

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 6

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2023

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# Marriage Under Various Personal Laws of India: An Analysis

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## ABSTRACT

*Marriage is a sacred institution for Hindus and it is the very foundation of a stable family and civilized society. There are, however, certain prerequisites and conditions for a valid marriage. All personal laws lay down certain conditions which need to be complied with to enter into or solemnize a legal marriage. Under the Hindu Law, the concept of marriage has undergone various changes after the codified laws. Under the uncodified Hindu Law, the conditions for entering into a valid marriage were mostly in the nature of recommendatory and not mandatory and also the child marriages were very much prevalent at that point of time. The Mithakshara Joint Family was purely patriarchal, because of which, there were so many discriminations against women in almost all the personal matters. Only a seniormost male member of the family can be a Karta, i.e., Head of the family. No female member can act as Karta which means she was given only the household activities.*

*All powerful positions like Administration and Decision-making were held only by the male members of the family. Property right was also denied to female members of the family. They were eligible to get maintenance only. But after the emergence of codified laws, there are radical changes effected in the personal matters like marriage, property rights, adoption, guardianship and maintenance. The Hindu Marriage Act, 1955 is a landmark in the history of social legislation. This Act contains elaborate provisions on the conditions for a valid marriage, matrimonial reliefs, jurisdiction and procedure, maintenance and custody of children. This article is going to highlight the conditions for a valid marriage and the consequences for violation of those conditions under various personal laws of India.*

**Keywords:** *Marriage, Hindu Law, Muslim Law, Christian Law.*

## I. INTRODUCTION

Marriage is a sacred institution for Hindus and it is the very foundation of a stable family and civilized society. There are, however, certain prerequisites and conditions for a valid marriage. All personal laws lay down certain conditions which need to be complied with to enter into or solemnize a legal marriage. Under the Hindu Law, the concept of marriage has undergone

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various changes after the codified laws. Under the uncodified Hindu Law, the conditions for entering into a valid marriage were mostly in the nature of recommendatory and not mandatory and also the child marriages were very much prevalent at that point of time. The Mithakshara Joint Family was purely patriarchal, because of which, there were so many discriminations against women in almost all the personal matters. Only a seniormost male member of the family can be a Karta, i.e., Head of the family. No female member can act as Karta which means she was given only the household activities.

All powerful positions like Administration and Decision-making were held only by the male members of the family. Property right was also denied to female members of the family. They were eligible to get maintenance only. But after the emergence of codified laws, there are radical changes effected in the personal matters like marriage, property rights, adoption, guardianship and maintenance. The Hindu Marriage Act, 1955 is a landmark in the history of social legislation<sup>2</sup>. This Act contains elaborate provisions on the conditions for a valid marriage, matrimonial reliefs, jurisdiction and procedure, maintenance and custody of children. This article is going to highlight the conditions for a valid marriage and the consequences for violation of those conditions under various personal laws of India.

### **(A) Conditions for a valid marriage under Hindu Law<sup>3</sup>:**

The Hindu Marriage Act, 1955 originally provided six conditions for a valid marriage. But the sixth condition relating to guardianship in marriage was omitted<sup>4</sup>. So, now the Hindu Marriage Act contains only five conditions to be satisfied for a valid marriage.

Sec 5: Conditions for a Hindu Marriage.

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

- i Neither party has a living spouse at the time of the marriage;

This is one of the most welcoming changes effected by the Hindu Marriage Act, 1955. Through this provision, the Act has introduced Monogamy. The most important effect of this provision is Bigamy has not only been prohibited, but it has been made as an offence punishable under the relevant provisions of Indian Penal Code and the Hindu Marriage Act, 1955<sup>5</sup>. The offence

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<sup>2</sup> The Hindu Marriage Act came into effect on 18<sup>th</sup> May 1955.

<sup>3</sup> Section 5 in Chapter II of the Hindu Marriage Act, 1955 lays down the conditions for a valid marriage.

<sup>4</sup> Omitted by the Child Marriage Restraint (Amendment) Act, 1978,(2 of 1978), Sec.6 and Schedule (w.e.f.01-10-1978).

<sup>5</sup> According to Sections 494 and 495 of the Indian Penal Code, Bigamy is a punishable offence. The provisions relating to Bigamy under the Indian Penal Code should be read with Sec.17 of the Hindu Marriage Act, 1955.

of Bigamy would be constituted only when the first marriage is solemnised according to proper ceremonies and rituals<sup>6</sup>. The Supreme Court held that during the subsistence of first marriage, the second marriage would be null and void<sup>7</sup>.

ii At the time of the marriage, neither party-

- a) Is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
- b) 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
- c) Has been subject to recurrent attacks of insanity;

If any of these conditions are not fulfilled then the marriage is voidable under Sec.12(1)(b) of the Act. In *Smt. Alka Sharma v. Abhinesh Chandra Sharma*<sup>8</sup>, the High Court of Madhya Pradesh held that the court can nullify the marriage if either condition or both the conditions are fulfilled due to mental disorder of the party.

iii The bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of marriage;

At the time of enactment, the legal age for marriage of boy and girl was 18 years and 15 years respectively. Later on, the Marriage Laws (Amendment), 1976 has changed the minimum age to 21 years and 18 years respectively. It was held in *Pinninti Venkataramana and Anr. v. State* that breaching of the condition did not amount to nullity of the marriage but it is an offence punishable under Sec.18(a) of the Act i.e., simple imprisonment which may extend to 15 days or with a fine of Rs.1000 or with both. But after the Prohibition of Child Marriage Act, 2006, the child marriages can be voidable and under certain circumstances, it can be made as void also. The punishment under Sec.18(a) has been enhanced<sup>9</sup> by the Act of 2006.

iv 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;

If any marriage is solemnised in contravention of this would be void under Sec.11 of the Act.

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<sup>6</sup> This was held by the Supreme Court in *Dr.A.N.Mukerji v. State*, AIR 1969 All 489 and in *Santi Deb Berma v. Smt. Kanchan Prava Devi*, AIR 1991 SC 816.

<sup>7</sup> *Bhogadi Kannababu & Ors v. Vuggina Pydamma & Ors*, AIR 2006 SC149., *Yamunabai Anantrao Adhav v. RanantraoShivram Adhav &Anr*, AIR 1988 SC 644.

<sup>8</sup> AIR 1991 MP 205.

<sup>9</sup> According to Sec.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 Rupees one lakh.

Apart from this, violation of this clause would amount to simple imprisonment up to one month or a fine of Rs.1000/- or both under Sec.18(b) of the Hindu Marriage Act, 1955. Section 3(g) defined persons who are coming under within prohibited degrees of relationship.

- v The parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

Any marriage solemnised under this would be void under Sec.11 of the Hindu Marriage Act, 1955 and violation of this clause would amount to simple imprisonment up to one month or a fine of Rs.1000/- or both under Sec 18(b) of the Act. Sec.3(f) of the Act provides definition for sapinda relationship.

It is significant to note that vide section 2(1)(b) of the Hindu Marriage Act, 1955, it is pointed out that 'this Act applies to any person who is a Buddhist, Jaina or Sikh by religion. The-term "Hindu" is comprehensive and includes Bhuddhists, Jains and Sikhs. In fact, explanation II to Article 25 of the Constitution, which provides for freedom of religion, elucidates that the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina and Buddhist religion. In this context, a reference may be made of a Public Interest Litigation (PIL) filed by a Sikh seeking Amendment in the Constitution t declare that the Sikh community should be out of the purview of the Hindu Marriage Act, 1955. The Supreme Court Bench headed by Chief Justice K.G. Balakrishnan, however turned down the petition. The court held that it cannot entertain the subject as it has to be looked into by the appropriate authority in the government.

Section.7: Ceremonies for a Hindu Marriage:

A Hindu Marriage may be solemnized in accordance with the customary rites and ceremonies of either party and it has been further pointed out that, where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes binding and complete when the seventh step is taken.

#### **(B) Registration of Marriage:**

There is no provision for compulsory registration of a marriage under the Hindu Marriage Act, 1955. Section 8 of the Hindu Marriage Act, 1955 makes registration optional and Sec 8(5) specifically states that validity of any marriage is not affected by failure to register it. But, in a recent judgment by the Supreme Court in *Seema v. Ashwani Kumar* AIR 2006 SC 1158, the court has issued directions that the marriages of all persons who are citizens of India belonging to various religions, should be made compulsorily registrable in their respective states where the marriage is solemnized. If the marriage is registered, the dispute concerning solemnization

of marriage is avoided; it protects the women's rights relating to marriage to a greater extent; it has great evidentiary value in the matters of custody of children, rights of children, and the age of parties to the marriage. The Supreme Court has directed the states and the Central Government to take concrete steps in this direction.

While the Special Marriage Act, 1954, provides for registration of marriages, s. 16 thereof, which refers to procedure for registration does not require publication of the factum of marriage in a newspaper for the purpose of registration. Under Section 15 of this Act parties required to have completed the age 21 at the time of registration of the marriage. The Registrar cannot refuse to register a marriage on the ground that the marriage of the parties was solemnized when one of the parties was below the age of 21. If the parties are 21, the registrar has to register it as it was held in *Baljit Kaur Boparai v. State of Punjab*, (2009) 1 DMC 28 (P&H — DB).

## **II. MARRIAGE UNDER MUSLIM LAW**

Marriage or Nikah, according to Muslim Law, is 'defined to be a contract which has for its object the procreation and legalizing of children'. Thus, a Muslim marriage is a contract and its object is (a) procreation, and (b) legalizing children. There is no formality nor any religious ceremony required for a marriage. Since, marriage in Islam is a contract, the usual conditions necessary to constitute a valid contract are to be fulfilled. Conditions for Valid Marriage:

The essential requirements for a valid Muslim marriage are capacity to contract marriage, proposal and acceptance, and absence of any impediment to the marriage.

### **(A) Capacity for Marriage:**

Every Muslim who is of sound mind and who has attained puberty has the capacity to marry. Marriage of such person without his/her consent is void. Persons who not of sound mind or have not attained puberty can be contracted in marriage by their guardians. Further, a Muslim woman cannot marry any man who is not a Muslim. As to a man marrying a non-Muslim woman, while a Sunni Mohammedan if she is a Kitabia but a Shia Mohammedan cannot marry even a Kitabia. If the parties have become Muslim by conversion before the marriage, then there is no bar.

### **(B) Proposal and Acceptance:**

There should be a proposal *ijab*, and an acceptance *qubul* of the proposal. The proposal and acceptance has to be made either by or on behalf of the parties. This has to be done in the presence and hearing of two male, or one male and two female, witnesses who must be sane and adult Mohammedans. It is significant to note that the proposal and acceptance must both be

expressed at one meeting; a proposal at one meeting and its acceptance at another does not constitute a valid marriage.

**(C) Impediments to a valid marriage:**

The following are the impediments or prohibitions to a valid Muslim marriage, viz.:

- A married woman cannot contract another marriage while her husband is alive and the marriage is subsisting. Such marriage is void.
- The bar of consanguinity renders a marriage void. The following are the prohibited relationships of consanguinity, viz., a man cannot marry his:
  - a) Ascendants, for e.g., mother or grandmother, how highsoever;
  - b) Descendants, for e.g., daughter or grand-daughter, how lowsoever;
  - c) His sister, whether full, consanguine or uterine;
  - d) His niece or great niece, how lowsoever;
  - e) His aunt or great aunt, how highsoever, whether paternal or maternal.

Such marriage if contracted is void.

- Marriage is also prohibited on ground of affinity. Thus, a man cannot marry:
  - a) His wife's mother, or grandmother, how highsoever;
  - b) His wife's daughter or grand-daughter, how lowsoever, if his marriage with his wife is consummated;
  - c) His father's wife or any other ascendant's wife; and
  - d) His son's or any other lineal descendant's wife.

Such marriage if contracted would be void.

- Fosterage is another impediment to a valid Muslim marriage.

While the above-mentioned bars would render a marriage void, certain prohibitions are only relative in nature, and would render a marriage only as irregular. These are marriage with a fifth wife, marriage without proper witnesses, marriage when there is a difference of religion, unlawful conjunction, or marriage with a woman undergoing iddat.

**(D) Muta Marriage:**

The word 'muta' literally means 'enjoyment, use'. It is a marriage for pleasure' for a fixed period of time, also known as temporary marriage. The institution of muta, which was fairly common

in Arabian before and at the time of the prophet, is now not recognized by any school of Muslim law in India, except the Ithna Ashari or Shia School. In practice, however, the institution of muta marriage is almost obsolete in India. Essentials of Muta Marriage:

There are four essentials of muta, viz.

- i Form, i.e., proper contract which means declaration and acceptance;
- ii Subject, i.e., a man can contract a muta marriage with a woman professing the Mahomedan, Christian or Jewish religion or even with a fire shipper, but not with a woman following any other religion. A Shia woman, however, cannot contract a muta with a non-Muslim. Relations prohibited by affinity are also unlawful in such marriage;
- iii Term, which means that the period of cohabitation should be fixed, which may be a day, a month, a year or a term of years; and
- iv Dower.

**(E) Dower:**

Dower is the amount payable by the husband to the wife in consideration of the marriage. It may be prompt or deferred. Prompt dower is payable on demand unless otherwise stated at time of the marriage, the entire dower is presumed to be prompt dower. This is so under the Shia Law. But under the Sunni Law it is usual to regard half as prompt dower and half as deferred dower but there is no hard and fast rule and the courts may treat a reasonable part of the entire dower as Prompt Dower. *Masthan Sahib v. Assan Bibi*<sup>10</sup>, The wife may refuse to consummate the marriage, until prompt dower is paid. Even after consummation, if prompt dower is not paid on demand, the wife may refuse further sexual intercourse. A suit by the husband for restitution of conjugal rights in such a case would be decreed conditionally, i.e., subject to the payment of the prompt dower within a time fixed by the court.

Deferred Dower is payable on the dissolution of the marriage. The husband under Mahomedan in Law enjoys an absolute power of divorcing the wife without assigning any person. To deter him from exercising that right arbitrarily, deferred dower is usually fixed rather high. If there is no divorce, deferred dower becomes payable only on the death of the husband. It can be recovered within three years of the death of the husband. Otherwise the claim becomes barred by limitation. But if she is in possession of her husband's property for satisfying her claim to dower, there is no bar of limitation and she can realize her claim from the income of that

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<sup>10</sup> 23 Mad.371 (FB).

property<sup>11</sup>.

### **III. MARRIAGE UNDER CHRISTIAN LAW**

Under the Christian Marriage Act, 1872, the conditions for certification of a marriage of Indian Christians have been provided in sec 60 of the Act. These are:

- 1) The age of the man intending to be married shall not be under twenty-one years and the age of the woman intending to be married shall not be under eighteen years of age;
- 2) Neither of the persons intending to be married shall have a husband or wife living;
- 3) In the presence of a person licensed under sec 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other-

'I call upon these persons here present to witness that I, AB, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, CD, to be my lawful wedded wife or husband' or words to the like effect.

#### **(A) Void, Voidable, Irregular Marriage:**

A marriage, which is not valid, may be void or voidable. A void marriage is one which has no legal status. The courts regard such marriage as never having

### **IV. MARRIAGE UNDER THE SPECIAL MARRIAGE ACT**

Any two persons (irrespective of their religion) can marry under the Special Marriage Act, 1954. Section 4 of the Special Marriage Act, 1954 lays down conditions for solemnization of special marriages. It states that:

- i neither party should have a husband or wife living;
- ii neither party is an idiot or a lunatic;
- iii the bridegroom must have completed the age of 21 and the bride the age of 18 years;
- iv the parties are not within the degree of prohibited relationship which are enumerated in the first schedule of the Act;
- v Where the marriage is solemnized outside the territories to which the Act applies, both parties should be citizens of and domiciled within the territories to which the Act applies.

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<sup>11</sup> Related case laws: Beebee Bachun v. Sheikh Hamid, 14 MIA 377, Mt.Haliman v. Md. Manir, AIR 1971 Pat.385, Sabir Hussain v. Ferzhand Khan, 1938 PC 80.

The marriage under the Special Marriage Act is a civil marriage by registration. The certificate of the Marriage Officer that this has been done is conclusive evidence of the factum of marriage under the Act. The parties applying for registration should have been residing within the jurisdictional area of the Marriage Officer for not less than 30 days immediately prior to their application. They should have completed the age of 21 years at the time of registration. The effect of registration under this Act is that the marriage would be deemed to have been solemnized under this Act.

**(B) Void, Voidable, Irregular Marriage:**

A marriage, which is not valid, may be void or voidable. A void marriage is one which has no legal status. The court regard such marriage as never having taken place and no rights and obligations ensue. It is void ab initio, i.e., right from its inception. Hence, the parties are at liberty to contract another marriage without seeking a decree of nullity of the first so-called marriage. A voidable marriage on the other hand, is a marriage which is binding and valid, and continues to subsist for all purposes until a decree is passed by the court annulling the same. Thus, so long as such decree is not obtained, the parties enjoy all the rights and obligations which go with the status of marriage. A remarriage by any one of the parties without a decree of nullity is illegal as it would amount to bigamy.

**V. STATUTORY POSITION REGARDING VOID, VOIDABLE AND IRREGULAR MARRIAGE**

The position regarding void, voidable and irregular marriage under the different personal laws are as follows:

**(A) Hindu Law:**

A marriage solemnized in contravention of the following conditions is void under the Hindu Marriage Act, 1955, when:

- i Either party has a living spouse at the time of marriage;
- ii Parties are not within the degrees of prohibited relationship, unless custom or usage governing them permits such marriage;
- iii The parties are not sapindas of each other, unless custom or usage permits such marriage.

A marriage is voidable under the Hindu Marriage Act, 1955 under the following conditions, viz:

- i The marriage has not been consummated owing to the impotence of the respondent; or
- ii Any of the parties is incapable of giving a valid consent because of unsoundness of mind, or though capable of giving a valid consent, has been suffering from mental disorder to such an extent as to be unfit for marriage and procreation of children, or has been suffering from recurrent attacks of insanity; or
- iii The consent to the marriage has been obtained from force or fraud; or
- iv The respondent was pregnant at the time of marriage by some person other than the petitioner.

**(B) Muslim Law:**

Under the Muslim Law, a marriage, which is not *sahih*, i.e., valid, may be either *batil*, i.e., void, or *fasid*, i.e., irregular.

a. *Batil*:

Such marriage being void, does not create any rights or obligations, and the children born of such union are illegitimate. A marriage will be void if the parties to the marriage are within the prohibited degrees of relationship, i.e., prohibited by reasons of consanguinity, affinity or fosterage. A marriage with the wife of another man or remarriage with the divorced wife when the legal bar still exists, is also void. A wife has no right to dower unless there has been consummation, in which case she is entitled to customary dower. Besides, if one of the parties dies, the other is not entitled to inherit from the deceased.

b. *Fasid*:

Such marriage is irregular because of the lack of some formality, or the existence of some impediment which can be rectified. Since the irregularity is capable of being removed, the marriage is not unlawful in itself<sup>12</sup>.

In *Chand Patel v. Bismillah Begum*, the issue was whether a person professing Muslim faith who contracts second marriage with wife's sister during the subsistence of the earlier marriage is obliged to pay maintenance to such woman under the provisions of the Sec 125 of the Cr PC. The court held that such a marriage was not void but only irregular; if it is a temporarily prohibited marriage and could always become lawful by death of first wife or by husband

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<sup>12</sup> Marriage in the following circumstances is *fasid*, viz., a marriage that is: Without witnesses; With the fifth wife by a person having four wives, With a woman undergoing *iddat*; Prohibited by reason of difference of Religion and finally because of bar of unlawful conjunction. In the above situations, the prohibitions against such marriages is temporary or relative or accidental, and can be rectified by removing the irregularities.

divorcing the first wife.

An irregular marriage may be terminated by either party, either before or after consummation. It has no legal effect before consummation<sup>13</sup>. If, however, consummation has taken place, then:

- i The wife is entitled to dower, either prompt or specified, whichever is less;
- ii She is bound to observe iddat, the duration of which, in case of both divorce or death, is three courses;
- iii Children born of the marriage are legitimate.

It is significant to note that an irregular marriage, even if consummated, does not create mutual rights of inheritance between the parties.

#### **(C) Christian Law:**

Under the Indian Divorce Act, 1869, a marriage may be declared null and void on the following grounds, viz:

- i The respondent was impotent at the time of marriage and at the time of institution of the suit;
- ii The parties are within prohibited degree of consanguinity or affinity;
- iii Either party was a lunatic or idiot at the time of marriage;
- iv The former husband or the wife of either party was living at the time of the marriage and the earlier marriage was subsisting.

#### **(D) Special Marriage Act, 1954:**

Under the Special Marriage Act, 1954, a marriage is null and void under Sec 4 read with Sec 24, if:

- i It is in violation of the minimum age requirement, which is 21 years for a boy and 18 years for a girl;
- ii There is another spouse living;
- iii The parties are within prohibited degrees of relationship, unless custom or usage permits such marriage;
- iv Any of the parties is incapable of giving a valid consent due to unsoundness of mind, or

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<sup>13</sup> If, however, consummation has taken place, then:

- The wife is entitled to dower, either prompt or specified, whichever is less;
- She is bound to observe iddat, the duration of which, in case of both divorce or death, is three courses;
- Children born of the marriage are legitimate.

though capable of giving consent, is suffering from mental disorder of such kind as to be unfit for marriage or procreation of children, or has been subject to recurrent attacks of insanity;

- v The respondent was impotent at the time of marriage and at the time of filing of the suit.

A marriage under the Special Marriage Act, 1954 is voidable if the same has not been consummated owing to wilful refusal of the respondent, or the respondent was pregnant by some person other than the petitioner, or the consent of either party to the marriage was obtained by coercion or fraud.

## **VI. CONCLUSION**

The concept of marriage in all the personal laws is not similar. Under uncodified laws, there are radical differences between various religious groups. But, after the codified laws some major changes are effected with reference to marriage, matrimonial reliefs and other related concepts. For instance, all the personal laws have provided the conditions for a valid marriage and the consequences for violation of those conditions. This chapter has analysed various provisions of major personal laws of India with specific reference to Marriage.

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