.

¹ Gopalakrishna v. Venkatanarasa, ILR 37 Mad 273

Marriage as a Contract

Since circumstances have changed, marriage now functions as a contract. Status and contractual obligations are the two features of marriage. As a result of the legal status that marriage bestows on a couple, obligations and rights develop between them. This turns marriage into a contract. Unlike commercial contract it is a sui generic in many aspects. But it presents similar problem like other contracts like void, voidable, consent obtained by fraud, dissolution of marriage etc². Marriage entails rights and duties of parties and is enforceable like other contracts such as claim of maintenance, right of residence, custody of children etc. Hindu marriage is enforced according to provisions of personal laws such as Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956, Hindu Succession Act, 1956, Maintenance provision under Criminal Law etc. In this regard marriage is neither a sacrament nor a contract but semblance of both.

Hindu Marriage Act,1955

The Hindu Marriage Act of 1955 is the sole Act that governs Hindu marriage. For the first time, the Act legalised divorce and made Hindu marriage a legally binding partnership. The Act's primary goal is to keep marriages together. Section 29(2) has upheld the validity of the customary marriage. Sacrament is covered in Section 7. The notion of marriage, as well as conventional rites and ceremonies of either gender, has been preserved. The presence of both parties is required for the marriage to be legitimate. Section 5 of the Act specifies the requirements for the legitimacy of marriage, which have made monogamy a rule along with the other provisions that neither party is of unsound mind and is capable of giving a valid consent etc. The object of Hindu Marriage Act, 1955 is to reform and bring uniformity in matrimonial law. Section 9 of the Act that did not exist in Hindu Law. The use of this rule was limited since it allowed respondents to allege facts that could not be proven by judicial separation, nullity for marriage, or divorce grounds in their defence, But in 1976 clause 2 of the section has been deleted by Marriage Laws Amendment Act, 1976. Before 1976, the ground for separation by the respondent should be sufficient to get judicial separation, divorce or nullity of marriage under section 9 Clause (2). Now after amendment even

² P.M. Bromley, Family Law 16 (Butterworths, London, 6th ed,1981)

grounds other than detailed above are sufficient to deny relief of restitution of conjugal rights. Not complying with the decree of restitution of conjugal rights under the original Act for two years was a ground of divorce under section 13(1A)(ii) of the Act. But after the 1976 amendment the period of two years has been reduced to one year. Thus, the legislature has given a way to breakdown theory of marriage. The sacrament concept of marriage was further impacted when the waiting period of judicial separation was reduced to one year.

Evolution through Case Laws

The judiciary has played a critical role in the preservation of marriage. In present times as well courts have given a view that the marriage is a sacrament and it cannot be dissolved at whims and fancies of parties. In *Nirmal Singh v. Reeta*³, the husband has contended that wife is suffering from Hepatitis B and because of that he cannot have access to women as it is infectious and it amounts to cruelty. Therefore, her medical examination should be conducted. But the court dismissed the appeal and held that communicable disease is not a ground of divorce under section 13 of the Hindu Marriage Act, 1955. Thus, even in present times divorce is not granted to parties as per their will until and unless there is any valid ground laid down under the Hindu, Marriage Act, 1955. With changing times wife has started inflicting cruelty towards husband which was never seen in Vedic and Manu period down to the period of Commentators and Digest writers. In *Narendra v. K. Meena*⁴, husband filed an appeal against the judgement of the Lower Court where the court dismissed the petition of divorce on ground of cruelty. The appeal was filed on the ground that the conduct of wife in imputing false allegations regarding extra-marital relationship, she is of suspicious nature, does not want to live with parents-in-law and wants to live separately and threats to commit suicide amounts to cruelty. The court upheld that the conduct of wife amounts to mental cruelty if she commits suicide then husband will have to face adverse consequences.

³ *Nirmal Singh v. Reeta*, C.R.No.237 of 2014 (O&M)

⁴ *Narendra v. K. Meena*, AIR 2016 SC 4599