



Study of Hindu Marriage Act, 1955.

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Introduction: The following article throws a light on the Hindu Marriage Act 1955. As part of the Hindu Code Bill, the Hindu Marriage Act was enacted by Parliament in 1955 to amend and to codify marriage law between Hindus. The Hindu Marriage Act provides guidance for Hindus to be in a systematic marriage bond. It gives meaning to marriage, cohabiting rights for both the bride and groom, and a safety for their family and children so that they do not suffer from their parental issues.

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Applicability

The Act applies to all forms of Hinduism (for example, to a person who is a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or AryaSamam) and also recognises offshoots of the Hindu religion as specified in Article 44 of the Indian Constitution. Notably, these include Jains and Buddhists. The Act also applies to anyone who is a permanent resident in the India who is not Muslim, Jew, Christian, or Parsi by religion. Although the Act originally applied to Sikhs as well, the AnandKarj Marriage Act gives Sikhs their own personal law related to marriage.

Although the Act originally did not apply to citizens in the State of Jammu and Kashmir, the effect of the J&K Hindu Marriage Act, 1955 made it applicable.

Conditions for marriage

Section 5 of The Hindu Marriage Act specifies that conditions must be met for a marriage to be able to take place. If a ceremony takes place, but the conditions are not met, the marriage is either void by default, or voidable.

Void marriages

A marriage may be declared void if it contravenes any of the following:

1. Either party is under age. The bridegroom should be of 21 years of age and the bride of 18 years.
2. Either party is not of a Hindu religion. Both the bridegroom and the bride should be of the Hindu religion at the time of marriage.
3. Either party is already married. The Act expressly prohibits polygamy. A marriage can only be solemnized if neither party has a living spouse at the time of marriage.
4. The parties are within the degree of prohibited relationship.

Voidable marriages

A marriage may later be voidable (annulled) if it contravenes any of the following:

1. Either party is impotent, unable to consummate the marriage, or otherwise unfit for the procreation of children.
2. One party did not willingly consent. In order to consent, both parties must be sound of mind and capable of understanding the implications of marriage. If either party suffers from a mental disorder or recurrent attacks of insanity or epilepsy, then that may indicate that consent was not (or could not be) given. Likewise, if consent was forced or obtained fraudulently, then the marriage may be voidable.
3. The bride was pregnant by another man other than the bridegroom at the time of the marriage.



Ceremonies

Section 7 of the Hindu Marriage Act recognises that there may be different, but equally valid ceremonies and customs of marriage. As such, Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either the bride or the groom. These rites and ceremonies include the Saptapadi and Krevā.

Registering a marriage

A marriage cannot be registered unless the following conditions are fulfilled:

1. A ceremony of marriage has been performed
2. The parties have been living together as husband and wife

Additionally, the parties must have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration. Section 8 of the Hindu Marriage Act allows a state government to make rules for the registration of Hindu marriages particular to that state, particularly with respect to recording the particulars of marriage as may be prescribed in the Hindu Marriage Register.

Registration provides written evidence of marriage. As such, the Hindu Marriage Register should be open for inspection at all reasonable times (allowing anyone to obtain proof of marriage) and should be admissible as evidence in a court of law.

Divorce

Although marriage is held to be divine, the Hindu Marriage Act does permit either party to divorce on the grounds of unhappiness, or if he or she can prove that the marriage is no longer tenable.

A petition for divorce usually can only be filed one year after registration. However, in certain cases of suffering by the petitioner or mental instability of the respondent, a court may allow a petition to be presented before one year.

Grounds for divorce

A marriage may be dissolved by a court order on the following grounds:

1. **Adultery** - the respondent has had voluntary sexual intercourse with a man or a woman other than the spouse after the marriage.
2. **Cruelty** - the respondent has physically or mentally abused the petitioner.
3. **Desertion** - the respondent has deserted the petitioner for a continuous period of not less than two years.
4. **Conversion to another religion** - the respondent has ceased to be a Hindu and has taken another religion.
5. **Unsound mind** - the respondent has been diagnosed since the marriage ceremony as being unsound of mind to such an extent that normal married life is not possible.
6. **Disease** - the respondent been diagnosed with an incurable form of leprosy or has venereal disease in a communicable form.
7. **Presumption of death** - the respondent has not been seen alive for seven years or more.
8. **No resumption of cohabitation after a decree of judicial separation** for a period of at least one year.

In addition, a wife may also seek a divorce on the grounds that:

1. In case of marriages that took place before the Hindu Marriage Act 1955 was enacted, the husband was already married and that any other wife of the husband was alive at the time of the marriage ceremony.



2. The husband, after marriage, has been found guilty of rape, sodomy or bestiality.
3. Co-habitation has not been resumed within a year after an order for maintenance under Section 125 of the Criminal Procedure Code or alternatively, under the Hindu Adoptions & Maintenance Act 1956.
4. The wife was under-age when she married and she repudiates the marriage before attaining the age of 18 years.

Alimonies (permanent maintenance)

At the time of the decree of divorce or at any subsequent time, the court may decide that one party should pay to the other an amount for maintenance and support. This could be a one off payment, or a periodical (such as monthly) payment. The amount to be paid is at the discretion of the court.

Remarriage

Remarriage is possible once a marriage has been dissolved by a decree of divorce and no longer able to be appealed (whether there was no right of appeal in the first place, or whether the time for appealing has expired, or whether an appeal has been presented but dismissed).

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