



Ch 2 - I

(a) Consent Theory :

Intro

Marriage of persons between male and female is a contract and rituals for religion. The marriage between two persons take place by parents wishes or individuals wishes. In India, the marriage is meant to be a pure relationship between two individuals where each of the spouse take care of each other, have

- 1) Matrimonial duties, or obligations
- 2) Matrimonial rights.

against each other.

It can happen in later stages that the relationship gets sour and differences starts appearing, which leads to Divorce. → To abandon. ~~The~~ Divorce is separate of individuals and there are 3 theories related to Divorce. The Hindu Marriage act was enacted in 1955 which codified the Hindu laws.



- My view
- 1) Fault Theory
 - 2) Consent Theory
 - 3) Irretrievable Theory
- Consent Theory ↗

In this, when two individuals can marry each other by their consent. They can take matrimonial obligations against each other by performing a marriage under section 5 of HMA, 1955. They have the full freedom to part or separate away with MUTUAL CONSENT.

Mutual Consent means — The two individuals after living for one year got after knowing each other realized that they are opposite and they cannot sustain more together so they file a divorce by mutual consent & Both the parties files a single application at the Family Court of their area.

→ Case-law:

Pankaj v. Manpreet 2007



The court granted them divorce under Mutual Consent.

Conclusion :

Contd.

Consent Theory application is vital in our society which is changing rapidly. More individuals have freedom to marry and part way easily.

b) Live in Relationship :

Hindu Marriage Act, 1955 was enacted in 1955 that codified the Hindu texts, laws and made it easier for legislature, judiciary to work. With time, amendments are even coming in the act.

In the 21st century, our society has changed a lot and a new kind of relationship has developed between the individuals. — Live in Relationship

In this, the two individuals starts living together for a long period of time without the institution



of marriage. They do all the matrimonial duties against each other which is there in a marriage. but they do not marry. There is no religious rites or ceremonies. As there is no marriage at first place so we can't talk about the validity of marriage.

Case Law :

Paramjeet Kaur v. Sukhjot 2012

Court stated that Sukhjot was ~~in a~~ in a relationship with another girl earlier.

The marriage between petitioner and respondent is valid as it is not a case of bigamy. Civil relationship is not considered as a Marriage.



As there is no marriage, there is no legality of this. Both the individuals do not get any legal rights like inheritance, marriage, child etc.

Conclusion :

Live in relationship is a new trend in our society. The court and legislature should now start accepting it.

- d) 'N', a male Hindu aged about 35 years wants to adopt a girl child of 15 years.

The above proposition talks about the Hindu Adoption and Maintenance act, which covers all the sections related to

- a) Adoption → Who can be
→ Who can put his child
: Who can adopt



5) Maintenance
Wife
Child
Parents

→ Who can be adopted

- 1) A Hindu.
- 2) aged less than 15 years of age
- 3) a lunatic or unsound mind person can also be adopted
- 4) There should be difference of 21 years between the age of Father and the opposite sex of adoption child.

→ Who can adopt

✓ Office Superintendent (Constituted)
Panjab University
Chandigarh

- 1) men
- 2) Adult individuals
- 3) Women : widow, divorce, if married can't adopt without the consent of husband.



- 4) Man : widow , divorce , ay married with the consent
of wife

In the given case , The Male aged 35 cannot
adopt a ~~girl~~ child child of 15 years. because the
age difference $(35 - 15) = 20$ years which is less than
mandatory 21.

(c) Mitakshra School :

Vedic religion is about more than 5000 years
old. This In the Vedic time , there were
4 Vedas .

- 1) Ria Vedas \rightarrow 1028 hymns
- 2) Yajur Veda \rightarrow Sacrifical Ceremonies ,
knowledge for priests



8

3) Sam Veda → hymns, soma plant

4) Atharva Veda → magic, prose

The people worshipped the sun, earth, water, fire & trees etc. it was less secular.

Manu Smriti talks about marriage, Inheritance, gambling, killing; he was harsh towards

1. Women

2. Sudras

Shruti - utterances by God.

Smritis - Remembered by sages and noted down from generation to generation.

Nibandhas - Commentaries on Smritis by sages, it also talked about custom and usage at that time



There were 8 schools of Hindu religion

- 1) Dagashra School
- 2) Mitakshra School -

This school of philosophy of Hindu religion talks about development and was prevalent in West Bengal.

UNIT - IV

(vi)

Explain Caste

Hindu Marriage Act ~~was~~ came into force in 1955 in whole territory of India except Jammu & Kashmir. It was applicable to all the Hindus living in India and Indian national living in foreign land.

Hindus consists of people of religion Buddhist and Hindus of Sikhs, Jain,

Into



Section 13 of the Hindu Marriage Act consists of the sections related to Divorce. Divorce means to separate and end marriage. There are 4 subsections by which ~~an~~ a marriage can be dissolved.

Divorce

There are 8 ways by which a divorce can take place under Section 13(1).

Cruelty is one of the ways which is defined under this ~~in~~ Section 13(1)(H).

The petition to file divorce at a Family Court can be filed either by the spouse

1) Husband

2) Female

against each other.

What is Cruelty?



(A) any culful conduct of either of the spouse that gives a serious harm to other spouse

- 1) Limb
- 2) Health →
 - 1) Mental
 - 2) Physical
- 3) Life

Case Laws:

1) Russell v. Russell

In this case, cruelty was defined to any harm done by one of the spouse to other spouse

- 1) Limb,
- 2) health
- 3) life.

2) Dastane v. Dastane

In this, Mental ~~and~~ health was also added



into health of a spouse. Mental cruelty any harm done mental health of another spouse. This is quite serious too

(B) unjust conduct of the husband on this relatives that forces the wife towards suicide by forcing her for demand of valuable items or property or failure to bring valuable items or property
This is also cruelty

(3) 2) Case Law

S K Sharma v. State of Bihar

Supreme Court stated that nowadays cruelty against Dowry being used by women against innocent husband has become Legal Terrorism.



Last law

(ii) 3)

S. Patel

R. R. Patel

In this, the petitioner wife has suddenly stopped performing her matrimonial duties, stopped making food for her children, and started behaving worse with her husband, affecting his mental health. The court granted him divorce under Mental Cruelty section.

Cruelty is also defined in Indian Penal Code of 1860 under section 498 A. The section talks about the protection of wife from their husbands and their relatives.

Demand for dowry has been illegalized by the Government of India and rigorous punishment is given to the concerned individual.

Many judicial judgements in the recent past have protected the women from serious harm being done by their in-laws and gave a serious



to the culprits of the crime. Many social awareness campaigns have been going on by the several state and central government on whole territory of India.

4) Case Laws:

A. Kumar v. State of Bihar

In this supreme court created new guidelines for the police officials to be followed while arresting any individuals.

These guidelines were known as

A. Kumar Guidelines.

5) Case Laws:

A v. B

The Supreme court stated that charge sheet will be filed against the husband and



the relatives cannot be added into it without investigation. As there is recent trend of harassment of relatives, minors, aged parents by the women.

In the Hindu Marriage Act, 1955, both ~~women~~ and husband can file the petition for divorce under Cruelty. Hence it is ~~gender~~ Gender Neutral at the family Court of their Area.

Connivance : When one of the spouse ~~continues~~ forgoes and cohabit ~~her~~ with the another spouse.

Illustration :

A did cruelty against B. B filed a case. B took the case back as A cured her of not repeating the offence. This is Connivance.

Conclusion :

Cruelty in any form creates a trauma for

Inclusion



another person. Hence the marriage should be dissolved.

UNIT - V

IX Discuss the provisions relating to Maintenance under Hindu Adoption and Maintenance Act, 1956.

Jan 60
 Hindu Marriage Act was enacted in 1955. It covers the whole territories of India except Jammu and Kashmir. It was applicable to all the Hindus residing in India and Indian national living in foreign land.

There were several provisions which were left vague in the HMA act.

Thus the provisions related to ~~Adopter~~ Adoption



2) Maintenance

were passed and enacted as Hindu Adoption and Maintenance Act, 1956. This section covers the whole territories of India as well as ~~of Indian~~ nationals living in foreign land.

The provisions related to Adoption are

- 1) Who can be adopted
- 2) Who can put his child upto adoption
- 3) Who can Adopt.

All these are clearly defined under section 6-11 of the Hindu Adoption and Maintenance Act, 1956.

The provisions related to Maintenance are defined under sections 12 - 16. All content related to maintenance are defined with illustrations.



→ What is Maintenance?

When two individuals cohabit under valid section Hindu Marriage by Section (5) of the Hindu Marriage Act, 1955. They have to follow matrimonial duties, obligations against each other.

→ Legal Consequence of Marriage:

- 1) Matrimonial obligation
- 2) Legitimacy of relation
- 3) Legitimacy of Children
- 4) Inheritance,
- 5) Maintenance

for JEE & IIT-JEE Preparation (Concise)
Panjab University
Chandigarh

Maintenance means the spouse has to take care of the other spouse, even other or



children, their security, education, food,
expenses so that they can sustain together for
life time.

A →

Maintenance of wife:

The husband has to take care of his wife,
lifestyle, living, food, security. He earns for
the both of them and give this family
a good life style and upbringing. He has
to do this till lifetime. It will stop after
this wife death or divorce and she remarries
again with other person.

• illustration

A marries B. Now A has to take care
of her spouse till lifetime.

15/1

Office Superintendent / Prof.

Punjab University

Chandigarh



→ Case Law:

A Kumar v. S Kumar

The Court stated that when two individuals marry each other. They have perform their Conjugal rights and if one partner is not performing then other can file a petition for restoration for Conjugal rights under section 9.

B Maintenance of Children:

• Sons:

The father has to ^{provide} maintain maintenance to his sons till the age of majority. Age of majority is 18 years. Even there is no compulsion on father to provide maintenance to son after majority even if he is unemployed or unmarried.



• Daughters

To provide maintenance to daughters till they get married. The age of marriage is 18 yrs for girls. The girl can seek maintenance if she remains unmarried. After marriage, there is no duty of Father.

• Adopted Children :

The adopted children such as boys or girl will have some rights of a natural child. He has to provide maintenance to adopted child for education, lifestyle, food, security etc.

• Maintenance during Judicial Separation :

It is the duty of the husband to provide maintenance to his wife during judicial separation for a period of 1 year. After that, they can file for divorce.



- Alimony = After divorce, the court decides the maintenance amount for the wife which covers the expenses of the wife. It is calculated by Juez according to

- 1) Education qualification of Husband & wife
- 2) Monthly Income of Husband
- 3) Life style etc.

→ Conclusion :

Human Adoption and Maintenance act, 1956 has provision for the spouses for their maintenance during the marriage or even after the marriage.



UNIT - III

IV

Nature of Hindu Marriage whether a Sacrament or a Contract?

TOP

Hindu religion is the oldest religion in the world. It is derived from the Vedic religion which is 6000 years old. Hindu is defined as the people belonging to religion of Hindus, Sikhs, Jains and Buddhists.

The Hindu marriage takes place between any two Hindus. Both the spouses have to perform Hindu religious rites or ceremonies of either of the party. The Hindu Marriage Act was enacted in 1955 which covers the validity and conditions of the Hindu marriage. The marriage between Hindus can be marriage b/w Hindu and Sikh; Sikh or Jain etc.



21

During the Hindu marriage, the spouse have to perform Sapta padī which is a sacred act and religious act.

It is circled around the pious seven times by both the spouses. There are 4 main ceremonies that must be performed in Hindu Marriage. Kanyadan, Sapta padī etc. When a Sikh is getting married, they performs Anand Karj.

In Hindu Marriage, the institution of marriage is considered pure, pious and it means relationship between the husband and wife for 7 years. lifetimes.

"Jati Jati on 21st"

That's why it is called a sacrament.



The marriage between the husband and wife occurs after the age

Womens	—	18
Males	—	21

They are of sound mind so that they can give consent to marriage. Con. consent is vital in a marriage if it is forced, it is considered a voidable marriage. ^{fraud, coercion}

The marriage between the individuals can be dissolved under section 13 and 12 of Hindu Marriage Act. ^(Divorce) ^(voidable marriage)

→

In 1976, a amendment was passed in the Hindu marriage act, 1955 and Divorce by Mutual Consent was added. In which individuals can separate or divorced by mutual consent and filing ~~is~~ a single petition together hence the Hindu marriage is a contract too. which



26

can be dissolved by both parties of the marriage
Thus it is the Hindu marriage is a Sacrament and a contract.

Essential Conditions for a Valid Hindu Marriage

There are several conditions defined under section 5 of the Hindu Marriage Act, 1955. These are

- 1) Both should be Hindu
- 2) None of the spouse being ↴

Bogamy is not allowed

- 3) Age of Civil should be 18 years
Man 21 years



Ques At It should not be a prohibited relationship
it should not be Spanida
Both should be co^{ly} sound clund.
Religions Ceremonies must be performed.

1) Both should be Hindu

1) Hindu , & 2) Sikhs , 3) Jain , 4) Buddhist
illustration

① Marriage b/w Jain and Skn is a valid
Hindu Marriage

② Marriage b/w Muslim and Hindu is not a
valid Hindu Marriage

2) None of the spouse living

Bigamy is not allowed. Both the spouses



should not have their first marriage earlier
The first marriage should be dissolved by
divorced or spouse is dead

Case law :

Mukesh v. Rakesh

It was a valid Hindu marriage as the
respondent was in a live in relationship
which is not considered a marriage. Hence No
Bigamy.

- 3) Age of girl should be 18 years and man
should be 21 years. Marriage b/w
Minor is illegal and voidable.

Prohibited relationships are not allowed



Sonoda relationships are also not allowed. 5 generation from Father side and 3 generation from Mother side. All these relationship marriages are void from beginning.

- ~~last~~ Religious ceremonies are important in a marriage
Saptapadi — 7 circles by Jyoti is a must

Case law

A v. B

Only registration of marriage is not enough

Both Religious ceremonies are important

[Signature]
Office Superintendent (Planned)
Chandigarh

Pg - 3

(C) - 3

30



UNIT - II

II Hindus →

Hinduism Hindus

- 1) By birth
- 2) By Conversion

Hinduised Hindus

- By doc Interest
By Merging

Section 2 of the Hindu Marriage Act 1955
states that a person is a Hindu

- 1) He belongs to a Hindu, Sikh, Jain, Buddhist
religion

- 2) He does not belongs to Muslim, Christianity
and Jews



- 3) To children of b'parents , both belonging to Hindus
- 4) One of the Parent is Hindu and the child is brought up by following Hindu traditions
- 5) When parentage is unknown or if he is abandoned to the traditions he followed while being brought

Case Law :

A v. B

A Christian man used to sing bhajan in a temple and he declared that he worship and follow Hindu religion, he is a Hindu by declaration

Development of Hindu Law

Ancient Sources :

Rig Veda, Shritis — words of God — Rig Veda, Atharvana Veda, Yajur Veda, Sam Veda.

~~Conc.~~ all these helped in the development of Hindu Law
which was more reformed and better



32

It contains all the hymns, sacrificial ceremonies, etc.

2) Smriti - Heard by sages wrote down from generation to generation

Manu Smriti → Info abt Marriage, inheritance, Adoption
Yajna Kalpa Smriti

3) Mahabharatas - Commentaries on smritis and text about usage and customs of that time. e.g. Manu Bhasya
→ Case law

① of Madras v. Mooloo Ramalinga

Proof of usage is superior to text of law

Modern sources

1) Judicial decision : Judicial precedents and decisions made up of law reports, helpful to lawyers

2) legislature : Hindu Marriage Act, Hindu Adoption & Maintenance Act

3) Justice, equity & good conscience - used from English law in a case. (A v. B)

Disqualification of murderer right on victim's property