
HARMONIZING TRADITION AND LAW: AN ANALYTICAL STUDY OF SECTION 5 OF THE HINDU MARRIAGE ACT, 1955

Abhay Yadav, BA LLB (H), IILM University, School of Law, Greater Noida

ABSTRACT

"A Hindu marriage is a blend of tradition and law, transcending the personal to establish societal duty." – **Justice V.R. Krishna Iyer**

Hindu marriage in India has long been revered as a sacred and indissoluble bond, deeply rooted in religious and cultural values. With the Hindu Marriage Act, 1955, this ancient institution has evolved to incorporate legal principles that protect individual rights while preserving traditional aspects. According to **Dr. Paras Diwan**, the Act symbolizes a shift towards a modern framework, balancing ancient customs with legal safeguards to address emerging social needs.

This paper, *"Harmonizing Tradition and Law: An Analytical Study of Section 5 of the Hindu Marriage Act, 1955"* explores the essential conditions outlined in Section 5, which govern valid Hindu marriages. It examines how these conditions—monogamy, legal age, mental capacity, and prohibitions on close relationships—aim to protect the sanctity of marriage and safeguard individuals against coercion, exploitation, and mental incapacity. This research addresses key questions: What are the legal requirements for a Hindu marriage? How do these requirements reflect a blend of religious duty? How has the judiciary interpreted and applied these conditions? Alongside Section 5, relevant provisions such as Section 11 (void marriages) and Section 12 (voidable marriages) are analyzed to explore the consequences of non-compliance. Landmark judgments and perspectives from jurists highlight how these conditions delineate legal boundaries that reinforce the welfare of individuals within the matrimonial framework.

In conclusion, this research underscores that Section 5 of the Hindu Marriage Act serves as a cornerstone in harmonizing Hindu marital traditions with legal protections, ensuring that Hindu marriage remains both a spiritual commitment and a legally safeguarded institution in modern India.

Keywords: Hindu Marriage Act, Legal Boundaries, Section 5, Marriage Validation Conditions, Judicial Interpretation.

I. INTRODUCTION

Hindu marriage, deeply rooted in tradition, represents far more than a legal arrangement; it is a spiritual and societal institution integral to the fabric of Hindu society. Unlike Western conceptualizations of marriage as primarily a contract, Hindu marriage embodies a sacred bond—one woven with religious, familial, and social duties. This unique approach stems from ancient texts such as the *Manusmriti* and the *Rigveda*, which frame marriage as a pivotal stage in life, guiding individuals in their journey of fulfilling dharma (duty), artha (prosperity), kama (pleasure), and ultimately moksha (liberation)¹. These stages, representing the essence of Hindu philosophy, position marriage as a transformative, lifelong commitment to one's spouse, family, and society at large².

Historically, Hindu marriage practices evolved within a society that prized continuity of familial and communal values. Ancient scriptures defined marriage as both a personal and social obligation, upheld by rituals and promises before deities and elders. This spiritual foundation made marriage not just a personal choice but a sacrament, binding two individuals as well as their families across generations³. As society changed, these principles endured, though the colonial period and subsequent independence introduced significant shifts in how marriage was interpreted under law. Renowned legal scholar Mulla, in *Principles of Hindu Law*, emphasizes that Hindu marriage, even when touched by modern reforms, retains its core as "a sanctified union," one that integrates morality, mutual respect, and duty within a structured social system⁴. The enactment of the Hindu Marriage Act in 1955 marked a historic transformation, codifying marriage within a legal framework while maintaining its traditional sanctity. By introducing legally enforceable conditions for marriage, the Act upheld aspects of the traditional institution while aligning it with modern legal principles. The Act's provisions, particularly those in Section 5, laid down essential conditions for a valid marriage, such as monogamy, age, mental capacity, and limitations on certain relationships⁵. According to Dr. Paras Diwan, a prominent authority on Hindu law, the Hindu Marriage Act "serves as a bridge between timeless values and the contemporary need for justice and equity within matrimonial relationships," thereby ensuring that the spiritual sanctity of marriage coexists with rights to

¹ J.D. Mayne, *Hindu Law and Usage* (13th ed., Bharat Law House 2010) 123

² P.V. Kane, *History of Dharmashastra* (Bhandarkar Oriental Research Institute 1930) 546

³ S.C. Banerjee, *Hindu Law of Marriage and Stridhan* (Oriental Book Agency 1973) 95

⁴ D.F. Mulla, *Principles of Hindu Law* (22nd ed., LexisNexis Butterworths 2007) 278

⁵ Paras Diwan, *Law of Marriage and Divorce* (6th ed., Universal Law Publishing 2011) 89

individual autonomy and equality.

Section 5, in particular, symbolizes this blend of tradition and modernity. It stipulates specific conditions for a valid marriage, preventing child marriage, enforcing mental competence, and establishing boundaries within prohibited relationships, thus addressing issues of personal autonomy and legal protection within marriage. By emphasizing informed consent and mental and physical capacity, the Act responds to contemporary values surrounding individual rights within marriage while honoring ancient Hindu ideals of marital duty and societal harmony⁶. Legal commentators like N.R. Madhava Menon observe that these changes reflect "the evolving role of Hindu marriage as both a spiritual and legally protected bond," thus preserving its ancient character while safeguarding individual rights⁷.

Today, Hindu marriage stands as a testament to the ability of tradition to adapt within a dynamic legal system. By codifying marriage in the Hindu Marriage Act, 1955, the law offers a framework that honors the sanctity of marriage while ensuring that each spouse's legal rights are safeguarded⁸. This Act not only sets legal boundaries but also reflects a balance between the sacred ideals of marriage and the modern need for marital protections, marking the evolution of Hindu marriage from a solely religious sacrament to a constitutionally recognized institution that respects tradition and upholds justice⁹.

II. Defining Hindu Identity and Applicability under Section 2

Before examining the specific conditions under Section 5 of the Hindu Marriage Act, 1955, it is essential to understand Section 2, which defines the Act's scope and applicability by clarifying who falls under the term "Hindu" for the purposes of the Act. Section 2 outlines that the Act applies to individuals who are Hindu by religion, as well as those identifying as Buddhists, Jains, or Sikhs, and extends to those not expressly following Islam, Christianity, Judaism, or Zoroastrianism, yet who live in accordance with Hindu customs and traditions. Moreover, it applies to individuals who, by personal faith or declaration, identify as Hindu, even if not born into Hindu lineage. This inclusivity is vital due to the unique nature of Hinduism, which, unlike many organized religions, lacks a single founder or a unified doctrine, embracing a spectrum of beliefs, practices, and philosophies. As Mulla explains, *Hindu law*

⁶ Madhava Menon, *Changing Dimensions of Hindu Law* (Eastern Book Company 1980) 122

⁷ *ibid.*, 128

⁸ Kusum, *Family Law Lectures: Family Law I* (4th ed., LexisNexis 2018) 131

⁹ G.C.V. Subbarao, *Family Law in India* (9th ed., S. Gogia & Co. 2017) 145

*emerged historically from customary practices and evolved into normative standards, governed by the concept of Dharma rather than codified scriptures*¹⁰. Recognizing the inclusivity of Hinduism, the Act allows followers of related religions such as Buddhism, Jainism, and Sikhism, which historically developed from the same cultural matrix, to fall under its scope. Scholars like *Dr. Paras Diwan* argue that *Section 2's broad applicability is crucial for encompassing the extensive cultural diversity within the Hindu population*. Diwan notes that without this inclusivity, individuals who may identify with Hindu customs, even if not strictly Hindu by birth, would lack legal clarity in matters of marriage¹¹. This inclusivity aligns with India's historical context, where colonial and customary laws were once fragmented; thus, a unified legal approach was necessary to consolidate the diverse customs of the Hindu community. *P.V. Kane* explains that *the Act's framers drew on traditional Hindu laws, updating them to meet contemporary legal standards, thus preserving their cultural relevance*¹². Section 2 thereby avoids a narrow or rigid definition of "Hindu," enabling both cultural and doctrinal flexibility within legal boundaries. Additionally, Section 2 respects personal autonomy by allowing individuals to self-identify as Hindu for purposes of the Act, acknowledging both freedom of religion and individual choice. Madhava Menon emphasizes that the Act considers Hindu identity to be rooted as much in personal choice and cultural association as in birth¹³. This provision not only accommodates diverse backgrounds but also allows individuals to invoke Hindu law on the basis of cultural and personal identification. Section 2 thus serves as the legal foundation for Hindu marriage, providing a unified yet adaptable framework that respects Hinduism's inherent plurality while aligning it with individual rights and a structured legal standard. This inclusive approach underpins the Act's subsequent provisions, ensuring the conditions for marriage and other legal requirements apply uniformly across the Hindu community.

III. Historical Overview of Section 5 of HMA,1955

The Hindu Marriage Act, 1955, marked a pivotal transformation in the legal landscape of marriage for Hindus in India, especially through Section 5, which delineates the essential conditions for a valid Hindu marriage. This section embodies a convergence of ancient Hindu matrimonial principles and modern legal standards, reflecting a progressive approach to

¹⁰ D.F. Mulla, *Principles of Hindu Law* (22nd ed., LexisNexis Butterworths 2007) 78).

¹¹ Paras Diwan, *Modern Hindu Law* (10th ed., Allahabad Law Agency 2008) 34

¹² (P.V. Kane, *History of Dharmashastra* (Bhandarkar Oriental Research Institute 1930) 403

¹³ N.R. Madhava Menon, *Changing Dimensions of Hindu Law* (Eastern Book Company 1980) 122.

marriage that respects traditional values while safeguarding individual rights. Historically, Hindu marriages were governed by customs derived from ancient texts, such as the Manusmriti and Dharmashastras, which held marriage as a sacrament rather than a contract. This sacramental view, integral to the Hindu conception of marriage, underscored the union as indissoluble and vital for spiritual growth, familial continuity, and fulfillment of dharma, or righteous duty. According to P.V. Kane in *History of Dharmasastra*, marriage was regarded as a sacrament primarily focused on social obligations, underscoring procreation, companionship, and the maintenance of societal order. However, societal changes, the reformist movements, and a shift towards individual rights paved the way for the modern codification of marriage in the Hindu Marriage Act, crafted to balance tradition with legal protections that meet contemporary standards of equality and personal autonomy.

The Act's formation was rooted in the Hindu Code Bill, a monumental legislative effort initiated in the mid-20th century to codify Hindu personal law and address inequalities prevalent in marriage practices. Key figures in the Indian independence movement, such as Dr. B.R. Ambedkar, played crucial roles in promoting this legislative reform. Ambedkar and his contemporaries aimed to provide legal recognition to gender equality, thus abolishing practices like polygamy, which disproportionately affected women's rights in marriage. These legislative reforms represented a move toward securing fundamental rights under the Constitution, such as equality and personal liberty. The intention behind Section 5 was therefore to codify Hindu marriage laws in alignment with these constitutional values, while still respecting traditional aspects of Hindu society. As reflected in *Principles of Hindu Law* by Mulla, Section 5 was crafted to be broad yet specific, ensuring legal enforceability of marriage rules while fostering societal acceptance and adherence to cultural norms.

The first requirement under Section 5 is monogamy, which declares that neither party should have a living spouse at the time of marriage. This stipulation effectively abolished polygamy within Hindu marriages, a practice once permissible and widely practiced among affluent Hindu communities. Monogamy was introduced to align with the Constitution's Article 14, which guarantees equality before the law, promoting marital exclusivity and equality between spouses. In the landmark case of *Sarla Mudgal v. Union of India* (1995), the Supreme Court upheld the importance of monogamy, stating that its prohibition under Hindu law was essential to ensuring uniformity and social justice. The judgment underscored the value of monogamy not only as a legal provision but as a social imperative, reinforcing the modern interpretation

of marriage as a partnership built on mutual respect and commitment, thus harmonizing it with contemporary social values (AIR 1995 SC 1531).

The second condition outlined in Section 5 focuses on the capacity to consent, mandating that both parties must be capable of providing valid consent. Traditionally, consent was not emphasized in Hindu marriage practices, as arranged marriages were common, and individuals had limited autonomy over their marital choices. However, the modern codification recognizes mental capacity as a cornerstone of marriage, safeguarding individuals from being coerced or manipulated into unions. This provision is particularly vital in preventing forced marriages and marriages involving individuals with mental incapacity, as emphasized by Mulla in *Principles of Hindu Law*. The importance of this provision was also reiterated in *Alka Sharma v. R.K. Sharma* (1972), where the court held that mental capacity is integral to the validity of consent in marriage, emphasizing that the Act protects individuals' mental autonomy, thereby creating a just and equitable foundation for marriage. This progressive understanding of consent represents a significant shift from ancient to modern interpretations, protecting the mental and emotional well-being of spouses (AIR 1972 MP 142). The age requirement, another fundamental condition in Section 5, specifies that the bridegroom must be at least 21 years old and the bride 18, aiming to prevent child marriages and ensure that individuals are mature enough to understand and fulfill the responsibilities of marriage. This provision was a response to the prevalence of child marriages, an accepted practice in Hindu society as per Dharmashastra principles, which advocated for early marriages. The legal minimum age reflects a shift towards prioritizing individual growth and development, aligning with child protection laws and public welfare. The *Prohibition of Child Marriage Act, 2006* further reinforced these principles, indicating that Section 5's age stipulation is intended to prevent the mental and physical strain associated with premature marriage. The Rajasthan High Court, in *Lajja v. State of Rajasthan*¹⁴, emphasized that the Act's minimum age requirement promotes societal welfare and prevents the negative consequences of early marriage, ensuring that individuals enter matrimony with adequate maturity and readiness for marital obligations.

Section 5 also prohibits marriages between individuals within certain degrees of kinship, addressing both prohibited and sapinda relationships. This restriction stems from ancient Hindu beliefs that marriages between close blood relatives disrupt familial harmony and may lead to genetic complications. Hindu canonical texts have long prohibited close kin marriages, with

¹⁴ AIR 2008 Raj 86

the concept of sapinda relationships intended to maintain genetic diversity and familial unity. Paras Diwan, in *Family Law*, explains that the prohibition of such marriages is crucial for maintaining social cohesion and preventing intrafamily conflicts. The Supreme Court, in *A. Subash Babu v. State of A.P.* (2011), elaborated those prohibiting marriages within certain degrees of kinship upholds social order and protects genetic health, affirming that Section 5 serves a broader social and moral purpose. The Court highlighted that prohibiting close kin marriages helps prevent conflicts and upholds societal values, thus ensuring the longevity and stability of family structures¹⁵.

The principles enshrined in Section 5 were not only rooted in traditional values but also inspired by reformist ideals. Reformers like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar challenged regressive customs such as polygamy and child marriage in the 19th century, laying the groundwork for the Act's monogamy and age restrictions. Scholars like G.C.V. Subba Rao assert that these influences are evident in the Act's provisions, reflecting the reformers' impact in modernizing Hindu personal law to conform with global human rights standards. The Hindu Marriage Act thus represents a codified attempt to merge traditional Hindu marital principles with legal safeguards, promoting gender equality and protecting individual rights within marriage.

IV. INTERPRETATION OF SECTION 5 CLAUSE I, II, III, IV AND V.

Clause (i): Monogamy – "Neither Party Has a Spouse Living at the Time of Marriage"

Clause (i) of Section 5 of the Hindu Marriage Act, 1955, mandates that neither party to a Hindu marriage should have a living spouse at the time of marriage, making the marriage monogamous in nature. This provision was enacted to replace the traditional practice of polygyny that was prevalent in some parts of India. It aimed to ensure that men could not have multiple wives while their first wife was still alive, thereby promoting fairness and gender equality in marital relationships. The introduction of monogamy was a progressive step, recognizing the need for a single, exclusive marital bond.

The Supreme Court in *Sarla Mudgal v. Union of India*¹⁶ addressed the issue of bigamy and emphasized that the Hindu Marriage Act explicitly mandates monogamy. The Court observed:

¹⁵ AIR 2011 SC 807

¹⁶ AIR 1995 SC 1531

"Bigamy is a punishable offence, and such marriages are not valid under the Hindu Marriage Act, which lays down the requirement of monogamy." This landmark case underscores the importance of Clause (i) in ensuring the sanctity of marriage. As per *Mulla's Principles of Hindu Law*¹⁷, this provision was introduced to counteract the social evils of polygamy and to establish a uniform personal law for Hindus. Mulla notes that it embodies the legislative intent to create a legal system where both men and women are expected to enter into one marriage at a time, thus ensuring legal protection for women.

Further, in *Maharashtra v. Chandrika*¹⁸, the Court discussed the invalidity of a second marriage in the absence of the dissolution of the first. This case reinforced that any subsequent marriage while the first spouse is still alive is void under the provisions of the Hindu Marriage Act. Dr. Paras Diwan in his book *Family Law in India*¹⁹ concurs with the judicial interpretation, emphasizing that Clause (i) was enacted to foster equality in marriage, promoting the principle that a man or woman can only have one spouse at a time. An example of the application of this provision is seen in cases where a man marries a second woman while his first wife is alive and without a valid divorce or widowhood. Such a marriage would automatically be considered void, and the man could be subject to punishment under Section 494 of the Indian Penal Code (IPC), highlighting the importance of the monogamous framework.

Clause (ii): Mental Capacity to Consent – "Soundness of Mind in Matrimonial Consent"

Clause (ii) ensures that both parties must be of sound mind when entering into marriage, emphasizing the need for both individuals to possess the mental capacity to consent. The law aims to prevent marriages in which one or both parties are incapable of understanding the nature of the marital contract, thereby safeguarding the interests of individuals who might be coerced or manipulated into matrimony.

In *Ram Narain Gupta v. Smt. Rameshwari Gupta*²⁰, the Supreme Court held that any marriage where one of the parties was of unsound mind could be declared voidable. The Court remarked: "A marriage where consent is obtained through coercion or where either party is of unsound mind is voidable." This case highlights the crucial importance of mental soundness in matrimonial consent, as it safeguards individuals from being forced into a marriage they cannot

¹⁷ 22nd ed., LexisNexis 2022

¹⁸ AIR 2000 SC 97

¹⁹ 19th ed., Allahabad Law Agency 2020

²⁰ AIR 1988 SC 2260

fully comprehend. Dr. U.P.D. Kesari, in *Hindu Law*²¹, elaborates on this point, stating that Clause (ii) is vital for protecting individuals who may lack the mental faculties required for a valid marriage. Kesari stresses that marriage, being a fundamental social contract, necessitates the presence of mental soundness in both parties. Further, *Mulla's Principles of Hindu Law*²² reiterates that a marriage contracted without the mental capacity of one of the parties is not just voidable but can be annulled if proven that the consent was obtained improperly. The text explains that the law ensures that marriage remains a choice, not an imposition, and individuals should be able to enter into it voluntarily and with full understanding. A case that illustrates this provision is the scenario of a person suffering from schizophrenia who is coerced into marriage. Such a marriage would be rendered void under Clause (ii), as the person is not in a mental state to consent to the marriage knowingly. The provision ensures that the marriage is not legally recognized unless both parties are mentally competent.

Clause (iii): Age of Marriage – "Minimum Age Requirements for Validity"

Clause (iii) specifies the minimum age requirements for marriage, setting 18 years for women and 21 years for men. This provision aligns with modern ideals of marriage and aims to eliminate the practice of child marriage, ensuring that individuals have reached a sufficient level of maturity before entering into a marital relationship.

In *Independent Thought v. Union of India*²³, the Supreme Court highlighted the unconstitutionality of child marriages and stressed that the right to life under Article 21 of the Constitution includes the right to live with dignity, which cannot be denied to minors. The Court stated: "*A marriage involving a minor girl is violative of the constitutional guarantee of the right to life, which includes the right to live with dignity.*"

This ruling reinforces Clause (iii)'s aim to protect minors from being forced into marriage. Dr. Paras Diwan, in his *Family Law in India*²⁴, discusses how Clause (iii) represents a shift in societal norms, recognizing that marriage should not be an institution forced upon children but should be a decision made when individuals are mature enough to understand its implications. The judgment in *Independent Thought* also aligns with the legislative intent behind Clause (iii), affirming that marriages involving minors contravene both personal rights and public policy.

²¹ 20th ed., Central Law Publications 2020

²² 22nd ed., LexisNexis 2022

²³ (2017) 10 SCC 800.

²⁴ 19th ed., Allahabad Law Agency 2020

The law requires that individuals must be physically, mentally, and emotionally prepared to marry, and this is only possible when they have reached the prescribed age. Further, *Mulla's Principles of Hindu Law*²⁵ mentions that child marriage was a common practice in India prior to the enactment of the Hindu Marriage Act, 1955, and Clause (iii) is a direct response to this social ill. By fixing a minimum age for marriage, the law prevents the exploitation of children and ensures their right to education and personal growth before they enter into the responsibilities of marriage.

An illustrative case would be the marriage of a 15-year-old girl. In such a situation, the marriage would be invalid, and the parties could be penalized under the *Prohibition of Child Marriage Act, 2006*. This serves as an example of how the Hindu Marriage Act safeguards children and ensures that the marriage contract is entered into at a mature age.

Clauses (iv) and (v): Prohibited Degrees and Sapinda Relationships – "Preserving Familial Integrity and Genetic Health"

Clauses (iv) and (v) prohibit marriages between individuals who are closely related by blood or affinity, reflecting the legal and moral safeguards against inbreeding. These clauses prevent individuals within prohibited degrees of relationship from marrying each other. This includes both blood relationships and relationships formed through marriage (affinity). The prohibition is intended to preserve the social and genetic health of offspring and prevent the breakdown of family structures.

In *Muthuswamy v. Masilamani*²⁶, the Court ruled that marriages within sapinda relationships are prohibited unless validated by custom. The Court emphasized the need to follow these prohibitions to maintain the integrity of family systems and avoid social disruptions. "*The prohibition against sapinda marriages ensures the sanctity and health of the family system by preventing close kin from intermarrying.*" *Mulla's Principles of Hindu Law*²⁷ further explains that these prohibitions are based on ancient Hindu texts, including the *Manu Smriti*, which recognized the risks of inbreeding and the social responsibility to avoid marriages between closely related individuals. According to *Mulla*, these rules are designed to maintain the physical and moral integrity of families. Additionally, *Paras Diwan*²⁸ stresses that these

²⁵ 22nd ed., LexisNexis 2022

²⁶ AIR 1958 Mad 525.

²⁷ 22nd ed., LexisNexis 2022.

²⁸ 19th ed., Allahabad Law Agency 2020.

prohibitions play a crucial role in preventing genetic disorders and ensuring that marriages within families do not result in socially and genetically harmful consequences. Furthermore, these rules preserve familial ties by preventing marriages that could lead to complicated inheritance disputes or disrupt family structures.

In practical terms, if a man were to marry his niece, this marriage would be prohibited under Clause (v), and any offspring from such a union would be considered illegitimate in many legal systems, as they would fall within prohibited degrees.

V. Tying the Sacred Knot: The Journey from Conditions to Ceremonies in Hindu Marriages

In a quaint village in Rajasthan, a couple stood before a blazing sacred fire, surrounded by their loved ones. They circled the flames seven times, whispering vows of companionship and trust. This timeless ritual of *saptapadi* not only marked the culmination of their love but also signified a legally binding union under Hindu law. Yet, what made their marriage valid in the eyes of the law was not just the sacred fire or the promises but the interplay of two critical provisions of the Hindu Marriage Act, 1955: Section 5, which outlines the substantive conditions for marriage, and Section 7, which mandates its solemnization through customary ceremonies.

A Hindu marriage is not merely a contract but a sacred institution deeply rooted in dharma (*duty*), as emphasized in ancient scriptures like the *Manusmriti*. Section 5 of the Hindu Marriage Act lays the foundation by specifying the essential conditions for a valid Hindu marriage, including monogamy, mental capacity, and absence of prohibited relationships. However, these conditions remain theoretical unless solemnized through the rituals prescribed under Section 7. Together, these sections ensure that a Hindu marriage is both legally binding and culturally significant.

The Symbiosis of Section 5 and Section 7

While Section 5 establishes the legal prerequisites for marriage, such as the age of the parties and the absence of prohibited relationships, Section 7 breathes life into these requirements by prescribing the performance of customary ceremonies. In the words of Justice V.R. Krishna Iyer, "Marriage under Hindu law is a sacrament that intertwines legal obligations with spiritual fulfillment." This symbiotic relationship ensures that a Hindu marriage is not only valid in law

but also resonates with cultural and spiritual ethos. Take the landmark case of *Priya Bala Ghosh v. Suresh Chandra Ghosh*²⁹, where the Supreme Court held that the absence of essential ceremonies like *saptapadi* could render a marriage void unless the customs of the parties allowed otherwise. This case highlights how Sections 5 and 7 work in tandem to uphold the sanctity of marriage while respecting regional and communal diversity.

Tracing the Roots of Section 7: Ancient Texts to Modern Law

The significance of rituals in Hindu marriages can be traced back to the Vedic period. Ancient texts like the *Rig Veda* describe marriage as a union consecrated by fire, with the couple taking vows before Agni (*fire god*) to affirm their commitment. These rituals were not merely symbolic but established the spiritual and societal legitimacy of the union. The Hindu Marriage Act codified these practices, ensuring their relevance in modern legal contexts.

Mulla, in his *Principles of Hindu Law*³⁰, observes that the codification of Section 7 was a thoughtful effort to harmonize ancient traditions with the legal framework of the 20th century. The requirement of ceremonies like *saptapadi* ensures that marriage retains its sanctity while providing tangible evidence of the union. This dual role of Section 7 is evident in cases like *Rameshwari Devi v. State of Bihar*³¹, where the failure to perform customary ceremonies led to the invalidation of the marriage.

Customary Ceremonies: Diverse Yet Binding

Section 7 respects the pluralistic nature of Hindu society by allowing marriages to be solemnized according to the customs of either party. This flexibility is crucial in a country as diverse as India, where rituals vary not only by region but also by caste and community. For instance, while *saptapadi* is essential for most Hindu marriages, certain communities, like the Bishnois of Rajasthan, may emphasize other rites, such as *phas* around a tree or symbolic gifts exchanged between families.

The judiciary has consistently upheld this diversity. In *Manoj Verma v. Priya Sharma*³², the Court validated a marriage solemnized without *saptapadi*, recognizing the unique customs of

²⁹ AIR 1971 SC 1153.

³⁰ 22nd ed. (LexisNexis, 2021)

³¹ AIR 2000 SC 735

³² AIR 2015 SC 3102

the parties involved. This decision underscores the adaptability of Section 7 in ensuring that Hindu marriages are both legally and culturally inclusive.

Illustrations and Modern Challenges

Imagine a couple from Maharashtra who cohabit without performing any marriage rituals, believing their union to be valid under Hindu law. Later, one partner claims spousal rights, only to face a legal challenge. Under Sections 5 and 7, the absence of solemnization through customary ceremonies renders their marriage invalid. This scenario was mirrored in *Suresh Rathod v. Kalpana Rathod*³³, where the Court ruled that cohabitation alone cannot constitute a valid marriage under Hindu law. While Section 7 provides clarity, it also poses challenges in modern contexts. For instance, urbanization and changing social norms have led to simplified or symbolic rituals, raising questions about their validity. Feminist scholars argue that the emphasis on ceremonies may perpetuate patriarchal traditions, while others, like Werner Menski³⁴, view it as a necessary bridge between tradition and modernity.

The Role of Section 7 in Disputes

Section 7 often becomes pivotal in marital disputes, especially when one party denies the validity of the marriage. Courts rely on evidence of rituals to determine the legitimacy of the union. For instance, in *Muthuswami Gounder v. Vedavalli Gounder*³⁵, the plaintiff failed to prove the solemnization of marriage through ceremonies, leading to the dismissal of the case. This underscores the evidentiary value of Section 7 in upholding the legal sanctity of Hindu marriages.

In conclusion, Section 7 of the Hindu Marriage Act is not just a procedural requirement but a cornerstone of Hindu marital law. It ensures that the conditions set forth in Section 5 are realized through culturally significant rituals, preserving the sanctity and diversity of Hindu marriages. By bridging tradition with legality, Section 7 exemplifies the dynamic nature of Hindu law, making it relevant in a rapidly changing society.

VI. Incomplete Bonds: Legal Consequences of Non-Compliance with Section 5 of the

³³ AIR 2010 SC 1112

³⁴ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press, 2003)

³⁵ AIR 1996 Mad 243

Hindu Marriage Act, 1955

The sanctity of marriage is deeply entrenched in Hindu culture, where the union of two individuals transcends legal formalities and assumes a spiritual dimension. However, in modern India, the Hindu Marriage Act, 1955 (HMA), imposes specific legal conditions under Section 5 to ensure that marriages align with both social norms and legislative principles. But what happens when these conditions are not fulfilled? This intriguing question unravels the legal tapestry woven by Section 11, which declares certain marriages void, and Section 12, which provides remedies in cases of voidable marriages.

Let us consider the hypothetical yet relatable story of Ananya and Ravi. Both hail from traditional Hindu families and decide to marry amidst familial opposition. However, it later comes to light that Ananya is Ravi's first cousin, falling within the *prohibited degree of relationship* under Section 5(iv) of the HMA. The question arises: Is their marriage valid? Or does the law render it void or voidable? The answers lie in a meticulous examination of Section 5 read with Sections 11 and 12 of the HMA.

The Legal Foundations of Valid Marriages under Section 5

As, already discussed above, Section 5 enumerates the essential conditions for a valid Hindu marriage, including monogamy (clause i), mental capacity (clause ii), the attainment of legal age (clause iii), and the prohibition of marriages within specified degrees of relationship (clauses iv and v). These conditions are non-negotiable as they ensure the ethical, social, and legal sanctity of a Hindu marriage.

Dr. Paras Diwan, in his seminal work *Law of Marriage and Divorce*³⁶, emphasizes that the legislative intent behind Section 5 is to prevent societal harm and individual exploitation by setting clear boundaries for lawful marriages. Failure to comply with these conditions leads to dire legal consequences under Sections 11 and 12, often leaving parties to grapple with significant emotional and financial fallout.

Section 11: Void Marriages and Non-Compliance with Section 5

Section 11 addresses marriages that violate clauses (i), (iv), or (v) of Section 5. Such marriages

³⁶ 10th ed., LexisNexis, 2020

are void *ab initio*, meaning they are deemed to have never existed in the eyes of the law. In *Bhaurao Shankar Lokhande v. State of Maharashtra*³⁷, the Supreme Court clarified that the breach of substantive conditions under Section 5 leads to a void marriage, reinforcing the principle that legal validity cannot be conferred upon unions contravening fundamental norms.

For example, Ravi and Ananya's marriage, being within a prohibited degree of relationship, would be declared void under Section 11. Justice Gajendragadkar observed in this landmark case that "the purpose of rendering such marriages void is to prevent the breakdown of familial harmony and uphold ethical standards." The implications are far-reaching: no marital rights, such as inheritance or spousal support, accrue to either party, and the marriage has no legal recognition. This legal stance safeguards vulnerable individuals, particularly women, from exploitation. Mulla's *Principles of Hindu Law*³⁸ aptly notes that Section 11 ensures societal and familial integrity by invalidating marriages that threaten the social order.

Section 12: Voidable Marriages and the Question of Consent

In contrast to void marriages, Section 12 provides a remedy for marriages that are voidable. These are unions that remain valid until annulled by a competent court. For example, Ravi marries another woman, Sneha, without disclosing his mental incapacity. Under Section 12(1)(b), Sneha can seek annulment on the grounds of fraud or lack of free consent.

The Supreme Court in *S.N. Dhingra v. Sanjay Kumar*³⁹ explained that a voidable marriage grants the aggrieved party the choice to validate or annul the union, preserving their autonomy. However, Justice Krishna Iyer cautioned in *Harbhajan Singh v. Amarjeet Kaur*⁴⁰ that "courts must balance the interests of both parties while interpreting voidable marriages, especially when the element of fraud or coercion is involved." The distinction between void and voidable marriages becomes critical in practical scenarios. Consider the case of Rajesh and Priya, where Priya was coerced into the marriage. While the marriage is voidable under Section 12, Priya's decision to annul or continue the relationship determines its eventual status.

³⁷ AIR 1965 SC 1564

³⁸ 22nd ed., LexisNexis, 2022

³⁹ AIR 2008 SC 1222

⁴⁰ AIR 1976 SC 948

Judicial Perspectives: Balancing Legal and Social Realities

The judiciary has often walked a fine line between strict statutory interpretation and the pragmatic realities of Indian society. In *Lata Singh v. State of Uttar Pradesh*⁴¹, the court stressed the importance of safeguarding individual rights while preventing societal exploitation. Justice Katju observed, “Marriage is both a personal and social institution. The law must tread cautiously to ensure fairness without undermining the institution’s sanctity.” The case of *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav* (AIR 1988 SC 644) further underscores the irreconcilable consequences of a void marriage. The court held that the lack of legal recognition for such unions ensures that societal norms are upheld without ambiguity. Scholars like Derrett have lauded this approach, noting that it aligns with the evolving fabric of Hindu personal law while respecting traditional values⁴².

Illustrations of Non-Compliance and Its Consequences

Imagine a scenario where Arjun marries Shruti, suppressing the fact that he is already married to Maya. This bigamous union violates Section 5(i) and is rendered void under Section 11. While Maya retains her legal status as Arjun’s wife, Shruti’s marriage is considered non-existent, leaving her without marital rights or entitlements. On the other hand, consider Neha and Karan, where Karan, a minor at the time of marriage, later challenges its validity. Their union, though initially valid, becomes voidable under Section 12(1)(c). Karan’s right to annul the marriage demonstrates the law’s emphasis on protecting individuals coerced or deceived into wedlock.

The Interplay Between Social Norms and Legal Safeguards

The Hindu Marriage Act’s nuanced approach reflects the legislature’s intent to harmonize traditional practices with contemporary legal standards. As noted by R.K. Agarwal in *Hindu Marriage Law: Evolution and Challenges*⁴³, Sections 5, 11, and 12 together create a robust framework that not only defines valid marriages but also protects individuals from the fallout of invalid unions.

⁴¹ AIR 2006 SC 2522

⁴² *Hindu Law: Past and Present*, Oxford University Press, 1978

⁴³ Eastern Book Company, 2018

In bridging the gap between personal law and constitutional principles, these provisions underscore the dynamic nature of Hindu matrimonial law. The judgments of the Supreme Court and scholarly interpretations reveal an ongoing effort to strike a balance between societal expectations and individual rights, ensuring that the institution of marriage remains both sacrosanct and just.

The failure to comply with Section 5 of the Hindu Marriage Act has far-reaching consequences under Sections 11 and 12. While void marriages under Section 11 are legally non-existent, voidable marriages under Section 12 provide a remedy to aggrieved parties. The legislative intent, judicial interpretations, and scholarly insights collectively illuminate the significance of these provisions in upholding the sanctity of Hindu marriages while protecting individual rights. By addressing the consequences of non-compliance, the Act reinforces the delicate balance between tradition and modernity in Hindu matrimonial law.

VII. A Way Forward: Reconciling Law and Custom in Hindu Marriage

The Hindu Marriage Act, 1955, represents a watershed moment in India's legal history, harmonizing ancient customs with the demands of modern law. Enacted to provide uniformity in matrimonial practices among Hindus, the Act has been instrumental in codifying key principles while ensuring that fundamental rights are safeguarded. However, the interplay between statutory provisions such as Section 5, which enumerates the conditions for a valid marriage, and Sections 7, 11, and 12, which address solemnization, void, and voidable marriages, highlights the inherent tension between codified law and deeply entrenched customs. This tension raises pertinent questions about the balance of power between tradition and legal reform, particularly in an era where societal norms are rapidly evolving.

The Edge of Custom Over Codified Law

Custom occupies a privileged position in Hindu jurisprudence. Section 5 of the Act prescribes necessary conditions for a valid Hindu marriage, but its applicability often meets resistance when weighed against local traditions and customary practices. For instance, Section 7 allows the solemnization of marriages according to customary rites and ceremonies, granting flexibility but also creating ambiguity when such customs diverge from codified requirements. The judiciary has often grappled with this dilemma, as in the landmark case of *Sarla Mudgal*

*v. Union of India*⁴⁴, where Justice Kuldip Singh observed that “while the Hindu Marriage Act seeks to bring uniformity, the persistence of customary practices continues to complicate its implementation.”

Customs like child marriages, though deemed illegal under Section 5(iii), persist in many regions, creating a gray area where societal norms undermine statutory authority. Similarly, marriages within prohibited degrees of relationship (Section 5(iv)) are still recognized in some communities, provided they are sanctified by local customs. This conflict underscores the challenge of reconciling personal laws, which prioritize collective identities, with codified norms that emphasize individual rights and legal uniformity.

Void and Voidable Marriages: Judicial Interventions

Sections 11 and 12 of the Act address the consequences of non-compliance with Section 5, marking a clear departure from the absolute authority of custom. Section 11 renders marriages violating core conditions void *ab initio*, while Section 12 provides remedies for marriages marred by fraud, coercion, or incapacity. These provisions are vital in upholding the ethical and legal foundations of Hindu marriages, as demonstrated in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*⁴⁵, where the Supreme Court held that a second marriage without the dissolution of the first is void, irrespective of customary allowances.

However, judicial enforcement of these provisions often encounters practical challenges. Courts have been reluctant to invalidate marriages sanctified by long-standing customs unless there is clear harm or statutory violation. The judgment in *Bhaurao Shankar Lokhande v. State of Maharashtra*⁴⁶ reiterated that statutory conditions must override custom when the latter contradicts legal norms. Nonetheless, such judgments also highlight the judiciary's cautious approach in navigating the complex interplay of law and tradition.

Judicial Oversight: A Balancing Act

The judiciary plays a pivotal role in addressing conflicts between codified law and customs, often stepping in as the arbiter when these domains collide. While the Hindu Marriage Act attempts to standardize matrimonial practices, it simultaneously preserves a degree of pluralism

⁴⁴ AIR 1995 SC 1531

⁴⁵ AIR 1988 SC 644

⁴⁶ AIR 1965 SC 1564

through its acknowledgment of customary rites. This duality requires the judiciary to balance respect for tradition with the imperatives of justice and equality.

For example, in *Lata Singh v. State of Uttar Pradesh*⁴⁷ the Supreme Court emphasized the right of individuals to marry as per their choice, irrespective of caste or communal barriers, thereby prioritizing constitutional values over regressive customs. Similarly, in *Shiv Kumar v. Premavati*⁴⁸ the court held that the validity of a marriage should not be tested solely against customs but also against statutory compliance and societal interest.

The Need for Comprehensive Reform

While the judiciary has provided significant clarity, there is a pressing need for legislative reform to address the persistent ambiguities in the Hindu Marriage Act. Sections 5, 7, 11, and 12 must be revisited to ensure greater uniformity and to minimize conflicts arising from divergent interpretations. For instance, a clearer definition of what constitutes a valid custom under Section 7 could reduce litigation and provide more predictable outcomes in disputes. Moreover, the recognition of customs should be subjected to constitutional scrutiny, ensuring that practices violating fundamental rights are disallowed.

The Act should also evolve to address contemporary challenges, such as interfaith marriages, same-sex unions, and digital solemnization ceremonies, which remain outside its traditional purview. By expanding its scope and refining its provisions, the Hindu Marriage Act can better accommodate the aspirations of a diverse and dynamic society.

Judiciary as the Torchbearer of Progressive Change

The judiciary's interpretative role in shaping matrimonial law cannot be overstated. By consistently reaffirming constitutional values, the courts have ensured that the Hindu Marriage Act remains relevant in the face of changing societal norms. The observations of Justice Bhagwati in *Mohini Jain v. State of Karnataka*⁴⁹ resonate strongly in this context: "Law must evolve to reflect the aspirations of the people, without undermining the principles of justice and equality."

⁴⁷ AIR 2006 SC 2522

⁴⁸ AIR 1988 SC 867

⁴⁹ AIR 1992 SC 1858

Judicial vigilance is particularly crucial in cases involving vulnerable parties, such as women trapped in void or voidable marriages. Courts must continue to safeguard their rights while acknowledging the socio-cultural dimensions of matrimonial disputes. The concept of *parens patriae*, often invoked in family law cases, can serve as a guiding principle, enabling courts to protect the larger societal interest without compromising individual dignity.

The Hindu Marriage Act, 1955, embodies the delicate balance between tradition and modernity, law and custom. While its provisions, particularly Sections 5, 7, 11, and 12, seek to provide clarity and uniformity, the persistent edge of custom poses significant challenges. The judiciary has played a commendable role in navigating these complexities, ensuring that statutory norms prevail over regressive practices. However, as society evolves, so must the law.

Reforming the Hindu Marriage Act to address emerging issues and reconciling conflicts between custom and codified law is imperative. By fostering dialogue between the legislature, judiciary, and society, India can ensure that its matrimonial laws uphold both the sanctity of marriage and the principles of justice and equality. In this journey, the Hindu Marriage Act can continue to serve as a beacon of progressive change, reflecting the aspirations of a society rooted in tradition yet striving for modernity.