



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

# “VOID MARRIAGES UNDER HINDU LAW”

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## 1. INTRODUCTION

The concept of marriage is defined as “the state of being united to a person of the opposite gender as husband or wife in a legal, consensual, and contractual relationship recognized and sanctioned by and dissolvable only by law.”<sup>1</sup> Thus, it is a combination of both sacrament relationship as well as a civil contract. The marriages under Hindu Marriage Act, 1955 is categorized into three types i.e.: Valid Marriage, Void Marriage and Voidable Marriage. This research paper will basically focus on Void Marriage which is a type of marriages under Hindu Marriage Act, 1955. In short, a Void Marriage is a form of marriage which is Invalid in the eyes of law. The concept of Void marriages is defined under Section 11 of Hindu Marriage Act, 1955.<sup>2</sup> There are various conditions which will determine the type of marriage that took place such as: Age of parties, Monogamy, Sanity etc.<sup>3</sup> All such conditions are defined in Section 5 of Hindu Marriage Act, 1955. All the conditions stated in the Section 5 of Hindu Marriage Act, 1955 shall be applicable to all Hindus including people of Hindu, Sikh, Buddhist and Jain religions.<sup>4</sup> To understand the concept of marriage as sacrament and civil contract, various case laws have been referred such as: In *Gopala Krishna v. Mithilesh Kumar (1979)*, the court stated that the marriage is an institution of matrimony under Hindu Law which is sacrament in nature not a mere socio legal contract.<sup>5</sup> this research paper will also showcase the difference between the main two types of marriage which is: Void marriage and Voidable marriage. On the other hand, in *Bhagwati Saran Singh v. Parmeshwari Manohar Singh (1942)*, the court stated that a Hindu Marriage is not only a sacrament but also is a contract.<sup>6</sup> Thus, it always depends upon case to case to determine whether a marriage is sacrament or a civil contract and whether the marriage is Valid or Void or Voidable in nature.

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<sup>1</sup>[http://www.legalservicesindia.com/article/1001/right to marry.html#:~:text=A%20legal%20dictionary%20defines%20marriage,parties%20that%20joins%20together%20their](http://www.legalservicesindia.com/article/1001/right-to-marry.html#:~:text=A%20legal%20dictionary%20defines%20marriage,parties%20that%20joins%20together%20their).

<sup>2</sup> Section 11 of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/1243269/>

<sup>3</sup> Section 5 of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/635068/>

<sup>4</sup> Section 2 (b) of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/1922953/>

<sup>5</sup> <https://www.legitquest.com/case/gopal-krishan-sharma-v-dr-mithilesh-kumari-sharma/1524DB>

<sup>6</sup> <https://www.casemine.com/judgement/in/5ac5e2f44a932619d903c218>

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## 2. CONCEPT OF MARRIAGE

A marriage (also known as Wedlock or Matrimony) is considered to be the most holy or sacrament union between two persons called 'Spouses' (Husband and Wife)<sup>7</sup>. It is a form of internal relationship which is indissoluble in nature or a 'union of flesh with flesh and bone with bone' according to the Ancient texts and Vedas. In other words, a marriage is a religious tie of knot which cannot be broken. According to Hindu Marriage Act, 1955: Section 5, the marriage is considered to be a Sanskara which are performed as purification rites and lays down certain conditions for the marriages in Hindu Law.<sup>8</sup> It is divided into three types i.e.: Valid marriage, Void Marriage and Voidable Marriage.

Also, according to Manu smriti which is an ancient text, there are two forms of marriage in Hinduism: Regular form and Irregular form. Regular forms of marriage include: (1) Brahma (2) Daiva (3) Arsha (4) Prajapatya and Irregular forms of marriage include: (1) Asura (2) Gandharva (3) Rakshasa (4) Paisachika.<sup>9</sup>

Thus, at the same time Marriage is a combination of both Sacrament relationship as well as a Civil contract. It is a civil contract in case of Muslim marriage – Nikah, which is a legal relationship between both the spouses and it is a sacrament relationship in case of Hindu marriage where it takes place in presence of holy fire and performs Sat Phare or Saptpati.

### 2.1 IMPORTANCE OF MARRIAGE

Marriage is an important part of every person's life. It is not just a relationship between two persons but it is a joint relationship between both the person's families also.

It is also meant that a man is incomplete without her wife / Ardhangini. So, after marriage only, a man can perform his three main duties of (1) Dharma Sampatti – where husband can take part in Pooja, Havan or Yagya; (2) Praja Sampatti – where husband can perform last rites of his father / grandfather; (3) Rati Sukham – where husband can have sexual pleasure, Since the main objective of a marriage is: Production and Maintenance of children.

<sup>7</sup> Haviland, William A.; Prins, Harald E.L.; McBride, Bunny; Walrath, Dana (2011). Cultural Anthropology: The Human Challenge (13th ed.). Cengage Learning. Definition of marriage.

<sup>8</sup> Id 3

<sup>9</sup> [https://en.wikipedia.org/wiki/Asura\\_marriage#:~:text=Among%20eight%20types%20of%20marriages.Hindi%3A%20%E0%A4%B0%E0%A4%BE%E0%A4%95%E0%A5%8D%E0%A4%B7%E0%A4%B8\)%2C%20and%20](https://en.wikipedia.org/wiki/Asura_marriage#:~:text=Among%20eight%20types%20of%20marriages.Hindi%3A%20%E0%A4%B0%E0%A4%BE%E0%A4%95%E0%A5%8D%E0%A4%B7%E0%A4%B8)%2C%20and%20)

### 2.2 CONDITIONS OF MARRIAGE

To make the marriage Valid, the couple needs to fulfill the Necessary conditions stated under Section



5 and the additional conditions stated under Section 7 of Hindu Marriage Act, 1955. Section 5 of Hindu Marriage Act, 1955 defines the five basic conditions which makes a marriage Valid / Void / Voidable depending upon the circumstances.<sup>10</sup>

The first condition stated under Section 5 (i) of the Act is 'Monogamy'. The section provides that there should be no living spouse of each other at the time of their marriage.<sup>11</sup> The section prohibits Bigamy / Biandry (marrying 2 females / males) and Polygamy / Polyandry (marrying more than 2 females / males) and the punishment of the same is provided in Section 17 of Hindu Marriage Act, 1955.<sup>12</sup> There are various case laws relating to this condition which will be covered in the next topic.

The second condition stated under Section 5 (ii) of the Act is 'Sanity'. The section provides that at the time of marriage, both the spouses should be of sound mind unless that marriage would become Voidable. It includes case laws such as: *Ram Narayan v. Rameshwari Gupta*<sup>13</sup>, *Alka Sharma v. Abhinesh Chandra*<sup>14</sup> etc.

The third condition stated under Section 5 (iii) of the Act is 'Age of Parties'. The section provides that the parties should marry each other once they are 18 years of age for girls and 21 years of age for boys. If the parties are less than the age limit then the punishment of the same is stated in Section 18 (a) of Hindu Marriage Act 1955.<sup>15</sup> This kind of marriages is Voidable in nature.

The fourth condition stated under Section 5 (iv) is 'Beyond Prohibited Degrees'. The section provides that the parties should not marry in the prohibited degrees of each other unless their customs or place of marrying accepts it. The section includes relationships by half or uterine or full blood, legitimate or illegitimate or adopted child.

<sup>10</sup> *Id* 3.

<sup>11</sup> *Id* 3 – Section 5 (i)

<sup>12</sup> Section 17 of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/1800387/>

<sup>13</sup> <https://indiankanoon.org/doc/1329391/>

<sup>14</sup> <https://indiankanoon.org/doc/1271198/>

<sup>15</sup> <https://indiankanoon.org/doc/1800387/>

The fifth condition stated under Section 5 (v) is 'Not Sapindas of each other'. The section provides that the parties should not marry to the sapindas of each other unless their customs or state of marrying accepts it. From Maternal side, third generation and from Paternal side, fifth generation is the sapindas of each other so, they should not marry each other.

### 3. TYPES OF MARRIAGES

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According to Hindu Marriage Act, 1955, there are three types of marriages: (1) Valid Marriage (2)

Voidable Marriage (3) Void Marriage.

### 3.1 Valid Marriage

All the conditions stated under Section 5 of Hindu Marriage Act, 1955 (Monogamy, Insanity, Age of Parties, prohibited degrees and Sapinda Relationships) are necessary for a marriage to become valid in the eyes of law.<sup>16</sup> It also includes performing of marriage ceremonies such as: Saptpati (Taking sat pharas in front of holy fire), Kanyadan (Father's responsibility to gift her daughter as bride to her good bridegroom) etc. which are stated under Section 7 of Hindu Marriage Act, 1955.<sup>17</sup> It is said that if any of the ceremonies is left especially Saptpati, then the marriage of the couple will not be valid in the eyes of law. A basic example of Valid marriage is that if a marriage takes place in which all the conditions under Section 5 are fulfilled and all the ceremonies are performed then it will be termed as a Valid marriage in the eyes of Society as well as Law.

### 3.2 Voidable Marriage

Section 12 of Hindu Marriage Act defines the second type of marriage which is Voidable in nature.<sup>18</sup> Voidable marriages are those form of marriages which were Valid earlier but later becomes Voidable due to various conditions such as Impotency (a situation when wife is not able to reproduce or give birth to a child); lack of consent of petitioner obtained from fraud / force including Intoxication, Threatening, Abduction / Kidnapping, Human Trafficking etc.; situation when wife is pregnant at the time of marriage; condition of Insanity under Section 5 (1) of the Act; & condition of Age of Parties under Section 5 (ii) of the Act. All such conditions

<sup>16</sup> *Id* 3.

<sup>17</sup> Section 7 of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/358783/>

<sup>18</sup> Section 12 of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/368948/>

mentioned are Retrospective in nature which means the section is applied to all the marriages which took place before or after the commencement of Hindu Marriage Act, 1955. To understand the concept of voidable marriages, various case laws can be cited such as: *Alka Sharma v. Abhinesh Chandra*<sup>19</sup>, *Bhagwati v. Anil Choubey*<sup>20</sup> etc.

### 3.3 Void Marriage

It is the third type of marriage which may take place in some places. The concept is explained in the detail in the next topic.

## 4. VOID MARRIAGE

Void marriage is the concept which is defined in Section 11 of the Hindu Marriage Act, 1955 as “Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.”<sup>21</sup> It is a type of Absolute Bar or Restriction put up on the marriages which are Invalid or have no meaning in the eyes of law. It is a form of marriage which can be annulled or terminated at any point of time since it is void and invalid from the point of beginning in the eyes of law.<sup>23</sup> In simpler terms, the marriage which does not fulfill the conditions stated under Section 5 clause (i), (iv) and (v) of Hindu Marriage Act, 1955 are considered to be Void Marriage in the eyes of law. It should be noted that according to Section 4 clause (b) of the Act, any law made after the commencement of the act shall be ceased so that’s why Section 11 of the Act is Prospective in nature as it is applied to only those marriages which took place after the commencement of the Hindu Marriage Act, 1955.<sup>24</sup> So, as per the legal terms, the marriages which is void from the point of beginning on the three main grounds are called Void – ab – Initio.<sup>25</sup>

<sup>19</sup> *Id* 14.

<sup>20</sup> <https://www.manupatrafast.in/Pers/Personalized.aspx>, <https://indiankanoon.org/doc/149432762/>

<sup>21</sup> *Id* 2.

<sup>23</sup> <https://www.lectlaw.com/def2/u040.htm>

<sup>24</sup> Section 4 of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/446436/>

<sup>25</sup> <http://www.legalserviceindia.com/legal/article-4475-void-marriages-under-hindu-law.html>

### 4.1 Conditions of Void Marriage under Section (i), (iv) and (v) of Hindu Marriage Act, 1955.

As per Section 5 of the Hindu Marriage Act, 1955 there are three main conditions which is covered under Void Marriages in India.

The first condition stated under Section 5 clause (i) is related to Bigamy as “neither party has a spouse living at the time of the marriage”<sup>26</sup> The section clearly states that at the time of marriage of the parties, there should be no living spouse of each other or the parties should not marry each other if one of them is married to another person earlier. The main purpose of this clause is to avoid Bigamy or Polygamy marriages in India. But if any Hindu is found doing the marriage then he / she will be punished under Section 17 of the Hindu Marriage Act along with Section 494 and 495 of Indian Penal Code with imprisonment from 7 to 10 years and fine and that marriage would become Void in the eyes of law.<sup>27</sup>

Case laws relating to Section 5 clause (i) is:



In the case of *Smt. Yamunabai v. Anant Rao*<sup>28</sup>, the Supreme Court held that the second marriage of Anant is Void – ab – initio and the second wife will not be treated as his wife and will not be entitled to claim maintenance under Section 125 of CrPC<sup>29</sup>.

In another case of *Parkash Chander v Parmeshwari*<sup>30</sup>, the Punjab and Haryana High Court stated that the second marriage with another girl is void on the grounds that his wife was not able to give birth to a child. Thus, Prakash Chandra cannot marry another girl when his first wife is alive.

The second condition stated under Section 5 clause (iv) is related to the Prohibited Degrees as “*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.*”<sup>31</sup> This condition is also stated in Section 3 (g) of the Act which includes lineal ascendants and descendants of husband and

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<sup>26</sup> *Id* 3.

<sup>27</sup> *Id* 12, Section 494 IPC. <https://indiankanoon.org/doc/508426/>, Section 495 IPC <https://indiankanoon.org/doc/653145/>.

<sup>28</sup> 1988 AIR 644, 1988 SCR (2) 809 <https://indiankanoon.org/doc/663395/>

<sup>29</sup> Section 125 CrPC. <https://indiankanoon.org/doc/1056396/>

<sup>30</sup> AIR 1987 P H 37 <https://indiankanoon.org/doc/804903/>

<sup>31</sup> *Id* 3.

wife’s side can’t marry to each other.<sup>32</sup> There are certain restrictions in which relationships of full blood (children of same mother and father), half-blood (children from same father but different mother) and uterine blood (children from same mother but different father) are also not included and their marriage would be Void. It is restricted to the extent that the family will get pure genes. In simpler words, a male cannot marry to a female who is belonging to their same ancestors or descendants unless such kind of marriage is acceptable according to their customs. The punishment for this condition is stated under Section 18 (b) of Hindu Marriage Act, 1955 as Simple Imprisonment up to 1 month and a fine of Rs. 1,000 or both.<sup>33</sup>

A case law of *Smt. Shakuntala Devi v. Amar Nath* can be referred in which the court states that if a marriage takes place between the parties who are in the prohibited degrees of each other and their customs follow it in a reasonable sense then it will not be void in the eyes of law.<sup>34</sup>

The third condition stated under Section 5 clause (v) is related to Sapinda Relationships as “*the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.*”<sup>35</sup> This condition is also stated in Section 3 (f) of Hindu Marriage Act, 1955 as the ascendants of first three generations from Maternal side and the ascendants of first five generations from Paternal side can’t marry each other and if they do so their marriage will be void unless their customs accept it.<sup>36</sup> The punishment of the condition is provided in Section 18 (b) which

is simple imprisonment up to 1 month and a fine of Rs. 1,000 or both.<sup>37</sup>

The case law of *Arun Navalkar v Meena Navalkar* can be referred in which the husband sued his wife for nullity of their marriage under Section 11 of the Act as it was a sapinda relationship and they wanted to get separated on the grounds of Cruelty, Desertion and Schizophrenia under Section 13(1) (ia) and 13(1)(iii) of the Hindu Marriage Act.<sup>38</sup>

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<sup>32</sup> Section 3 (g) of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/1003029/>

<sup>33</sup> Section 18 (b) of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/319670/>

<sup>34</sup> AIR 1982 P H 221 <https://indiankanoon.org/doc/1679143/>

<sup>35</sup> *Id* 3.

<sup>36</sup> Section 3 (f) of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/1248900/>

<sup>37</sup> *Id* 33.

<sup>38</sup> AIR 2006 Bom 342, 2006 (4) BomCR 210, 2006 (3) MhLj 772 <https://indiankanoon.org/doc/1455570/#:~:text=The%20husband%20sued%20her%20for,of%20the%20Hindu%20Marriage%20Act.>

## 4.2 Legitimacy of child under Void Marriages.

It is considered that child born out of a Void marriage is Legitimate as per Section 16 of Hindu Marriage Act, 1955. It is stated as “*Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)\*, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.*”<sup>39</sup> But if it is found that the female is pregnant on her wedding and later gives birth to her child, then that child would be Illegitimate and that condition would be of Voidable marriage.

## DIFFERENCE BETWEEN VOID AND VOIDABLE MARRIAGES

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In brief it can be stated that:

Void marriage is stated under Section 11 and Voidable marriage is stated under Section 12 of the Hindu Marriage Act, 1955.

Void marriage consists of Section 5 Clause (i), (iv) and (v) of Hindu Marriage Act and on the other hand, Voidable marriage consists of Section 5 Clause (ii) and (iii) of Hindu Marriage Act, 1955.

Void marriage is null and void from the point of beginning and Voidable marriage is Valid earlier but becomes Voidable at the end because of various conditions as mentioned above.

The children in Void marriage are Legitimate and the children in Voidable marriage is Illegitimate.

Etc.

## CONCLUSION

“Conjunctio Martialis Pemonae est de nature” means to keep husband and wife together is the law of the nature.

<sup>39</sup> Section 16 (1) of Hindu Marriage Act, 1955. <https://indiankanoon.org/doc/284588/>

From all the above discussion it is concluded that a wife is very important for a man and marriage is both a combination of Sacrament and as well as a civil contract. According to Hindu Marriage Act, 1955 marriage is divided into three types: Valid Marriage (Section 5), Void Marriage (Section 11) and Voidable Marriage (Section 12). The research paper basically covered the topic of Void Marriages under section 11 and some case laws relating to the concept. Thus, the marriages under Section 5 clause (i), (iv) and (v) are under Void Marriages.

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