



HINDU MARRIAGE IS A CONTRACT OR A RELIGIOUS SACRAMENT

Monika Rathore

Gyan Vidhi P. G. Law College, Bikaner (Rajasthan)

INTRODUCTION

In India marriages are particularly big events. Hindu marriage is an ancient tradition which is prevailing from the Vedic period to the modern world with different modification that have occurred until now. There are 16 sacraments in the shastri Hinduism in which marriage is one of the most important sacraments. It is a sacred tie that can't be broken. It is a bond which continues after rebirth and death. According to Veda, a man is incomplete until he gets married and meets his partner. The word "marriage" has been defined in Black's Law Dictionary¹, as follows: -

- 1.The legal union of man and woman as husband and wife.
- 2.The act and ceremony so uniting them, a wedding.

According to R.N. Sharma a Hindu marriage is a religious sacrament in which a man and a woman are bound in permanent relationship for the physical, social and spiritual purposes of dharma, procreation and sexual pleasure.

Since very earlier marriage is considered as sacramental union. Vedas and Shashtra's also contains the idea that marriage is sacrament. On the other hand, due to the reformation in society where contract plays a vital role, marriage is also included within the ambit of contract. Hindu Marriage Act,1955 also contains provisions that relates marriage with contract but it is not a pure contract.

SACRAMENTAL NATURE OF HINDU MARRIAGE

Hindu marriage is considered as one of the most important sacraments. It is a religious and holy union of the bride and groom which is necessary to be performed by religious ceremonies and rites. According to the Satpatha Brahmana-Wife is the Ardhangini [half of man] and man is not complete until he marries. The sacramental nature of marriage has three characteristics: -

*It is a permanent union, which means once tied cannot be untied.

*It is an eternal union, means its valid not only in this life but in lives to come.

*It is a holy union, means performance of religious ceremony is essential

In the case *Shivanandy v/s Bhagavathyamma*², the hon'ble court observed that marriage is binding for life because a marriage is performed by saptapadi before the sacred fire was a religious tie which could never be untie.

In the case *Tikait v/s Basant*³, the court observed that marriage under Hindu Law was a sacrament, an indissoluble union of flesh with flesh, bone with bone to be continued even in the next world.

Marriage is obligatory for Hindu so that they can get son to discharge their debt towards their ancestor by offering them pindas and for performing religious and spiritual duties. The ceremonies and rites which is followed in Hindu marriage also shows its sacramental character. There are certain rites which must be performed for a complete marriage. For Example: -Performance of Homa, Kanyadan *etc.* These all should be performed in presence of Brahmin and mantras are chanted. If these rites are not performed then the question arises about the validity of the marriage .

In *Piya Bala Ghosh v/s Suresh Chandra Ghosh*⁴, held that Homa and Saptapadi are two essential rites of marriage, if it is not proved or performed then it is not considered as valid.

CONTRACTUAL NATURE OF HINDU MARRIAGES: -

Because of the changing needs of society, HINDU MARRIAGE ACT,1955, the sacramental nature of Hindu marriages has been affected. Now, it has some contractual characteristics such as: -

CONDITIONS VALID FOR HINDU MARRIAGE ACT

UNDER SECTION 5⁵

- ❖ A valid marriage shall be solemnized between two Hindus with the following conditions fulfilled.
- ❖ The groom shall attain the age of 21 and the bride should attain the age of 18. It is very much necessary at the time of marriage the person shall attain the specified age given in the act.
- ❖ The consent cannot be taken into consideration when there is a use of coercion or threat. In the modern world, a father can't get the girl married to any without the girl's consent. If in case that happens the will be void.
- ❖ The person shall not be suffering from any insanity or mental disorder at the time of marriage.
- ❖ During the time of marriage, no person shall have a spouse living. According to the Hindu marriage Act, it is not permissible to have two living wives at the same point of time, which amounts to bigamy. Section 494 IPC gives punishment for the said offence.
- ❖ They don't fall under the sapinda relationship, or within the decree of prohibited relationship unless it is allowed by the custom or tradition.

- ❖ Registration of Hindu marriage is optional as according to section 8 of Hindu Marriage Act 1955⁶, but state government has power to make registration of marriage compulsory. In *Seema v/s Ashwini Kumar*⁷, the Hon'ble Supreme Court held that registration should be made compulsory by state government.
- ❖ The concept of void and voidable marriage is also expressed in Section 11,12 of Hindu Marriage Act,1955⁸.
- ❖ The concept of divorce is also provided under Section 13 of Hindu Marriage Act 1955⁹
- ❖ The concept of Widow Remarriage has also destroyed another characteristic of sacramental marriage i.e., Eternal union¹⁰.

These above-mentioned characteristics and conditions of Hindu Marriage gives it effect of contract.

- ❖ In the case *Purushottamdas v. Purushottamdas* the court held that the marriage of Hindu children is a contract made by the parents
- ❖ In the case *Bhagwati Saran Singh v. Parmeshwari Nandar Singh*¹¹ the court held that a Hindu Marriage is not only A sacrament but also a contract.
- ❖ In the case of *Anjona Dasi v. Ghose*¹² the court observed that the marriage, whatever else it is, sacrament and institution, which is undoubtedly a contract entered into for the consideration with correlative rights and duties.
- ❖ In the case of *Dhanjit Vadra v. Beena Vadra*¹³ the court cited observations of a division bench of the Andhra Pradesh High court: Section 13-B radically altered the legal basis of a Hindu marriage by Treating it as an ordinary form of contract which competent parties can enter into and put an end to like any other contract by mutual consent.

CONCLUSION

Therefore, in the most Hindu marriage is a religious ceremony is followed. In sacramental character there are certain rituals which are mandatory for marriage and Vedas and shastras also considered that marriage is sacramental union. But gradually as society develop the concept of contract evolved and some features was also included in marriage. Some provisions in Hindu Marriage Act gives the idea that marriage is also a contract. It has semblance of a contract as consent is of some importance. It has a semblance of a sacrament as in most marriages a sacramental ceremony is still necessary. It cannot be said that marriage is pure contract or pure sacrament rather Hindu marriage can be considered as a mixture of sacrament and contract.

REFERENCES:

1. Black's Law Dictionary, 7th edition, 1999
2. on 7 Feb. 1961
3. ILR 28 Cal. 758
4. on 4 March 1971
5. Section 5 of Hindu Marriage Act, 1955
6. Section 8 of Hindu Marriage Act, 1955
7. on Feb. 2006
8. Section 11 and 12 of Hindu Marriage Act, 1955
9. Section 13 of Hindu Marriage Act, 1955
10. Widow Remarriage Act, 1856
11. 1942 ILR All 518
12. (6 Bengal Law Reporter, 243)
13. on Jan. 1990
14. Pooja, Concept of Hindu Marriage: - Whether Sacramental or Contractual Vol. 3 of International Journal of Legal Research and Studies 113 (2018)
15. Dr. Paras Diwan, Modern Hindu Law (Allahabad Law Agency, Faridabad, 24th edition 2020)

