

THE HINDU MARRIAGE ACT, 1955: THE ILLUSION OF EQUALITY FOR HINDU WOMEN

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Abstract:

The United Nations in its 17 sustainable development goals endeavors to transform the world especially in the areas of poverty, economic growth, social needs such as education, health, social protection, job opportunities, climate change and environmental protection etc. The 17 sustainable development goals importantly, also includes the aspects of ensuring equality for women which is a need of modern contemporary developing societies at global level in order to achieve the sustainable development of mankind.¹

The constitution of India in its part III secures the equality through fundamental rights to the citizens of India.² While ensuring the fundamental rights, the constitution of India also protect every citizen from the discrimination on grounds of religion, race, caste, sex or place of birth.³ In the recent decades the world community at global level and our country at local level has taken various initiative and measures to ensure the equality of status and opportunities, free from the discrimination on the ground of gender however, in some cases the discrimination on the basis of gender is perceptible and the law governing marriage of Hindus is an instance of the same⁴. This article is an attempt to highlight some provisions of the Hindu Marriage Act, 1955 wherein the disproportion in securing the rights and remedies to Hindu females are evident.

Key Words: Hindu, Women, Marriage, Equality, Rights

INTRODUCTION:

Discrimination of women is an idiosyncratic phenomenon at all the levels in societies. Securing the equal rights of women is an unending debate since decades at national and international level. Equal treatment of women in all respects and at all levels has been regarded within basic fundamental human rights that are enshrined in various international conventions and instruments.

The United Nations Transforming our world: the 2030 Agenda for Sustainable Development in its vision envisage a world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment as removed. It further envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination.⁵ The 2030 agenda for sustainable development sets the goals and targets in order to achieve and ensure the basic human rights of all and to achieve gender equality and the empowerment of all women and girls at all levels over the next fifteen.⁶

The Universal Declaration of Human Rights (UDHR), a milestone in the history of human rights, also affirmed the belief in fundamental human rights and in the equal rights of men and women.⁷ The Universal Declaration of Human Rights (UDHR) institutes the entitlement of all the rights for every human being without establishing the difference on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status etc.⁸

In 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women which entered into force in 1981. The Preamble of the Convention concedes that the extensive discrimination against women continues to exist in our societies and also highlights that any kind of discrimination, violates the principles of equality of rights and respect for human dignity. The convention while defining the term discrimination as ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’⁹ widely covers the aspects of probable discrimination of women and provides an exhaustive definition in order to safeguard women and her rights. Article 16 of the Convention is noteworthy which covers various facets of marriage and family life and provides for equality in terms of rights and responsibility including rights and responsibilities with regard to children¹⁰.

At national level, efforts are made by the government to eliminate the all forms of discrimination against women at all levels. In recent decades, by implementing new inclusive legislations and policies, the perpetual efforts have been made in order to secure the equality and protection of women from discrimination on the basis of gender. The drafters of the Indian constitution have laid the foundation of such efforts by incorporating various provisions in the Constitution. The fundamental rights as enshrined in the Constitution provides the equality of status and also protects from all forms of discrimination on the basis of gender¹¹. The Directive Principles of state policy mandates the state for striving to promote the welfare of the people and also strive to minimize the inequalities. In recent decades, constant efforts have been made by international community and at national level, however, the efforts seems diminutive upto some extent as the women are in grievance of inequality in some cases.

The Hindu Marriage Act, 1955

The enactment of the Hindu Marriage Act, 1955, a landmark legislation in the history of social inclusive legislation has brought significant transformation in the traditional religion based law of marriage for Hindus which has long bearing on the nature and aspects of Hindu marriage. The legislation has gradually eroded the belief of Hindu marriage as purely religious and sacramental obligation of Hindus by introducing the concepts such as re-marriage, divorce, prohibition of bigamy, minimum age of marriage, consent etc. The Hindu Marriage Act, 1955 extends the remedies, available within its provisions to both husband and wife however, it is an instance of the conspicuous inequality with respect to Hindu women in some cases which has been in debates since decades¹². The codification of Hindu law has provided the universality through its principles and provisions nevertheless, some cracks are still required to be fixed in order to achieve the equality for women in true sense.

The Hindu Marriage Act, 1955 initially prescribed the minimum age of marriage for bride and the groom as 15 and 18 years respectively and before 1978, marriage below the prescribed ages could be solemnized with the consent of the guardians.¹³ Post 1978 amendment, the legislation by stipulating the minimum age of marriage as 18 and 21 respectively for women and man retained the difference of age thereby depicting the socio-cultural set up conformist notion of Indian societies that the wife should be younger than the husband.¹⁴ Though, the Hindu Marriage Act, 1955 does not make marriage as void or voidable, if solemnized in violation of prescribed age, legislation makes it a punishable offence,¹⁵ signifies the uneven treatment. The Majority Act, 1875, which governs the aspects pertaining to age of majority for various purposes also prescribes the age of majority on attaining the age of eighteen years for all purposes however, the male and female are treated unequally in Hindu Marriage Act, 1955 in order to maintain the wrong notion of Indian societies in this regard.¹⁶

In the cases of the restitution of conjugal right also even after various pronouncements of the Supreme Court of India and High Courts, the husband is given priority at least in the cases when the grounds pertaining to the obligations of wife are contended. The observation of Punjab and Haryana High Court full bench while deciding a matter on restitution of conjugal right as "obligation to live together under common roof is inherent in the concept of Hindu Marriage and it cannot be torn unilaterally by the desire of wife to live separately and away from matrimonial home merely for reason of either securing or holding the job elsewhere¹⁷" depicts the prevalent aspects of male dictated societies. It is so often that the women share the major stake of housework has to compromise on personal and professional front, which is never considered in any term. The Indian Judiciary had made attempts to come out from this notion and has made attempts to ensure the equality in matrimonial disputes of such nature. The Delhi High Court expressively highlighted need of ensuring the equality of rights between husband and wife and observed that "Art. 14 of the Constitution guarantees equality before law and equal protection of the law to the husband and the wife. Any law which would give the exclusive right to the husband to decide upon the place of the matrimonial home without considering the merits of the claim of the wife would be contrary to Art. 14 and unconstitutional for that reason."¹⁸ Therefore, the societies, through clear provisions of law should come out of the prehistoric notion of male dominations especially in family matters when the same has been used to evade the obligation of paying maintenance to wife.¹⁹

In a significant move, the amendment in the Hindu marriage Act, 1955 reduced waiting period for divorce from 3 year to 1 year.²⁰ However, the condition and requirement of minimum 1 year for presenting the petition for divorce²¹ upto some extent is detrimental to the interest of women, more significantly in the cases of cruelty by husband. It is contended that the limitation of 1 year is based on the public policy and marriage is the foundation of civil society, therefore, it is to prevent party to recourse legal proceedings before they made real efforts to save their marriage.²² The provision prescribed that the leave of High Court may be obtained in the cases of exceptional hardship and depravity however, it turn to be extremely difficult in some cases for wife to approach the high court and establish the case of exceptional hardship and depravity in court of law for the reason that the terms are undefined together with very extensive scope of terms. The courts have tried to specify that what could

be exceptional hardship and depravity through various judgments however, not concluding and exhaustive especially in view of changing dimensions of marriage and matrimonial relationships.²³ Therefore, the provision which has been kept to uphold the sanctity of institution of marriage, still becomes unfavorable for women.

The Marriage Amendment Bill, 2010 proposed various landmark amendments in the Hindu Marriage Act, 1955 particularly in the cases of divorce by incorporating revolutionary provisions such as permitting the petition for dissolution of marriage on grounds irretrievable breakdown of marriage, opportunity to oppose the divorce petition on the grounds of financial hardship and importantly safeguards the interest of minor children, unmarried daughters, who are financially dependent on the parents by ensuring the adequate provisions for maintenance.²⁴ Such major initiatives in the context of women empowerment regrettably have not been perused consistently by the government and therefore, could not see the light of day which has resulted in hardships for women.

Conclusion:

The Hindu Marriage Act, 1955 has introduced radical changes in the *shashtric* law of marriage and divorce for Hindus. The legislation is intended to establish the institution of marriage as sacred social union between Hindu husband and wife with assimilation of sacramental, religious and upto some extent the contractual aspects by ensuring & securing the rights, duties and obligations between husband, wife and their children. Nevertheless, the legislation while securing the rights of Hindu husband and wife grieves some limitations especially in the context when Indian societies are diverse and developing very fast. Therefore, the progress of law is essential in order to align the law and its relevancy with the pace of development and progress in societies in order to establish the comprehensive legal mechanism for ensuring the equal protection of basic fundamental human rights regardless of race, gender etc.

References:

- ¹ Goal 5, the United Nations sustainable development goals: Achieve gender equality and empower all women and girls
- ² Article 14 of the Constitution of India: Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- ³ Article 15 of the Constitution of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- ⁴ The Hindu Marriage Act, 1955
- ⁵ See Resolution 7/1, Transforming our world: the 2030 Agenda for Sustainable Development, unanimously adopted by the General Assembly on 25th September 2015.
- ⁶ See The Preamble, Transforming our world: the 2030 Agenda for Sustainable Development
- ⁷ The preamble of The Universal Declaration of Human Rights (UDHR).
- ⁸ Article 2 of The Universal Declaration of Human Rights (UDHR): Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
- ⁹ Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women
- ¹⁰ Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women:
 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;

- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.
- ¹¹ See Article 14 and 15 of the Constitution of India.
- ¹² The Hindu Marriage Act, 1955
- ¹³ Repealed by the Child Marriage Restraint (Amendment) Act, 1978 (Act 2 of 1978).
- ¹⁴ The Hindu marriage act, 1955, Section 5 (iii): the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage. The Prohibition of Child Marriage Act, 2006 section 2(a): (a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.
- ¹⁵ Pinniti Venkatarama v. State, AIR 1977 AP 43, See also Mohinder Kaur v. Major Singh, AIR 1972 P & H 184
- ¹⁶ The Majority Act, 1875, Section 3: Age of majority of persons domiciled in India. (1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.
- ¹⁷ Kailashwati v. Ajudhaya Prasad, 1977 H.L.R. 175
- ¹⁸ Swaraj Garg v. K.M.Garg, AIR 1978 Del.
- ¹⁹ See The Report by High Level Committee on Status of Women, Ministry of Women and Child Development (2015)
- ²⁰ The Marriage Laws Amendment Act, 1976
- ²¹ Section 14 of the Hindu Marriage Act, 1955: 14. No petition for divorce to be presented within one year of marriage.- (1) Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for dissolution of marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage:
Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but, if it appears to the court at the hearing of the petition that petitioner obtained leave to present the petition by any mis-representation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.
- ²² Meghanatha Nayyar V Smt Susheela, AIR 1957 Mad 23
- ²³ See *Savita Devi v. Santosh Kumar*, AIR 2013 NOC Alld. 307; *Vinod Arora v. Manju*, AIR 1982 Del. 592 and *Meghanatha Nayyar V Smt Susheela*, AIR 1957 Mad 23
- ²⁴ The Marriage Laws (Amendment) Bill, 2010: Section 13C (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2010], on the ground that the marriage has broken down irretrievably. Section 13D (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.
Section 13E. The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.