
REVITALIZING THE HINDU MARRIAGE ACT, 1955: THE URGENT NEED FOR REFORM AND MODERNIZATION

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ABSTRACT

The institution of marriage has undergone significant transformations in the 21st century, with changing societal norms and values placing a greater emphasis on individual autonomy and freedom of choice. The Indian judiciary ascertaining that the freedom to marry a person of one's choice is protected and once the fundamental right is inherent in a person, then no one can scuttle such right by leaning on any kind of philosophy, moral or social, or self-proclaimed elevation. Marriage is the subject matter of personal law. Marriage is sacrament and holds great significance in culture and traditions. As per the ancient Hindu law Hindu marriage is a union between two individuals, typically a man and a woman, and is regarded as a lifelong commitment. Before the Modern Hindu law, it was governed by the ancient sources of law and schools of Hindu law. After the independence the first legislation for governing the marital relationships among the Hindus the Indian parliament enacted the Hindu Marriage Act, 1955 which applies to all Hindus, including Buddhists, Jains, and Sikhs. The act provides provisions related to conditions for valid marriage, grounds for divorce, maintenance, custody of child and other matrimonial remedies. Over the years, the act has undergone several amendments, but there is a growing consensus that it needs to be reformed and modernized some provisions of the Act to reflect the changing needs of society because the Hindu Marriage Act, as legislation in India, is subject to the principles of constitutional morality. The Indian Constitution, adopted in 1950, guarantees certain fundamental rights and principles that promote equality, liberty, and justice. These principles influence the interpretation and implementation of laws, including the Hindu Marriage Act, 1955. It's important to note that the interpretation of constitutional morality and its application to specific laws, including the Hindu Marriage Act, can evolve over time through judicial pronouncements, legislative amendments, and societal changes.

Keywords: Hindu Marriage, Gender Equality, Same Sex Marriage, Child Marriage and Registration of Hindu Marriage.

I. Introduction

Law play an important role for the regulation of society or social system and these laws includes not only legislative laws which are passed by legislature but the custom, usages established by the society also contained within. In India since the ancient time the society was governed by the norms established by 'dharam' and custom or practices prevailing in the society where diversity of religion. But with the growth of society and social transformation these custom and usages need to change and there was demand to codify laws. When these codified laws encompass matters such as marriage, divorce, inheritance, adoption, and other aspects of personal or family life within a particular community or religious group, it is called personal laws. These laws govern the rights, obligations, and legal relationships between individuals within the framework of their personal or religious beliefs. These laws can vary significantly between different communities or religious groups, reflecting the diversity of customs and practices within societies. During British rule in India, various social and religious practices prevalent among Hindus, including marriage, were governed by customary laws. However, the lack of a unified legal framework led to inconsistencies. Amongst the Hindus the society was governed by the social norms established by *Sanatan Dharama* or various schools of Hindu laws. There were two major school of Hindu laws namely, *Mitakshara* and *Dayabhaga* School. These schools provide different interpretations of inheritance, partition, marriage, and other aspects of Hindu personal law. These schools of Hindu law are based on ancient legal texts and commentaries. In 1947, shortly after independence, the Indian government established the Law Commission to recommend legal reforms. The first Law Commission, chaired by Sir B.N. Rau, recommended the codification of personal laws to ensure gender equality and social justice. Dr. B.R. Ambedkar, the principal architect of India's Constitution and the country's first Law Minister, took up the task of drafting the Hindu Code Bill. Ambedkar aimed to bring significant changes to Hindu personal laws to uplift the status of women and eradicate discriminatory practices. The first part of the Hindu Code Bill, known as the Hindu Marriage Bill, was introduced in the Parliament in 1951. It sought to modernize marriage laws, provide equal rights to both spouses, and enable divorce under specific conditions. The subsequent parts of the Hindu Code Bill, known as the Hindu Succession Bill and the Hindu Minority and Guardianship Bill, were introduced in 1954 and 1956, respectively. The final versions of the bills were enacted as laws as the Hindu Marriage Act in 1955, the Hindu Succession Act in 1956, and the Hindu Minority and Guardianship Act in 1956.

In 1954, the Hindu Marriage Act was enacted by the Parliament of India, with the objective of codifying and regulating marriage and divorce practices among Hindus. The Hindu Marriage Act, 1955, has played a significant role in providing a legal framework for Hindu marriages in India. It has helped in standardizing the legal aspects of marriage, divorce, and related matters, ensuring the protection of rights and interests of individuals within the Hindu community. The act applies to individuals who fall under the definition of "Hindu," which includes persons who are Hindus by religion, as well as those who are Buddhists, Jains, or Sikhs. The Act consist of 29 section to deal with the solemnizing and validating Hindu marriages, defined the conditions for a valid marriage, and laid down provisions related to divorce, maintenance, and custody of children. The Hindu Marriage Act, 1955, prohibits marriage between individuals who are "sapindas" to each other, except under certain specified circumstances. The Act defined "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation¹.The concept of "sapinda" relationship is significant when determining certain restrictions and rules regarding marriage. There are restrictions on marriage to prevent unions that are considered too close in terms of blood ties. The marriage among the 'sapinda relationship' is prohibited under this Act which is based on *Mitakshara School*. The Act lays down certain conditions for a valid Hindu marriage, including age requirements, mental and physical capacity, absence of prohibited relationships, and consent of both parties. The Act recognizes the principle of monogamy², meaning a Hindu person can have only one spouse at a time. It recognizes the essential ceremonies³ and rituals for solemnizing a Hindu marriage and allows for both traditional rituals as well as registration of marriages. The Act provides grounds for the nullity⁴ of a marriage, such as the existence of a valid prior marriage, mental incapacity, or consent obtained through fraud or force. As a matrimonial remedy it allows for spouse to divorce which is based on various theories like fault theory, irretrievable breakdown theory and divorce by mutual consent. Originally the Act recognizes only the fault grounds for divorce such as cruelty, adultery, desertion, conversion to another religion, or incurable mental illness and presumption of death. The Law Commission in its 71st report has recommended the breakdown principle. In the year 1964 included the

¹ Hindu Marriage Act, 1955, § 3(f)

² Hindu Marriage Act, 1955, § 5(1)

³ Hindu Marriage Act, 1955, § 7

⁴ Hindu Marriage Act, 1955, § 11

irretrievable breakdown of marriage as non- resumption of cohabitation and judicial separation for a certain time. Further, in the year 1977 introduced the consent theory of divorce. The consent theory of divorce emphasizes the importance of individual autonomy and recognizes that forcing individuals to remain in a failed or unhappy marriage can lead to more harm than good. It promotes the idea that marriage is a voluntary union based on mutual consent, and if both spouses consent to dissolve the marriage, the law should provide a mechanism for them to do so. In addition, the Act provides for the payment of maintenance and alimony to the spouse who is unable to maintain themselves. The Act allows a spouse to petition for the restitution of conjugal rights if the other spouse has wilfully withdrawn from the relationship. The Act considers the welfare of the child as paramount and provides provisions for the custody and maintenance of children⁵.

II. Current issues with the Hindu Marriage Act

Despite the codification and amendment in marriage laws among the Hindus there is various issues with the Hindu marriage Act, 1955. The object of the Act was to reform the social status of Hindu women and protect their rights which was not in patriarchal society exist. That's why the old myth and bad practice abolished in respect of the marriage. This modern Hindu marriage law is based on the *Mitakshara school* philosophy. But when we critically examine the provisions of the Act, it is found that there is conflict between two in the present society. These issues are as following:

- a) **Child marriage:** Child marriage has serious implications for the well-being and development of children, especially girls. It often leads to the denial of education, limited economic opportunities, early pregnancies, and increased vulnerability to domestic violence and other forms of abuse. These consequences can perpetuate a cycle of poverty and limit the overall progress of society. The elimination of child marriage by 2030 remains a priority under Sustainable Development Goal on gender equality. As per the Hindu Marriage Act, 1955 the minimum age of marriage for girls is 18 years and for boys 21 years. It is not mentioned anywhere under hindu law that the nature of child marriage is void but marriage below the specified ages lead to penal consequences⁶. In India, the practice of child marriage was first legally prohibited in

⁵ Hindu Marriage Act, 1955, § 26.

⁶ Diwan, Paras, Family Law (5th ed. 2019).

1929 through the Child Marriage Restraint Act, 1929. As per the 1929 Act, marriage of girls below the age of 14 years and boys below the age of 18 years was prohibited. This Act was amended in 1978 to increase the minimum age to 18 years for females, and 21 years for men. The Prohibition of Child Marriage Act, 2006 replaced the 1929 Act, with the same minimum age limits and it consider the child marriages to be voidable at the option of contracting party being a child⁷. Further, the Act recognized the marriage of a minor child to be void only in certain circumstances. The Indian Government has introduced a Bill namely '*the Prohibition of Child Marriage (Amendment) Bill, 2021* for rising the age of marriage of women to 21 years to make it at par with the men. It also specifies that the provisions of the Act shall override any other law, custom, usage or practice. In the case of *Lila Gupta vs. Lakshmi⁸ Narayan* lay down that though Section 5 (iii) of the Hindu Marriage Act prescribes a minimum age of marriage, a breach of this condition does not render the marriage void. The court, in this case, observed that it would be hazardous for marriage laws to treat a marriage in breach of a certain condition as void even though the law does not expressly provide for it.

- b) **Registration of marriage:** The purpose of marriage registration is to provide a legal record of the marriage and to facilitate the verification of marital status for various purposes, such as obtaining legal documents or benefits. While registration may not be mandatory under the Hindu Marriage Act⁹, it is advisable to register a marriage to ensure legal validity and for practical reasons. Registering a marriage provides legal proof of the marriage and establishes a record of its occurrence. Without registration, it may be challenging to prove the existence of the marriage in legal matters, such as property rights, inheritance claims, or divorce proceedings. There was no requirement for the registration of Hindu marriages before the Hindu marriage Act, 1955. Generally, Hindus do not get their marriages registered unlike Adoption, Will Transfer of Property and Partition. The Act does not contain the rules of registration, and the State Government have been authorised to frame them. Non-registration of marriage can create challenges when obtaining official documents as obtaining a passport, applying for joint loans, or changing surnames or conducting administrative tasks that require

⁷ Child Marriage Prohibition Act, 2006, § 3.

⁸ 1978 AIR 1351, 1978 SCR (3) 922.

⁹ Child Marriage Prohibition Act, 2006, § 8.

proof of marriage. Without a registered marriage, additional steps or documentation may be required to establish the marital status. While answering to the issue of whether making registration of marriage a compulsory procedure is constitutional or not, the Indian Judiciary in a landmark judgment¹⁰ given guideline to the States and Union Territories. It was observed by the court that registration of marriage will help in the prevention of child marriages or marriages without the consent of the parties, enabling married women to claim their right to live in the matrimonial house and enabling widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husband.

- c) **Cooling-off period in mutual divorce:** Originally there were no provisions for divorce by mutual consent under the Hindu marriage act. It was inserted in the year 1976. It is essential that both spouses must mutually agree to seek a divorce and requires a mandatory separation period before filing for divorce by mutual consent. The couple must have lived separately for a continuous period of one year or more before filing the joint divorce petition. After filing the joint petition, the court imposes a mandatory waiting period of six months (known as the cooling-off period). This period is provided to allow the couple an opportunity for reconciliation and reconsideration. A bill has been prepared based on the Law Commission's suggestions. In 2012, the Marriage Laws (Extension) Bill, 2010 was passed in congress to change the Hindu Marriage Act of 1955 to make divorce simpler on the grounds of the irreversible collapse of marriage. It provided under Clause 13-B, the phrases "not earlier than 6 months" are replaced with "upon acceptance of a plea." The question whether the minimum period of six months stipulated under section 13(B)(2) of the Hindu Marriage Act, 1955 for a motion for passing a decree of divorce based on mutual consent mandatory or can be relaxed in any exceptional situations was raised in the *Amardeep Singh vs. Harveen Kaur*¹¹. The court held that in determining whether the provision is mandatory or directory, the language, context, subject, and object of the provision must also be considered. Thus, the court may waive the statutory period of six months under section 13(B) (2). Recently, in the case of *Shilpa Sailesh vs. Varun Sreenivasan*¹² a Constitution Bench of the Supreme Court has held that it can invoke the special powers under Article 142

¹⁰ Smt. Seema v. Ashwani Kumar, AIR 2006 SC 1158.

¹¹ AIR 2017 SC 4417

¹² 2023 LiveLaw (SC) 375

of the Constitution of India to waive the waiting period of 6 to 8 months prescribed for seeking divorce through mutual consent as per Section 13-B of the Hindu Marriage Act 1955.

III. Proposed reforms for the Hindu Marriage Act

The Hindu Marriage Act, 1955 like any legislation, can be subject to reform to address evolving societal needs and address potential shortcomings. It's important to note that any proposed reforms would require thorough examination, stakeholder consultations, and careful consideration of social, cultural, and legal implications. Therefore, there are some areas that have been discussed as potential reforms to Act, 1955.

- a) **Age of marriage:** As per the National Family Health Survey-V (NFHS 2019-21), 23.3 per cent of women in the 20-24 age group were married off before attaining the age of 18. Also, as per the NCRB-2021 report, at least 34 minor girls were kidnapped every day to be compelled into marriage¹³. In order to abolish the child marriage there is need to enforce and strengthen existing laws related to child marriage, ensuring they align with international standards. Eradicating child marriage requires a multi-dimensional and sustained effort involving legal, social, economic, and educational interventions. It is crucial to prioritize the well-being and rights of children, particularly girls, to create a future free from child marriage. It is required to develop strict penalties for those involved in facilitating child marriages and enact child marriage as void under the Hindu marriage act.
- b) **Monogamy by registration of marriage:** As earlier discussed that the registration of marriage under the said Act is obligation of state government and the validity of any Hindu marriage shall in no way be affected by the omission to make registration. If the registration of marriage make compulsory under the Hindu marriage act, 1955 which will not help in only legal documents, but it will also abolish the bigamy in the society. It has been observed that many times an individual to hide their marital status and solemnized another marriage. By the registration the offence of bigamy will be decreased. It is also required that the status of marriage should also be mentioned in the 'Aadhar card' of an individual by which when anyone try to commit another marriage,

¹³ <https://india/child-marriage-teenage-pregnancies-among-muslims-30-higher-than-hindus-2524385.html>

he or she will be caught at the time of registration of marriage. In a recent move, law commission has suggested the government to make registration of marriages compulsory and suggests mandatory registration of marriages, linking of Aadhar with marriage certificates. Linking Aadhar card to marriage certificates will be helpful in tracking records and will also help in prevent fraudulent marriages and also help in the prevention of cases of denial of subsistence to deserted women. This deprives women of societal recognition and legal security. Such fraudulent marriages are especially on rise among Non-Resident Indians. Compulsory registration can serve as a means to ensure that conditions of a valid marriage have been performed. Linking of Aadhar card to the marriage certificate could be seen as a move which might give the social status of marriages in India a new meaning, and the increasing number of fraudulent marriages might be curbed.

IV. Consequences of reforming the Hindu Marriage Act

The 18th of May 2025 is marked 70 years since the enactment of the Hindu Marriage Act, 1955. It is needed to reform certain provisions as discussed. By reforming the Hindu Marriage Act can bring several benefits that aim to promote gender equality, protect individual rights, and address the evolving needs of Hindu marriages. The reform can provide better protection for women's rights within Hindu marriages and recognize the legal protection to various forms of marital relationships, such as live-in relationships and same-sex marriages, thereby reducing social stigma and discrimination. Modernize the Hindu Marriage Act to reflect contemporary societal values and needs. It can harmonize provisions with other family laws, aligning them with the principles of equality, justice, and human rights. It's important to note that the consequences of changes in the Hindu Marriage Act may vary based on the specific amendments made and the broader social context in which they are implemented. Additionally, the impact of any changes may take time to be fully realized and may require complementary efforts in education, awareness, and social change to bring about the desired outcomes. Modifications in the Act may also present legal and administrative challenges. There may be a need to update documentation processes, modify marriage registration procedures, and ensure effective implementation and enforcement of the amended provisions. It may challenge existing social norms and customs related to marriage, family, and gender roles. This could lead to resistance or changes in societal attitudes and practices, with some segments of society embracing the amendments while others may take time to adjust. If there are changes that

address the validity of child marriages, such as making them void ab initio (from the beginning), it would strengthen the legal framework against child marriage. It would discourage the practice and provide legal protection for individuals affected by child marriages. Alterations in the Act can impact the grounds and procedures for divorce. It may introduce new grounds for divorce or modify existing ones, making it easier or more difficult to dissolve a marriage based on certain circumstances. Amendments in the Act may emphasize the importance of free and informed consent in a marriage. This can lead to stricter enforcement of consent requirements, ensuring that individuals have the freedom to choose their life partners without coercion or pressure.

V. Challenges to reforming the Hindu Marriage Act

Reforming the Hindu Marriage Act can face several challenges due to various factors, including societal, cultural, and political considerations. Here are some common challenges that may arise:

- a) The Hindu Marriage Act is deeply rooted in philosophy of *Mitakshara* and *Dayabhaga* School and religious beliefs, and there may be resistance to altering established norms and practices. Conservatives may argue that any changes to the Act could undermine the sanctity of Hindu marriage and disrupt cultural traditions.
- b) Hinduism encompasses a wide range of beliefs, practices, and sects. Reaching consensus on reform provisions that are acceptable to all segments of the Hindu community can be challenging. Different groups may have differing interpretations of marriage, divorce, gender roles, and other related aspects, making it difficult to find common ground.
- c) Religious institutions and leaders may have a significant influence on marriage practices and may resist changes that they perceive as interfering with religious doctrines or principles. Their opposition can create obstacles to reform efforts. Political parties may resist or delay reforms due to concerns about electoral implications, opposition from conservative groups, or other political calculations.
- d) Even if reforms are introduced, ensuring effective implementation and enforcement can be challenging. Adequate resources, infrastructure, and trained personnel are required

to ensure that the intended changes are put into practice. Weak implementation mechanisms can undermine the impact of reforms.

- e) Balancing traditional values and cultural practices with modern principles of equality and individual rights can be a delicate task. Reforming the Hindu Marriage Act requires finding a middle ground that respects the traditions and customs while also addressing issues of gender equality, consent, and other contemporary concerns.
- f) The challenge lies in striking a balance between preserving cultural traditions and addressing the evolving needs and aspirations of individuals within the Hindu community. Reform efforts need to find a middle ground that respects cultural values while promoting gender equality, individual autonomy, and social justice.
- g) Change, especially in matters of marriage and family, can be met with resistance due to fear of the unknown or disruption of established social norms. Building public support and understanding for the need for reform is essential to overcome such resistance.
- h) Public awareness and teaching play a crucial role in garnering support for reforms. Lack of awareness or misunderstanding about the need for change can deter the progress of reform efforts. Generating widespread awareness and education about the objectives and benefits of the proposed reforms is essential.

Overcoming these challenges requires a comprehensive and inclusive approach, involving engagement with various stakeholders, public discourse, educational initiatives, and robust political will. It may take sustained efforts, dialogue, and gradual changes to achieve meaningful reform in the Hindu Marriage Act.

VI. Conclusion

In conclusion, reforming the Hindu Marriage Act holds the potential to bring about significant positive changes in promoting gender equality, protecting individual rights, and addressing the evolving needs of Hindu marriages. By addressing challenges such as societal resistance, religious and community opposition, and complex diversity, meaningful reforms can be pursued. The benefits of reform include promoting gender equality, ensuring informed consent and age-appropriate marriages, protecting women's rights, streamlining divorce processes, recognizing diverse marital relationships, and safeguarding the rights and welfare of children.

However, the process of reforming the Hindu Marriage Act may face hurdles due to political will, lack of awareness, and the need to balance tradition and modernity. Overcoming these challenges requires persistent efforts, stakeholder engagement, education, and inclusive dialogue. By navigating these challenges and implementing comprehensive reforms, the Hindu Marriage Act can become a more equitable, just, and responsive legal framework that aligns with contemporary societal values and protects the rights and well-being of individuals within Hindu marriages.