
THE GAP BETWEEN CODIFIED LAW AND SOCIAL PRACTICE: A CRITICAL ANALYSIS AND REFORM OF THE HINDU MARRIAGE ACT, 1955

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1. ABSTRACT

The Hindu Marriage Act, 1955, stands as a cornerstone of social reform in post-independence India, codifying principles that aimed to transform the traditional; Hindu conception of marriage from a sacrament into legal binding and legal contract. Yet, despite its progressive intent, the act continues to face challenges in implementation, as deeply entrenched customs and social norms often prevail over statutory laws. This article examines the exact cause or gap between the statutory laws and social practices in context of Hindu marriages. It critically analyses how often the social attitudes, beliefs, gender hierarchy, and customary practices such as child marriages affect the effectiveness of the statutory law or Hindu Marriage Act, 1955. Using landmark judgements and judicial decisions, the article explores the tension between reformist legal ideas influenced by different cultural identities and resistant cultural realities. It concludes by proposing reform ideas to bridge this gap, ensuring that the law's transformative intent is realised within lived social experience.

2. Introduction

The Hindu Marriage Act, 1955, marked a significant step in India's post-independence law making and modernising personal laws and align them with constitutional and cultural values. As part of the broader Hindu bill, its central purpose was to codify progressive values—monogamy, consent, equality, and women's rights—into the legal fabric of Indian society (Derrett, 1978). The Hindu Marriage Act itself was a milestone for India, in giving legal recognition to the rights and responsibilities of the spouse within marriage.

However, nearly 7 decades after its enactment, a considerable gap persists between the codified provisions of the act and actual social practices. While the law environs marriage as a sacred yet contractually regulated institution ensuring equality, but in reality still in many parts of India there is continuation of patriarchy, caste prejudice, and rigid traditions which defy the law. This article examines the reasons for this gap, its manifestation, and its implication on Indian society.

3. Historical Background of the Hindu Marriage Act

Before the enactment of Hindu Marriage Act 1955, Hindu Marriages were primarily governed by ancient scriptures like Dharmashastras and regional customs that varied from community to community. The introduction of Hindu Marriage Act brings was an attempt to bring uniformity, coherence and legal clarity to marriage law applicable to Hindus, Jains, Buddhists, and Sikhs.

Some of the key reforms were like - termination of polygamy, minimum age limits for marriage were set, inclusion of divorce clause to dissolve Hindu marriages through legal procedures, equal rights for both men and women were given.

Despite these progressive measures, deep-rooted cultural beliefs about marriage as a sacred ceremony rather than a contract continued to influence social attitudes and marriage was viewed as a *smaskara*- a sacred and indissoluble union which challenge the very concept of divorce as it was nearly known to the masses. The legal framework thus coexisted uneasily with entrenched customs and gender hierarchies. Reform efforts, however, had begun earlier. The Child Marriage Restraint Act of 1929 (Sarda Act) and the Hindu Women's Right to Property Act of 1937 were precursors to the codified reform movement (Kumar, 1983).

Yes, while the law codified equality and consent, but it simultaneously permitted certain customary practices as exceptions, which are prohibited by law but can be sanctioned by customs. This partial accommodation of customs became a significant source of tension in later interpretations, as the court struggled to balance statutory provisions with social practice that often contradicted the spirit of law itself (Sivaramayya, 1991).

4. Persistence of Traditional Practices

Despite its clear provisions, the Hindu Marriage Act has not fully substituted customary practices. Marriage continues to be perceived primarily as a family and religious event rather than a legal contract. The performance of rituals such as *saptapadi* and *kanyadaan* still hold more significance and importance over registration and legal compliance (Menski, 2003). In many rural and traditional contexts, marriages are still solemnized according to caste norms, local customs, and community sanctions, even if it contravenes statutory provisions.

i) Child Marriage

Although prohibited under the Act and reinforced by the **Prohibition of Child Marriage Act, 2006** and section 5(iii) of the Hindu Marriage Act prescribes a minimum marriage age as 18 for women and 21 for men, child marriage remains widespread in various parts of rural India till now. Families often justify it as customary practices.

Even if declared voidable by law, many of the child marriages go unreported or unchallenged due to social stigma and lack of awareness. This reveals how social stigma or social legitimacy often overrides legal prohibitions.

Instead of declaring child marriage as voidable, the age-old Hindu Marriage Act, 1955 should be reformed and mark child marriages as void ab initio, to avoid the exploitation of minors in the name of customs.

In the case of **T. Sivakumar v. The Inspector of Police (2011) 1 MLJ (CrI) 784 (Madras High Court)** the court rejected the claim of child marriage as a Hindu customary practice and clarified that child marriages, even if performed according to the customs, are illegal and voidable.

The court directed that such marriages should be reported and investigated under the

Prohibition of Child Marriage Act, 2006. This case criticised the misuse of 'custom' as shield to justify exploitation of minors under the grab of marriage.

ii) Dowry System

Section 3 of Hindu Marriage Act does not explicitly address dowry, but the Dowry Prohibition Act, 1961, made it as illegal. Even after declaring it as illegal, dowry remains a pervasive element of Hindu marriages, particularly in the northern side of India. The practice of dowry is deeply rooted in the patriarchal culture and society of India, often leads to exploitation of the women and domestic violence against women. Judicial interventions have recognised this social malady.

In cases like **Satbir Singh v. State of Haryana (2021)**, the supreme court stated that dowry harassment and death because of it represent a failure of social reform and that stricter enforcement of dowry laws is essential to achieve gender equality and realising gender justice.

iii) Caste Endogamy

Another area where social practices contradicts and defy codified law is caste based marriage restrictions. The Hindu Marriage Act allows inter-caste and inter-sect marriages. Yet, the social community oppose and stick to violence against inter-caste couples remain widespread. With introduction of scheme to reward and promote inter-caste marriages, although decreased but need more strict laws to eliminate violence against the inter-caste couple.

Lata Singh v. State of Uttar Pradesh (2006), the Supreme Court declared that adult individuals have the right to marry a person of their choice and stated caste-based interference as unconstitutional. Later, in *Shakti Vahini v. Union of India (2018)*, the Court issued preventive guidelines against honor killings, emphasising that social customs cannot override the constitutional right to personal liberty.

5. The Role of Judiciary in Interpreting Custom and Law

Indian courts have often been at the forefront of reconciling statutory law with social practice. Over the years the judiciary's role from interpreting legal text has evolved into actively shaping the social meaning of law. In this process, courts have repeatedly stated and emphasised that customs cannot override statutory provisions when the two are in conflict.

In the case of *Lila Gupta v. Laxmi Narain* (1978), the Supreme Court held that the Hindu Marriage Act was a statute intended to bring reform and social uniformity, and that customs i.e inconsistent with the Act cannot prevail. The Court emphasised that the law must substitute the practices that contravene its express provisions (*Lila Gupta v. Laxmi Narain*, 1978). This case established an enduring principle that statutory law is paramount, and no custom can justify violations of the Act's essential conditions.

Similarly, in *P. Venkataramana v. State of Andhra Pradesh* (1977), the high court rejected the argument that child marriage could be violated by long- standing customs and stated that “ no custom can legalise what statute law prohibits”,there by clearly affirming that practices or customs contrary to public policy cannot be shielded under the guise of religion or tradition.

Such judgements shows that in judicial understanding, law's reformist intent must not be undermined by selective adherence to custom. However, the persistence of cases involving child marriage, dowry harassment, and gender-based discrimination indicates that legal declarations alone have limited effect in transforming entrenched social norms.

6. Why Customs Are Sometimes Prioritised Before Codified Law

Recognition of Custom as a Source of Law in Hindu Jurisprudence:-

Hindu laws which are developed from Shruti(vedas), Smriti(legal commentaries), and customs (Aachara). Before codification, customs was one of the primary source of law which govern on marriage, inheritance, and other civil matters. Even after independence when Hindu laws were codified (through the Hindu Marriage Act, Hindu Succession Act, etc) parliament chose to custom entirely to not hurt public sentiments and to avoid public rage. Instead, it acknowledged that Hindu society was deeply rooted in diverse customary practices, many of which were centuries old and followed From then, it also acknowledged that custom also varied from region to region which cannot be codified in HMA .

Therefore, custom was preserved as a legitimate source of law unless it directly violated and fundamental right or contradict statutory provisions.

Ex;-Section 3(a) of the Hindu Marriage Act defines “custom” and recognizes it if it has been “continuously and uniformly observed for a long time, has obtained the force of law among

Hindus in any local area, tribe, community, group or family, and is not unreasonable or opposed to public policy.”

Social Reality and Cultural Legitimacy:-

The Indian legal system understood that laws alone won't be able to immediately change social behaviour and social beliefs. Customs often hold moral and cultural sentiments in local communities, sometimes even more than codified law.

Therefore, in practice, courts and legislators were cautious about invalidating the very foundation of their religion and belief - especially those not manifestly unjust or against constitutional morality. This respect for cultural continuity helps prevent backlash and ensures gradual rather than abrupt social reforms.

Legislative Intent During Codification:-

The Hindu Marriage Act, 1955, was intended as a reformatory, not revolutionary statute. Lawmakers sought to modernise personal laws (eg., to remove social stigma around divorce and ban bigamy) while retaining traditional flexibility through the recognition of custom and retaining the essence of the religion.

Section 29(2) of the Act explicitly provides that nothing in the Act shall affect any right recognized by custom to obtain the dissolution of a Hindu marriage.

This shows legislative intent to coexist with valid customs, provided they are not contrary to public policy.

Judicial Interpretation and Precedent :-

Indian courts have often upheld valid customs, emphasising that the law respects customary practices of ancient time when proven to exist and not inconsistent with morality or statute

For example :

- In *Muthuswami Mudaliar v. Masilamani* 1904, the privy council recognised that long standing customs could operate as law if continuous, certain, and reasonable.

- Similarly, in *Gokal Chand v. Parvin Kumari* 1952, the Supreme Court held that courts should presume against the existence of a custom unless proven - showing that customs have value, but must meet a strict evidentiary standard.

Pluralism in Indian Personal Law:-

India follows a plural legal system when it comes to marriages in Hindu tradition, meaning different communities are governed by their respective personal laws. In such system, customs of different communities embody the diversity of social norms, and legal pluralism recognises that a uniform codification for Hindu marriages may not fit all contexts . Therefore, customs is prioritised to preserve identity and autonomy of different communities .

Practical Enforcement and Social Acceptance:-

In many rural areas where tradition plays a bigger role than la itself, customary norms dictate social legitimacy even if statutory law says otherwise.

For example, child marriage still occur despite being prohibited by the Prohibition of Child Marriage Act (2006), partly because in certain communities they view child marriage as socially acceptable custom.

The state often faces difficulty enforcing codified laws when they conflict with entrenched customs -creating a gap between legal validity and social acceptance.

7. The limits of Customary priority

While customs have historical and cultural importance, they are not absolute. Indian jurisprudence has clearly set boundaries:

A custom cannot be recognised if it unreasonable, immoral, or opposed to public policy or question the validity if statutory law.

The constitution of India, especially Articles 14, 15, and 21, mandates equality and individual rights, which can override discriminatory or regressive customs.

Courts also have increasingly emphasised constitutional morality over social morality, especially in cases relating to gender justice and personal liberty.

For instance, in *State of Bombay v. Narasu Appa Mali* (1952), the Bombay High Court upheld the validity of personal laws but also hinted that the legislature can reform customs that violate fundamental rights.

More recently, in *Joseph Shine v. Union of India* (2018) and *Indian Young Lawyers Association v. State of Kerala* (2018), the Supreme Court reinforced that customs violating constitutional principles must yield to constitutional morality.

8. Understanding the Gap: Sociocultural and Structural Causes

The resilience of social practices contrary to the Hindu Marriage Act can be understood through several sociological lenses. Firstly, the patriarchal structure of Hindu society, with emphasis on family status, honor, purity, name, and lineage, often overrides the individual rights and decision of the groom and the bride. Marriage still remains as a collective decision which is significantly influenced by caste, community, and economic status. In such contexts, codified law is seen as an external imposition rather than a reflection of lived morality (Uberoi, 2006).

Second, the lack of awareness and accessibility of legal institution in rural areas contributes to the persistence of custom. The registration of marriage, though made compulsory in several states, remains very low. Enforcement mechanism for the Prohibition of Child Marriage Act are weak and very weakly governed, and the victims of child marriage rarely seek annulment due to social stigma and the fear of being called as divorcee (UNICEF, 2019).

Third, religious sentiments also play a significant role in making customs override the statute. As divorce as a concept is missing in Hindu religious text, which also supports various other customs. The religious leader and community often interpret statutory reform as an intrusion into religious autonomy. The Hindu Marriage Act's secular and egalitarian principle challenge long-held beliefs about the sanctity and permanence of marriage, leading to passive resistance or selective compliance (Parashar, 1992).

Finally, economic factors such as poverty, dowry practices, and the psychology of people perceiving female children as a financial burden which in result perpetuate early marriages of female child. Thus, the gap between codified law and social practices cannot be explained merely as a legal failure, it represents a complex contribution of various factors such as gender, religion, and socioeconomic structure.

9. Judicial Efforts to Bridge the Gap

The judiciary has tried time to time to bridge the gap between codified law and the social practices by interpreting the law in light of constitutional principles. Courts have repeatedly invoked Articles 14, 15, and 21 of the constitutional to promote gender equality and individual liberty in marriage related cases.

In *Independent Thought v. Union of India* (2017), the Supreme Court explicitly linked the protection of minor girls to constitutional guarantees of dignity and bodily integrity, asserting that personal law or social custom cannot contravene fundamental rights (*Independent Thought v. Union of India*, 2017).

Similarly, in *Seema v. Ashwani Kumar* (2006), the Court recognised the social reality of unregistered marriages leading to exploitation of women and children and sought to institutionalise marriage registration as a tool of empowerment. These judicial efforts signify an evolving constitutional morality that prioritises human rights over tradition.

However, judicial activism alone cannot ensure compliance. the court may declare, but social practices must internalise. The enduring gap lies in the translation of legal principles into community ethics.

10. Proposed Reforms: Bridging Codified Law and Social Practice

To bridge this enduring gap , reform must proceed in legal way with keeping social and emotional value in mind with proper education for this.

Strengthening Legal Enforcement:

The enforcement of existing laws, particularly the Prohibition of Child Marriage Act, must be prioritised through stricter penalties, strict monitoring , and making mandatory registration of marriages to enjoy perks . Marriage registration should be uniformly enforced across all states, supported by digital access systems and increasing vigilances in local bodies , as the marriages in local bodies often go unregistered.

Integrating Customary Institutions:

Community-based mediation and religious institutions should be integrated into the legal

reform process. Legal literacy programs targeting especially rural and traditional communities can reframe the law as compatible with, instead of being antagonistic to, Hindu values of justice (*dharma*). Engaging local leaders and women's groups can enhance social acceptance of statutory norms and increase its effectiveness.

Gender Sensitisation and Education:

Education remains the most effective way for long term reform. Programs emphasising women's rights, consent, and equality must be embedded within school curriculum and community awareness campaigns. Media and digital awareness can also play a vital role in redefining social attitudes toward child marriage and gender bias roles.

Legislative Clarifications:

Ambiguities in the Hindu Marriage Act regarding the validity of child marriage should be addressed. Presently, under Section 13(2)(iv), child marriages are voidable rather than void, leaving room for exploitation. The law should be amended to declare all underage marriages void *ab initio*. This would remove any legal ambiguity and strengthen protection for minors.

Harmonising Personal and Constitutional Law:

The law must be interpreted and applied consistently with constitutional morality. The Supreme Court's evolving jurisprudence on personal law reflects this shift from religious accommodation to constitutional alignment. Codified law must thus embody the principles of equality and dignity as the ultimate benchmarks of legitimacy.

11. Conclusion

The Hindu Marriage Act, 1955, was not only meant as a contractual obligation but also to preserve the very essence of Hindu marriages and their culture. Its purpose was to liberate individuals from oppressive customs and align Hindu marriage with constitutional values of equality and justice while keeping traditions in mind. Yet, decades after its enactment, the gap between the codified law and social practices endures. This is not merely a legal anomaly but a reflection of deeper social inertia rooted in patriarchy, religion, and economic inequality.

Judicial interventions—from *Lila Gupta v. Laxmi Narain* (1978) to *Independent Thought v.*

Union of India (2017) have consistently upheld the supremacy of statutory and constitutional norms over custom. However, the persistence of practices such as child marriage underscores that true reform requires more than judicial declarations. It demand a holistic strategy comprising legal enforcement, social education, and cultural engagement.

Ultimately, bridging this gap calls for reimagining of the relationship between law and society. The Hindu Marriage Act must evolve from being a codified statement od ideals into living embodiment of social justice , one that harmonises reformist legality with traansformative social consciousness.

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