HINDU MARRIAGE ACT: JURISDICTION, DOMICILE AND VALIDITY

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INTRODUCTION

There have been cases in the present and the past where women have been facing serious troubles mainly in Northern India after getting married to Non-Resident Indians (NRI). The groom would either dump the bride here in India after marriage or take her along for other reasons. The issue becomes all the more prominent when a dispute arises and no one knows which jurisdiction to approach and proving validity of the marriage becomes a daunting task.

Hindu Marriage Act and its connotations in different scenarios have unique applicability but at the same time it is to be understood that the core remains the same.

This article discusses about the scenario where parties are Hindus of Indian origin and place of residence may vary from time to time.

The word "Hindu" in this article refers to **all individuals** who come under purview of Hindu Marriage Act 1955 section 2(1).

JURISDICTION AND DOMICILE

The jurisdiction and applicability of the act is outlined in the section 1 and 2 of the Hindu Marriage Act.

Section 1 of the Act provides as under:

> 1. Short title and extent - (1) This Act may be called the Hindu Marriage Act, 1955.
>
> (2) It extends to the whole of India except the State of Jammu and Kashmir, and **applies *also* to Hindus domiciled in the territories to which this Act extends who are outside the said territories.**

The recent decision of the Delhi High Court has seized the controversy and made the situation comprehensively clear.

In **Karan Goel v. Ms. Kanika Goel I (2021) DMC 193 Del. ; LQ/DelHC/2020/2682** it was held as under:

> *"The Hindu Marriage Act, as it originally stood besides its coverage to the whole of India, also applied to all Hindus domiciled in India. The Act was subsequently amended and it was given an extended application. Accordingly domicile in India was substituted by a new clause domiciled in the territories to which this Act extends.* ***This amendment was made with a specific purpose to extend the provisions of the Act to all Hindus with such domicile, even though for the time being, they are outside the said territories.*** *Because of this amendment, it was not open to a person governed by Hindu Law to contest the matter on the sole ground that he is residing outside India and as such the Act has no application to him".*

Further**, Section 2** talks about applicability of the Act.

2. Application of Act: - (1) This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion**, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.**

The intention of the legislature was to cover even the cases where a person refuses to be governed by Hindu law raising a plea that he doesn't fall under the purview of the Act for any reason including domicile. It is for the person to prove that he doesn't fall under the purview of this Act. Merely because one of the parties is not domicile of India does not restrain the other party who's domiciled in India to invoke the provisions of the Hindu Marriage Act.

Where there is no denying of the fact that both the parties are Hindu and even if one is domiciled in some other country and got married to the girl/boy of Indian domicile, the Act very much applies.

It has further been made very clear by the Hon'ble High Court of Delhi **in Karan Goel Vs Kanika Goel (supra)** wherein the court after assessing the scenario at length where boy was a US citizen and Girl had Indian Citizenship, observing as under:

> *" 34. …Unless, it is proven otherwise by leading appropriate evidence, it cannot be stated at this stage that courts in India are divested of the territorial jurisdiction to entertain a petition filed under the Act simply on the say so of the appellant/husband. Once the respondent/wife has averred in clear and unequivocal terms that* ***she has not abandoned the domicile of India****, it has to be held that the divorce petition discloses a valid cause of action and cannot be held to be barred under any law."*

The Hon'ble High Court further clarified whilst taking care of all the aspects and held as under:

> *"35. If we accept the contention of the appellant/husband that both the parties must be domiciled in India for a petition to be maintainable in India, it would lead to an absurd and untenable inference that after the marriage, if a wife is abandoned in a foreign land on being deserted by the husband, she will be left with no remedy other than to institute/contest the case in a foreign land where she may have no financial means, wherewithal or support for the same.*
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> *36. The marriage between the parties herein having been solemnized under the Hindu Law, can only be dissolved on the grounds set out in Section 13 of the Hindu Marriage Act. Irretrievable break down of marriage is not a ground available under the said provision. It therefore, does not lie in the mouth of the appellant/husband to claim that courts in Illinois, California had acquired prior jurisdiction in the matter merely because he had approached the said courts for seeking divorce against the respondent/wife on grounds that are not even available under the Act. In fact, it will be for the appellant/husband to establish the validity of the decree of divorce granted by the foreign court in his favour on the ground of irretrievable break down of marriage****. [Refer (1991) 1 SCC 451, Y. Narasimah Rao & Ors. Vs. Y. Venkta Lakshmi & Anr.]."***

It was also held as under:

> *"22. The Hindu Marriage Act applies to all Hindu domiciled in the territories to which the Act extends. A combined reading of Sections 1 and 2 with Section 19(iiia) contemplates a situation where even if the wife is domiciled in India and the husband is not, remedies under the Act can be availed of by the wife. A glance at Section 19 of the Act shows that it offers multiple options as to the local District Court where a divorce petition can be presented. It includes the place where the marriage of the parties was solemnized or where the respondent resides at the time of presentation of the petition or in case the wife is the petitioner, where she is residing on the date of presentation of the petition or where the petitioner is residing at the time of presentation of a petition in a case where the respondent at that relevant point in time, is residing outside the territories to which the Act extends, as contemplated in Section 1(2).''*

The above discussion on the jurisdiction makes it very clear that in case one of the parties is still domiciled in India, Hindu Marriage Act applies to the parties.

As far as issue in regard to domicile is concerned, Court has further made it clear in following words in ***Karan Goel Vs Kanika Goel I (2021) DMC 193 Del. ; LQ/DelHC/2020/2682-***

"The observations made by the Supreme Court in para 34 ***of Sondur Gopal Vs Sondur Rajini AIR 2013 SC 2678****, is extracted as under:-*

> *34. Domiciles are of three kinds viz. domicile of origin, the domicile by operation of law and the domicile of choice. In the present case, we are concerned only with the domicile of origin and domicile of choice. Domicile of origin is not necessarily the place of birth. The birth of a child at a place during temporary absence of the parents from their domicile will not make the place of birth as the domicile of the child. In domicile of choice one is abandoned and another domicile is acquired but for that, the acquisition of another domicile is not sufficient. Domicile of origin prevails until not only another domicile is acquired but it must manifest intention of abandoning the domicile of origin.*
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> *35. The right to change the domicile of birth is available to any person not legally dependent and such a person can acquire domicile of choice. It is done by residing in the country of choice with intention of continuing to reside there indefinitely. Unless proved, there is presumption against the change of domicile. Therefore, the person who alleges it has to prove that.*

> *Intention is always lodged in the mind, which can be inferred from any act, event or circumstance in the life of such person. Residence, for a long period, is an evidence of such an intention so also the change of nationality.(emphasis supplied)*
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> *27. The captioned judgment refers to Section 1(2) of the Act and states that the said provision applies to Hindus by religion in any form and takes in its fold, sub-sects like Buddhists, Jains, Sikhs and covers all such persons who are domiciled in India, not being Muslims, Christians, Parsis or Jews unless it is proven that they are not governed by the Act. The conclusion drawn was that Section 2 would apply to Hindus domiciled in territories contemplated in Section 1(2) of the Act including those Hindus who are living outside the territories of India.*

28. ***In Kedar Pandey v. Narain Bikram Sah, reported as AIR 1966 SC 160****, on the aspect of domicile, the Supreme Court held as under:*

> *10. The law on the topic is well established but the difficulty is found in its application to varying combination of circumstances in each case. The law attributes to every person at birth a domicil which is called a domicil of origin. This domicil may be changed, and a new domicil, which is called a domicil of choice, acquired; but the two kinds of domicil differ in one respect. The domicil of origin is received by operation of law at birth; the domicil of choice is acquired later by the actual removal of an individual to another country accompanied by his animus manendi. The domicile of origin is determined by the domicile, at the time of the childs birth, of that person upon whom he is legally dependent. A legitimate child born in a wedlock to a living father receives the domicil of the father at the time of the birth; a posthumous legitimate child receives that of the mother at that time. As regards change of domicile, any person not under disability may at any time change his existing domicile and acquire for himself a domicile of choice by the fact of residing in a country other than that of his domicile of origin with the intention of continuing to reside there indefinitely. For this purpose residence is a mere physical fact, and means no more than personal presence in a locality, regarded apart from any of the circumstances attending it. If this physical fact is accompanied by the required state of mind, neither its character nor its duration is in any way material. The state of mind, or animus manendi, which is required demands that the person whose domicile is the object of the inquiry should have formed a fixed and settled purpose of making his principal or sole permanent home…..(emphasis added)*

29. Similarly, ***in Abdus Samad v. State of West Bengal, reported as (1973) 1 SCC 451 , the Supreme Court*** *observed as under:*

> *6. ..... By domicile is meant a permanent home. Domicile means the place which a person has fixed as a habitation of himself and his family not for a mere special and temporary purpose, but with present intention of making it his permanent home. Domicile of choice is thus the result of a voluntary choice.*
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> *7. Every person must have a domicile. A person cannot have two simultaneous domiciles. Domicile denotes connection with the territorial system of law. The burden of proving a change in domicile is on those who allege that a change has occurred.(emphasis added)*

30. Yet again, on the concept of resident and domicile, following are the pertinent observations made by the Supreme Court in ***Union of India v. Dudh Nath Prasad reported as (2000) 2 SCC 20:-***

> *27. .....The classical division of domicile is well known. There are the domicile of origin, the domicile of choice and the domicile of dependence. There has been little change in the essential concept of these three domiciles.....28. In view of the above, the concept of domicile as canvassed by learned counsel for the appellants with reference to change of nationality or change of domicile from one country to another, cannot be imported in the present case. Moreover, Domicile and Residence are relative concepts and have to be understood in the context in which they are used, having regard to the nature and purpose of the statute in which these words are used.(emphasis supplied)."*

It can be safely inferred from the observations and findings made by the Hon'ble Supreme Court in various cases that merely because a person has acquired citizenship of some other country does not exempt him from the purview of the Hindu Marriage Act if the spouse is still domicile of India. The intention of the legislature was clear if one of the parties has still not abandoned the domicile of India, the act very much applies. It may not apply where both the parties have relinquished the domicile of India and acquired the citizenship of any other country.

VALIDITY OF CEREMONIAL MARRIAGE

We all know marriages in India take place differently in different parts of the country. There have been cases where groom would challenge the validity stating that ceremony lacked a specific action. The Indian courts have made it amply clear in catena of judgments that once it is established that marriage was performed as per Hindu rites, the Hindu Marriage Act would apply.

In the case of **Ravindra Harshad Parmar v. Dimple Ravindra Parmar (Bombay High Court, 11 December, 2014)** where both the parties were US citizens at the time of filing of divorce petition in India, the Hon'ble High Court observed that –

> *"In the present case, the evidence shows that the marriage was performed at Arya Samaj. It is not the case of the appellant that Arya Samaj wedding did not constitute a Hindu marriage ceremony as contemplated under section 7 of the Act.* ***Once it is established that marriage between the parties was performed as per Hindu rites, the Hindu Marriage Act would apply by virtue of section 2(1)(a).****"*

In the case of **Karan Goel Vs Kanika (supra),** the marriage was solemnized as per sikh rites i.e. Anand Karaj ceremony and Hindu Vedic rites and ceremonies in New Delhi in October 2010, after the wedding Ms. Kanika Goel travelled to USA on fiancé visa, and in March 2011, the couple solemnized their marriage again in front of the County Circuit Court of Illinois in a civil marriage ceremony. At the time of marriage in India, Mr Karan Goel was citizen of USA, while Ms. Kanika Goel was domicile and citizen of India. When the issue of divorce and child custody arose, Ms. Kanika Goel was a permanent resident of USA, however Ms. Kanika Goel filed for divorce and child custody in India under section 13 of Hindu Marriage Act.

Following are the observations made by the Family Court-

> *"So far as the present matter is concerned, both the parties have Indian domicile of origin, the marriage was solemnized as per Sikh rites and ceremonies and at that time the intention of the parties was to be governed by their personal law i.e. Hindu Marriage Act. If the proposition put forth by the counsel for respondent/husband that both the parties must be domiciled in India at the time of presentation of petition is accepted, then it will bring us to a situation, where if a spouse after the marriage, deserts the other spouse by going abroad and by acquiring domicile of choice, the spouse in*

> *India would be left with no remedy to seek dissolution of marriage even on the ground of desertion. By any stretch this cannot be intention of the legislature."*

As it can be seen from the observations and findings above, the Indian court claimed the jurisdiction under Hindu Marriage Act as it deemed the marriage with Sikh and Hindu rites and ceremonies valid for the applicability of Hindu Marriage Act. The intention of the legislature is to take care of spouses who otherwise would not left with any remedy.

HINDU CEREMONIAL MARRIAGE

Another ancillary issue which normally arises in such cases and is a matter of concern is the nature of ceremony and its validity. What constitutes a valid marriage is one of the significant aspect attached to the issues discussed above. In this regard Section 5 and 7 are relevant to understand the concept of valid Hindu marriage.

Section 5 of Hindu marriage act, 1955 provides conditions for a Hindu marriage-

5. Conditions for a Hindu Marriage: - A marriage may be solemnized between two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind ; or

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

(c) has been subject to recurrent attacks of insanity or epilepsy;

(iii) the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

*sapindas - one is lineal ascendant or descendant of the other

Two main constituents apart from others as mentioned in Section 5 and 7 of Hindu Marriage Act, are that wherever both the parties are Hindus and marriage is solemnized in accordance with the customary rites and ceremonies, it's a valid marriage.

In the case of **Bibba v. Ramkall (AIR 1982 AII 248)20**, the court held that simply with the intention to take the parties as married they go through certain ceremonies, these will not make them the rituals prescribed by the law. It also held that **the ceremonies may vary according to the custom of each person.** For example, the presentation of a piece of cloth by the bridegroom to the bride (pudava kodukal) is an important customary rite which has been practices among the Nair caste in Kerala.

It is to be understood that the Hindu marriage ceremony consists of several steps. **The dichotomy is that there is no uniformity in the ceremony of the marriage. There is no uniformity of ceremonies, rites, rituals or customs in Hindu marriages, neither, there is strict rules in Hindu law to be followed for solemnizing marriage nor there is consensus among pundits about essential ceremonies to be followed by Hindu couples. The customs or rituals vary from region to region or caste or family.**

Section 29 of Hindu Marriage Act states that nothing contained in the Act is to be deemed to affect any right recognized by custom or conferred by any special enactment to the same. It further dilutes the assertion normally raised qua ceremony of marriage, by the groom and trying to get it declared invalid.

According to Section 7 of the Hindu Marriage Act-

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 saptpadi (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.

Before the codification, it was a rule that the marriage should be solemnized according to shastric or customary rites. If the necessary ceremonies are not performed then it is not a valid marriage.

The Hindu marriage as contemplated by the Act is a ceremonial marriage and it must be solemnised in accordance with the customary rites and ceremonies of one of the two parties and the ***word 'solemnise' means, 'to celebrate the marriage with proper ceremonies and in due form'***.

What amounts to customary rites or mandatory ceremonies is not clear. Once the law says necessary ceremonies are saptapadi and on the other hand the same law says it is not**. Reference: Shakuntalabai and Anr v. L.V. Kulkarni and Anr, AIR 1989 SC 1359.**

Therefore, the law recognized in Hindu Society does not make "saptapadi" an indispensable custom in every incident of marriage. The court further stated that, what is required is substantial compliance with only those rites and ceremonies, performance of which is, by the customary law of either party, peculiar to it and deemed as absolutely necessary, and non-performance of such rites and ceremonies of prime necessity would be regarded as failure to solemnize the marriage and no valid Hindu marriage can result. Though the law emphasise the importance of the saptapadi, it does not insist upon the same. So marriage may be complete by the performance of ceremonies other than those referred when the custom of the case to which the parties belong are followed.

Clause (2) of Section 7 of Hindu Marriage Act clearly states that ***"where such rites and ceremonies include Saptpadi"***, as such where there is some other Hindu ceremony as refereed in clause 1, it is still a valid marriage. Parties may have some other ceremonies like pheras (taking rounds of the holy fire) etc.

Interestingly, number of pheras also differ as per the rites and ceremonies of each Hindu wedding. The marriage solemnised with the intention of two people getting married and religious people getting the same solemnised in presence of the invitees is a valid marriage.

Among the lingayats who predominantly reside in northern part of Karnataka and southern part of Maharastra, the ceremonies is very simple where the bridegroom gives the bride a pair of saree and blouse and there is tying of magalsutra after haldi (turmeric) application ceremony. There is no ceremony such as saptapadi or homa, yet it is a valid marriage. Among the Gujaratis, the ceremony of the marriage is again different. The main ceremony is garlanding the groom by the bride and vice versa which is called vara mala. And only four steps are taken as saptapadi. There is no specific sign to say that they are married.

It is a problem when parties fail to get their marriages registered and one of the parties raise the issue of validity. To avoid future ugly scenarios, parties should insist on getting their marriage registered.

REGISTRATION OF MARRIAGE UNDER HINDU MARRIAGE ACT

Registration of Marriage as per Section 8 of Hindu Marriage Act is optional. Clause (5) of Section 8 provides that-

> Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

With **no compulsion** for registration of marriages in India, it is necessary that the Central Government makes provisions to register all marriages that have taken place in their States/Union Territories or elsewhere. Thus, all marriages in whatever form, should be registered in order to secure women from harassment.

The Hon'ble Supreme Court in **Smt. Seema vs Ashwani Kumar AIR SC 2006** made certain observations raising the concern over the issue in flowing words:

> *"The origin of marriage amongst Aryans in India, as noted in Mayne's Hindu Law and Usage, as amongst other ancient peoples is a matter for the Science of anthropology. From the very commencement of the Rigvedic age,*

> *marriage was a well- established institution, and the Aryans ideal of marriage was very high.*
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> *The Convention on the Elimination of All Forms of Discrimination Against Women (in short 'CEDAW') was adopted in 1979 by the United Nations General Assembly. India was a signatory to the Convention on 30th July, 1980 and ratified on 9th July, 1993 with two Declaratory Statements and one Reservation. Article 16(2) of the Convention says "though India agreed on principle that compulsory registration of marriages is highly desirable, it was said as follows:*
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> ***"It is not practical in a vast country like India with its variety of customs, religions and level of literacy' and has expressed reservation to this very clause to make registration of marriage compulsory".***
>
> *While a transfer petition was being heard it was noted with concern that in large number of cases some unscrupulous persons are denying the existence of marriage taking advantage of the situation that in most of the States there is no official record of the marriage."*

The scenario of marriages not being registered for whatever reason has been taken to be a serious concern by the Apex Court. Either of the parties uses it against the other in case any complexity arises in future. It is always wise to get the marriage registered even if it is not a mandate by the law. Recently, Government have planned to get the bill introduced titled as "The Registration of Marriage of Non Resident Indian Bill, 2019" whereby every NRI who marries a citizen of India or another NRI shall register his marriage within 30 days. In case an NRI fails to register the marriage within 30 days, the passport authority may impound his passport. If that becomes a law, it would definitely bring respite to brides facing trouble at the hands of foreign grooms.

CONCLUSION

Marriage plays a very important part in society, and the intention of legislature cannot be to make any marriage invalid without considering all the facts. Domicile and registration are not important criterion for validity of a marriage. Domicile may play a role when it comes to jurisdiction for issues arising after the marriage.

From the discussion made herein this article, it can be safely concluded that every marriage solemnised between two Hindus according to rites and ceremonies as prevalent and accepted under the Hindus constitutes a valid marriage irrespective of the domicile of the parties

involved, in case one of the parties is still domicile of this country or marriage has not been registered. It becomes all the more important when there is an issue pertaining to bigamy where party raising the plea of bigamy has to prove the ceremony.

When the case is a clear-cut case of two Hindus getting married as per Hindu rites and ceremonies, there lies no confusion with regard to validity of such marriage. People should not be allowed to take advantage of the anomalous situations if a dispute arises later in time.

It can safely be inferred, if either party is domicile of India, they can seek relief under Hindu marriage act regarding divorce, alimony, child custody etc. Indian courts have to accept their jurisdiction regarding divorce, child custody etc. as long as one of the parties was domicile of India. Only when both parties are not domicile of India or not citizen of India, they may not claim relief under Hindu marriage act.

REFERENCES

1. *Hindu Marriage Act, 1955*
2. *Mr Karan Goel v. Ms. Kanika Goel I (2021) DMC 193 Del. ; LQ/DelHC/2020/2682.*
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4. *Ravindra Harshad Parmar v. Dimple Ravindra Parmar (Bombay High Court, 11 December, 2014)*
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