



CONCEPT OF HINDU MARRIAGE: WHETHER SACRAMENTAL OR CONTRACTUAL

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Marriage is one of the oldest institutions of Hindus. It occupies a very important role in our life. Marriage is essential also because all the religious ceremonies and rites are to be performed by a Hindu in the companionship of his wife otherwise they will not bear any fruits. The word 'marriage' has been defined in Black's Law Dictionary¹, as follows: -

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

According to Satpatha Brahmana "Wife is the *ardhangini* (half of man) and man is only half, not complete until he marries." According to Mahabharata, by cherishing the woman one virtually cherishes the Goddess of prosperity herself. Wife under Hindu law is not only a "*grahpatni*," but also a "*dharma patni*" and "*shadharmi*". The functions of marriage include regulation of sexual behavior, reproduction, and nurturance, protection of children, socialization, consumption, and passing on of the race.² In the Shastric Hindu law³, marriage has been regarded as one of the essential *samskaras* (sacrament for every Hindu). In the patriarchal society of Rig Vedic Hindus, marriage being one of essential *samskaras* and considered as a sacramental union, and this continued to be so during the entire period. The sacramental nature of marriage has three characteristics:

1. It is a permanent union.
2. It is an eternal union.
3. It is a holy union.

Under old Hindu law, marriage was said to be sacramental because of the above mentioned characteristics which explains the sacramental nature. The first characteristic of old Hindu law is permanent union which means once tied cannot be untied. Second characteristic is eternal union because it is valid not only in this life but in lives to come. The last characteristic is holy union, means performance of religious ceremonies is essential. According to Smritikars even death cannot break this relation of husband and wife which is not only sacred and religious but is a holy union also.

The Hindu Marriage Act has effected certain changes in the law of marriage, which has struck upon its nature. For example, widow remarriage as a rule were not recognized under old Hindu law. The modern concept of marriage is contractual in nature. It receives the ideas of liberty i.e free volition of individuals and equality. Today, it is an established notion of the west that marriage would be an agreement, which must be voluntarily entered into by both parties. In the light of modern concept of marriage could we say that Hindu marriage continues to be sacrament? The contractual nature of marriage has following characteristics:

- *Divorce*: It is introduced under Section 13 of Hindu marriage Act, 1955 which makes Hindu marriage dissoluble. It destroyed the first characteristic of sacrament marriage i.e. permanent union.
- *Widow remarriage*: The concept of widow remarriage has also destroyed the another characteristic of sacrament marriage i.e. eternal union⁴.
- *Age of majority*: Age of majority is 21 for male and for female, it is 18⁵.
- *Sound Mind*: The person must be of sound mind.⁶



- *Consent*: consent is also one of essential ingredient of Hindu marriage. It should be free, if it is obtained by force and fraud, it makes the marriage voidable at the option of party whose consent is not free.⁷
- *Void and Voidable marriage*: Hindu marriage is classified as Void and Voidable marriage as in case of contract.⁸

- *Registration of marriage*: Section 8, Hindu Marriage Act, 1955 deals with registration of marriage. According to this section registration is optional but state government has given power to make rules to make registration of marriage compulsory. In famous case *Seema V. Ashwini Kumar*⁹, the Hon'able Supreme Court held that registration should be made compulsory by state government for all citizens irrespective of caste, religion, sex to check or control bigamy, child marriage, forceful marriage, to save the time of court in determining whether the marriage is solemnized or not properly.

The Hindu Marriage Act of 1955 by providing several matrimonial remedies including mainly divorce and nullity of marriage has seriously eroded its sacramental character. It is no longer remains a pure sacrament and a binding religious duty. The other characteristic of contractual nature of Hindu marriage as prescribed under section 5 of Hindu Marriage Act is the requirement of age of bride and bridegroom, for valid marriage. If a marriage is solemnized in contravention of this condition is neither void nor void able i.e. marriage is considered as valid marriage. The punishment in contravention of this condition is provided under section 18 as it provides that, anyone who procures a marriage in violation of the condition is liable to be punished with simple imprisonment which may extent up to 15 days or with fine which may extend up to Rs. 1000/- or with both¹⁰. Court on its own motion the division bench of the High Court quashed the order of remanding the minor girl to Nari Niketan by observing that a marriage of a minor girl in contravention of Section 5(iii) of the Hindu Marriage Act is neither void nor voidable and the only sanction which is provided under Section 18 of the Act is a sentence of 15 days and a fine of Rs.1, 000/-¹¹.

Since Hindu marriage was considered to be sacrament, the consent of the parties did not occupy any important place. The person married may be a minor or even of unsound mind, if the marriage is duly solemnized there is valid marriage but under the Contract Act, the contract of a minor or of a person of unsound mind is void. Further, the act lays down that a marriage is void able if consent is obtained by fraud or force, but it is not laid down anywhere that if one's consent was not obtained, what will be the status of that marriage. This shows that despite the fact that a party is able to prove the absence of consenting mind, the marriage will continue to remain valid.

In the sacred texts, marriage created an inseparable tie between the husband and wife, which could not be broken in any circumstances whatsoever. It was only in exceptional cases, woman allowed to abandon her husband and take another. This fact along with the others ascribed sacramental character to marriage. The Andhra Pradesh High Court states that the sacramental character of marriage is still preserved under the Act. It was observed by the court, "There can be no doubt that a Hindu marriage is a religious ceremony. According to all the texts it is a sanskara or sacrament throughout one's life for purification of because the marriage ceremony is completed by Saptapadi or the walking of seven steps before the sacred fire which creates a religious tie and when once it created, it cannot be broken. S.T. Desai, the revising author of Mulla's "Principles of Hindu Law" concludes that 'a Hindu marriage under the Act is not entirely or necessarily a sacrament but a union of one men with one woman by solemnization of the customary rites and ceremonies of either party essential for a marriage; and directly it creates a relation and status not imposed or defined by contract but by law.' The Hindu Marriage has been said to be a sacrament also because the marital relations between the spouses are created not on account of any contract between the two but by virtue of a gift of the girl by her father to the bridegroom. The gift is holy and accompanied with the religious ceremony of sapatpadi and any



other customary religious rites. In the absence of such religious ceremonies and rites marriage is said to have not taken place at all in the eyes of law.

Marriage among Hindus being a religious and sacred tie, performance of certain religious rituals and ceremonies or customary rites is still necessary for a valid marriage. In the event of non-performance of required religious rituals or rites it would not be a legally valid marriage. In a case Kerala High Court observed that mere agreement without ceremonies does not constitute any marriage. The parties entered into agreement on a Rs. 50 stamp paper before the Sub-registrar mentioning them as husband and wife.¹² The retention of these religious rituals and rites under Section 7 of the Act of 1955 leads only to this conclusion that although sacramental character of Hindu marriage is lost yet the condition of religious ritual in respect thereof has still been preserved. Hence it can be very well concluded that the sacramental character of marriage has not been properly recognized but ceremonial character of marriage has been retained.

The Calcutta High Court once observed that a Hindu marriage is “more religious than secular in character”¹³. But in *Anjona Dasi v. Ghose*¹⁴ it is observed that suits relating to marriage deal with that which in the eyes of law must be treated as a civil contract, and important civil rights arise out of that contract. Hindu marriage is thus rightly acclaimed as sacramental rather than contract as it lacks every essential of a valid contract e.g. proposal, acceptance and consideration.

Thus in light of above study, it comes to the conclusion that the Hindu marriage has not remained a sacramental marriage and has also not become a contract, though it has semblance of both. We can say that Hindu marriage is not purely contract or not purely 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.

To sum up the Hindu marriage has not remained a sacrament and has also not become a contract, but it has a semblance of both.

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