
CRITICAL ANALYSIS OF THE JUDICIAL TRENDS ON SECTIONS 7 & 7A OF THE HINDU MARRIAGE ACT, 1955

Harushig Ramana V, CHRIST (Deemed to be University), Bangalore

ABSTRACT

The institution of marriage operates in a regressive framework wherein the procedure laid down by the personal laws do not accommodate a pragmatic forum or mechanism to incorporate unconventional or heterodoxic unions. Therefore, the paper titled “*Critical Analysis of the Judicial Trends on Sections 7 and 7A of the Hindu Marriage Act, 1955*” tends to focus on the contemporary or futuristic forms of unions wherein these disaffirm the traditional notion of marriages, that is, through the customary practices regarding solemnization and recognition of marriages. This paper inherently deals with the provisions of Hindu Marriage Act, 1955 as the Hindu law espouses the ceremonial validity of a marriage wherein the law itself prioritizes the rituals over the registration; the non-performance of necessary Shastric or customary ceremonies, whichever are applicable to either party (or both) to the marriage, would render the marriage void and the same leads to difficulty in proving the non-validity of bigamous marriages.¹ These are subsequently evaluated through judicial pronouncements from the standpoint of the functioning of penal provisions concerning bigamy and the legal lacunae, such as, ‘*Deviani Achi v. Chidambaram Chettiar, AIR 1954 Mad 65*,’ ‘*Dolly Rani v. Manish Kumar Chanchal*,’ ‘*Lingari Obulamma v. L. Venkata Reddy & Ors.*’ ‘*Priya Bala Ghosh v. Suresh Chandra Ghosh*,’ ‘*Bhaurao Shankar Lokhande & Anr. v. State of Maharashtra & Anr.*,’ and ‘*Smt. Laxmi Devi v. Satya Narayan and Ors.*’ that have been the foundational interpretations until Section 7-A was enacted. Subsequently, the change even though was not prevalent but some degree of change occurred; but these are subject to jurisdictional limitations, as detailed throughout the paper.

Keywords: Sections 7 & 7A, Solemnization, Ceremonial Validity, Bigamy, Heterodoxic Unions

¹ Mohini, *Institution of Marriage Vis-à-Vis Matrimonial Relief: A Critical Study with Special Reference to Hindu Marriage Act 1955* 137 (2016), <http://hdl.handle.net/10603/560697>.

CHAPTER 1: INTRODUCTION

Introduction:

As a well-known institution that developed gradually, marriage was first based on practice before moving into a state of legal recognition. It serves as the foundation for all domestic comfort from childhood to old age, preserves and promotes the well-being of the human species, and relates to legal rights and obligations. As a result, it is widely regarded as the primary pillar upon which the entire superstructure of society is built as life goes on, particularly endorsing a particular type of social and legal dependency that is considered to be the most basic form of family. Generally speaking, marriage is regarded as a legally recognized partnership between a man and a woman; yet, the institution of marriage is seen from several aspects because it is inherently linked to uncivilized local customs.

As the institution of marriage is interpreted variably by law, religion, and society, it lacks a definitive definition, according to the ruling in *'Supriyo @ Supriyo Chakraborty & Anr. v. Union of India 2023 INSC 920.'*

D.Y. Chandrachud CJI noted that *"Some religions consider marriage a sacrament, while others consider it a contract. The law defines the conditions for a valid marriage, such as the minimum age required of a party to the marriage, whether both parties have consent to the marriage, or whether the parties are within the degrees of prohibited relationship. A marriage is valid in the eyes of the law as long as the preconditions in the concerned law(s) are satisfied."*²

Further, S.R. Bhat J. noted that *"Marriage, as a social institution, predates all rights, forms of political thought, and laws. The institution of family has no known origin in the sense that there has been no stage of human existence in which family was absent, leading to another time in which it emerged. Marriage, however, has been regarded for the longest time, as a relationship of man to woman that is recognized by custom and thereafter law; it involved certain rights and duties in the case of both persons entering the union."*³

² *Supriyo @ Supriyo Chakraborty & Anr. v. Union of India, 2023 INSC 920.*

³ *Id.*

The crux of the institution was rightly pointed out by P.S. Narasimha J., *“There cannot be any quarrel, in my opinion, that marriage is a social institution and that in our country, it is conditioned by culture, religion, customs, and usages. It is a sacrament in some communities and a contract in some others. State regulation in the form of codification has often reflected the customary and religious moorings of the institution of marriage.”*⁴

The Supriyo (Supra) ruling basically means that the constitutional effort we adhered to in 1950 aimed to restructure some of our societal structures, while also, within the first six months of enacting the Constitution, our native formalization and consolidation and overhaul of personal laws governing family life and marriage was pursuant to way.⁵ Therefore, even when our constitutional state labored to codify and reform, it allowed customs to persist and occasionally gave them legislative weight. In fact, recognition and solemnization of marriages are based only on the requirements of customary rituals, ceremonies, and practices.

Statement of Problem:

In recent years, the problem of sacred or ceremonial marriages has taken a new discourse in terms of solemnization, registration and other subsequent procedures through the application of the special provision, Section 7A of HMA, inserted via the Tamil Nadu Amendment Act; however, that is limited only to Tamil Nadu, and hence not enforceable in any other states due to the lacking of appropriate provisions. Therefore, this research aims at analysing the inadequate and non-eficacious procedures followed in other states via examining judicial pronouncements and affirmations. This inherent broad nature of the provisions of the law concerned is interrogated and manifested in the present research paper to analyse the ambit of the said provisions and how the legitimacy of Section 7A can be fostered in other states to translate the sacramental ceremonialism into progressive and more humanistic.

Research Questions:

From the above discussion, the following issues and problems arose.

1. The solemnization of marriages under Hindu law.

⁴ Id.

⁵ Id.

2. The various laws on bigamous marriage and the flaws in the laws.
3. The proof of marriage, i.e., the factum of the first marriage, and the second, along with the consequences of bigamous marriages under Hindu law.
4. The view of the courts and applicability of laws to Indian society.
5. Evaluation of the function of bigamy laws (in accordance with older provisions).
6. Addressing the legal lacunae to enable uniform and effective implementation across India.

The above issues need answers, which have been given in an abstract form *supra*.

Significance of Research:

The significance lies in the exploration of the criticality of the status of Hindu marriage during the development. As the institution of marriage mandates ceremonial necessities or prerequisites that ought to be carried out by the parties who come together to solemnize a union, it leaves out a majority of the uncommon or dissident communities that depart from conventional or customary practices, thereby prioritizing the centre or the custom-driven populace and ostracizing or disregarding the marginal people, including any generally prevailing individual or community, thereby reducing the incentives to marry as the unions cannot be consummated without the intervention of customary practices. Nevertheless, several progressive provisions have been implemented, but these are restricted to one place and therefore not applicable universally. However, the significance of research ought not to formalize the recurrent and traditional practices but to move towards contemporary, civilized, and progressive or liberal forms of marriages.

Scope and Limitation of Research:

The institution of marriage is often displayed as the foundation of union, peace, and order of society and is considered sacred even by those who view it as a civil contract.⁶ Under traditional Hindu Law, it is more religious than a secular institution. “By no people, is greater importance

⁶ Mohini, *supra* note 1, at 83.

attached to marriage than by the Hindus.”⁷ Therefore, the magnitude of this paper is restricted to criticizing the ceremonial necessity, or *sanskara* (sacraments), to validate a marriage, thereby espousing the broader aspects of marriages that are based on ceremonies to prove the legitimacy of the marriage and how these constitute a quintessential part of Hindu religion. The contention behind sacraments in Hinduism is that these are designed to build a solid superstructure for righteous living by adhering to *Sankaras* and other texts; such unions ought not to take place without the performance of *Sanskara* rituals and practices, and moreover, these are necessitated by the law.⁸ This means that one of the matters in respect of which custom is retained is also the ceremonial validity of Hindu marriages; no marriage is valid unless it is solemnized with proper ceremonies and rites.⁹ A Hindu marriage cannot be performed by any other method, though Hindus are free to perform a civil marriage, under the Special Marriage Act, with all its consequences. There is no free will for the parties when it comes to marriage, as they either have to adhere to the Hindu Law or perform a civil marriage and face consequences. Therefore, the law itself operates in a vacuum with multiple exceptions (loopholes) that are available for a party to escape liability when the party has defaulted on the marriage. Upon inserting Section 7-A, via the Tamil Nadu Amendment to the Hindu Marriage Act in 1967, this made the procedure shift from ceremonialism to simplistic and reformed the Hindu Law, at least in one region.

Objective of Research:

- To study and examine the legal provisions shrouding the two paramount ceremonies of a valid marriage.
- To scrutinize the solemnization of marriage by the customary rites and ceremonies.
- To rigorously deconstruct the judicial pronouncements relating to Sections 7 and 7A under Hindu Law.
- To know the effective implementation of statutes on “Bigamy.”
- To identify and propose suggestions and reforms that interrogates the lacunae in

⁷ Id.

⁸ Id.

⁹ Id.

existing laws.

Research Methodology:

The present research work requires the intertwining of doctrinal, analytical, and qualitative studies of the topic. The analytical work will deal with the legal interpretations and the judicial pronouncements relating to the solemnization of marriage under Hindu Law in accordance with the customary rites and ceremonies. The qualitative studies will focus on opinions, experiences, and social context in pursuance of the topic to raise pertinent questions; furthermore, they will use already available observations and case studies related to the Hindu Law provisions, viz., Sections 7 and 7A of the Hindu Marriage Act, 1955, to scrutinize the ambit of invocation of said provisions and to evoke the universal application of Section 7A across India.

CHAPTER 2: LITERATURE REVIEW

PART I

In order to have a better understanding of the institution of marriage under the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'), especially Sections 7 and 7A of the Act, this division would enable us to comprehend the existing knowledge of the research topic. The concept of different types of marriages has been abolished, and no particular form of marriage has been prescribed; the marriage can be solemnized only according to Section 7 of the HMA, 1955. Consequently, upon development of rigid systems like that of caste and religious faith, the solemnization pursuant to the ceremonial rituals and practices of any of the parties will be followed; upon taking the seventh step of 'Saptapadi,' the marriage is considered to be complete and binding so far as Section 7 (2) is concerned.

A marriage can be solemnized in three ways: either in accordance with Section 7 of the Act, in general statutory provision, or by a Sastri ceremony. Therefore, to prove the 'factum valet' of a marriage, it is significant that the seventh step is taken for the reasons as specified under Section 7, as it can be said the marriage is not solemnized or valid. Furthermore, to prove the factum of second marriages in cases of bigamy, the judicial stand is that the fact of marriage must be strictly proved, and admission of a party about such marriage is not enough. Therefore, there is a strict necessity of proof of 'solemnization' and essential ceremony to prove the validity of marriage.

Inter-caste and inter-sect marriages in Hindu society were once considered invalid and obsolete, but *anuloma* marriages were held valid. Customary inter-caste marriages were validated under various acts, including the Special Marriages Act, 1872; the Arya Marriages Validation Act, 1937; the Hindu Marriage (Removal of Disabilities) Act, 1946; and the Hindu Marriage Validity Act, 1949 and 1955. The Hindu Marriage Act made inter-caste marriages among all castes valid, and in Tamil Nadu, marriages made between any two Hindus in any form solemnized in a simplified form were considered valid. The Tamil Nadu Act (21 of 1957) came into force with effect from January 20, 1968, and inserted a special provision, i.e., Section 7-A, pertinently furnished for a specific type of marriage, i.e., the ‘Suyamariyathai’ and ‘Seerthirutha’ unions that have been predominant and prevailing for over fifty years, and thus, the impugned provision cannot be determined impotent on the basis of intolerance, as it is the prerogative of the parties to consummate a union in pursuance with the said provision. Hence, it promotes a more humanitarian, progressive recognition of marriages that transcends from sacrosanct ceremonialism to consent-driven progressive recognition of the marriages.

PART II

According to the Hindu Marriage Act, 1955 (hereinafter referred to as ‘the Act’), marriage is not an economic or commercial transaction but a solemn foundational event to form a family by establishing a relationship between a man and a woman that forms the basic unit of Indian society. Section 7 of the Act stipulates that according to either party’s customary rites, ceremonies, and procedures, a Hindu marriage may be solemnized, especially if these procedures include the practice of Saptapadi, i.e., the performance of seven steps by the parties; this is customarily contemplated as the pertinent means to consummate the union. Inherently, usually, it is examined in multiple matters, reinstating the importance of the seventh step, and is also seen in judicial pronouncements such as ‘*Dolly Rani v. Manish Kumar Chanchal*,’ wherein the court held that the registration or certification would not legitimize or validate such marriages that have not been in pursuance with the practices stipulated in Section 7 of the Act.

In light of the conflicting provisions in the Act, Sections 7 and 8 are conflicting to the widest range possible, and the same takes a deprecated view when it comes to the factum of second marriage, i.e., to prove there has been a factum of second marriage, the court needs proof of such a ceremony of ‘saptapadi’ for both the first and second marriages. At the same time, merely because the victim of such an act of bigamy is not in a situation to demonstrate the

factum of the second (subsequent) marriage punishable under Section 494 of the IPC, that does not mean the appellant should be left in the lurch; therefore, Rs. 25000 should be paid to the victim by the accused. This case of '*Smt. Laxmi Devi v. Satya Narayan and Ors.*' had a progressive judgment, but there are regressive judicial pronouncements such as '*Lingari Obulamma v. L. Venkata Reddy & Ors.*' and '*Priya Bala Ghosh v. Suresh Chandra Ghosh,*' wherein the prosecution failed to prove the factum of the second marriage, and there was no evidence to prove that essential ceremonies required to be performed, such as Homa and Saptapadi, had been executed.

Furthermore, there are numerous matters or proceedings wherein the party (prosecution) was essentially unable to demonstrate that the prerequisites of Section 7 or the requisites to complete a union ought not to be executed to solemnize a union in marriages that are governed by a unique ritual or practice in a specific community or in other constructs of marriage. Cases like '*Bhaurao Shankar Lokhande & Anr. v. State of Maharashtra & Anr.*' and L. Nageswara Rao and Hemant Gupta, JJ., tell you that the onus lies upon the plaintiff to prove the marriage is valid as it satisfied the conditions that were to be performed as requisites in the form of 'Gandharva' marriage or to prove the marriage is solemnized even though customary rites and ceremonies are not practiced. These judicial trends lead people to the extent of saying that these marriages are not in accordance with Section 7 and therefore not recognized in Hindu law.

This paper also scrutinizes the case of '*S. Nagalingam v. Sivagami,*' wherein a special provision, i.e., Section 7-A, as inserted by the Tamil Nadu Amendment, recognizes marriages of 'Suyamariyathai' and 'Seerthirutha' in the State of Tamil Nadu (hereinafter referred to as 'the State'). These two marriages are essentially recognized as 'Self Respect' and 'Reformatory' marriages in the state. In the present case, the lower court acquitted the husband, as the second marriage was not a valid marriage, as Saptapadi was not performed. But in this instance, the parties to the marriage are residents of the State and their marriage was performed at Thiruthani temple within the State. Prosecution Witness No. 3 also deposed that he performed the marriage in accordance with the custom applicable to the parties, and the bride and bridegroom exchanged garlands. The court held that any of the ceremonies enumerated in Section 7-A would be sufficient to complete a valid marriage, as the parties were residents and performed the marriage in the said State in accordance with provisions of S. 7-A; therefore, the factum of the second marriage was proved, and it was also proved the husband committed the offense of bigamy. Hence, Section 7-A acts as a progressive, humanistic shift from sacrosanct

ceremonialism towards a contemporary, modern, right-based, community-based lawful framework for marital recognition.

PART III

The research paper titled “Institution of Marriage vis-à-vis Matrimonial Relief: A Critical Study with Special Reference to HMA 1955,” by Mohini (2016), scrutinizes the validity and rigidity of inter-caste marriages under Hindu Law; furthermore, it deals with essential ceremonies for a valid solemnization of a Hindu marriage under HMA, creation of new and mock ceremonies, *factum valet* and when they can be invoked, civil ceremonies and degree of proof to prove the *factum* of marriage, i.e., on the basis of preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases.

Furthermore, “/Grounds of Divorce under HMA 1955 with Special Reference to Irretrievable Breakdown of Marriage: A Critical Study,” by Dhiman and Ashu (2018), essentially deals with marriage and divorce in terms of its causes, effects, the grounds of divorce, and suggestions as to the need for setting up a neutral and politics behind that. Moreover, it deals with whether the husband would be guilty of the offense under Section 494 of the Indian Penal Code, 1860, if the *factum* of the second marriage is not proved.

In the article titled “Pros and Cons of Hindu Bigamous Marriages,” Rath and Binodini (1996) explore the role of ceremony in the bigamous marriage under different religions and flaws therein, especially in connection with the role of ceremony in the Hindu law and the legal interpretation of bigamous marriages within the scope of Section 17 of HMA, 1955. This is seen through the judicial view and applicability of laws to Indian society to plug the lacuna in the law to enhance and augment its efficacy. The merits and demerits of Hindu bigamous or adulterous marriages have been treated.

In the referenced literature titled “Restitution of Conjugal Rights: A Comparative Study,” Singh and Preet (1995) pertain to the quintessential query of the status of women under Hindu Law and the intertwined relationship between status and matrimonial remedies. It deals with the existence of valid marriages and their prerequisites under Hindu Law, the rights of the spouses, and remedies available to the women to seek divorce and judicial separation alongside the impact of the act or operation on *pendente lite*.

Additionally, the article titled “Changing scenario of marriage in India: A Critical Study with Special Reference to HMA 1955,” by Rajni (2024), cynically and disparagingly examines the customary union rituals and practices, thereby reiterating the normative composition that had been consistently followed; nevertheless, it explores the secular special provision regarding “Suyamariyathai and Seerthiruththa marriages,” as mentioned in Section 7-A, modified by the Tamil Nadu Legislature in 1967, of the HMA 1955, that overturned the entire traditional solemnization ritual, and the special provision could not incorporate any of the shastric rituals, consequently not mandating the religious rites.

PART IV

Ceremonial Marriage: A wedding that follows all the statutory requirements and that has been solemnized before a religious or civil official.¹⁰

Civil Marriage: A wedding ceremony conducted by an official, such as a judge, or by some other authorized person, as distinguished from one solemnized by a member of the clergy.¹¹

Marriage ceremony: The religious or civil proceeding that solemnizes a marriage, sometimes shortened to marriage (also termed wedding).¹²

Marriage Certificate: A document that is executed by the religious or civil official presiding at a marriage ceremony and filed with a public authority (usually the county clerk) as evidence of the marriage. Also termed a certificate of marriage.¹³

Scotch Marriage: A marriage by consensual contract, without the necessity of a formal ceremony. Until 1940, Scots law retained the medieval canon law forms of marriage per verba de praesenti and per verba de futuro subsequente copula.¹⁴ These promises constituted irregular but valid marriages. Scots law still retains the irregular marriage by cohabitation with habit and repute. No ceremony needs to be proved, but after the death of one spouse, the surviving spouse or any child can obtain a court’s confirmation that a marriage existed, based on the general

¹⁰ *Black’s Law Dictionary* 1062 (10th ed. 2014).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

belief of neighbors, friends, and family.¹⁵

Sham Marriage: A purported marriage in which all the formal requirements are met or seemingly met, but in which the parties go through the ceremony with no intent of living together as husband and wife.¹⁶

Solemnity: A formality (such as a ceremony) required by law to validate an agreement or action. (Solemnity of marriages) The state of seriousness or solemn respectfulness or observance (solemnity of contract).¹⁷

Solemnity of Contract: The concept that two people may enter into any contract they wish and that the resulting contract is enforceable if formalities are observed and no defense exists.¹⁸

Solemnization: The performance of a formal ceremony (such as a marriage ceremony) before witnesses, as distinguished from a clandestine ceremony.¹⁹

Solemnize: To enter into (a marriage, contract, etc.) by a formal act, usually before witnesses.²⁰

Solo Animo: By mere intention²¹

Solum Italicum: Land in Italy needing, for full ownership to pass, to be transferred by formal methods, such as mancipatio or cession in jure.²²

Voidable Marriage: A marriage that is initially invalid but that remains in effect unless terminated by court order. For example, a marriage is voidable if either party is underage or otherwise legally incompetent, or if one party used fraud, duress, or force to induce the other party to enter the marriage. The legal imperfection in such a marriage can be inquired into only during the lives of both spouses, in a proceeding to obtain a judgment declaring it void. A voidable marriage can be ratified once the impediment to a legal marriage has been removed.²³

¹⁵ Id.

¹⁶ Id.

¹⁷ *Black's Law Dictionary* 1520 (10th ed. 2014).

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

Void Marriage: A marriage that is invalid from its inception, that cannot be made valid, and that can be terminated by either party without obtaining a divorce or annulment. For example, a marriage is void if the parties are too closely related or if either party is already married. A void marriage does not exist, has never existed, and needs no formal act to be dissolved, although a judicial declaration may be obtained. Also termed ‘attempted marriage.’²⁴

CHAPTER 3: PLAN OF THE STUDY

Scheme of the Study:

- The entire study is divided into six chapters.
- The *first* chapter covers introduction, statement of problem, research questions, significance, scope and limitation of research, and objectives and methodology of research.
- The *second* and *third* chapters deal with the literature reviewed and the plan of the study.
- The *fourth* chapter scrutinizes the research findings that include legal definitions, statutory provisions, and judicial pronouncements to deal with the institution of marriage and the relevant provisions in the Hindu Law.
- The *fifth* chapter entails the research study’s conclusions and highlights the pertinent aspects and resources of the research findings.

CHAPTER 4: RESEARCH FINDINGS

Ceremonies under the Hindu Marriage Act, 1955:

This portion examines the statutory provisions and judicial pronouncements, which are the intrinsic of the study’s findings. The pertinent provision of the Hindu Marriage Act, 1955, that addresses the religious ceremonies and customary rituals is Section 7, which outlines the required customs for solemnizing a Hindu marriage.

²⁴ Id.

“7. Ceremonies for a Hindu marriage.²⁵—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”²⁶

“Solemnized”²⁷ refers to entering into a union, contract, etc., by a formal act, typically in front of witnesses, in the due form, such as through the Shastric ceremonies outlined in the Grihya Sutras or through customary rites and ceremonies that are prevalent in each party’s community. There are no certain types of rites that must be followed in Hindu marriages, according to the Act. In actuality, tradition or usage may alter the “shastras” recommended marriage arrangement.²⁸ The phrase “customary rites and ceremonies” refers to the “shastric” rituals that the parties’ society traditionally observes; among these, Kanyadan, Vivah Homa, Agniparinayana, and Saptapadi are significant.²⁹

As completion of the usual ritual, the seventh step, Saptapadi, must be performed. It is very important for carrying out the shastric ceremonies of a Hindu marriage.³⁰ According to Section 7 of the Hindu Marriage Act, subsection (2), a marriage is only considered legitimate and legally enforceable when the seventh stage is completed.³¹ After reviewing the pertinent texts, the High Court of Madras ruled in ‘*Deviani Achi v. Chidambaram Chettiar*, AIR 1954 Mad 65,’ that notwithstanding the Gandharva process’ reliance on consent from both parties, the plaintiff’s claim that a legitimate marriage could be formed by simple contract, declaration, exchanging garlands and rings, and cohabitation was disregarded.³²

The court explained that “Hindu law demands two rituals for the ceremonial validity: first, the bride’s gift, comprising sampradana and kanyadana; subsequently, the religious or mystic component, which is the execution of panigrahana (holding hands) and saptapadi (seven steps) for the completion of the union.”³³ According to

²⁵ Hindu Marriage Act, § 7, No. 25, Acts of Parliament, 1955 (India).

²⁶ Id.

²⁷ *Black’s Law Dictionary* (10th ed. 2014).

²⁸ Mohini, *supra* note 1, at 129.

²⁹ Id.

³⁰ Section 7 of HMA, 1955.

³¹ Mohini, *supra* note 1, at 129.

³² *Deviani Achi v. Chidambaram Chettiar*, AIR 1954 Mad 65.

³³ Id.

authoritative texts and significant legal rulings, these practices are crucial even for Sudras, regardless of whether they exclude the use of chants. For example, the courts have ruled that when performing an Arya Samajist marriage, Saptapadi constitutes an essential ceremony, along with the two paramount practices of “lajahoma” and “saptapadi,” and ought to be performed for a Hindu marriage to be legally binding; they have also stressed that if saptapadi takes place, the marriage is not null and void.”³⁴ The courts have also stated that, despite Kanyadan being a crucial component of the rituals, omitting to conduct it shall not render the marriage null and void, but omitting to complete Saptapadi will.³⁵

Factum Valet:

The ‘factum valet’ doctrine essentially indicates that an act is considered valid provided it is accomplished and is unable to remediate a ceremony-related flaw that is necessary for a marriage to be judged lawful.³⁶ When properly construed, this doctrine is especially relevant to issues pertaining to bigamy, divorce, and succession. In cases involving succession or property, courts ought to decide if a marriage was lawful. The marriage shall be deemed null and void if Saptapadi had not taken place (where custom demanded it), potentially rendering offspring illegitimate and unlawful under preceding laws (although they are currently safeguarded under the Hindu Succession Act and judicial characterization). Therefore, when the succession rights are frequently contingent upon if the partners are lawfully married, Saptapadi may be the decisive element. The constitutionality of the marriage ought to be determined before any divorce litigation can begin, particularly if a payment of alimony or maintenance is sought. In an effort to escape legal responsibilities, either party can state that the marriage is null and void or invalid or alternatively assert that Saptapadi (or other necessary rites) did not take place. Section 7 so evolves into being essential to the marriage’s very existence. Furthermore, if the first marriage was constitutionally valid, bigamy is a crime under Section 494 of the IPC.³⁷ As a result, the person being charged may contest the legality of the original marriage by claiming that Saptapadi was not conducted, proving that there was certainly no legitimate marriage and, thus, no bigamy.³⁸ The substantial risks associated with

³⁴ Id.

³⁵ Id.

³⁶ *Rath, Pros and Cons of Hindu Bigamous Marriages* (1996), <http://hdl.handle.net/10603/227635>.

³⁷ Id.

³⁸ Id.

ritual requirements are further highlighted by the prerequisite that the first spouse provide proof that the rites were performed in order to invoke criminal culpability.³⁹

Judicial Pronouncements:

In the case of ‘*Dolly Rani v. Manish Kumar Chanchal 2024 INSC 355*,’ the court held that,

“for a valid marriage under the Act, the requisite ceremonies have to be performed, and there must be proof of performance of the said ceremony when an issue or controversy arises. Unless the parties have undergone such a ceremony, there would be no Hindu marriage according to Section 7 of the Act, and a mere issuance of a certificate by an entity in the absence of the requisite ceremonies having been performed would neither confirm any marital status to the parties nor establish a marriage under Hindu law.”⁴⁰

Both the petitioner and the respondent in the present matter are experienced commercial pilots who assert that they have “solemnized” their union and received a “marriage certificate” from Vadik Jankalayan Samiti (Regd.).⁴¹ The petitioner filed a formal complaint against the respondent and his household members for allegedly harassing him after they lived apart, but the respondent filed a divorce petition under Section 13(1)(ia)⁴² of the Act, claiming that there had been no marriage in compliance with Section 7 of the statute because the requirements of a valid Hindu marriage, with regard to rituals, were not followed.⁴³

The Court stated, “There should not only be compliance with the conditions as prescribed under Section 5 of the said Act, but also the couple must solemnize a marriage in accordance with Section 7 of the Act.”⁴⁴ In addition, “It is only when the marriage is solemnized in accordance with Section 7 that there can be a marriage registered under Section 8.”⁴⁵ The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnized by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case; but if there has been no marriage in accordance with

³⁹ Id.

⁴⁰ *Dolly Rani v. Manish Kumar Chanchal*, 2024 INSC 355.

⁴¹ Id.

⁴² Hindu Marriage Act, § 13(1)(ia), No. 25, Acts of Parliament, 1955 (India).

⁴³ *Dolly Rani v. Manish Kumar Chanchal*, *supra* note 40.

⁴⁴ Id.

⁴⁵ Hindu Marriage Act, § 8, No. 25, Acts of Parliament, 1955 (India).

Section 7, the registration would not confer legitimacy to the marriage.”⁴⁶ Put otherwise, certification doesn’t lend these unions any legal standing if the ceremonies required by Section 7 of the Act are not carried out.

In the case of “*Lingari Obulamma v. L. Venkata Reddy & Ors.*” and “*Priya Bala Ghosh v. Suresh Chandra Ghosh*,” the prosecution was unable to establish the factum of the second marriage, since there was no proof that necessary ceremonies like Homa and Saptapadi had been performed. In light of the divergent provisions in the Act, Sections 7 and 8 operate in contradiction or conflict to the fullest degree and therefore take a derogatory view about the factum of a second marriage. The appellant, who was the wife in the Priya Bala Ghosh case,⁴⁷ accused her husband of marrying a second spouse while they were still married and claimed that the respondent had committed an offense under Section 494 IPC⁴⁸. The respondent was deemed guilty by the lower court, but on appeal, the Sessions Court determined that there had been no proof of Homa and Saptapadi’s performance in connection with the second marriage, and the respondent was exonerated or acquitted.⁴⁹ The matter was heard by the High Court, which determined the fact that the appellant’s reliance on the respondent’s statement that he had married a second woman as a result of the appellant’s misconduct could not be leveraged to demonstrate that all the required steps had been carried out and validate the respondent’s acquittal.⁵⁰ The Obulamma case is similar to the aforementioned case wherein the appellant, who happened to be the husband, brought a lawsuit against his wife for having married someone else although they continued to be married.⁵¹ The only notable distinction is that the wife, not the husband, was the one in question who got married a second time in the latter instance.⁵² However, as the prosecution had no way to establish the validity of the second marriage, the High Court ended up being precise in clearing the respondent.⁵³

Furthermore, the court also concluded in the matter of ‘*Bhaurao Shankar Lokhande & Anr. v. State of Maharashtra & Anr.*’ that “whoever marries” under Section 494 IPC ought to, on the surface, indicate “whoever marries validly” or “whoever marries and whose marriage is a valid

⁴⁶ *Dolly Rani v. Manish Kumar Chanchal*, 2024 INSC 355.

⁴⁷ *Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh*, (1971) SCC 1 864.

⁴⁸ Indian Penal Code, § 494 (Bigamy).

⁴⁹ *Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh*, (1971) SCC 1 864.

⁵⁰ *Id.*

⁵¹ *Lingari Obulamma v. L. Venkata Reddy & Ors.*, (1979) 3 SCC 80.

⁵² *Id.*

⁵³ *Id.*

one.”⁵⁴ No likelihood of the union being void because it occurred within the lifetime of the spouses can arise if the law applicable to the parties, states that the marriage is invalid.⁵⁵ Two requirements must be met for a Hindu marriage to be deemed null and void under Section 17 of the HMA, 1955: (a) the union of marriage must be solemnized following the Act, and (b) either party ought to have a spouse who is still alive on the date of the marriage.⁵⁶ The court acknowledged the rites required for a “Gandharva” type of marriage in this specific instance.

The court went on to say that “The two ceremonies essential to the validity of a Hindu marriage, i.e., invocation before the sacred fire and saptapadi, are also a requisite part of a ‘Gandharva’ marriage unless it is shown that some modification of these ceremonies has been introduced by custom in any particular community or caste.⁵⁷ It was not disputed that in the present case these two ceremonies were not performed when the appellant No. 1 married a second time, and the evidence on record did not establish that these essential ceremonies had been abrogated by custom; the prosecution had therefore failed to establish that the second marriage was performed in accordance with the customary rites applicable.”⁵⁸ Finally, the court stated that “The fact that the two essential ceremonies may not have been performed for a period of five or seven years could not be said to have established a custom as contemplated by Section 3(a) of the Hindu Marriage Act, 1955.”⁵⁹

Despite the fact that the prosecution was unable to establish the existence of a second marriage, the courts in three of the regressive cases mentioned above cleared the respondents, dismissed the case, and offered the appellants no recourse. However, the court adopted a progressive position in the proceeding of ‘*Smt. Laxmi Devi v. Satya Narayan and Ors.*’ Section 494 IPC was applied to press charges against the first defendant, followed by defendant No. 7 under Section 494 r/w with Section 109 IPC⁶⁰ and Respondent Nos. 2 to 6 and 8 under Section 494 r/w with Section 120B⁶¹ of IPC.⁶² As is customary, the trial court determined that the prosecution failed to establish the accused's second marriage by appropriate testimony,

⁵⁴ *Bhaurao Shankar Lokhande v. State of Maharashtra*, AIR 1965 SC 1564.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Indian Penal Code, § 109 (Punishment of abetment).

⁶¹ Indian Penal Code, § 120B (Punishment of criminal conspiracy).

⁶² *Smt. Laxmi Devi v. Satya Narayan and Ors.*, 1994 INSC 307.

witnesses, or execution of “Saptapadi,” and the High Court determined that the evidence presented was unsuitable for granting leave to appeal.⁶³ After carefully examining the testimonies from prosecution witnesses (PW2 and PW5), the Supreme Court concluded that neither of them provided evidence of “Saptapadi’s” performance.⁶⁴ The Court reiterated that proof of substantial ceremonies is a sine qua non for acknowledging or solemnizing a Hindu marriage in criminal cases alleging bigamy, citing precedents set in Kanwal Ram, Bhaurao Shankar Lokhande, and Priya Bala Ghosh.⁶⁵ Absent proof of the required ceremonies, whatsoever “assertions or testimony from witnesses of a marriage” are not enough to qualify the purported second marriage under Section 494 IPC.⁶⁶

The Court added that there is no question that the primary respondent (Respondent No. 1) and Respondent 4 have resided together as spouses in this particular case; the appellant ought not to be kept in the shadows solely because they are unable to furnish evidence of a second marriage, which is penalized under Section 494 of the Indian Penal Code.⁶⁷ By using the authority granted by Article 142⁶⁸ of the Indian Constitution, the appellant receives compensation that guarantees a little relief during her bleakly depressing miserable time.⁶⁹ As a result, we conclude that the first respondent has to provide the appellant the amount of Rs. 25,000 in compensation within eight weeks starting this day (judgment day).⁷⁰ As a result, this ruling definitely took the parties' welfare into account, indicating a progressive ruling.

Section 7-A in the Hindu Marriage (Tamil Nadu Amendment) Act, 1967:

The Hindu Marriage (Tamil Nadu Amendment) Act, 1967, established Section 7-A, thereby substantially changing the underlying conditions of Section 7 HMA. It operates as outlined as follows:

“7A. Special provision regarding Suyamariyathai and Seerthiruththa marriages.⁷¹-(1) This section shall apply to any marriage between any two Hindus, whether called Suyamariyathai marriage or Seerthiruththa marriage or by any other name, solemnized in

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ INDIA CONST. art. 142.

⁶⁹ *Smt. Laxmi Devi v. Satya Narayan & Ors.*, *supra* note 62.

⁷⁰ Id.

⁷¹ Hindu Marriage Act, § 7-A, No. 25, Acts of Tamil Nadu State Legislature, 1967 (India).

the presence of relatives, friends or other persons-

- (a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or
- (b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or
- (c) by the tying of the thali.⁷²

Section 7-A commences with a non-obstante clause, denoting that any language, interpretation, tradition, or usage implied in Section 7 of the Act, 1955 is superseded by Subsection (2)⁷³ of the Act, 1967. According to this law, a marriage that is solemnized in front of family, friends, or other people is legal and legitimate. It does not require a priest to be present because it is performed with a simple event like garlanding each other, tying the thali, or placing a ring on one of the other's fingers.⁷⁴ The judiciary considers these to be valid.

Judicial Pronouncements:

A specific provision, Section 7-A, introduced by the Tamil Nadu Amendment, acknowledges marriages between “Suyamariyathai” and “Seerthiruththa” in the State (jurisdiction) of Tamil Nadu (hereinafter referred to as “the State”) in the matter of “*S. Nagalingam v. Sivagami*.” In essence, the State recognizes these two unions as “Reformatory” and “Self-Respect” unions. Because the second marriage was invalid due to the non-performance of Saptapadi, the trial court in this case cleared the husband of all charges.⁷⁵ However, in this particular instance, the marriage took place at the Thiruthani temple located within the territorial boundaries of Tamil Nadu, and both partners are residents thereof.⁷⁶ Additionally, according to Prosecution Witness No. 3, he performed the marriage ceremony in line according to the parties’ custom, and both parties exchanged garlands.⁷⁷ The court determined that any of the ceremonies listed in Section 7-A would be adequate to consummate an authorized marriage because both partners were domiciled and the marriage was consummated in the State in question in compliance with S.

⁷² Id.

⁷³ Hindu Marriage (Tamil Nadu Amendment) Act, 1967, § 7-A.

⁷⁴ Id.

⁷⁵ *S. Nagalingam v. Sivagami*, (2001) 7 SCC 487.

⁷⁶ Id.

⁷⁷ Id.

7-A.⁷⁸ As a result, it was determined that the second marriage occurred and was established, and it was additionally proven that the husband perpetrated the crime of bigamy.⁷⁹ As a result, Section 7-A represents a humanistic and progressive transition, disregarding mystical ceremonies and heading toward an evolving, democratic, social-based legislative structure for marital solemnization and registration.

The appellant initiated a habeas corpus petition in this instance of *Ilavarasan v. Superintendent of Police and Others*,⁸⁰ claiming that he was wed to Mathithra in compliance with Section 7A of the Hindu Marriage Act, 1955, and demonstrating that the marriage had been consummated under the supervision of social service personnel and attorneys.⁸⁰ The appellant claimed that his spouse, Mathithra, was allegedly taken against her will, pressed into marriage with her maternal uncle, and subsequently constrained.⁸¹ The Madras High Court noted the Tamil Nadu Amendment Act and the Hindu Marriage Act, most specifically Section 7A, which outlined an exclusive special process pursuant to the recently inserted provision and eliminated the need to solemnize marriage employing the forms stipulated in various parts of the Hindu Marriage Act.⁸²

Since it presumes that each marriage necessitates a public solemnization or declaration, the Madras High Court's position in "*S. Balakrishnan Pandiyan v. Inspector of Police (2014)*" is considered incorrect.

“Our declaration of law that, marriages performed in secrecy in the Office of Advocates and Bar Association Rooms cannot amount to solemnization within the meaning of Sections 7 & 7-A of the HMA, cannot be used as a sword by the males for cutting the nuptial knot in Matrimonial proceedings, but can be used only by the fair sex to get liberated from sham marriages of this nature.⁸³ We also hold that the Certificate of Solemnization issued by Advocates will not be per se proof of Solemnization of Marriage in a matrimonial dispute.”⁸⁴

This Court believes that such a view is oversimplified since partners may encounter resistance

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ *Ilavarasan v. Superintendent of Police & Ors.*, 2023 INSC 813.

⁸¹ Id.

⁸² Id.

⁸³ *S. Balakrishnan Pandiyan v. Inspector of Police*, 2014 (7) Mad LJ 651.

⁸⁴ Id.

from family or parental influences, which are susceptible to damage or coercion; additionally, caste or societal structures may also be the source of these adverse effects and brutality.⁸⁵ For these causes, couples who intend to get married might not be entirely able to undertake or announce such a public declaration. Their well-being would be at risk, or at the very least, their physical well-being could potentially be in jeopardy, or at worst, they could potentially be forced to depart from their companions.⁸⁶ In earlier rulings such as '*Lata Singh v. State of UP*,'⁸⁷ '*Shafin Jahan v. Asokan KM*,'⁸⁸ and '*Laxmibai Chandaragi B. v. The State of Karnataka*,'⁸⁹ the Court has highlighted the liberty to oneself to make an independence of choice or individual autonomy, which is a critical aspect of the right of life pursuant to Article 21 of the Indian Constitution.⁹⁰ Accordingly, it is believed that the perspective presented in *S. Balakrishan Pandiyan (Supra)* is inaccurate and erroneous; consequently, as a result, it was overturned in *Nagalingam (Supra)*.⁹¹

In the ultimate analysis, there ought to be sufficient substantial and compelling proof on file to support the decision to determine that the Saptapadi ceremony had been performed with the objective to establish a legally binding marriage.⁹² The immediate vicinity and accompanying conditions solely shouldn't be used to infer the same thing. However, it ought to be noted that the threshold of evidence for a marriage of this sort pursuant to the Hindu Marriage Act is considerably less stringent relative to what must be established for a bigamy trial under Section 494 of the IPC.⁹³ In analogy with civil lawsuits, the court may apply deductions and determine the legitimacy of marriage based on the preponderance of probabilities or evidence, but not beyond a reasonable doubt corresponding to criminal proceedings.⁹⁴ However, the fact that a marriage transpired cannot be established by the plaintiff's word alone or by photographic evidence of the union that was not documented or authorized.⁹⁵

⁸⁵ *Ilavarasan v. Superintendent of Police & Ors.*, *supra* note 82.

⁸⁶ *Id.*

⁸⁷ (2006) 5 SCC 475.

⁸⁸ (2018) 16 SCC 368.

⁸⁹ (2021) 3 SCC 360.

⁹⁰ *Ilavarasan v. Superintendent of Police & Ors.*, 2023 INSC 813.

⁹¹ *Id.*

⁹² *Mohini*, *supra* note 1, at 143.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

CHAPTER 5: CONCLUSION

The Crux:

A multitude of decisions by courts have referenced Section 7 of the Hindu Marriage Act of 1955; nevertheless, the primary thrust of the debate is to demonstrate concern regarding how, according to the Hindu social order, the prohibition on marriage between different castes and the disdain for the offspring born to such a married couple culminated in the dismissal of inter-caste marriages as a means of social mobility and the inflexibility of the societal order. However, when the requirements of Sections 3(a)⁹⁶, 5⁹⁷, and 7 have been invoked, both spouses escape the legitimacy of such unions. As a result, the modifications implemented in Tamil Nadu alongside the citation of Section 7-A of HMA, 1967, determined that any union initiated among either of the Hindus in any sort and authorized in front of close relatives, friends, or other individuals in a simplified variant constitutes a legal union. The HMA has eliminated the inflexibility by rendering inter-caste marriages legitimate and legally binding.

In accordance with the Indian Constitution's foundations pertaining to social integrity and national unity, in conjunction with the right to equal treatment guaranteed by human rights and the Constitution, a man and woman who marry constitute an integral part of the family and are granted the social standing of a unionized couple; recognition of that status itself is not an indispensable prerequisite, but both parties are accustomed to consideration when supporting evidence is available.⁹⁸ It is prevalent that young men and women unionize contrary to their parents' desires as their education and economic standing evolve, and that in numerous instances, neither party's nor both parties' parents would offer their assent or acknowledgement.⁹⁹ Consequently, getting married is not dependent on being recognized by one's family or community.

Conclusion:

In light of the requirements of the Domestic Violence Act of 2005, this paper does not address considerations such as whether the application for alimony or maintenance under Section 125 requires stringent evidence of marriage. If a woman ought to be entitled to maintenance under

⁹⁶ Hindu Marriage Act, § 3(a), No. 25, Acts of Parliament, 1955 (India).

⁹⁷ Hindu Marriage Act, § 5, No. 25, Acts of Parliament, 1955 (India).

⁹⁸ Mohini, *supra* note 1, at 104.

⁹⁹ *Id.*

Section 125 of the CrPC¹⁰⁰ if the union was consummated in accordance with customary ceremonies and practices without rigorously meeting the prerequisites of Section 7(1) of the HMA or other provisions of family law?¹⁰¹ Furthermore, it addresses the specifics of precisely what unfolds when ceremonies are not held in situations involving divorce, restitution of conjugal rights, succession, or inheritance. Nonetheless, it predominantly deals with the notion of invoking Section 7-A, and its mere existence that it is exclusively enforceable in Tamil Nadu raises serious concerns about social cohesiveness.¹⁰² In actuality, the union develops into an operational institution where women ought to operate as a support system and conform to their husbands' requirements. The institutional framework of the household or community is an initial catalyst for this paradox of subjugation. It underlines the fact that a union has traditionally been perceived to involve a man and a woman in all cultures, societies, and perceptions of what the union is. Unquestionably, cultural and social settings play a significant role in determining what marriage is in each social order. The evolution of what were considered fundamental and crucial constituents, alongside the fundamental bounds within which unions were deemed legitimate, ought to be taken into account in order to determine the allegations in these petitions. Since procreation was mentioned as the sole justification for marriage, completion and sexual relations were regarded as the absolute most crucial aspects of any union since they indicated the founding of a family. As stated in extensive judicial cases, if both individuals were domiciled and the union was consummated in the State in compliance with S. 7-A, the courts as have determined that any of the rituals listed in the statute would be deemed adequate to consummate a lawful marriage.¹⁰³ As a result, the fact of the second marriage can be established, and additionally be determined that the party had carried out the crime of bigamy, therefore it makes the practice more humanitarian and transparent. As a result, Section 7-A represents a humanistic and progressive move away from sacred rituals and toward an advanced, democratic, social-based legal system for marriage recognition.

¹⁰⁰ Code of Criminal Procedure, § 125 (Order for maintenance of wives, children and parents).

¹⁰¹ Rajni, Changing Scenario of Marriage in India: A Critical Study with Special Reference to Hindu Marriage Act 1955 (2024), <http://hdl.handle.net/10603/661515>.

¹⁰² Id.

¹⁰³ *S. Nagalingam v. Sivagami*, (2001) 7 SCC 487.

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