

Transformation Of Hindu Marriage From Sacrament To Agreement

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Abstract:

Marriage is considered as an indissoluble union between two souls to remain with each other forever under Hindu jurisprudence. It is also considered as a social institution as because it is a union of two families. As per Hindu law, marriage is a sacrament as well as it is a civil contract. Before Hindu Marriage Act, 1955 the nature of marriage was almost sacramental, however the codified Act and its time to time amendments has given a revolutionary perspective in the concept of marriage which was in vogue before the codification. The traditional Hindu marriage was a sea of diverse rituals. But after enactment of the Act some conditions are given more importance than religious rituals. Considerably during the few decades with the pronouncement of landmark judgments by the Supreme Court as well as various High Courts, and initiative taken by human rights organizations and women bodies has afforded to think marriage as an agreement more than sacrament. The acceptance of living relationship and growing instances of divorce cases by the members of the society also pushed to rethink over the nature of marriage before Hindu Marriage Act, 1955 and aftermath of it in recent era of globalization.

The present paper will focus on marriage as a sacrament and marriage as a contract and the effect of rituals and registration of marriage among Hindu people.

Key Words: *Sacrament, Agreement, Registration of marriage, Hindu Marriage Act, 1955.*

RESEARCH METHODOLOGY:

For the purpose of the present study, the researcher has adopted Doctrinaire method. Mostly the secondary data are collected from legislations, Acts, articles, texts and research papers.

INTRODUCTION:

Women were never given freedom, as per observation of Manu,¹ “Her father protects her in childhood, her husband protects her in youth and her sons protect her in her old age; a woman is never fit for independence”.²

So in no age women set free to take her responsibility at her own. As per his writing it was not like a bar that women are not given full liberty to bloom to which she is entitled. But it was the pious duty of the family members in the form of respect and protection to the womenfolk. So for that sake it is father’s sole responsibility or in his absence the guardian has the obligation to decide to whom he will bestow his damsel. And hence the example of the practice of organizing “Swayamvar”, where the girls were given the opportunity to choose the bridegroom best for her in presence of her family members.

Under Hindu law marriage is regarded as religious as well as sacramental in nature. Marriage is a sacrament because there are many customary rituals to be observed in Hindu marriage. In *Sundrabai v. Shivnarayana*, (1908, 32 Bom 81), the High Court of Bombay held that marriage is a sacrament. It is considered the last of the 10 sacraments enjoyed by the Hindu religion for purifying the body from inherited taint. The same view has been given by the High Court of Madras. The customary practices are not uniform among all the Hindu people. It differs from community to community and caste to caste. However among all the customary rituals ‘exchange of garlands’, using of ‘sindoor’ and ‘mangalsutra’ and ‘saptapadi’³ are considered more common among the various communities.

The traditional and customary Hindu marriage has undergone sea changes after passing of The Hindu Marriage Act, 1955⁴. Under the Act the Hindu marriage which was regarded as indissoluble union of man and woman, is transformed into an association of comfort. Some of the provisions of the Act are analyzed below.

Section- 5: This section of Hindu Marriage Act provides the conditions for a valid Hindu marriage as:

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

- (i) neither party has a spouse living at the time of the marriage;
- (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;⁵

- (iii) The bridegroom has completed the age of (twenty- one years)⁶ and the bride the age of (eighteen years)⁷ at the time of the marriage;
- (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;
- (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.

The Act has made it compulsory for a valid marriage the requisites which are considered necessary for a valid contract. So it has redundant the sacramental character of Hindu marriage coming from the Vedic era. Marriage under the Act is like an agreement full of some conditions where age of majority and free consent of both the parties to marriage determine significant role in happening of the event of marriage between the boy and the girl for marriage, which totally excludes the role of guardian or other family members in a Hindu marriage. So the Hindu Marriage Act, 1955 has represented marriage more as a contract rather than as a social institution.

Section-7: Section 7 of the Hindu Marriage Act, 1955 deals with Ceremonies for a Hindu Marriage as:

- (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto becomes complete and binding when the seventh step is taken.
- (2) 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 marriages becomes complete and binding when the seventh step is taken.

India is not a country for one language and one community. It is a country where the people of diverse language with diverse communities are living with peace and harmony due to the guaranteed rights given by the constitution of India, to secure one's own language and culture. So is the reflection at the time of marriage. People prefer to follow their own customary rites and rituals, which is not common among all caste and community. It differs from caste to caste. As per Sub-Section 1 of Section 7 of the Hindu Marriage Act, the parties are free to observe their customary practices. So the Act is not explaining specifically any kinds of approved customary practices except 'saptapadi'. It is totally left to the customary practices of either party. In *Subhash Shah vs Lata Subhash shah* (AIR 1994 Bom 43,(1993) 95), it was held that, "there is nothing in the evidence of either the husband or the wife that saptapadi was a must according to the religious rites, ceremonies and custom prevalent between them. Therefore, even if saptapadi was not one of the items of the marriage ceremony undertaken by the parties before us, we are of the opinion that the marriage between the appellant and the respondent cannot be held to be illegal and invalid. In fact, when some sort of marriage ceremony was undergone by and between the parties, there is always a presumption of validity of marriage unless the presumption is rebutted by quite cogent and satisfactory evidence"

In India we have the fundamental right to movement and settle in any part within the country. If any party move from one part of the country to another part and settled down therein and adopt and observe the customary practices of that part and do the marriage as per that customary practices which is not of either of the parties own customs, in such circumstances the Act is not expressing any views. In such circumstances whether the marriage will be valid or not as per this Act is a matter of great importance.

This Act is the first codified Act in the sphere of Hindu marriage. But despite of codification, Courts are not certain about the acceptable and necessary ceremonies of marriage, except the saptapadi, which is obligatory in nature. Even the Pandits who perform the religious activities in a Hindu marriage might not be able to identify with consensus, the necessary ceremonies which will make a marriage valid, as distinct from the unnecessary ceremonies of the marriage.

The Hindu Marriage Act does not lay down any special form of ceremonies to be uniformly observed in all Hindu marriages. Hence discretion in use of customary rites sometimes creates problems in practical parlance in some cases.

In recent era, the practice of customary rites are reducing in the sense that people hesitate to invest more time in observing step by step practices of the customary rites. In such situation parties preferred to short cut the customary practices. In such situation the sacramental nature of marriage is somehow not getting due attention from the parties.

The ceremony of 'Kanyadana'⁸ which is considered as a matter of pride among the fathers of Bride from the time immemorial, and given high regard to it, is not able to find its place in the book of law, which has a very high sacramental value indeed.

Section-8: This Section of Hindu Marriage Act, 1955 spells about registration of Hindu Marriage as:

- (1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.
- (5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

Registration of Marriage under this section makes the Hindu marriage valid. The Sub-Section 1 of Section 8 says to facilitate the proof of Hindu marriage the State Government may makes rules for compulsory registration of the marriages.

But Sub-Section 5 of section 8 at the other hand has given exemption to the marriages omitted to enter in registration. This kind of dual nature of the legislation has given the opportunity to culprits who intend to deceive the innocent in the name of marriage. By not implementing the provision of registration compulsory and in absence of proof of marriage the dispute relating to solemnization of marriages between the two parties can be discarded. Non registration of marriage and non uniformity of customary rites may affect the interest of womenfolk to a large extent.

Therefore marriage as a sacrament has losing its evidentiary value then the registration in some cases.

In recent period the mushrooming growth of live-in- relation has also adding fuel to the concept of marriage is a sacrament or marriage is an agreement. The new generation considers the marital relationship with more liberty. The live-in relationship is being adopted by many people in the society, where two people prefer to reside together as husband and wife outside marital knot. The legal position relating to such relationship is not specific and express. However the Apex Court ruled that any couple living together for a long time will be presumed as legally married⁹ unless proved otherwise¹⁰, and the aggrieved partner can seek maintenance under Domestic Violence Act, 2005.¹¹

In *Ningu Vithu vs. Sadashiv Ningu* (1986 MLJ186), the court had ruled that.

“I am of the opinion that in a well organized, orderly and civilized society like ours which is not of loose and uncertain morals, the institution of marriage occupies an important place and plays a very vital role in the process of development of human personality.

We have definite views and strong convictions about marital relation. The law as to presumption in favour of marriage under sections 50 and 114 of the Evidence Act is well crystallized. Thus when a man and a woman live together as husband and wife for sufficiently long time and were related as husband and wife by friends, relatives and neighbours there is always a presumption in favour of their marriage. If children are born to such a couple, there is a further presumption in favour of their legitimacy. The presumption in favour of marriage does not get mitigated or weakened merely because there may not be positive evidence of any marriage having taken place. But if there is some evidence on records that the couple had gone through some form of marriage, the presumption get strengthened. Therefore though marriage ceremony said to have taken place may not be valid , the marriage can be held to be valid by force of habit and repute and the onus of rebutting such a marriage would be on the person who denies the marriage.”

Section- 13: This section of Hindu Marriage Act, 1955 speaks about Divorce.

This section provides for dissolution of marriage on several grounds by either of the party on various grounds. Though divorce is a remedy provided to the parties to the marriage from lawful bindings of marital knot. But by incorporating the provision within the Act itself the very nature of marriage as an indissoluble union has transformed to a union of compatibility, where if any of the party is not comfortable with the other one may go for divorce available under the said section.

CONCLUSION:

Marriage is an evolving concept. It is not a static one. With the passage of time, the rules and principles of traditional Hindu marriage is entering in a new phase of life. No doubt marriage as a sacrament had a high regard value during Vedic era which also provides opportunities to the party to marriage the sentiments of agreement in the nature of right of selection of appropriate party and of right to property. But since the codification of Hindu Marriage laws in 1955 the sacramental nature of marriage is shaken by section 5, 7 and 8 of the Hindu Marriage Act,1955.

The insufficient specification of ceremonies and registration of marriage is some extent has reduced the relevancy of sacramental nature of marriage. Before Hindu marriage Act,1955 the position of marriage was based on the concept of sacrament, but the evolving nature of marriage as adopted and practice in society makes it more consensus between the parties rather than the societal institution. Now as per section 5 of the Act marriage is more conditional in nature then sacrament. The parties have to behave before entering into the contract of marriage as a party of an agreement. So it can be concluded that marriage has transforming its nature from sacrament to agreement in recent years and also going hand -in -hand in some cases.

NOTES AND REFERENCES:

1. Manu is regarded as a Smritikar.
2. Manu IX, 3
3. Customary ritual.
4. Come into force in 18th May, 1955.
5. The words “or epilepsy” omitted by Act 39 of 1999, section 2.
6. As amended by the Child Marriage Restraint (Amendment) Act, 2 of 1978 substituting for the words ‘eighteen years’ and ‘fifteen years’, the words ‘twenty one years’ and, ‘eighteen years’ respectively.

7. *Ibid*

8. Is considered as a part of custom where the father of the bride make the gift of daughter to a bridegroom at the time of marriage.

9. *Tulsa and others Vs. Durghatiya and others*, 2008, 4 SCC,520

10. *Badri Prasad VS. Dy. Director of Consolidation and others*, AIR ,1978 SC 1557.

11. Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005.