

BREAK DOWN OF MARRIAGE LAWS - IT'S CHALLENGES AND REFORMS

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Introduction

Hindu marriage is solemnized for spiritual pleasure (sacrament) and not for sexual pleasure. It is said by Manu that the marriage is means for salvation; no man is complete without marrying a woman. Marriages are made in heaven and are solemnized on earth. It was considered permanent union under old Hindu law: a union of heart with heart, soul with soul.

With the change in the societal behaviour after passing of the Hindu Marriage Act, 1955 the laws of marriage under Hindu law went under sea change and contractual colour was given to the Hindu marriage. The principle changed from 'Marriages are made in heaven and are solemnized on earth' to 'Marriages are made in heaven solemnized on earth and can be dissolved in the courts with the permission of the courts'.

Under old Hindu law which was male dominated, the husband was considered to be *pati parmashwar* (next to God) irrespective of his character or behaviour towards his wife and family. Under the Act of 1955¹ law put certain criteria for a man to call himself as good husband or *accha pati*. Dissolution of marriage became reality and the woman was given additional grounds for divorce if the conduct of the husband was not good.

With the amendments to the Hindu Marriage Act in 1976, more freedom was given to the spouses to decide and regulate the future of their married life; marriage laws permitted convenient divorce by consent within a reasonable period of time.

In spite of these amendments and equality of the spouses, the marriage institution still stands at cross-road as particularly a Hindu woman is not happy with the marriage and divorce laws as they ensure formal equality but not substantial equality. The question remains in our mind: *Kaun Banegha Accha pati*.

Critical Issues and Challenges under Hindu Marriage Laws

The setback to the concept of sacrament of Hindu marriage was due to passing of the Hindu Marriage Act, 1955 and subsequent amendments to it. The major setback to the tradition concept of Hindu marriage is largely due to recognition of live-in-relationship and same sex marriage.

Every person on this earth wants to be happy in his life and he feels that marriage is an institution which will bring happiness in his life. Every person spent three-fourth of his life as married person till he dies; therefore laws

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1. The Hindu Marriage Act, 1955.

regulating to this aspects of life shall be those laws which promotes happiness and reduces cruelty of life. The experience of almost every married person with the marriage laws is otherwise.

The challenges to the present marital laws are due to the following factors:

1. Distribution of matrimonial property
2. Irretrievable break down of marriage
3. Live- in- relationship
4. Same sex marriage
5. Ceremonies of marriage
6. Non-registration of marriage
7. Dilatory and costly litigation
8. Child marriage
9. Bigamy by conversion to Islamic religion
10. Maintenance rights

1. Distribution of Matrimonial Property

After 1976, as the nature of Hindu marriage changed from sacrament to marriage of convenience, parties are allowed to dissolved their marriage by mutual consent with the permission of court within a specific period. In the cases of dissolution of marriage on 'Fault Theory', the procedure is little painful as the parties have to prove the fault to claim divorce. The family courts in India have become divorce courts, people have started to take divorce more often only for small reasons also. The major problem after divorce particularly for woman remains her right of livelihood and maintenance. A lum-some amount is fixed and wife has to live on that amount whole of her life though there may be inflation in the market or ill-health or any other reasonable ground which forces her to sell her body and soul. In the foreign countries like UK, US, Malaysia and Goa in India the situation is different. The divorce is not much painful in terms of property as the woman is given equal share in the property earned by the husband after marriage till the time of divorce *in lieu* to her domestic services which she has rendered to husband family. Hindu woman enjoys equal right to the matrimonial property on the basis of principle of equality enshrined under Articles 14 & 15 of the Indian Constitution. There is need of special legislation on the same lines as that of matrimonial laws in Goa in this regard to ensure equality and dignity to the married woman.

2. Irretrievable Break Down of Marriage

Section 13 B of the Hindu Marriage Act permits spouse to take divorce by mutual consent. It is observed in many cases that the spouse gives consents initially at the time of filling petition and then hold it for a long period, making the marriage virtually impaired. Such irretrievable breakdown of marriage, where the marriage continued only for revenge shall be brought an end. The Draft Legislation in this regard is pending. It needs to be promoted and expedited to facilitate with certain safeguards for the spouses to relive happily.

3. Live-in-Relationship

The biggest threat to the institution of marriage is the recognition of live-in-relationship by the Supreme Court of India and under the Protection of Domestic Violence Act, 2005. The Supreme Court of India has observed that for the man and woman in-love to live together is part of right to life and not a criminal offence. There is urgent need to regulate live-in-relationship by comprehensive legislation so as to protect the institution of marriage.

4. Same Sex Marriage

With the recognition of legality of homo-sexual acts by Delhi High Court in *Naz Foundation* case² the questions have been raised about the legality of Gay Marriages in India. The Hindu Marriage Act permits any two Hindus to marry under Hindu law. It is silent as far as the sex of Hindus is concerned. If tomorrow Supreme Court India approves homo-sexuality, the question of gay marriages will be a challenge under Hindu law.

5. Ceremonies of Marriage

Many cases of prosecution of bigamy fail because of the lack of proof of solemnization of the second marriage with requisite rights and ceremonies. In order to prevent the problems of evidence, a simple ceremony of marriage should be laid down and which should be uniformly applied to all marriages irrespective of any custom. Additional ceremony according to customary rights can be performed.

6. Non-registration of Marriage

Registration of marriage shall be mandatory in all the States. In the State like Maharashtra, where registration is compulsory, non-registration does not invalidate to marriages. The effect of non-registration shall be more stringent other than paying fine. No divorce or maintenance petition shall be accepted without Registration Certificate. On-line registration of marriage shall be promoted.

2. *Naz Foundation v. Govt. of NCT of Delhi*, 160 Delhi Law Times 277 (Delhi High Court 2009).

7. Dilatory and Costly Litigation

The objective behind creating family courts was to provide speedy justice. But the fact of the matter is that divorce is more expensive than marriage. The appeal system to High Courts and the Supreme Court for long many years creates barriers in the happiness of marriage. Separate courts shall be created at national and State level *i.e.*, Consumer Forums to settle the cases speedily, the concept of *e-court* shall be introduced.

8. Child Marriage

The Prohibition of Child Marriage Act, 2006³ does not make a child marriage a void marriage. The age of the man and woman for marriage under Hindu law is not equal. Such discrimination is not justified as it promotes child marriages. There is urgent need to amend the law and make the age of marriage equal for man and woman.

9. Bigamy by Conversion to Islamic Religion

There are many cases wherein the Hindu has converted to Islam and performed bigamous marriage. In spite of Supreme Court judgments the confusion prevails. Absence of Uniform Civil Code is major challenge in Hindu marriage.

10. Maintenance Rights

The Laws of Maintenance and the various judgments of the courts are contradictory in many cases. A woman today feel helpless and is cheated in spite of many legislations and landmark judgments protecting right of maintenance. Penalty for non-payment of maintenance shall be harsh. Procedural technicality shall not be given more importance.

Conclusion

In absence of Uniform Civil Code, in spite of different State legislations, special personal laws, and due to conflicting judicial decisions the parties to the marriage in India are not happy to fall in love with the institution of marriage. Live-in-relationships are gearing up and the common belief is 'short-term marriages' are better than 'heavenly life -long marriages' in search of *Kaun Banega Mera Accha Pati*. There is urgent need of revising the existing law in the context of modern demands of young minds who wants more freedom and less responsibility. The day is not far when one will find 'Live-in-Relationship Bureaus' instead of 'Marriage Bureaus' in India and 'Family Courts' will be replaced by 'Friends Courts'.



3. Section 3.