

Course –B.A LL.B sem 2

Family law 1(unit – 2)

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The Hindu Marriage Act 1955

Contents

- ❑ Application of Act
- ❑ Conditions of Hindu Marriage
 - Conditions
 - Ceremonies
- ❑ Nullity of Hindu Marriage
 - Void Marriage
 - Voidable Marriage
- ❑ Remedies Available
 - Judicial Separation
 - Restitution of Conjugal Right
 - Divorce
 - Maintenance/Alimony
- ❑ Custody of Children
- ❑ Other Important Provisions
- ❑ Punishments

Application of Act (Sec-2)

- ▶ The **Hindu Marriage Act, 1955** applicable to all **Hindus, Buddhists, Jains and**
- ▶ **Who is Hindu?**
 - ▶ **Hindu by Religion** (in any of its forms or developments – Virashaiva, Lingayat; folk Brahmo, Prathana or Arya Samaj)
 - ▶ **Hindu by Conversion** (any persons who are converts or reconverts to the Hindu, Jaina or Sikh religion)
 - ▶ **Hindu by Birth** (any child, legitimate or illegitimate, both of whose parents are Hindu, Buddhist, Jaina or Sikh religion; any child, one of whose parents is a Hindu, Buddhist or Sikh religion and who is brought up as Hindu). # *Maneka Gandhi vs. Indira Gandhi* (AIR 198

Note: The Act applies to any other person (domiciled in the territories to which the Act extend Muslim, Christian, Parsi or Jew by religion.

Conditions of a Hindu Marriage (Sec-5)

To constitute a Hindu Marriage, it should fulfill the following conditions also.

Conditions

- ❑ Monogamy [Sec-5(i)]
- ❑ Valid Consent of the Parties & Soundness of mind [Sec-5(ii)(a, b & c)]
- ❑ Age of Parties [Sec-5(iii)] - (21 years for bridegroom & 18 years for bride at the time of marriage)
- ❑ Parties are not within the Degrees of Prohibited Relationship [Sec-5(iv)]
- ❑ No Sapinda Relationship [Sec-5(v)]

Balaswami Reddiar vs. Balakrishna Reddiar (Marriage with daughter's daughter – invalid marriage)

AIR 1996 Mad. 150 (Respondent failed to prove that marriage was in accordance with Hindu customs)

Prohibited Degrees of Relation

[Sec-3(g)]

(Summarized by Dr. Mahmood)

SN	For Men	For Women
1	Mother.	Father.
2	Grand-mother howsoever high.	Grand-father howsoever high.
3	Former wife of father/grand-father howsoever high.	Former husband of mother/grand-mother howsoever high.
4	Former wife of son/grand-son howsoever high.	Former husband of daughter/grand-daughter howsoever high.
5	Former wife of brother	Brother of former husband.
6	Former wife of either parent's brother.	Nephew of former husband.
7	Former wife of grand-parent's brother.	Grand-nephew of former husband.
8	Sister.	Brother.
9	Either parent's sister.	Either parent's brother.
10	Daughter of a brother/sister.	Son of a brother/sister.
11	Daughter of either parent's brother.	Son of either parent's brother.
12	Daughter of either parent's sister.	Son of either parent's sister.

Sapinda Relationship [Sec. 3 (f)]

Sapinda Relationship - with reference to any person extends as far as:

- ❑ the **third generation** (inclusive) in the line of ascent through **the mother**,
- ❑ the **fifth** (inclusive) in the line of ascent through **the father**,
- ❑ the line being traced upward in each case from the person concerned who is to be counted as the first generation.

Ceremonies of a Hindu Marriage (Sec-7)

Marriage Ceremonies (Sec- 7)

- ❑ A Hindu marriage may be solemnized in accordance with the ***customary rites or ceremonies of either party*** thereto.
- ❑ ***Saptapadi*** (A marriage becomes complete and binding when the seventh step taken).
- ✓ **Devain Achi vs. Chidambara Chettiar** (Marriage is performed by Anti Purohit Association n Hindu rites and customs – **invalid marriage**)
- ✓ **Ram Saran Vs. Mahabir Sewak** (Marriage to a Sword - **invalid marriage**)
- ✓ **Dr. AN Mukerji Vs. State** (Marriage is performed in presence of the Moon – Mere Exchange Garlands in Temple - Gurugrand Saheb - **invalid marriage**)

Registration of Marriage (Sec-8)

Registration of Marriage (Sec-8)

- ❑ For the purpose of **facilitating the proof of Hindu Marriages**, the **State Government** **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.
- ❑ The **Hindu Marriage Register** shall at all reasonable times be open for inspection, and the entries therein shall be admissible as evidence.
- ❑ **On application** and with the prescribed fee, **the Registrar** shall give certified extracts of the entries in the register to the parties.
- ❑ The Government of Andhra Pradesh enacted "***the Andhra Pradesh Compulsory Registration of Marriages Act, 2002***".
- ✓ **Seema vs. Ashwini Kumar (2006 (2) SCC 578)** (SC held – marriages of all persons shall be made compulsorily registrable)

Nullity of Hindu Marriage

Void Marriage (Sec. 11)

Void Marriage (Sec. 11)

A Hindu Marriage can be dissolved as **null and void**, on a petition presented to a party thereto against the other party on any of the following **THREE** grounds.

- ❑ Bigamy **[Sec-5(i)]**
- ❑ Sapinda Relationship **[Sec-5(iv)]**
- ❑ Prohibited Degrees of Relationship **[Sec-5(v)]**

Nullity of Hindu Marriage Voidable Marriage (Sec. 12)

Any marriage solemnized shall be **voidable** and may be annulled by a decree on the following grounds.

❑ **Impotency [Sec - 12(1)(a)]**

- ✓ *Mrs. Rita vs. Mr. Balkrishan Nijhawan* – lack of ability to intercourse – **amounts to impotency**
- ✓ *Shewanti vs. Baburao* – Not begetting children- Not amount to impotency

❑ **Unsoundness of mind [Sec - 12 (1)(b)]**

- ✓ *Alka Sharma vs. Abhinesh Chandra Sharma* – unable to handle domestic appliances, in presence of family members – **amounts to unsoundness of mind**

❑ **Use of force or fraud to obtain consent** (from party or from his/her guardian) [Sec -

✓ **Exceptions:**

1. No remedy after ONE YEAR:

2. After removal of the force or after discovery of fraud – Parties lived together

- ✓ *Madhusudhan vs. Smt. Chandrika* – concealment of venereal disease – **amounts to fraud**
- ✓ *Babai Panmato vs. RA Singh* – 60 y's man married 18 y's girl under a belief that his age as

❑ **Pregnancy by someone at the time of marriage [Sec-12 (1) (d)]**

✓ **Essentials:**

1. He was ignorant of the fact; 2. Within one year of the marriage, 3. No marital intercourse between

- ✓ *Mahendra vs. Sushila Bai* – baby was born after 171 days of marriage- **Voidable marriage**

Legal Consequences of Void & Voidable Marriage

Legitimacy of Children

The children of void and voidable marriage would be legitimate

Section-16

Position of Woman

Maintenance of woman during the time she does not remarry -

Sections 24 and 25.

Restitution of Conjugal Rights (Sec.9)

Conditions for Restitution of Conjugal Rights

This relief is available for Husband as well as Wife

- ❑ Valid Marriage
- ❑ Withdrawal from Society
- ❑ Without Reasonable Cause
- ❑ Aggrieved party may apply
- ❑ By Petition to the District Court
- ❑ No Legal Ground to deny the Relief

(On Satisfaction of the Court with regard to truth of the statements)

✓ **Ramesh Chandra vs. Prema Lata, AIR 1979 M.P. 15**
Temporary withdrawal does not amount to withdrawal.

✓ **Lad Kumwar vs. Jugdish, AIR 1979 Raj. 197**
In a petition by the husband for restitution of conjugal rights, the wife's counter-claim for judicial separation can be decreed.

✓ **AIR 1984 SC 1562 = 1984 (4) SCC 90**
Section-9 is not violative of Article 14 and 21 of Indian Constitution and is constitutionally valid.

Judicial Separation (Sec. 10)

Judicial Separation means suspension of conjugal rights for sometime i.e. **one year**.

Grounds available for both Husband & Wife

- ❑ Adultery
- ❑ Cruelty
- ❑ Desertion (not less than 2 years)
- ❑ Conversion
- ❑ Unsoundness of mind
- ❑ Leprosy (virulent and incurable form)
- ❑ Venereal disease
- ❑ Renunciation of world
- ❑ Presumed death (unheard 7 years)

Grounds Available to **Wife** alone

- ❑ **Husband has been guilty of Rape, Sodomy or Bestiality**
(since the solemnization of the marriage)
- ❑ **Non-resumption of cohabitation after decree/order of maintenance for one year or upwards**
(under Sec.-18 of the Hindu Adoptions & Maintenance Act-1956 or under Sec-125 of Cr.P.C.)
- ❑ **Her marriage solemnized before she attained 15 years of age**
(she can repudiate the marriage before attaining the age of 18 years)

Judicial Separation (Sec. 10)

Consequences of Judicial Separation

- ❑ Marriage tie is **not dissolved**.
- ❑ After passing of the decree of Judicial Separation, **the husband and wife are not bound to live together**.
- ❑ Either spouse **shall not marry** during that period.
- ❑ Either spouse **eligible to alimony**.
- ❑ Mutual rights & obligations arising from the marriage are suspended and **rights & duties prescribed by the decree are substituted therefor**.

1995 (1) DMC 67 – A ground which cannot be a ground for divorce, cannot operate as a ground for judicial separation.

Divorce (Sec. 13)

15

► Grounds Available for both Husband & Wife (Sec-13 (1))

1. **Adultery [Sec-13(1)(i)]** (Subbarama Reddy vs. Saraswati – found his wife with unrelated person in the bedroom - **adultery**; Playing jokes, accompanying in Cinema Hall, Love Letters– **Not amount to adultery**)
2. **Cruelty [Sec-13(1)(ia)] – Physical & Mental** → Repeated beating, burning, stabbing, causing fracture, starvation, illegal confinement, having undesirable relations with some other person, refusal to cook for husband & insulting him, charge by wife without medical evidence that erectile dysfunction, voluntary abortion, burning doctoral thesis, threatening to commit suicide
3. **Desertion [Sec-13(1)(ib)]** (not less than 2 years) (Bipin Chandra vs. Prabhavathi)
4. **Conversion [Sec-13(1)(ii)]**
5. **Insanity [Sec-13(1)(iii)]** (# Ram Narayan vs. Rameswari)
 - **Mental Disorder [Sec-13(1)(iii)(a)]** – mental illness, disability of mind and schizophrenia
 - **Psychopathic Disorder [Sec-13(1)(iii)(b)]** – abnormally aggressive or seriously irresponsible conduct
6. **Virulent and Incurable Leprosy [Sec-13(1)(iv)]** (#Annapurna vs. Nabakishore)
7. **Venereal Disease [Sec-13(1)(v)]**
8. **Renunciation of World [Sec-13(1)(vi)]**
9. **Unheard for 7 years [Sec-13(1)(vii)]**
10. **No cohabitation for 1 year or upwards after passing of decree for Judicial Separation [Sec-13(1-A)(i)]**
11. **No restitution of conjugal rights for 1 year or upwards after passing of a decree for Restitution of Conjugal Rights [Sec-13(1-A)(ii)]**

No petition for divorce to be presented within one year (Sec-14)

Divorce (Sec. 13)

Grounds Available for 'Wife' alone (Sec-13(2))

- ❑ Husband has been guilty of Rape, Sodomy or Bestiality

(since the solemnization of the marriage)

- ❑ Non-resumption of cohabitation after decree/order of maintenance for one year or upward

(under Sec.-18 of the Hindu Adoptions & maintenance Act-1956 or under Sec-125 of Cr.P.C.)

- ❑ Her marriage solemnized before she attained 15 years of age

(she can repudiate the marriage before attaining the age of 18 years)

Divorce (Sec. 13)

▶ # Smt. Rani Banik vs. Pradip Kumar Banik (AIR 1999 Guj. 139)

The mere vague allegation that the behaviour of wife towards husband's mother and brother was rude – **it is not sufficient to establish cruelty.**

▶ Smt. Anita vs. Rathore (AIR 1999 MP 218)

The wife had administered sleeping pills to husband, and she had indulged in extra marital relationship - **it will amount to cruelty.**

▶ # AIR 2000 HP 73

False allegations of harassment, physical assault, not providing maintenance, extra marital relations with rich woman against husband – **it will amount to cruelty.**

▶ # AIR 1999 Raj. 46

Demanding dowry – **amounts to cruelty.**

▶ # AIR 1996 Mad. 262

Mere allegations by husband without details **may not be sufficient** to prove adultery.

Divorce by Mutual Consent (Sec. 13-B)

- ▶ **Divorce by Mutual Consent** – means both the parties agree to dissolve their marriage.
- ▶ **Requisites**
 - ▶ **Both** the spouses should file the petition for divorce **jointly**.
 - ▶ The parties have been **living separately for more than one year** preceding the date of filing the petition.
 - ▶ They have **not been living together**.
 - ▶ They **mutually agree** to dissolve the marriage.

Other Important Provisions

❑ Sec-22:

Every proceeding under this Act shall be conducted ***in camera*** and it not be printed or published.

(Exception – Judgements of HC & SC with prior permission)

❑ Appeals from Decrees and Orders (Sec-28)

Every appeal shall be preferred within a period of **90 days** from the date of the decree or order.

Jurisdiction

► Sec-19: Court to which petition shall be presented

Every petition shall be presented to the District Court within the local limits of whose ordinary original jurisdiction.....

- the marriage is solemnized
- the respondent resides (at the time of presentation of petition)
- in case the wife is the petitioner, where she is residing
- where the parties last resided together
- where the petitioner (husband) resides (when the respondent (wife) has been heard of 7 years)

Maintenance (Sec-24 & 25)

Sec-24: Maintenance "*pendente lite*" & expenses of proceedings

Essential Conditions:

- ❑ **Proceeding must be pending** in a competent court
 - For Restitution of Conjugal Rights / Judicial Separation / Divorce
- ❑ Application for maintenance by either **wife or husband**
- ❑ **During this pendency** the party cannot maintain himself/herself
- ❑ Court can make any **interim order** as well as for payment of expenses of the proceeding
- ❑ Court shall be disposed **within 60 days** from the date of service of notice.

Maintenance (Sec-24 & 25)

Sec-25: Permanent Alimony and Maintenance

- ❑ At the time of passing decree or **any time** subsequent thereto, on application.....
- ❑ Court orders the respondent to pay the maintenance to the applicant in the form
 - Gross sum or
 - Monthly payment or
 - Periodical sum
- ❑ For a term not exceeding the life of the applicant
- ❑ At any time even after passing the decree, the court may **vary, modify or rescind such orders.**

Note:

- Remarriage (of wife or husband) – **No maintenance**
- If the wife has not remained chaste – **No maintenance**
- If the husband has had sexual intercourse with any women outside wedlock – **No maint**

Maintenance (Sec-24 & 25)

❑ **Smt. Pramila Bhatia vs. Vijaya Kumar Bhatia (AIR 2000 Raj. 362)**

Husband is unemployed and dependent on his mother – wife is not entitled to maintenance

❑ **Sandeep Chaudhary vs. Radha Chaudhary (AIR 1999 SC 536)**

Maintenance awarded under Sec-125 of Cr.P.C. to be adjusted against the amount awarded under Sec-24 of this Act.

❑ **Lokeswari vs. Srinivasa Rao (2000(3) ALT 130)**

While granting permanent alimony to a divorced wife the factors to be considered

- Status
 - Sources of income
 - Properties
- } of the parties

Custody of Children (Sec-26)

- ❑ As per the **wishes of the minor children....**
- ❑ Court may pass the **orders for custody**
- ❑ The court may also from time to time **revoke or suspend or vary** any such orders provisions previously made.

#Sardar Bhupendra Singh vs. Smt. Jasbir Kaur (AIR 2000 MP 330)

Welfare of the minor is the supreme consideration in case of custody of minor child

Padmaja Sharma vs. Ratanlal Sharma (AIR 2000 SC 1398)

Where both the parents are employed they have to maintain the minor children in proportion of their salaries.

Thank you !!!



Thank you !!!

