

HINDU MARRIAGE: A HOLY CONTRACT AND A DISSOLUBLE UNION

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ABSTRACT

This article deals with the most debatable topic in the classroom, law chambers and even the courts of India i.e. whether a Hindu Marriage still maintains its sanctity as a sacrament or now it has taken the shape of a civil contract resulting in a new shape of holy contract. It will be an effort to look at who are Hindus and what are their sacrament, what and how marriage is recognised in Hindu customs. What are the conditions for Hindu Marriage under ancient and modern sources? The article will try to look into what is a sacrament and what are the elements of a sacrament, specifically what are the essential elements of a sacrament its genesis and how a sacrament loses its sanctity. Article through laws enacted in India will try to analyse what are the elements required to form a valid contract. This article will analyse Hindu marriage on the lines of the subject of sacrament and contract and will try to establish whether Hindu marriage in today's context is a sacrament or a civil contract.

Keywords: Marriage, Sacrament, Contract, Consent, Divine, Eternal, Holy.

INTRODUCTION

In India, the first image that flashes in our mind when we hear the word Hindu Marriage is a grand procession depending upon the financial condition of the family, a stage where the bridegroom and bride will exchange garlands, lots of dance, delicious food and a full night or a day full of lots of ceremonies and rituals depending upon the area we are in and finally, the bridegroom comes with a bride to his house. More often than not after a few days they are seen in the registrar's office for registering their marriage.

The question shall mushroom in our mind how did all this develop? Were these things the essential part of the marriage? What actually constituted the ceremonies and relevance of those ceremonies in these days? Debates have been on the rise since the mid-20th century about whether Hindu marriage is still a sacrament or now it has become a contract.

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This debate arose because a Hindu marriage is considered to be a sacrament and eternal which means two people whose marriage solemnised under Hindu rituals will last not only for this birth but will continue to till eternity, but after the enactment of the Hindu Marriage Act the concept of divorce was encapsulated in the act and as the society grew case of divorce rose multi-fold thereby questioning the concept of Hindu marriage as lasting to be an eternity. Societies and intellectual minds have taken it to a matter of debate that Hindu Marriage: a Sacrament or a civil contract.

WHO ARE HINDUS

Neither a person nor a date can be attributed to anyone as to who and when the word Hindu came into existence. Historians have agreed to a consensus that it was Greeks who used the word “Indus” for all who lived beyond the Indus River and the same word Indus later took the form of Hindus.

HINDU MARRIAGE ACT,1955

Thus, Hinduism was a territorial notion in ancient India, While the area to the east of the Indus at that time also had seen the rise of Jainism and Buddhism a reformed religious ideology of Sanatan Dharma. The people living to the east of Indus (Aryavart) considered themselves to be followers of Sanatan Dharma and later on, this Sanatan dharma came to be known as Hindu Dharma. Though it was accepted that All dwellings to the east of the Indus were Hindu the converse was not true, because Aryavarta consisted of diverse faiths and religions specifically after the advent of Greeks and Islamic rulers forcibly coming to India.

Later, Hindu was the term accredited to the person professing the faith of any kind. As the other philosophies and religions rose and this belief was contested too and later it was accepted that those who professed the Hindu Dharma in any form would be Hindu and after the enactment of Hindu Personal Laws for the brevity as per section 2 of Hindu Marriage Act 1955.

Everyone who professes the Hindu Religion is Hindu and everyone professes its other form of Hinduism including Lingayat, Virshaivas, Brahma Samjaj etc.

Everyone who is Jain, Sikh, Buddh and Jain.

Also, everyone who is not a Muslim, Christian, Parsi and Jew is Hindu unless he proves that he is not governed by Hindu Laws.

Thus, it gave a codified view for the sake of the administration of personal laws and delivering justice to all Hindus.

HINDU MARRIAGE

Hindu Marriage as per religious texts is considered to be one of the sixteen sacraments acknowledged in Hindu philosophy and a few of these are like, Nam-Karan Sanskar, Mundan Sanskar, Upnayan Sanskar, etc. All these sacraments were meant to be completed in accordance with the rules and procedures written in Vedas or smritis and later developed by learned Brahmins. Hindu Marriage as known as Vivaha Sanskar is considered to be the most pious among all because it is the one that opens the door for an individual to enter into Grihastha Ashrama and start his domestic life.

It is believed by Hindus that Grihastha life is the only way to achieve all four ultimate targets of Hindu Philosophy that is Dharm, Arth, Kaam and ultimately Moksha. It is said that a Hindu man remains Half till he marries. Once married he is considered to take part effectively in all the processions and ceremonies. Acknowledging the importance of marriage, Once Sage Vashishta said that God can take birth or incarnation only in a domestic Household. A married couple can only be blessed with the birth of God in their home.

As the Hindu religious texts describe the marriage of Lord Shiva or Lord Rama it can be clearly said that these were the procession involving lots of rituals, customs and celebrations. Marriage was celebrated in its full potential in both the house of the bride and bridegroom. The notion of the Eternality of Marriage is attributed to these marriages mentioned in the religious texts wherein it was said that Ram-Sita, Vishnu-Laxmi, and Krishna-Rukmani are the same couple and married themselves in different ages and epochs and thus, giving an abstract idea that every Hindu will be marrying the same better half in every birth.

ELEMENTS OF HINDU MARRIAGE

Smritis and various commentaries give a picture that marriage was considered an important event in the life of an individual as it granted legitimacy to an individual for family procreation. The ancient source had some elements required for the marriage to be solemnized like the bride shall be a maiden, and it was said that a girl can be given once in kanyadan. There was a prohibition on the anulom and pratilom marriage which means inter-caste marriage was prohibited Marriage between samgotri was prohibited that is a person belonging to the same

gotra, Pravara or asans was prohibited. It was approved that the age of the groom shall be more than that of the bride.

After the codification of Hindu personal laws, Hindu Marriage and divorce used to be governed by the Hindu Marriage Act 1955. The Hindu Marriage Act prescribes the conditions for a Valid Hindu Marriage. As per Section 5 of the Hindu Marriage Act-

- a. Neither party has a spouse living at the time of the marriage
- b. At the time of the marriage,
 - Neither party is incapable of giving valid consent to it in consequence of unsoundness of mind; or
 - 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 unfit for marriage and the procreation of children; or
 - has been subject to recurrent attacks of insanity
- c. The bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;
- d. The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits a marriage between the two;
- e. The parties are not sapindas of each other unless the custom or usage governing each of them permits a marriage between the two.

Thus, inference can be drawn that the conditions which were necessary before the enactment of personal laws were not given much importance except that none of the parties shall already be married at the time of marriage. All the other conditions such as being the same caste and none of the party shall be the same gotra were not given any place in the Hindu Marriage Act.

ELEMENTS OF A SACRAMENT

Hindu religious texts specifically mention how any procession or activity becomes rituals, and the determining factors are the reciting of Mantras, and acceptance of customs and rituals. Performance of ceremony as mentioned in Shrutis and scriptures what we say in Hindi is “Jehi Vidhi Shruti Gaai” which means the process described by the Vedas.

HINDU MARRIAGE AS A SACRAMENT

The ancient Hindu Texts regard marriage as a sacrament. In such a marriage where it is considered a sacrament, the relationship of the husband and the wife is established exclusively by the performance of religious ceremonies and not by the contract between the parties.

The bride receives the status of the wife only after the ceremony of “Panigrahan” is completed. Thus, after the recital of sacred Mantras marriage is completed and because of an utterance of sacred mantras and performance of rituals and thus it is considered a sacramental marriage.

Marriage as a sacramental has a few meanings:

It is an indissoluble tie: Hindu Marriage in ancient times was considered to be indissoluble and the union formed shall never use to be dissolved, while after the enactment of the Hindu Marriage Act, The marriage solemnised between two Hindus can be dissolved by a decree of divorce from the courts. Thus, the nature of Hindu Marriage being indissoluble no longer sustains in modern times.

It is an Eternal Union: Hindu Marriages solemnised as a sacrament are considered to be eternal in nature which means the same couple will be marrying at every birth, but this presumption is contested with arguments of the person getting divorced and marrying again. Modern times and laws do not accept such an assumption

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It is a Holy Sacrament: Though Hindu Marriage are sacrament if performed with all the rituals after the enactment of HMA 1955 and many judicial pronouncements, have emphasized on performance of ceremonies yet main emphasis is on the ceremony of the Saptapadi, while other ceremonies have not been given such importance.

Every Hindu Marriage must satisfy the conditions of section 5 HMA and must be solemnised under section 7 -in *Ravinder Kumar vs Kamal Kanta ILR 1974*.¹ Thus, the marriage can be solemnised even without the performance of the all rituals prescribed in the scriptures.

Thus, A Hindu Marriage solemnised with rituals partially satisfies the conditions of being qualified as being sacramental in nature. While Courts in various judicial pronouncements have

¹ *Ravinder Kumar vs Kamal kanta ILR 1974*

considered it to be a sacrament it has lost some of its ingredients in substance form as it is mentioned in Hindu Scriptures.

ELEMENTS OF A CONTRACT

Section 10 of the Indian Contract Act 1872 prescribes the essential conditions for a valid contract.

- Free Consent
- Competent Parties
- Lawful Consideration and Lawful Object
- Not a Void agreement

Free consent: In every contract, there is a requirement of free consent while analysing the HMA 1955 and ancient texts it can be said that consent is not given much importance in Hindu Marriage. Consent is not mentioned in the conditions of marriage as in section 5 of HMA 1955. Having a close reading of section 5 with section 12 of HMA 1955, it can be said that a party may get a marriage annulled on the basis that consent was not free and was obtained by force and fraud. The only two grounds are given to get the marriage annulled on the basis of not having a free consent. While the Indian Contract Act Section 14 mentions 5 grounds on which free consent can be contested these are Coercion, Undue influence, Fraud, Misrepresentation and mistake. Thus, the element of consent is partially qualified in the line of marriage and contract.

Competent Parties: Parlance can be drawn with the competency of parties in a contract and marriage. Except with the condition of age where a marriage between minors is punishable yet valid, a contract between minors is considered to be void. Other's competency regarding unsoundness of mind has the same footing as in contract and in marriage with slight differences.

Lawful consideration and lawful object: A marriage does not at all suit and comply with these conditions and does not fall in the ambit of this element.

In the case of *Malla Reddy v Subbamma* AIR 1957 Justice Visvanatha Shastri observed that "Marriage also partakes of a civil contract made by the spouses or by their parents if they are minors and essential part of the marriage ceremony is the gift of the bride either as free as in case of Brahma Marriage or for money in case of Asura Marriage". The above view of the

Learned Justice was not supported in later pronouncement. Thus, a Hindu Marriage can not be considered a full civil contract as the conditions required to make a contract are not fully met. Though it may look like considering few elements of marriage bearing resemblance to a contract yet a Hindu marriage does not qualify for a civil contract.

A HOLY CONTRACT

A Hindu Marriage in modern times has molded itself into a flexible composite substance having the elements of a sacrament and also the element of a contract. The Hindu Marriage nowadays is not a complete sacrament as it does not require the performance of all the rituals and ceremonies except the Saptpadi and that too has a place in the customs of the parties involved in the marriage. As Kanyadaan is not an essential part of the marriage “*Ramlal Agarwal v Shanta Devi 1999*”.² Also, after the HMA 1955, the assumption of being an indissoluble union ceases to exist as a married couple can dissolve their marriage as per section 13 of HMA.

Also, a Hindu Marriage does not qualify all the tests that are required to qualify it to be a contract. Though a few ingredients like of contract being voidable have parlance with voidable marriage a Hindu marriage can not be termed a contract and remedies available in matrimonial disputes are totally different from those of in contract. Thus, A Hindu marriage is a blend having ingredients of pioussness and some of the contract has shaped itself into a Holy contract.

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² *Ramlal Agarwal v Shanta Devi 1999*