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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN ANALYSIS ON REFORMS OF HINDU MARRIAGE ACT,1955

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Abstract:

Rules norms of Hindu marriage under old Hindu law it was very rigid with caste system there was no importance of the will of would be bride and bridegroom. But change is the nature of time when time is changing and due that change needs of society is also changing. To maintain the sacrament feature of Hindu marriage and to adopt demands of modern society Hindu marriage laws codified through enactment of Hindu Marriage Act, 1955. Needs of society will be changed time to time this Act was reforms through various Amendments like Hindu Marriage Amendment Act , 1960, 1964,1976,1978,1999, 2001,2003.2006,2007, 2019 etc. Amendment Bill 2021 is pending. Bigamy is punishable under Section 17 of Hindu Marriage Act,1955 which allows punishment of bigamy under section 494-495 of IPC. Where as in old hindu law bigamy was not an offence. To protect wives from offences under marriage reforms are necessary. In if needed than more reforms will be done through amendment through some provision of ACT MAY repeal or some provisions may be inserted. Marriage is a Social institution and social union also. For the betterment of society and to protect social institution like marriage Hindu marriage laws will be reformed as per the need of society.

Key words: Hindu, Marriage, Hindu Marriage Act,1955, Amendment, Reforms, Bride, Bridegroom, laws, imprisonment.

Introduction:

According to some historians word “Hindu” comes from the Sanskrit word Sindhu river. As per the opinion of Hindu jurists Hindu laws are mandatories of Dharma. Now the question is that who is considered as Hindu. There are types of groups who are considered as hindu. They are as follows:

- i) Any person who is practicing Hindu, Jain Sikh or Buddhist religion they are known by Hindu

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by religion.

- ii) a person who is born of Hindu parents, where both of parents are Hindu or one of the parents is hindu, jain, sikh or Buddhist by religion they are also known as hindu by birth. They are also known as hindu.
- iii) If any person is not a Muslim, Christian, Persians, jews or not regulated by any other law is a hindu. Before codification of Hindu law converted hindus were not considered as Hindu. But after codification Hindu by religion are two types
 1. Who are originally practicing Hindu, Jain, Sikh or Buddhist religion.
 2. A persons who are converted from other religion to Hindu, Jain, Buddhist religion are also Hindu by religion.

HINDU MAARRIAGE IS A SACRAMENT: -

According to hindu law marriage is holy Sanskar that means sacrament not a civil contract. As per the old hindu law marriage is a death less relationship. But to meet the needs current society codified law has brought some changes as because of this some people argued against the concept of sacrament of Hindu marriage. Some arguments are as follows:

As per sacrament concept of Hindu law husband and wife are soulmates of each other and marriage is a in separable relation. But through the Hindu Marriage amendment Act,1976 provisions of judicial separation and grounds of divorce were inserted. If it marriage is inseparable relation then how divorce is a concept against sacrament.

In ancient period Hindu males are allowed to do polygamy. In 1856 Widow Remarriage Act was passed. Argument is that if marriage is a deathless relationship than how widow can remarry and how can be the soulmate of more than one person similarly in ancient period when Hindu males are practicing polygamy. How one man can be soulmate of several wives. These are the contrary to the concept of sacrament. Age of majority and free consent these are the essential condition of Contract as per Indian Contract Act,1872. 18 years for bride and 21 years of age for bridegroom and free consent for marriage from both the ages of bride and bridegroom, These are conditions of Hindu marriage mentioned under sec 5 of Hindu marriage Act, 1955. The argument is that like contract Hindu marriage has some same conditions like contract.

According to sastras husbands were considered as Parmeshwar for wife and wife is considered as

ardhangini and shakti of husband. Husband wife together is a symbol of Ardhanarishwar which means two body and one soul. To protect these concepts of marriage as sacrament and to protect and rights of wife and to protect them from mental, physical torture and improve health conditions of females' provisions like conditions of marriage judicial separation divorce maintenance are inserted through various amendment act of Hindu Marriage Act.

Though there are different opinions argument about Hindu marriage Act but finally it is accepted by all that Concept of Hindu marriage is a sacrament not a contract.

Conditions of Marriage As per Old Hindu Law: noncodified Hindu law had specified three conditions for Hindu Marriage. These are as follows:

- a) **Identity of caste: According** to old Hindu Law if any marriage had performed between the same caste then only the marriage is a valid Marriage but if the bride and bridegroom belongs from different castes than the marriage is invalid as per old Hindu Law.
- b) **Parties Must be beyond the Prohibited Degrees:** Marriage between same gotras were prohibited under old Hindu Law. A person could not marry a woman belongs to same gotra. No can marry his or her sapindas.
- c) **Ceremonies of Marriage:** specially three ceremonies were mentioned under non codified Hindu Law i) betrothal (ii) Saptapadi, (iii) kanya dan and panigrahan.

Betrothal: Which means a a formal promise to marry each other . In other words betrothal is a form of engagement between would be husband and wife which is witness by both the family and friends of both side.

Saptapadi: It is ceremony where both husband and wife are taking seven steps around sacred fire.

Kanya dan and Panigrahan: kanya dan is a ritual where the father of the bride had donated his daughter in the hand of bride groom. At the same time bridegroom taking the hand of bride which is given by her father through panigrahan is a process through which bride groom is taking responsibility of the bride for life.²

² HINDU LAW ;R,K AGARWAL; CENTRAL LAW AGENCY;P-40,41,42

Reforms Brought by Hindu Marriage Act,1955: Hindu marriage was codified through enactment of Hindu Marriage Act, 1955. This codified law had brought some following changes in marriage laws:

- i) condition of same caste for marriage was abolished by Hindu Marriage Act, 1955. After enforcement of this Act marriage between different caste is valid.
- ii) section 5(i) imposed the condition that monogamy which is essential for Hindu marriage.
- iii) Conditions of Hindu marriage as per codified law inserted under section 5 and ceremonies of Hindu marriage mentioned under section 7 of Hindu Marriage Act,1955.
- iv) In modern times only ceremonies are not sufficient as the need of society and to stop the crimes in the name of marriage. There is need of legal registration of marriage. Section 8 of Hindu Marriage Act provides procedure of registration of marriage. In Smt. Seema v. Aswini Kumar AIR 2006 SC 1158, it was held that registration of marriage is important for statistical data records so registration of marriage of all marriages of citizen of India irrespective of religion, caste, community is compulsory. Supreme had ordered every state of India to make registration of marriage mandatory within three weeks of supreme court's order.
- v) State of Andhra Pradesh, Goa, Bihar, Karnataka, Mizoram, Meghalaya, Tamil Nadu, Chhattisgarh, Rajasthan, Tripura, Sikkim had organised their law as per the order of Supreme Court.³
- vi) if any one contravenes section 5(i) then he or she will be punished for the crime of bigamy under Indian Penal Code which is mentioned under section 17 of Hindu Marriage Act,1955.
- vii) Various matrimonial reliefs provided by Hindu Marriage Act section 9 provides restitution of conjugal rights, nullity of marriage as void and voidable under section 11,12 of Hindu Marriage Act,1955
- viii) provision for judicial separation and grounds for divorce for both husband and wife {13(1)} and special grounds for divorce only for wife section {13 (2)}
- ix) Grounds of irretrievable breakdown of marriage are also provided by section {13 (1A)} of Hindu Marriage Act, 1955.
- x) legitimacy of child born from void and voidable marriages under section 16 of Hindu Marriage Act,1955 provisions are inserted under section 24, 25 of Hindu Marriage Act, 1955.

³ Modern Hindu Law; Dr. PARAS Diwan, Allahabad Law agency; edition -2023p-93

REFORMS OF HINDU MARRIAGE ACT,1955 Through

Amendment Acts:

Some reforms are done in Hindu Marriage Act by Amendment Act, 1964

Section 13(1A) Grounds of irretrievable breakdown of marriage inserted by Hindu Marriage Amendment Act, 1964. Hindu Marriage Amendment Act, 1976 has brought some changes. Section 5 of Hindu marriage Act provides the conditions of marriage section 5(ii) (a), (b), (c) inserted by Hindu Marriage Amendment Act, 1976 again section 5 (ii) (c) word epilepsy omitted by Hindu marriage Amendment Act, 1999. Hindu marriage Amendment Act, 1976 has inserted impotency as a ground of voidable marriage under section 12 (1) (a). Adultery, cruelty, desertion were inserted as a ground of divorce under section 13(1) (i), (ii) and (iii) by Hindu Marriage Amendment Act, 1976. Wife can claim divorce on the ground of maintenance has inserted by Hindu Marriage Amendment Act, 1976 under section 13 (2)(iii). alternate relief in divorce proceeding under section 13A and divorce by mutual consent under section 13B these sections are also inserted by Hindu Marriage Amendment Act, 1976. Legitimacy of children of void and voidable marriage has been inserted through section 16 of Hindu marriage Amendment Act, 1976. special provisions relating to trial and disposal of petition under Hindu Marriage Act specified under section 21B which is inserted by Hindu marriage Amendment Act, 1976⁴. Age limit of bride 18 years and age limit for the bride groom 21 years fixed through Hindu Marriage Amendment Act, 1978. The word epilepsy omitted from section 5(c) through Hindu Marriage Amendment Act, 1999. Provision related to children custody under section provided that the application with respect to maintenance and education of minor children, pending proceeding obtaining decree shall as far possible be disposed of within 60 days from the date of service notice of the respondent. This portion is inserted by Hindu marriage Amendment Act, 2001⁵. section 19 (iii a) provided that in case the wife is the petitioner, where she is residing on the date of presentation of the petitioner this provision was inserted by Hindu Marriage Amendment Act, 2003.⁶ Section 18(b) provided that if any contravention of (iv) (v) of section 5 had done by any one will be punished with one month imprisonment or one thousand rupees fine or with both this provision was modified by Hindu Marriage Amendment Act, 2003.

Section 18 of Hindu Marriage Act deals with punishment for contravention of other conditions of

⁴ Cr./MA/8240/2015;p-44

⁵ BARE ACT; HINDU LAWS; Universal Lexis Nexis;p-25

⁶ BARE ACT; HINDU LAWS; Universal Lexis Nexis;p-19

Hindu marriage. Section 18(a) provides that in case of contravention of the condition specified in clause(iii) of section 5 will be punished with rigorous imprisonment which may extend to 2 years or with fine which may extend to one lakh rupees or with both. This provision inserted by Hindu Marriage Amendment Act,2007⁷.

Role judiciary in reforms of Hindu Marriage Act:Indian judiciary had played a great role to protect the rights of married couples. Judiciary always protects the social institution like marriage. Smt. Yamunabai v. Anant Rao Adhar v. Anant Rao Thiraram Adhar. A,I.R1988 SC644 it was held that if the marriage is performed with out the condition mentioned under section 5(i) then that marriage is void ab initio and in case void marriage wife is not entitle to claim maintenance under 125 crpc .⁸

S, Laxminarayan v. shanti AIR2001(45) ALR515(SC) supreme court held that before declaring wife as un-situated for marriage and procreation of children it should be proved that the illness of the wife is in that stage that it is not possible for her to live a normal married life.

Unushbhai usmabhai v. State of Gujrat Cr./MA/8240/2015. Gujrat High Court held that the prohibition of child marriage Act, 2006 is a special law for the protection of children any person laws either Hindu personal law or muslim personal law cannot prohibit application of Prohibition of Child Marriage Act,2006.⁹Nagalingam v.Shivgamani¹⁰ (2001)7 SCC487 , It was held that section 7A is applicable to the Hindu marriage should be perform in front of friends relatives or other person. Main purpose of this section is that presence of the priest for marriage is not necessary. self-respected marriage is also valid under Hindu marriage Act, 1955¹¹.Navjit Patowary v. karabi Takuria Patowari AIR2019 Gau105.In this case husband filed case of restitution of conjugal against his wife but his wife had already lodged complaint that she was regulary tortured by her husband and his sisters and she was not getting maintenance properly and she was forced to leave in- laws house to save herself and life of her children. She was bound to left. It was held wife has real ground to live in laws house and husband is not entitle for restitution of conjugal rights.¹²

⁷ MODERN HINDU LAW; DR. PARAS DIWAN; ALLAHABAD LAW AGENCY;P-557

⁸ Hindu Law; R.k. Agarwal; Central LAW Agency;p-46

⁹ CR/MA/8290/2015

¹⁰ https://www.livelaw.in/pdf_upload/735-ilvarasan-v-superintendent-of-police-28-aug-2023-491516.pdf ((Retrieved on 12.02.2024 at 7.50 p.m.)

¹¹ Hindu Law; R.k. Agarwal; Central LAW Agency;p-50

¹² Hindu Law; R.k. Agarwal; Central LAW Agency;p-66

Ilavarasan v. Superintendent of police SLP CRL NO(S)6534 OF 2023 writ of habeas corpus filed by appellant that he had married Mathithara under section 7A OF Hindu Marriage Act, 1955. Marriage was solemnised in presence of advocates and social worker. According to appellant his wife was forcefully taken away and she was forced to marry her maternal uncle. It was held according to the statement of Mathithara which was recorded by district judge that she was willing to stay with appellant so she can join the appeal filed by appellant but her marriage performed through garland exchange and tying thali in front of advocates and social worker they had expressed themselves as a husband and wife of each other so their marriage is valid she wants to reside with appellant at her free will. So they can reside with each other as a husband and wife and society can recognise them as a married couple¹³.

Proposed Reforms of Hindu Marriage Act through Hindu Marriage Bill 2021: section 13(1) after clause (vii) the clause (viii) shall be inserted (viii) is undergoing a sentence of imprisonment for seven years or more for committing an offence under Indian Penal Code, 1860:

Divorce shall not be granted on this ground only if respondent has prior to the presentation of divorce petition if the respondent already undergoes at least three years of imprisonment out of seven years.

This proviso is proposed by Hindu Marriage Amendment Bill 2021 to insert this provision under Hindu Marriage Act, 1955.

CONCLUSION:

In old non-codified law there were so many rigid and unjustified systems which belonged to that society. But due to changes of need of time and modernization of society it is impossible to continue those systems and rules of marriage in the modern society. Under shield of marriage rules and norms crime against women was raising day by day. To protect the sacramentness of Hindu marriage and to save wives against crime related to marriage Hindu Marriage Act, 1955 was enacted by parliament of India but as per the changing needs of dynamic society Hindu Marriage Act, was reformed through various amendments of Hindu Marriage Act, 1955. In future if needed then this Act will be again reformed through amendment for the betterment of society, as Hindu marriage is a social institution.

¹³ https://www.livelaw.in/pdf_upload/735-ilvarasan-v-superintendent-of-police-28-aug-2023-491516.pdf (retrieved on 16. 02. 2024 at 8.00 p.m.)