

THE EVOLUTION OF MARRIAGES AND DIVORCES UNDER THE HINDU MARRIAGE ACT: IMPACTS, CHALLENGES AND FUTURE DIRECTIONS

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ABSTRACT

Marriages from being just traditions and customs have now evolved to become legal contract that binds people into living together happily. Earlier without The HMA¹ marital issues were ignored and couples either forgot the issues or continued to live in a troubled environment or husbands would leave their wives. Thanks to the existence of HMA, most of these issues nowadays can be resolved. The Sections of HMS related to Separation and maintenance not only bring equality but also bring a form of standard and uniformity. Yet, some issues still need to be dealt with in this current age, that is same-sex marriage. These issues can be dealt with if UCC² gets implemented or the HMA is made more inclusive and modernised.

INTRODUCTION

Hindu marriages are considered a sacred form of connection between mates. Marriage is one of the most complex connections that is seen in our society, it requires financial as well as emotional stability to keep the bonds of the marriage intact. Marriage is a kind of commitment that is so intricate that a few mistakes in a relationship can make or break a marriage. Especially, in today's world marriages have become hard to maintain because, with any minor vexation, people start seeking divorces. Hence, it becomes necessary to help save certain marriages with the help of The Hindu Marriage Act, 1955.

THE BRIEF HISTORY OF DIVORCES

Earlier Indians did not have the concept of separation and divorce. This culture was brought to India by the Britishers, in 1869, The Indian Divorce Act was legislated to get divorces substantially for Christians. Later, after the introduction of The Hindu Marriage Act, 1955 which governs Hindu, Buddhist, Jain, and Sikh Marriages under its dimension.³ Similarly,

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¹ The Hindu Marriage Act, 1955.

² Unifor Civil Code

³ The Hindu Marriage Act, 1955, section 2(b)

The Muslim Marriage Act, 1936 governs not only Muslims but also Christians and Jews. There also exists a Special Marriage Act, 1954 for inter-community marriages.

BEFORE THE HINDU MARRIAGE ACT ERA

The Hindu Marriage Act gave us the age limit for marriage for men and women which is 21 years and 18 years respectively.⁴ Earlier to this act, child marriages were more prevalent, girls who were not even teenagers yet were married off to older men and had to carry the household chores and after attaining puberty these girls were forced to bear children for the family. Polygamy was also seen before The HMA which was usually men get married to multiple women. During this period women were treated harshly, for example, in the practice of Sati, women were only seen as a source for reproduction and only had the job of maintaining the household and family. Women were not seen equally compared to their male counterparts and since the emergence of HMA, it has become a powerful instrument that helped in codifying Hindu marriage laws.

THE HINDU MARRIAGE ACT, 1955

Different regions and areas of India follow varied customs and traditions which means there is a difference in the fragments of law related to marriage in different locations, with the enactment of this legislature, it codified and helped in bringing uniformity. As it was seen women were treated differently, and this statute helped bring gender equality. Before women were forced to marry, now they do not have the obligation of getting married, and they can continue to stay independent. This statute has made the process of registration of marriages easier it, recognises the marriages done with custom and tradition but also gives a way to legally get married in a courtroom without the need for customs.⁵ This Legislature also protects children from child marriages as an age limit is set for marriages.

SEPARATION

The statute provides relief when either of the partners from the marriage without reasonable excuse, withdrawn from the society of the other, the aggrieved party can approach the court for the reinstatement of conjugal rights.⁶ During the monarchy era, a married person with

⁴ The Hindu Marriage Act, 1955, section 5(iii)

⁵ The Hindu Marriage Act, 1955, section 7&8

⁶ The Hindu Marriage Act, 1955, section 9

responsibilities would go into exile leaving behind their wives and children alone, now this issue can be resolved under the dimensions of this act. It gives the right to both parties in a marriage to opt for divorce (after completion of one year of marriage) or judicial separation under specific conditions like adultery, conversion to a different religion, desertion, or mental illness. The statute also gives the right to a woman in marriage to opt for divorce for undergoing sodomy or bestiality done by her husband.⁷

MAINTENANCE

Earlier, husbands would leave their wives for any minor inconvenience and not even think of their child's development and not even care about whether their wives would or wouldn't be able to financially support themselves and their children. With the enactment of this Act, it has become a legal obligation for spouses to support each other and their child financially even during pendente lite and after divorce as alimony. After the divorce is settled both spouses have equal rights to the property acquired during their marriage.⁸

FEATURES OF HMA

The inception of this Act has brought stability and uniformity in getting and maintaining a marriage. Divorces were seen as rare and mostly discouraged but now people see it as a source to get out of unhealthy relationships which is helping people's lives. The Act also allows the remarriage of widows which was earlier frowned upon. During the British Colonial rule over India, widows were burnt alive with their dead husband's rites. Earlier inter-caste marriages were considered taboo but not this act has legalized inter-caste marriage. In Vedas, only 8 forms of Hindu marriages were recognised as pure marriages but now this act does not specify any sort of condition for a marriage between a couple except the couple should not be sapindas or of the same gotra.⁹ Mate selection for the bride was traditionally done by her parents or the elders of her family in which the bride had no say but now this act has given brides the freedom to choose their mate according to their preferences.

IMPACTS OF DIVORCE

⁷ The Hindu Marriage Act, 1955, section 13(2)(ii).

⁸ The Hindu Marriage Act, 1955, sections 24, 25 & 27.

⁹ The Hindu Marriage Act, 1955, section 3(f)

Divorces have both individual and societal impacts on a couple which include emotional trauma, change in family dynamics, social judgment, financial impacts, and complete lifestyle change. The stress of going through a divorce can affect one's mental health causing them to go through depression or anxiety. Divorce affects one's self-esteem and causes emotional turmoil in both partners.¹⁰

Divorces affect children in multiple ways, it confuses and creates a sense of insecurity in children. The change in family structure can impact the child's development, academic performance, and personality. Divorces lead to distribution of assets for child support and alimony which can create financial constraints for the partner and may create difficulty in reestablishing financial stability. In Indian society, there is a stigma attached to divorce which further creates trouble for separating couples, as they feel they would be judged if this information about their separation were to get public.

The judiciary has interpreted the HMA in such a way that it helps expand women's rights, especially regarding divorce. All landmark cases relating to divorce upheld the idea that no one should be forced into a marriage that has irretrievably failed. The courts have shown a readiness to modify legislation to better suit the realities encountered by those experiencing marital strife as society's standards change.

CHALLENGES

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There are still a few challenges that need to be dealt with which include gender-based violence, technology, and LGBTQ+ rights. In the case of gender-based violence women are often subjected to providing a dowry to the bridegroom's family and if she doesn't comply with it, she suffers violence in the forms of physical, verbal, or mental abuse.

In today's digital world, people have access to multiple sites and applications which includes social media and dating apps. These technologies can cause a marriage to fail due to either partner cheating or the other or infidelity, which makes them lose each other's trust.

Till now many countries have not recognised same-sex marriage which includes India. Same-sex couples are not accepted and their relationship is not tolerated in the society. The Supreme Court judgement declined same-sex marriage because there is no existence of the

¹⁰ Michael Fried, "Divorce in India", (scholar blogs, Oct 2017) <
<https://scholarblogs.emory.edu/postcolonialstudies/2014/06/20/divorce-in-india/>> accessed on 23 July 2023

right to marry but not letting a same-sex couple get married infringes their fundamental rights which are article 14, 15, 19, 21, and 25 [11]. Such couples also have the right to choose their partner out of their will and should be given the freedom to get married to them.

FUTURE DIRECTIONS

The process of divorce is very time-consuming and financially burdening, this process needs to be made speedier and more cost-efficient for poor sections of our society by Streamlining the divorce procedures, reducing the waiting periods, and destigmatizing the process can provide better relief to individuals. The process needs to address the hardships faced by the members of the LGBTQ+ community. These people also have the right to live their lives freely without having to live in shame. Gender-based violence still persists in our society, which needs to be dealt with so that we can progress and build a future society that has equality, respect, and autonomy within marriages.

SUGGESTIONS

Most marriages fail due to a lack of common understanding, miscommunication, and distrust. Some of the marriages can be saved from being broken just by solving these misunderstandings. Family Courts can make Marriage Counselling a mandatory process before one can approach the court and file for divorce, this not only would help save a family from being broken but also save the court some time. A Marriage counselling framework helps in resolving and redressing the underlying issues in a marriage which can prevent a family from taking the discourse of divorce.

Before the existence of The Hindu Marriage Act, all the laws related to marriages were scattered the HMA helped bring structure and uniformity, similarly, having a Uniform Civil Code will help in codifying the dimensions of marriage. UCC [11] will not only help in integrating the diverse religions present in India but will also provide a cohesive legal framework for all citizens.

divorce being a lengthy process requires to be simplified. The process needs to be less burdensome which can be done by reducing the number of required hearings and administrative steps. Even integration of technology in this process can help in speedy relief of clients by developing online platforms for filing petitions, tracking case progress, and accessing legal resources. This can make legal processes more transparent and accessible.

The Hindu Marriage Act was enacted in 1955 since then our society has become more developed and hence the act also needs to be updated. The HMA needs to be modernised and made inclusive. We need to update the act to recognise and include same-sex marriages. It needs to incorporate gender-neutral language, words like husband and wife can be changed to spouse or partner.

CONCLUSION

Marriage has transitioned from a sacred, indissoluble union in Hindu law to a contemporary civil contract, reflecting societal shifts toward liberty and equality. The evolution of divorce has changed the landscape of marital relationships in India, this evolution has helped in catering to the needs and rights of the individuals while also keeping in mind the traditional values of people. The HMA lacks in certain aspects relating to inter-community marriage and same-sex marriage. These are some major issues that need to be dealt with so that it does not infringe on an individual's basic rights. By addressing these challenges and pursuing these future directions, the Hindu Marriage Act can evolve to be more efficient in meeting the needs of society, ensuring fairness, efficiency, and inclusivity in the legal processes related to marriage and divorce.