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CASE COMMENTARY: A LOOK INTO THE ARCHAIC AND PATRIARCHAL NATURE OF THE INDIAN SOCIETY THROUGH THE LENS OF P. VENKATARAMANA V. STATE

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Introduction

The preamble of the Hindu Marriage Act, 1955 (hereinafter referred to as the HMA) shows that it is "an act to amend and codify the law relating to marriage among Hindus."[1] Section 5 of the Act lays down the conditions for the solemnification of a Hindu Marriage wherein clause (i) states that "a marriage may be solemnized between any two Hindus if neither party has a spouse living at the time of the marriage"[2], and clause (iii) states that "a marriage may be solemnized between any two Hindus if the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of marriage."[3]

It can be said that the practices of bigamy and child marriage though prohibited by law and looked down upon at present, were a few of the common practices among Hindus in earlier times, such that these practices could have been considered what is known as "customary law". Under the HMA, S.17 lays down the punishment for bigamy and the provisions of S.494 of the IPC are applied accordingly.[4]Coming to the issue of child marriage, the legal position prior to the enactment of the HMA in 1955, under the Child Marriage Restraint Act, 1929 was that, while those involved in the solemnization of a marriage in violation of the Child Marriage Restraint Act were liable for punishment, the marriage itself was not rendered void or null and void. In PanchadiChittiVenkanna v. Panchadi Mahalakshmi, the marriage was solemnized in 1953 prior to the enactment of the HMA, 1955 and, therefore, the provisions of the HMA would not apply, and it

[1]The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).
[2]The Hindu Marriage Act, 1955, § 5(i), No. 25, Acts of Parliament, 1955 (India).
[3]The Hindu Marriage Act, 1955, § 5(iii), No. 25, Acts of Parliament, 1955 (India).
[4]The Hindu Marriage Act, 1955, § 17, No. 25, Acts of Parliament, 1955 (India).

could not be said that the marriage was performed in violation of clause S.5(iii) of the HMA.[5]

The doctrine of factum valet is another essential school of thought when it comes to the issue of customary law which means- "once an act is done or a fact is accomplished it can't be altered by the written texts of laws."The doctrine in the case of the marriage of a minor was that the factum of marriage, which as solemnized could not be undone by reason of numerous legal prohibitions to the contrary. Under S.4 of the HMA, it is only when there is a clear provision in the HMA that "any text,rule, or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the HMA shall cease to have effect in so far as it is inconsistent with any of the provisions of the Act."[6]

Background

In this case, the first respondent, i.e., the wife filed a complaint in the court of the First Class Judicial Magistrate against the first petitioner, i.e., her husband and ten others. It was alleged by her that the husband had committed the offence of bigamy punishable under S.494 of the IPC and that the other ten accused had committed an offence punishable under S.494 read with S.109 of the IPC.The marriage was solemnized in 1959, and the husband's defence was that he was 13 years old, and the complainant wife was 9 years old at the time. The husband argued that the marriage between them was a void marriage and no marriage in the eyes of the law, and thus he had not committed any crime under S.494 by marrying another girl.The Magistrate, on the other hand, held that the marriage was valid and that his marrying again constituted an offence, and thus found the parties guilty. The convictions were upheld on appeal, though with minor changes to their sentences such as a fine of Rs. 200/- and, if the amount was not paid, each of the petitioners was sentenced to undergo one month of rigorous imprisonment.The petitioners appealed to the High Court against their convictions, wherein the Division Bench had held that a marriage which violates clause (iii) of S.5 of the HMA is void ab initio and is no marriage in the eyes of law.Following that, the case was referred to a Full Bench in an order dated March 22, 1976 since it was felt that the view taken by the Division Bench was not in accordance with the provisions of the Hindu Marriage Act.The Court stated unequivocally that a marriage in which both parties or any one of them is

[5]PanchadiChittiVenkanna v. Panchadi Mahalakshmi, T.A. No. 578 of 1973.
[6]The Hindu Marriage Act, 1955, § 4, No. 25, Acts of Parliament, 1955 (India).

under the minimum prescribed age is a valid marriage. The only consequence of such marriage is that the persons concerned are liable to be punished under S.18, and the wife has the option to repudiate the marriage underS.13(2)(iv). It was thus held that the first petitioner committed the offence of bigamy and as a result, his appeal against conviction was dismissed because he had committed an offence under S.494 of the IPC. However, the complaint filed by the first respondent alleging that the other accused had committed an offence punishable under S. 494, read with S. 109 IPC was quashed.[7]

ISSUES

i. Whether the marriage between two parties who are below their respective marital ages as set out in clause (iii) of Section 5 of the HMA is void ab initio?

ii. Whether the marriage between the first petitioner (the husband) and the second girl he married was valid?

ARGUMENTS ADVANCED

In the case at hand, neither of the parties presented any individualized arguments, however, a number of significant judgements were relied upon by the judges. Moreover, the two issues are tackled as follows:

i. It was argued by the husband that the marriage between him and the first respondent was void ab initio and no marriage in the eyes of law. He relied upon the Division Bench of the AP High Court in P.A. Saramma v. G. Ganapatulu. However, it was felt that the view taken by the Division Bench was not in accordance with the provisions of the Hindu Marriage Act. The court relied on a number of judgements and stated that a marriage solemnized in contravention of S. 5(iii) of HMA is neither void ab initio nor voidable; and that such a violation does not find place in S.11 or S.12 of HMA.[8] It was held that such a marriage is only punishable under S. 18 of the Act and such a marriage solemnized would be valid, enforceable, and recognizable in the court of law.[9] Thus, it was held that the marriage between two parties who are below their respective marital ages as set out in clause (iii) of S.5 of the HMA is not void ab initio but is a valid marriage.

ii. In the first issue, since the marriage between the two parties was considered to be a valid marriage in the eyes of law, the marriage between the first petitioner (husband)

[7]PinnintiVenkataramana v. State, AIR 1977 AP 43.
[8]Gindan v. Barelal, AIR 1976 MP 83.
[9]*Supra* note 9.

and the second girl was in violation of Section 5(i) of the HMA. Hence, the marriage between the first petitioner and the second girl was void in accordance with S.11 of the HMA. The husband was thus, liable to be punished under S.494 of the IPC.

Analysis

I strongly believe that the judgement given by the court was not wrong, however, the reasoning of the court was flawed and against the spirit of law. The case primarily relied on a large number of precedents and did not reflect any new and independent reasoning. The reasoning in several case laws that were relied upon in this judgement was outdated. The fact that the judgement was passed in the year 1976, after the enactment of the HMA, 1955 which brought about stricter conditions and policies to prohibit solemnization of marriage, and yet set out a precedent that upheld the validity of Child Marriages makes the judgement nothing but archaic.

The case of Sivanandy v. Bhagavathyamma was taken into consideration by the court in which it was held that:"A marriage under the Hindu law by a minor male is valid even though the marriage was not brought about on his behalf by his natural or lawful guardian. The marriage under the Hindu Law is a sacrament and not a contract. The minority of an individual may operate as a bar to his or her incurring contractual obligations. But it cannot be impediment in the matter of performing a necessary 'samskars' . A minor's marriage without the consent of the guardian can be held to be valid also on the application of the doctrine of factum valet."[10] Similarly, the doctrine of factum valet was once again relied upon by the court in Venkatacharyulu v. Rangacharyulu, in which case the facts were that a Vaishnava Brahmin girl was married to the plaintiff by her mother without the approval of her father, who afterwards repudiated the marriage. The plaintiff was granted a declaration that the marriage was lawful as well as an injunction prohibiting the bride's parents from marrying her to anyone else. It was also observed:

"A Hindu marriage is binding for life because the marriage rite completed by saptapadi creates a religious tie, and a religious tie when once created, cannot be untied. It is not a mere contract in which a consenting mind is indispensable. The person married may be a minor or even of unsound mind, and yet, if the marriage rite is duly solemnized, there is a valid marriage."[11]

I disagree with the reasoning of the court in relying upon the aforementioned judgements. Firstly, these judgements rely upon the doctrine of factum valet which holds the practice of child marriage perfectly valid, even though there exist sound reasons why it should be invalid or illegal. Secondly, the reasoning that even though a minor may not be mature enough to enter into contractual obligations but may be mature enough to enter into a marriage because it is considered to be a

[10]Sivanandy v. Bhagvathyamma, AIR 1964 Mad 237.
[11]Venkatacharyulu v. Rangacharyulu, (12891) ILR 14 Mad 316.

"sacrament and not a contract" is flawed. The court has failed to recognize the fact that a marriage brings in a number of responsibilities in terms of the burden of conceiving and starting a family for the wife and maintaining and providing for the family either by the husband or wife or both. The very fact that there exists a minimum prescribed age for marriage is so that two persons get married after having attained the maturity that comes with the said age. If two persons are getting bound for life and creating a religious tie after completion of the marriage rites, the court's judgement that a consenting mind is not necessary in such a tie is a matter of concern. Moreover, in Venkatacharyulu v. Rangacharyulu the court also held that even if a person is of unsound mind, if the marriage rite is duly solemnized in contravention of S.5(ii)(a) of the HMA, the marriage would be valid. In my opinion, when any activity is performed upon a particular person, without their consent such that they are incapable of even understanding the nature or purpose of performing that activity means that they did not have the mental capacity or maturity to engage in that activity. The same must be applied for persons of unsound mind as well as minors when it comes to marriage.

The learned judges however, strongly disagreed with the view taken by the judges in P.A. Saramma v. G. Ganapatulu. It was held in the case that a violation of clause (iii) of S.5 would render the marriage null and void ab initio, despite the fact that no specific provision is made in S.11 or S.12 for the consequences of a violation of clause (iii) of S.5. The several provisions of S.5 were viewed by the learned Judge of the Division Bench as establishing conditions precedent. The judges in the case at hand disagreed with the view in the aforementioned case as the provision regarding legitimacy of children granted under S.16 of the HMA will not apply to children begotten by a couple that was married in contravention of the provisions of S.5(iii) as neither S.11 nor S.12 provides for any consequence that might result from contravention of the said clause.[12] Hence, it was argued that the children from such a marriage would be considered as bastards if the view in P.A. Saramma v. G Ganapatulu was considered. The reasoning applied by the court does not find place in the current case as firstly, there was no question of any child. The facts of the case at hand clearly depict that no child was conceived out of the 'matrimony' between the parties. The court has unnecessarily dragged in arguments that do not pertain to the situation at hand, thereby setting up a disappointing precedent.

On the other hand, the court has omitted a major issue in the judgement, which was to explain how the husband was held guilty of bigamy. It was clearly held that the husband had committed an offence punishable under S.494 of the IPC, which is the punishment given for committing the offence of bigamy.[13] However, S.17 of the HMA provides the punishment for bigamy and is an

[12]P.A. Saramma v. G. Ganapatulu, AIR 1975 AP 193.
[13]The Indian Penal Code, 1860, § 494, No. 45, Acts of Parliament, 1860 (India).

essential section that has been carelessly omitted from the judgement. In fact, "the voidness of the marriage under S.17 is one of the essential ingredients of S.494 of the IPC because the second marriage will become void only because of the provisions of S.17."[14] Instead of S.17, the provisions of S.18(a)[15] have been applied in this case which nowhere states that it is the punishment for bigamy or that the provisions of S.494 will be applied accordingly. This weakens the merit of the decision as it is a depiction of the inability to apply the correct provisions, thereby also making the interpretation of the law inappropriate.

In the year 2022, with PCMA being the handbook for any matter relating to child marriages, it is highly unlikely that a case such as P. Venkataramana v. State will significantly influence existing law. However, the existence of major discriminatory provisions even in landmark judgements of today regarding child marriages stem from the fact that the precedents set out in the past have been inconsistent.

[14]Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170.
[15]The Hindu Marriage Act, 1955, § 18, No. 25, Acts of Parliament, 1955 (India).

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Conclusion

P. Venkataramana v. State has left certain lacunae in the legal sphere. Even though it prevented the husband from taking advantage of the loopholes in law and rightly convicted him of bigamy, the reasoning given in the judgement created the scope for a patriarchal and old-fashioned society. Prohibition of Child Marriage Act did not exist at the time and came into force in 2006, yet there exist personal laws and factors such as lack of education, customs and traditions, poverty, as well as legal precedents such as this that create impediments in the foregoing of practices such as child marriage. Thus, as long as judgements or laws related to child marriage keep overlooking the practice, it would be decades before this social evil is abolished. As was also stated in the case at hand, that even when the provisions of the HMA were extensively amended in 1976, by the Marriage Laws (Amendment) Act, 1976, the provisions of clause (iii) of S.5 were not interfered with. There is an urgent need to not just impose punishments for persons engaging in child marriage, but also for amendments in law to insert new provisions absolutely prohibiting this practice. No court in the future should be in a position to overlook child marriages by applying the doctrine of factum valet or the fact that such a grave violation does not even find place in S.11 or S.12 of the HMA and would thus, be valid.