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The Concept of Matrimonial Relations Under Hindu Law : An Analytical Study

Dr. Surya Sharma*

***Assistant Professor, Govt. Law College, Datia (M.P.) INDIA**

Abstract - The union of a socially approved man and woman is called marriage.Through this an attempt is made to discipline the relationship of the couple. This can be seen in the light ancient and modern methods. In the vedic period, the relation between man and woman was considerd sacred and unbreakable. Specially since the time when the Hindu Marriage Act ,1955 was enacted, marriage seems to have evolved into a dissolving relationship rather than a sacred religious bond a sacrament.
Keywords-Marriage, Types of marriages, Matrimonial relations, Matrimonial methods and Marital treatment.

Introduction - A strong matrimonial institution has been continuously existing in Hindu society since ancient times. It's terms and conditions are accepted by most of the people of the society . Those men and women who join together through the institution of marriage are called matrimonial relations. In the vaidic period , the relation between man and woman was considered sacred and unbreakable . It lacked words like divorce . Where at that time marriages were performed with many modalities and rituals , gradually those customs and traditions started showing laxity in those customs and traditions . At present , most of the people consider it to be the best to conclude their marital relations with in their own cast .

Perhaps this has been the reason that the Hindu Marriage Disability Act ,enacted in 1946, allowed people to marry only within with in their own caste sub caste. But later it was apposed as a result of which in 1949 the Government of India created the inter caste Marriage Act , under which marriage started taking place among Hindu in every caste and sub caste . Later , the Hindu Marriage Act 1955 was enacted .Under which inter marriage and all other matrimonial problems were properly resolved .Now under the section of Hindu Marriage Act , it has been like a contract which can be terminated at the stage of married life . The basic form of marriage has been changed due to the relief provided in the present Act for the nullity of divorce and judicial separation. More revolution are changes were brought in this regard by the Marriage Laws Amendment Act , 1976 in which dissolution of marriage by consent judicial separation and integration of grounds for divorce are very prominent.

Types Of Hindu Marriage – Under the earlier law , 8 system of marriage were considered , 4 valid and 4 invalid methods. The legal rituals of valid and invalid marriage systems were different . According to the accepted system, a married woman was called a wife , but according to the invalid marriage system, a woman was not a wife. The methods of eight types of marriages are as follows :

1. Brahma
2. Daiva
3. Arsha
4. Prajapatya
5. Asura
6. Gandharva
7. Rakshasha
8. Paishacha

The eight forms of marriage are divided into two categories of approved and unapproved .

Approved forms – Brahma , Daiva , Arsha and Prajapatya.
Unapproved forms – Asura, Gandharva, Rakshasha and Paishacha .

The Concept Of Marriage Under Hindu Marriage Act,1955 –For a valid marriage under the Hindu Marriage Act, 1955 , all the conditions mentioned in section 5 must be fulfilled the conditions are follows-

1. Neither party has a spouse living at the time of marriage " The first condition of this section , prohibiting polyandry and polygamy marriage and provides for the rule of monogamy.

On analyzing the first condition of section 5 it is known that any person can have a legal marriage only on the basis of the following conditions-

A. Unmarried boy or girl who has never married .
B. Divorced , widower or widow who has legally dissolved his and her marriage .
C. Any Hindu part whose spouse has died after the

marriage can legally remarry.

The main case related to this first condition is that of **Yamuna bai Anantrao Adhav Vs Anantrao Shivram Adhav , AIR 1998 ,S.C.(644)** , In which the Supreme court held that the marriage would be null and void if the first condition of section 5 was violated**.**

2. The second condition of a valid marriage relates to unsoundness of mind according to section 5 clause 2 – at the time of the marriage neither party –

A. Is incapable of giving a valid consent to it in consequences 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 an extent as to be unit for marriage and the protection of children ,or

C. Has been subject to recurrent attacks of insanity.

3. The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage.

Where the parties enter into a marriage in contravention of the third condition of section 5 , then that marriage is valid but the marriage is contravention of the hird condition of section 5 is neither void nor voidable , but is punishable under section 18(a) of this Act.

4. The parties are not within the degree of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two.

5. The parties are not sapindas of each other , unless the custom or usage governing each of them parties of a marriage between the two .

In the modern Hindu Law , the prohibition of marriage on the basis of kinship has been classified into two parts-

a. Prohibited class kinship

b. Sapind kinship

The main case concerning the categories of forbidden relations is that of **Shakuntala bevi Vs Amarnath (1982(P&H)221),** In this case , the parents of the husband wife are brother and sister in a mutual relationship. Therefore such marriage within the degree of kinship prohibited in this Act.

Matrimonial Methods – Some religious rituals also had to be followed for solemnizing the marriage , but according to the provisions of the Hindu Marriage Act ,1955the parties have been considered obligatory to perform only "Saptapadi". Even today , many formal rituals are followed while solemnizing marriages .Section 7 of the Hindu Marriage Act describes the rituals that are obligatory to perform a Hindu marriage legally.

Marital Tratment-

Restitution of conjugal rights-It's purpose is to be provided an opportunity to restore the spoiled relations of husband and wife through agreement . Using this , the aggrieved party applies in the district court examine the truth and validity of the facts and arguments given by the petitioner , then in grants the aggrieved party a decree of restitution.

(Section 9 of the Hindu Marriage Act , 1955)

Judicial Separation – Judicial separation marital relations of the parties are suspend but not terminated by judicial separation is a remedy between a conjugal relationship that allows the couple to take away their marital dues. In this situation ,the marital relations of the parties are suspended but not terminated by judicial separation .That is , by the decree of judicial separation , the marital relations of the parties do not end permanently , but their marital rights and duties are suspended.

(Section 10 of The Hindu Marriage Act , 1955)

Divorced – This is the biggest remedy in relation to the creation and termination of marital relations ,generally by this the marital relationship of the parties is completely terminated , due to which the parties get the states of unmarried again.

Section 13 of the Hindu Marriage Act ,1955 describes some of the major grounds for divorce which are follows-

Adultery- Consensual sexual intercourse between a married person of the opposite sex, not the other spouse, during the subsistence of marriage.

In **Subbaramanna Vs Saraswati court 1966,MLJ 263** held that one single act of adultery is enough for divorce or judicial separation.

Cruelty- Before 1976, cruelty was not ground for divorce. It ws ground for judicial separation . Cruelty is an act that is dangerous to life , limb or health.

In **Gurbax Singh Vs Harminder Kaur (2010) 14 SCC30** court held that simple minor aggravations , squabbles normal wear and tear of married life which occurs in every day life in all families would not be satisfactory for an award of separation on the ground of cruelty.

Desertion- For the offence of desertion so far as deserting spouse is concerned , two essential conditions must be there-

- The reality of the split and
- The desire to finally put an end to cohabitation

Similarly , two elements are essential so far as the deserted spouse is concerned –

- The lack of consent and
- The lack of a valid cause of action for the partner leaving the matrimonial home to render the required purpose referred to above.

In **Savitri Pandey Vs Prem Chand Pandey (2002) S.C**. Court held that " there can be no desertion without previous cohabitation by the parties ".

Insanity- Under the Hindu Law petitioner may get a decree of divorce or judicial separation , if the respondent has been experiencing consistently or irregularly mental turmoil of such a sort and so much that the petitioner can't sensible be required to live with the respondent

In Ram **Narayan Vs Rameswari , 1988** Supreme court held that in schizophrenic mental disorder , the

petitioner should prove not merely the said mental disorder, but also establish that account the petitioner could not reasonably be expected to live with the respondent.

Leprosy- Virulent and incurable leprosy is both ground for divorce and judicial separation under Hindu Marriage Act, 1955.

Venereal Disease – Under Hindu Marriage Act,1955 provides ground for divorce against communicable venereal disease .

Conversion – Discover may be obtain if the respondent converted from Hindu to other religion and ceased to be a Hindu.

Renunciation of world – To obtain a divorce under this Act two conditions must be satisfied –

- The respondent must have renounced the world , and
- He must have entered some other religious order .

Presumption of death – Under Indian Evidence Act , 1872 a person is presumed to death if he/she ha no longer been heard of as being alive for a period of at least seven years . On this ground, The petioner may be obtain a divorce.

Divorce by mutual consent. The petition for divorce via mutual consent need to be provided before the court jointly among the events and that there had been three other requirements -

First- They have been residing separately for a period of 365 days;

Second- They have not been capable of live together; and

Third – They have together agreed that the marriage has to be dissolved. [Section 13- B of Hindu Marriage Act , 1955

In Smt. Jayashree Ramesh Londhe Vs Ramesh Bhikaji Londhe AIR 1984 BOM 302 [19] Court held that either party can withdrawn the petition after thinking over the matter about divorce through mutual consent and that in this way a party can withdrawn the earlier consent though not obtained by using fraud , undue influences and coercion.

Rules regarding re-marriage of a divorce person :- If a divorced party wants to remarry, it's provisions is given in section 15 of the Hindu Marriage Act . 1955 . Although In the present Hindu Law, freedom has been given to the person to remarry , but some conditions have also imposed . In the absence of these conditions , remarriage is not legally valid and the parties can get such marriage declared void through the court.

Void marriage – Section 12 of the Hindu Marriage Act lays down the four grounds of voidable marriage . On these grounds such marriage can be declared voidable as follows:

1. Imporence of the respondent
2. Mental disability
3. Consent obtain by force and fraud
4. The respondent was not at the time of marriage pregnant by some other than the petitioner.

Conclusion- After studying the above facts , it becomes clear that marriage is neither a sacrament nor a contract but a combination of both.

While Section 5 and 7 of the Hindu Marriage Act, 1955 given the actual nature of a valid marriage, section 11 and 12 of the Hindu Marriage Act provide remedies to the parties to void and voidable marriages so that their marital relations can be re created. Similarly , Section 9 of this Act provides the parties to the matrimonial relationship with the right to recon spoiled relations of husband and wife .

Section 10 and 13 respectively deal with judicial separation and divorce , the grounds of which are the same but different in natur. Where judicial separation provided 1 year opportunity to the parties to rectify the spoiled marital relationship. On the basis of divorce , marital relations are terminated permanently.

Similarly , Sec 13 (A) of this Act , where the respondent provides alternative relief in relation to marital relations, the same Section 13(B) allows the parties to dissolve the marriage by mutual consent . In essence , it can be said that by the remedies provided in all these sections of the Hindu Marriage Act an attempt is made to make the discordant relations of the married parties amicable through conciliation agreement.

Suggetions- On the basis of the above discussion and analysis , the following suggestions for the changing dimension of marital relations seem desirable-

1. Marriage has always been a sacred sacrament, whereas in the present environment , its sacramental and sacred nature is getting eroded. To get rid of this various seminars and workshops should be organized at the level of government and non government organizations .
2. The marriage of the bride and bridegroom should be done according to the nature of karma , rising above caste, gotra , pravara , pind etc. so that their relationship can be sweet and permanent .
3. In ancient Hindu Law , husband and wife were given almost equal rights and duties. Therefore , they should harmonize both o them so that the marital relationship can run smoothly and in a well planned manner .
4. Under the Hindu Marriage Act , a marriage can be dissolved on the basis of adultery , but at present the offence of adultery has been made statutory in the case of **Joseph signe Vs Union of India , 2018 , S.C.** Due to which adultery is no longer a punishable offence . This decision should be reviewed by the Honorable Supreme Court keeping in view the Indian scenario .
5. To prevent evil like dowry in marriage , the amount of fine provided in section 3 of Dowry Prohibition Act , 1961 should be increased and it should be strictly enforced.
6. The problem of married life cannot be solved only by the provisions of law , but for this men and women should make efforts to solve the problems by being self aware and conscious.
7. A concise legal process should be adopted to resolve the dispute between the married parties, so that the parties can get speedy justice.
8. Before solemnizing the marriage of the bride and

bridegroom, medical certificates of both should be taken so that physical problems coming in the marriage system like impotence, sterility and mysterious diseases can be prevented.

9. Must dispute problems related to matrimonial relations should be resolved through alternative resolution system , so that money , labour and time can be saved.
10. It is most important to increase female literacy.

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