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Salient Features of Hindu Marriage Act – Critical Analysis

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Abstract

“Marriage, the beginning of the family and a lifelong commitment to a human being”. The said sentence is possible only if it is legal in modern India. So, in this article, the author has done a critical analysis of the legal features of the Hindu Marriage Act 1955. This article brings out the salient features and has done a thorough analysis of a few provisions of the Hindu Marriage Act 1955.

Introduction

Marriage is the recognized union of two people which is also considered as a sacred institution. Hinduism is the world's third-largest Indian religion with the dharma related to the Vedas. According to each religion in the world, the process and ritual of the marriage system will vary. Hence, the process and rituals of Hindu marriage have been made as a personal civil law under the Hindu Marriage Act, 1955.

Hindu Marriage Act, 1955

After the independence of India, this Act was enacted on 18th May 1955. The purpose of this Act was to abolish the regressive Hindu law for marriage with various consequences under the British Rule. The main intention of this act was to secure the rights of the bride and groom in the marriage under Hinduism. It was not to simply codify them but also to introduce the law of Hindu marriage officially. This Act consists of six different chapters with the thirty different sections which are only applicable within the territory of India except for Jammu and Kashmir (Section 2{2}). After several cases were seen in India where both men and women were petrified or humiliated under a fraud case in the name of marriage, this Act includes the codified rules and regulations to get married under the Hindu religion. According to the Article 25 (2) (b) of the Indian Constitution, this Act is also binding to any person who is Hindu, Sikh, Jain, and Buddhist and not a Muslim,

Christian, Parsi, or Jew.

Salient Features:-

- Recognition as Hindu - To get married under Hinduism, the essential feature is that the parties must fulfill the condition in Section 2 of the Hindu Marriage Act, 1955. He/she must also be a citizen of India excluding the state of Jammu and Kashmir. Once they fulfilled those conditions then they are eligible to enjoy all other features of the Hindu Marriage Act.
- Conditions for a Hindu marriage – to get a legally solemnized marriage, both the parties must not be having a living spouse and must be unmarried, divorced or a widow. Secondly, at the time of marriage, no parties can be of unsoundness of mind and should be able to give valid consent. The most important condition is the age of the male and female to get married which are 18 and 21. Overruling this may lead to the voidable marriage (Section 12). Until and unless, the custom gives permission to get married between two spindles, it is void and the prohibited relationship such as son and mother, daughter and father, sister, and brother are also unacceptable and void (Section 11). These conditions are clearly mentioned in Section 5, subsections 1 to 5 of the Hindu Marriage Act.
- Guardianship in Marriage – In a marriage, the need for guardianship for a bride is more important in Hinduism. Guardian can be the mother, father of the bride or in case of their absence, blood brother, half brother, grandmother or grandfather of parents, paternal uncle or with whom the bride lives, can also be a guardian. Only the person can be a guardian if he/she is above the age of 21. Section 6 of the Hindu Marriage Act has been repealed by the Child Marriage Restraint (Amendment) Act, 1978.
- Ceremonies for a Hindu Marriage – The Hindu marriage can be performed through any of the rituals expressed by either parties. In India, the most common ceremony is taking seven steps before the sacred fire by the bride and groom i.e. saptapadi, which is mandatory under this Act (section 7). But according to section 7A, the marriage ceremony of suyamariyathai or seerthirutha or any other name with the presence of friends, parents, and relatives is applicable only to the state

of Tamil Nadu and UT Pondicherry.

- Registration of Hindu Marriage - Anything without proof is like a ball without air. To register marriage will be evidence to prevent any kind of illegal activities from either of the parties. This registration can be done by the State Governments in India and the rules are made under the state legislature which is different for each state within the territory of India.
- Restitution of Conjugal Rights and Judicial Separation – Section 9 prohibits bigamy or polygamy which is an offense and punishable under the Indian Penal Code. Moreover, asking for dowry or the physical abuse can lead to filing of the divorce. According to section 10, either party can make a petition in the district court for the divorce on the grounds mention in Section 13.
- Nullity of, Marriage and divorce - The legalities of divorce are also governed by the law. A person can seek divorce on any valid ground like physical abuse by the partner or his/her family, infidelity, mental ill-health, etc. Aspects like alimony, child custody, etc. also lie within this Act. Even no cohabitation or restitution of conjugal rights between the parties for the period of one year can lead to the divorce on this ground.

Conclusion

The purpose of a Hindu marriage is to regulate the traditions of people and culture of the land. The illegal activities in the marriage may lead to the punishment of imprisonment and/or fine, according to Section 194 of IPC and Section 17 of the Hindu Marriage Act 1955. Thus, it is necessary that Hindus should abide by the Hindu Marriage Act, in order to ensure that the marriage is valid and legal.

References

1. The Hindu Marriage Act 1955.
2. The Constitution of India 1950.
3. The Indian Penal Code 1862.
4. The Child Marriage Restraint (Amendment) Act, 1978.

