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2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

Second Draft- Research paper

Topic – Hindu marriage act

Name - Ankit Sharma
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KEYWORDS:

HINDU, SHPINDA, GOTRA, VIVHA, BHRMA VIVHA, GANDHRBA VIVHA, RAKSHAS
VIVHA, KANYADAN, VAR, VADHU, ETC

Introduction:

According to Hinduism, marriage is a sacred relationship. In some Hindu systems of marriage, there is no role for the state as marriage remained a private affair within the social realm. Within this traditional framework reference, marriage is undoubtedly the most important transitional point in a Hindu's life and the most important of all the Hindu "sanskaras" (life-cycle rituals). The Congress Government diluted the Hindu Marriage in 1955 by enactment of HMA and then in 1983 by introduction of 498A. Special Marriage Act in 2000. Therefore there was fierce religious opposition to enacting such laws for marriage, succession and adoption. The greatest opposition was to the provision of divorce, something which is anathema to the Hindu religion. Also resisted was the principle of equal inheritance by sons and daughters regardless of whether the daughter was married or unwed. This was contrary to the Hindu view of family, where married daughters were regarded as belonging to the family of their husband, not to the family of their father.

Some have argued that Hindu marriage cannot be subjected to legislative intervention. [Derrett](#) predicted in his later writings that despite some evidence of modernization, the dominant view in Hindu society for the foreseeable future would remain that marriage is a form of social obligation.

Research Methodology

The researcher has used observational research method that is based on the observation of data which was published by different institution. Context and contents has been taken from various books, articles and the books of eminent authors. While the concepts HINDU MARRIAGE ACT 1955 is very well known. Will be explained utilizing the doctrinal approach. The data will be collected from the published research works and published data from different sources.

Judicial Interpretation On Hindu Marriage Act 1955

In Hindu mythology there are 16 sacraments, among these 16 sacraments one is marriage. Father has a moral duty to up bring his daughter and after she attains the age of marriage find a suitable groom for her and give his daughter as benefaction {**KANYADAN**}. The above definition is given by Raghunandan.

The Vedas are large body of religious texts originating in ancient India. There are four Vedas: the Rigveda, the Yajurveda, the Samaveda, and the Atharvaveda. According to Rigveda it is whole and sole fathers discretion that whom he want to marry his daughter but it is also the responsibility of a father that he must have to find a virtuous person for his daughter and have to perform some religious sacrament such as 7 rounds {**SAATH FERE**} around fire god and after all the religious sacrament girl becomes bride but according the Rigveda the girl have no right to give consent for marriage. Here it is his father's absolute right that he can make marry his daughter to anyone. It is assumed that the father cannot even think to do wrong for his daughter.

➤ CASE LAW- TIKATI MUNMOHNTI V.S BASANT KUMAR (1901) ILR 28 Cal 751

The points laid down in this case are as follow-

1. Hindu Marriage is sacrament not a contract
2. Male and female make a indissoluble bond
3. They now becomes the Husband and wife for 7 worlds

❖ **Significance of Marriage according to Hindu mythology-** Marriage is to fulfill religious duties and begetting of a son who enables a man to get deliverance from sufferings of hell.

Hindu Marriage Act-1955

Act to amend and codify the law relating to marriage among Hindus.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows.

➤ SECTION-1 - Short title and extent

- SECTION-2- Application of act
- SECTION-3-Definations
- SECTION-4- Overriding effect of act
- SECTION-5- Condition of Hindu Marriage
- SECTION-7- Ceremonies for a Hindu marriage
- SECTION-8- Registration of Hindu marriages
- SECTION-9-Restitution of conjugal rights
- SECTION-10-Judicial Separation
- SECTION-11-Void Marriages
- SECTION-12-Voidable Marriages
- SECTION-13-Divorce
- SECTION-13(A)-Alternate relief in divorce proceedings
- SECTION-13(B)-Divorce by mutual consent
- SECTION-14-No petition for divorce to be presented within one year of marriages
- SECTION-15- Divorced persons when may marry again
- SECTION-16-Legitimacy of children of void and voidable marriages
- SECTION-17-Punishment of bigamy
- SECTION-18-Punishment for contravention of certain otherconditions for a Hindu marriages
- SECTION-19- Court to which petition shall be presented
- SECTION-20-Contents and verification of petitions
- SECTION-21-Application of Act 5 of 1908
- SECTION-21(A)- Power to transfer petitions in certain cases
- SECTION-21(B) -Special provision relating to trial and disposal of petitions under the Act
- SECTION-21(C)-Documentary evidence
- SECTION-22-Proceedings to be in camera and may not be printed or published
- SECTION-23-Decree in proceedings.
- SECTION-23(A)-Relief for respondent in divorce and other proceedings
- SECTION-24-Maintenance pendent lite and expenses of proceedings
- SECTION-25-Permanent alimony and maintenance
- SECTION-26- Custody of children
- SECTION-27- Disposal of property
- SECTION-28- Appeals from decrees and orders
- SECTION-28(A)-Enforcement of decrees and orders
- SECTION-29-Savings

- SECTION-30- This act is repealed

Essentials Of Hindu Marriage Act, 1955 Along With Penalties

The following are the necessary conditions for a valid Hindu Marriage:

1. **Monogamy**: Section 5(i) of the Act prohibits polygamy and polyandry. It says that neither party should have a living spouse at the time of the marriage. Failure of this condition would make the marriage null and void under section 11 of the Act. Apart from this, the party would be liable for bigamy under sections 494 and 495 of the Indian Penal Code, 1860 and section 17 of the Hindu Marriage Act, 1955. Schedule Tribes are exempted from this but they must have an early and lasting custom for this. In cases like *Bhogadi Kannababu & Ors vs Vuggina Pydamma & Ors* [AIR 2006 SC149] and *Yamunabai Anantrao Adhav A vs Ranantrao Shivram Adhav & Anr* [AIR 1988 SC 644], the apex court held that during the subsistence of first marriage, the second marriage would be null and void.
2. **Mental Capacity** : This clause was inserted in the Act through The Marriage Laws (Amendment) Act, 1976. As per the clause, three conditions must be fulfilled as per section 5(ii) of the Act for a valid Hindu Marriage. The conditions are: neither party, at the time of marriage (a) is incapable of giving a valid consent due to his/her unsound mind (b) 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 (c) has been subjected to recurrent attacks of insanity. If any of these conditions is not fulfilled then marriage is voidable under section 12(1)(b) of the Act. The clause of epilepsy was removed through The Marriage Laws (Amendment) Act, 2001.

3. **Age of the parties** : At the time of enactment of the Act, the legal age for the marriage of boy and girl was 18 years and 15 years respectively. However, later on The Marriage Laws (Amendment) Act, 1976, changed the minimum age to 21 years and 18 years respectively. According to the ruling in Pinninti Venkataramana and Anr vs State [AIR 1977 AP 43], breaching of the condition didn't amount to nullity of the marriage but it is an offence under section 18(a) of the Act i.e. simple imprisonment up to 15 days or a fine of Rs. 1000/- or both. According to section 10 of The Prohibition of Child Marriage Act, 2006, any person performing, conducting, directing or abetting a child marriage shall be punished with rigorous imprisonment up to two years and fine of one lakh rupees.

4. **Prohibition of Sapinda Relationship** : Section 5(v) of the Act, marriage between the persons having sapinda relationship is prohibited unless there is a custom which allows them to do so. Any marriage solemnized under this would be void under section 11 of the Act and violation of this clause would amount to simple imprisonment upto 1 month or a fine of Rs. 1000/- or both under section 18(b) of the act

Conclusion

To any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samam,

To any person who is a Buddhist, Jaina or Sikh by religion, and

To any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation. - The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

Any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;

any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community,

group or family to which such parent belongs or belonged; and

Any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

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