

Chapter- VII

CONCLUSION

The Hindu Widows' Remarriage Act, 1856 legalized re-marriage of Hindu widows. The Child Marriage Restraint Act, 1929 made child marriages, a penal offence. The minimum age for marriage under this Act was originally 15 years for the Bride and 18 years for the Bridegroom. In 1978, through an amendment these limits have been raised to 18 years and 21 years respectively and validated the marriages though solemnized in contravention of these age limits. The Prohibition of Child Marriages Act, 2006 made such marriages voidable.

The Hindu Marriage Disabilities Removal Act 1946 validated inter-caste marriages. The provisions of the Act have now merged in the Hindu Marriage Act 1955. The Hindu Marriage Validity Act, 1949 validated inter-caste marriages between Hindus, Jains and Sikhs. These provisions have now merged in the Hindu Marriage Act, 1955.

Summary:

Concept of Hindu marriage:

The Hindu marriage is a sacramental. Marriage is one of the essential *samskara* (sacraments) for every Hindu. The aim and objectives of this institution is to achieve by cohabitation of man and woman, the supreme values of *Dharma* (i.e. duty according to law and religion), *Arth* (economic effort and achievement), *Kam* (love and procreation) and *Purusharth* (i.e. best and noble actions and deeds). These are the material determinants of the concept of marriage. Manu declared that a man who has not taken a wife has not fully perfected his personality and must be regarded as incomplete. His personality is developed and completed only upon the union of his wife, himself and his offspring. This is the significance of unity of personality of man and his wife under Hindu law.

According to Manu, husband and wife are united to each other not merely in this life but even after death, in the other world. The rule is that, "once is a maiden given in marriage. A true wife must preserve her chastity as much after

as before her husband's death".¹ A Hindu marriage is a sacrament in the sense that, a wife could never ask for divorce. Marriage was considered to be an indissoluble union. It was only in some exceptional cases, the sages allowed a woman to abandon her husband and take another. Old Hindu law does not recognize divorce because it considered marriage as an indissoluble union. But it was recognized by custom. Some smritikars allowed a wife to abandon her husband in some exceptional cases.

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Concept of Muslim marriage:

The term '*Nikah*' has been used for marriage under Muslim law. In Muslim law, *Nikah* is a contract for the legalization of intercourse and the procreation of children. Hence *Nikah* means union of sexes. It confers the status of husband and wife on a man and woman to marriage and the status of legitimacy on the children born out of such union.² The Quranic injunctions regarding marriage are: Marriage is recognized as the basis of society. Marriage as an institution leads to the uplift of man and is a means for the continuance of the human race. Spouses are strictly enjoined to honour and love each other. It is a contract for the legalization of intercourse and procreation of children³.

Legally speaking, Muslim marriage is a civil contract. Therefore, its legal nature is contractual. Besides being a civil contract, Muslim marriage is also a social and religious institution⁴. Sanctity attached to the institution of marriage. It is a religious duty of every Muslim to contract a marriage according to the rules of Islam. Moreover, marriage is also the tradition (*sunnat*) of the prophet. In Islam, it is believed that marriage is a '*Sunnat Muwakkidah*'. This means that, it is an act

¹ . Manu Smriti, V, 160-161; Dr. Paras Diwan on Hindu Law, 2nd edn. P.547, Orient Publishing Company.

² . Dr. Nishi Purohit- The Principles of Mohammedan law, 2nd edn. 1998, p.105, Orient Publishing Company, Allahabad.

³ . A.A.A. fyzee- Outlines of Muhammadan Law, 1999 edn. p.90, oxford university press, New Delhi.

⁴ . Dr. R.K. Sinha- Muslim Law, 5th edn. 2003, p.40; Central Law Agency, Allahabad.

of such a nature that, if a person does it, he gets religious benefits. If he abstains from doing it, then he commits sin.⁵

Changing concept of marriage under Hindu law:

The Hindu Marriage Act, 1955 has not prescribed any particular form of marriage. It simply lays down the conditions for a valid marriage. The Act calls marriages solemnized under the Act as Hindu marriages which may be performed in accordance with the customary ceremonies prevalent in the community to which, the bride belongs. The conditions prescribed under old Hindu law for marriage were strict and elaborate. The Hindu Marriage Act, 1955 modified those conditions mentioned for marriage under old law. It simply lays down the conditions for a valid marriage and consequences for its non-observance.

The Hindu Marriage Act of 1955 liberalized the law of marriage and permitted marriage between persons belonging to different caste which was prohibited under old law. This Act also removed the restrictions on inter-caste, inter-sub-caste, sagotra and sapravara marriages. Under this Act, “any two Hindus” can marry. The remarriage of widows had been legalized by the Hindu Widows Remarriage Act, 1856. The Act of 1955 also legalized such marriages. Old Hindu law prescribed elaborate list of ceremonies for marriage. The Hindu Marriage Act, 1955 has not made those ceremonies as compulsory for marriage. The customary ceremonies of either party may be observed.

Thus the Act of 1955 modified the Hindu law of marriage and provided for performing more marriages and with easy procedure. This is a welcome change which is desirable in the present society.

Changing concept of marriage under Muslim law:

Islam reformed the old marriages and prescribed for only one form of marriage (*nikah*) in which mahr was made compulsory though Ithna Asharis permitted a temporary (*muta*) marriage. It restricted the number of marriages

⁵. Aquil Ahmad- Mohammedan Law, 21st edn. 2004, p.108, Central Law Agency, Allahabad.

from unlimited to four. It also classified marriages into sahih, batil and fasid. It allowed guardian of a minor and persons of unsound mind to contract a child marriage. It also made provisions for annulment of marriage by those minors after attaining puberty on showing reasonable grounds. It also made provision for presumption of marriage even where direct evidence of marriage between the parties is not available by acknowledgement of paternity, acknowledgement of marriage and even in case of continuous and prolonged cohabitation.

Islam provided with right to claim the dower whenever she likes and right of refusing cohabitation in case of non-payment and also provided with a right to approach the court of law for enforcement of such right. Islam also provided for annulment of a child marriage by the minor after attaining puberty if it not suitable for the minor. Thus, Islam has made so many changes in the law of marriage which existed before the advent of Islam. And it improved the status of women and gave so many rights to Muslim women in relation to marriage. These are welcome changes in the present society.

The Changes in the law of Divorce under Hindu law:

The Hindu Marriage Act, 1955 contains provisions for dissolution of marriage which is a deviation from the notions of traditional Hindu law. Under old Hindu law, there is no provision for dissolution of marriage except under certain exceptional cases; because Hindu marriage is an indissoluble union. But considering the changed circumstances, necessity in the modern age, divorce is recognized under the Hindu Marriage Act, 1955.

Before passing of the Marriage Laws (Amendment) Act, 1976 the grounds for judicial separation and divorce were different. The Act of 1976 made those grounds identical. The Act of 1976 liberalized the law of divorce and almost altered the sacramental nature of Hindu marriage. The Hindu Marriage Act, 1955 was amended in the year 1964 which allowed even the wrong doer to apply for divorce. The Marriage Laws (Amendment) Act, 1976 further liberalized the time limits prescribed by the Act of 1964 unnecessarily. More over, it inserted a new

ground called divorce by mutual consent which requires no fault on the part of either party for divorce.

Thus from an unbreakable bondage, the Hindu marriage after passing of the Hindu Marriage Act, 1955 and its subsequent amendments, has been transferred into a consensual union between one man and one women. They marry freely and dissolve simply which is against the sacramental nature of Hindu marriage. The Marriage Laws (Amendment) Act, 1976 unnecessarily interfered with the shastric Hindu law which is undesirable. Hindu marriage which is considered to be a religious duty and a sacrament has undergone a change and it has lost its religious sanctity under the Hindu Marriage Act, 1955, which came into force on 18th May, 1955.⁶ The parliament has not taken in to account, the sanctity attached to the institution of Hindu marriage.

Changes in the law of Divorce under Muslim law:

Islam as well as Parliament brought so many changes in the law of divorce by keeping in mind, the heinous position of Muslin women. Islam restricted the unlimited number of pronouncements of talaq to three; and further introduced a process of *Halala* for remarriage. She can resort to so many specified kinds of extra judicial as well as judicial divorces. Islam gave the husband, the power of pronouncement of talaq, but denied the same power to wife, unless delegated to her. This destroys the institution of marriage. Such arbitrary power should be curtailed.

The Dissolution of Muslim Marriage Act, 1939 passed by the parliament in order to provide a relief of release from an unhappy marital tie is a welcome change that should be appreciated. The residuary clause (ix) of the Act of 1939 entitles a Muslim wife to seek decree of dissolution of her marriage in the absence of any of the grounds expressly provided under the Act of 1939 on the

⁶. Dr. S.C. Tripathi and Vibha Arora- Law relating to women and children, 3rd edn. 2008, p. 157, Central Law Publications.

ground that she may not lose the benefit of any other ground which may have escaped the attention of the Parliament.

Thus except the power of pronouncement of talaq, limited polygamy and apostasy, the position of Muslim women is improved. To strengthen the institution of marriage, change should be brought in these spheres also. Now she can release from an unhappy marital tie on various grounds recognized by Islam and also by legislation. These are welcome changes which are desirable in the present day society though they are not on par with males.

Testing of Hypothesis:

The Hindu Marriage Act, 1955 has made changes in the law of marriage. These changes are summarized as under⁷:

- The marriage amongst Hindus, Jains, Sikhs and Buddhists are now valid.⁸
- The divergence between the Mitakshara and Dayabhaga Schools in relation to the expression “Prohibited degrees of relationship” for the purpose of marriage is now removed. The strict rule prohibiting marriages within the limits of Sapinda relationship as laid in the ‘Smritis’ has been considerably relaxed. Some new degrees of relationship have also been added.
- Monogamy amongst the Hindus is introduced for the first time. Bigamy is now punishable under the Indian Penal Code 1860⁹. The conditions and requirements of a valid marriage are now very much simplified.
- Caste considerations for inter-caste and inter-communal marriages have now been made irrelevant, eliminating all restrictions thereupon.
- It does not recognize any particular form of a Hindu marriage.

⁷. B.M. Gandhi- Hindu Law, 3rd edn. 2008, p.251, Eastern Book Company, Lucknow.

⁸. Section 2 of the H. M. Act, 1955.

⁹. Section 494 of I.P.C.

- The ancient Hindu law did not prescribe any age for marriage; but it is now a condition of marriage that the bridegroom must have completed 21 years and the bride, 18 years at the time of marriage.¹⁰
- No particular ceremony is prescribed. Parties may observe customary rites and ceremonies of either party.
- Provision for registration of Hindu marriage has been provided.

Under old Hindu law, the conditions required for a valid marriage were strict and elaborate. With the passing of various legislative enactments, those conditions were modified, liberalized or removed; which is a welcome change.

- The Hindu Marriage (Amendment) Act, 1964 allowed even the wrongdoer to file a petition for dissolution of marriage.
- The Marriage Laws (Amendment) Act, 1976 reduced the time limits for dissolution of marriage under Section 13 (1-A).
- The Marriage Laws (Amendment) Act, 1976 made the common grounds for both judicial separation and divorce.
- The Marriage Laws (Amendment) Act, 1976 omitted the time limits specified for dissolution of marriage under Section 13 (1).
- The Marriage Laws (Amendment) Act, 1976 inserted a new ground of divorce by mutual consent.
- The Marriage laws (Amendment) Act, 1976 added 2 more additional grounds of divorce to wife. [Sec.13 (2) (iii) and (iv)].
- The Marriage laws (Amendment) Act, 1976 reduced the time limit from three years to one year to apply for divorce.

¹⁰. [Section 5 (iii)].

All these changes have led to a serious kind of encroachment upon the sacramental character of marriage. In this way, The Marriage Laws (Amendment) Act, 1976 introduced so many changes in the law of divorce which are infact, not necessary. The Act of 1976 almost altered the nature of Hindu marriage and it created a doubt in the mind of the people whether the Hindu law of marriage is still a sacrament or contract.

- Islam improved the status of Muslim women. They were also given important rights.
- Islam reformed the law of marriage and introduced only one form of marriage which is permanent (nikah), though Ithna Asharis recognized a temporary marriage (muta) also.
- Islam laid down the conditions for a valid marriage; for that it classified the marriages in to valid, void and irregular.
- Islam provided for guardianship of marriage for marriages of minors and of unsound mind. It also contained a provision for dissolution of marriage in such cases.
- Islam provided a provided a provision for presumption of marriage under certain cases in the absence of direct proof of marriage.
- Islam prohibits limitless polygamy and no Muslim is now allowed to marry more than 4 wives at a time.
- Islam provided the unilateral pronouncement of talaq to the husband but denies the like power to the wife unless delegated.
- Apostasy of a Muslim husband results in an instant dissolution of marriage; but not so in case of Muslim wife.
- The Dissolution of Muslim Marriage Act, 1939 provided a relief of dissolution of marriage to a Muslim wife on the grounds specified therein.

Suggestions:

1. The two clauses under Section 13(1-A) of the Hindu Marriage Act, 1955 should be retained under Section 13 (1) as original clauses (viii) and (ix) of the Act, thereby making the remedy available only to the affected party. Otherwise, the guilty party will take advantage of this provision; and thereby the chances of its misuse will be more. Section 13(1-A) should be repealed. Or the relief should be made available only to the affected party/ decree holder.
2. Section 13-B should be repealed from the Hindu Marriage Act, 1955 since it allows the parties to dissolve their marriage for no fault. Such a facility will create disputes and abets the parties to dissolve their marriage. A marriage should be dissolved only on the basis of wrong on the part of one of the party to the marriage. It should not be dissolved simply by mutual consent.
3. Only one ceremony should be prescribed for all Hindu marriages for its validity. And it should be informed to all through various means.
4. Awareness should also be brought about usefulness and necessity of registration of marriage.
5. To apply for divorce, the time limit should be at least 2 years from the date of marriage.
6. Section 13-A of the Act of 1955 [passing of a decree of judicial separation instead of passing of divorce] should be frequently used to protect the institution of marriage. This burden is on the judiciary.
7. The courts should be very keen about breach of section 23(1) (a) of the Act of 1955 [taking advantage of one's own wrong] by the wrong-doer.
8. By giving effect to section 23(2) of the Act of 1955, [Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first

- instance, in every case where it is possible so to do consistently with the nature and circumstances of the cases to make every endeavour to bring about reconciliation between the parties] we can preserve the sacramental nature of Hindu marriage. Granting of divorce should be very strict. It should be granted in cases where it is inevitable.
9. Finally, to protect the sanctity attached to the institution of Hindu marriage, it should be seen that, no further amendments be done in the law of divorce to liberalize divorce thereby destroying the sacramental nature of Hindu marriage and sanctity attached to the institution of marriage.
 10. The procedure for repudiating the Muslim marriage by the Muslim males should be same like that of females. After attaining puberty, for repudiating the marriage or for the exercise of option of puberty, the males should also approach the court and dissolution should be made only when the court is satisfied with the reasons shown for such dissolution.
 11. To strengthen the institution of Muslim marriage, the unilateral power of pronouncing talaq which simply dissolves the marital tie should not be allowed.
 12. The effect of conversion by the Muslim wife should be the same as in case of conversion of Muslim husband.
 13. Minimum amount of dower should be fixed to all Muslims. And it should be very high; so that Muslim husbands will deter from pronouncing talaq.
 14. The grounds of divorce for both the parties should be same. For maintaining stability of marriage, dissolution should be based on fault grounds only.
 15. For the stability of marriage and for providing better life to his wife and children whether during his life time or after his death, strict monogamy should be applied; because nobody can provide equal treatment and equal facilities to all wives in the modern social circumstances.

16. Triple talaq which is prohibited by Shias should not be allowed to Sunnis, because of its instant dissolution and irrevocable nature.
17. The best solution to prevent injustice to Muslim women is to enter into pre-nuptial agreements relating to marital relations, payment of dower, delegation of power of pronouncing talaq to wife on the happening of contingencies stipulated in the deed of marriage, maintenance during and after dissolution of marriage etc.
18. To protect the interests of Muslim women and to save them from being suppressed, there is a need to codify Muslim law.
