HINDU MARRIAGE AS A CONTRACT AND A SACRAMENT: A COMPARATIVE STUDY

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ABSTRACT

Marriage is an ancient social institution with legal, social and religious significance. In Hinduism, marriage is viewed as both a sacrament and a contract. Traditionally, Vivaha is regarded as a samskara, a sacred, permanent, and inseparable union for Dharma performance and lineage continuation. Its sacramental nature is reflected in rites such as Homa, Kanyadan, and Saptapadi, which are recognized under Section 7 of the Hindu Marriage Act, 1955[1]. The Hindu Marriage Act, 1955 introduced contractual elements of requiring free consent, sound mind, and a minimum age under Section 5, as well as grounds for divorce under Section 13[2]. Judgements such as Rajeevi v. Sarasamma[3] and Dolly Rani v. Manish Kumar[4] demonstrate that modern Hindu marriage is a sacramental institution that operates within a legal framework.

[1] The Hindu Marriage Act, No. 25 of 1955, § 7, Acts of Parliament, 1955 (India).
[2] Ibid., §§ 5, 13.
[3] Rajeevi v. Sarasamma, 2021 SCC OnLine Ker 2435 (India).
[4] Dolly Rani v. Manish Kumar Chanchal, 2024 SCC OnLine SC 754 (India).

INTRODUCTION:

Marriage is one of the oldest social practices in the society. Marriage is very important component or part of human life in India. In India, there are different religions and societies and they have different customs and rules for marriage. Marriage is not just a relationship between the husband and wife but it also has legal, social and religious significance.

In India, the Hinduism is practiced in majority and it has its own customs, rules, culture, customs, rights regarding the marriage. There is great importance of saptapadi in marriage which involves taking of seven steps and vows in front of sacred fire. It is believed that a man is incomplete without his wife and vice versa. According to Hindu Shastra, the men and women are complementary to each other for performing all the responsibility. Any men or women cannot perform all responsibilities independently.

Marriage can be understood in two ways as marriage as a contract or marriage as a sacrament. Marriage as a contract is considers marriage as an agreement between the husband and wife based on the mutual consent and obligations. Marriage as a sacrament considers marriage as a sacred and long-lasting bond between husband and wife based on religious beliefs, spiritual values and mutual duties[5].

The nature of marriage changed with the time from traditional to modern laws. The enforcement of Hindu Marriage Act, 1955[6] marked as the most important stage in transformation of laws governing matrimonial relationships and Hindu Marriages. This act introduced modern legal principles relating to matrimonial rights, judicial separation, nullity and divorce. This act is an interaction between the traditional sacraments and the modern laws. This development leads to rise of important question whether the marriage is understood as a sacrament or marriage is understand as a contact under modern law.

HINDU MARRIAGE AS A SACRAMENT

Traditionally Hindu marriage was considered a sacrament (samskara) rather than a contractual relationship. It is known as Vivaha, which is one of the sixteen sanskaras and it plays an important role in hindu religious and social life. Rigveda also mentions that marriage of Hindus

[5] Paras Diwan, Modern Hindu Law 54 (22d ed. 2015).
[6] The Hindu Marriage Act, No. 25 of 1955, Acts of Parliament, 1955 (India).

is a sacramental union[7]. At that time, marriage was connected with performing Dharma, continuing family lineage, performing religious and social duties of marriage. The wife is considered Sahadharmini or Ardhangini[8] which means partner in dharma or half of man. It signifies that a man is incomplete without marriage. So, Hindu marriage was not considered a contract but a sacrament because performance of rituals and rites make it valid.

The sacramental aspect of Hindu marriage has three features i.e. sacredness, permanence and religious significance. Traditionally, it was considered a permanent and sacred union of husband and wife which continue even after death and it was carried out through religious rites. The traditional Hindu marriage placed more value on enduring nature of marital duties than a contract, which is based on agreement and may be ended in accordance with its provisions. Its goals are Dharma, Praja, Rati[9], giving it a social and spiritual value.

Another significant element is the ceremonial component. Depending on customary rites, traditional ceremonies include Homa or Vivah Homa, Kanyadan, Panigrahan, and Saptapadi[10]. Section 7 of the Hindu Marriage Act of 1955 specifically acknowledges this ceremonial nature. A Hindu marriage may be consummated in line with either party's customary rites and ceremonies, according to Section 7(1). According to Section 7(2), when the seventh step is performed in front of the sacred fire, the marriage becomes final and legally binding in cases where such rites include Saptapadi. As a result, the Act recognizes customary ceremonies legally rather than prescribing a single uniform ceremony.

Judicial decisions have upheld this sacramental nature. In Tikait Mon Mohini Jomadai v. Rai Basant Kumar Singha[11], the Calcutta High Court established that Hindu marriage is a holy sacrament and an indissoluble union of flesh with flesh and bone with bone that continues into the next world, rather than a mere commercial contract. In B. Sivanandy v P. Bhagavathyamma[12], the Madras High Court held that a Hindu marriage is a sacramental, holy and eternal union rather than a mere civil contract. The court observed that a marriage performed by saptapadi (seven steps) before the consecrated fire creates a religious tie that is binding for life and cannot be easily severed. In Bhurao Shankar Lokhande v State of

[7] Rig Veda 10.85 (Griffith trans.).
[8] Manusmriti 9.101-102.
[9] Mulla, Principles of Hindu Law 420 (21st ed. 2013).
[10] The Hindu Marriage Act, No. 25 of 1955, §§ 7(1)-(2), Acts of Parliament, 1955 (India).
[11] The Hindu Marriage Act, No. 25 of 1955, § 7(1)-(2), Acts of Parliament, 1955 (India).
[12] B. Sivanandy v. P. Bhagavathyamma, AIR 1962 Mad 400 (India).

Maharashtra[13], the Supreme Court of India ruled that a second marriage must be validly solemnized with essential religious ceremonies to prove the crime of bigamy.

Under contemporary law, the conventional notion of indissoluble union has changed. The Hindu Marriage Act, 1955 has established a legal framework which provides remedies like judicial separation, divorce etc. Divorce by mutual consent and contested divorce are recognized in Section 13B and 13[14]. This marks a substantial shift from conventional understanding of marriage as absolutely permanent. However, the introduction of divorce does not change Hindu marriage into an ordinary contract.

In the landmark case of Dolly Rani v Manish Kumar Chanchal[15], the Supreme Court held that a mere marriage certificate or registration entry does not establish a legal marriage if the foundational rituals under Section 7 of the Hindu Marriage Act, 1955 are not performed. This reinforces the sacramental foundation.

As a result, modern Hindu marriage strikes a balance between its sacramental nature and contemporary legal regulations. Its religious character, customary ceremonies and emphasis on marital duties preserve its sacramental nature, whereas Section 5's statutory conditions for valid consent and availability of divorce reflect changing social realities. Therefore, Hindu marriage cannot be regarded as purely sacramental in its ancient form. It is better understood as a sacramental institution operating under modern legal framework.

HINDU MARRIAGE AS A CONTRACT:

According to contractual aspect of marriage is not merely just a sacred and religious union of two individuals but it is an agreement between the two individuals who choose or will to enter in marital relationship.

In modern laws, Hindu marriages contain rights and obligations between the husband and wife and there is need for rules prescribed by law. These rules and conditions are provided in the Hindu Marriage Act,1955.

[13] Bhaurao Shankar Lokhande v. State of Maharashtra, AIR 1965 SC 1564 (India).
[14] The Hindu Marriage Act, No. 25 of 1955, §§ 13, 13B, Acts of Parliament, 1955 (India).
[15] Dolly Rani v. Manish Kumar Chanchal, 2024 SCC OnLine SC 754 (India).

Section 5 of Hindu Marriage Act provides[16]:

Section 5 lays down the most essential conditions for the valid marriage. This section provisions determine the Hindu marriages as a contract.

Conditions for valid Hindu marriage:

A marriage may be solemnized between any two Hindus, if following conditions are fulfilled namely:

i. Neither party has a spouse living at the time of marriage.

ii. At the time of marriage, neither party

(a) Is incapable of giving a valid consent to it in consequence of unsoundness of mind.

(b) Though capable of giving a valid consent, has a suffering from mental disorder of such kind of to such extent as to be unfit for marriage and the procreation of children

(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 [Eighteen years] at the time of marriage.

Section 5 (ii) states that the marriage should have valid consent of both parties and both parties must be sound mind. Section 5 (iii) states that the bridegroom and bride the age of 21 and 18 years, respectively[17].

The contractual nature of marriage by comparing the conditions of Hindu Marriage under section 5 of Hindu Marriage Act, 1955 and the conditions for the valid contract under section 10 of Indian contract Act, 1872[18]. Section 10 of Indian contract Act recognises free consent and competency of parties (sound mind and age) as a most important condition of valid

[16] The Hindu Marriage Act, No. 25 of 1955, § 5, Acts of Parliament, 1955 (India).
[17] Ibid. § 5(ii)-(iii).
[18] The Indian Contract Act, No. 9 of 1872, § 10, Acts of Parliament, 1872 (India).

contract. Section 5 of Hindu Marriage Act also recognises the free consent, sound mind and the age as a condition for valid marriage. This shows the contractual nature of Hindu Marriages.

Section 13 of Hindu Marriage Act,1955 provides the ground for divorce:

Traditionally, Marriages are considered as sacred and permanent bond or relation between spouses but in modern laws marriage can be dissolved. Section 13 provides the grounds for the divorce. This section allows either spouse to seek divorce on the grounds provided under section 13[19].

Section 13 shows the contractual nature of marriage as it recognises marriage as subject to the legal rights, obligations and remedies. If these rights, obligations are violated then the marriage can be dissolved. Like when any condition or rights mentioned in contract is violated then the whole contract can be dissolved in the same manner if any rights, obligations of marriage are violated then the marriage can be dissolved.

In Rajeevi v Sarasamma[20], the Kerala High court recognised the Hindu marriage as a sacrament but it also observed that the Hindu marriage also has contractual nature. The court noted that the Hindu Marriage Act, 1955 provides both the sacramental and contractual aspects. The Hindu Marriage Act, 1955 has introduced the legal changes in the traditional Hindu marriage concept and recognised the Hindu marriage as a contract. Like the legal rights of both parties to enter in marital relation or rights to dissolve the marriage reflects the contractual nature of marriage. Thus, the judgement supports that Hindu marriage comprises of the certain characteristics of a contract in relation to legal rights and capacity of the spouses.

[19] The Hindu Marriage Act, No. 25 of 1955, § 13, Acts of Parliament, 1955 (India).
[20] Rajeevi v. Sarasamma, 2021 SCC OnLine Ker 2435 (India).

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