STUDY NOTES · BASIC CONCEPT

About Hindu Marriage Act, 1955

Society & Social Justice

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About Hindu Marriage Act, 1955

1. Objective of the Act

- The Hindu Marriage Act, 1955 was enacted to codify and reform Hindu personal law relating to marriage.
- It transformed marriage from a purely religious sacrament into a legal institution.
- The Act aims to ensure gender justice, legal certainty, and uniformity in matrimonial matters.

2. Applicability (Section 2)

- Applicable to Hindus, Buddhists, Jains, and Sikhs.
- Also applies to persons who are not Muslims, Christians, Parsis, or Jews.
- The Act is based on personal law applicability, not merely religious belief.

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3. Conditions for a Valid Marriage (Section 5)

- Monogamy: Neither party should have a living spouse at the time of marriage.
- Mental capacity: Parties must be capable of giving valid consent.
- Age requirement:
- Groom: 21 years
- Bride: 18 years
- Parties should not be within prohibited degrees of relationship.
- Sapinda relationship is prohibited unless allowed by custom.

4. Void Marriages (Section 11)

- A marriage is void if:
- Bigamy is committed.
- Marriage is within prohibited degrees.
- Such marriages are null from inception and have no legal validity.

5. Voidable Marriages (Section 12)

- A marriage is voidable at the option of the aggrieved party if:
- Consent was obtained by force or fraud.

- One party was mentally incapable.
- Impotence of the respondent.
- Wife was pregnant by another person at the time of marriage.

6. Registration of Marriage (Section 8)

- Registration is not mandatory.
- However, it serves as important legal evidence in courts.

7. Restitution of Conjugal Rights (Section 9)

- If one spouse withdraws from the society of the other without reasonable cause,
- the aggrieved party may seek a court order for cohabitation.
- This provision is debated for its conflict with Right to Privacy (Article 21).

8. Judicial Separation (Section 10)

- Allows spouses to live separately without dissolving the marriage.
- Considered an intermediate legal remedy before divorce.

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9. Grounds for Divorce (Section 13)

- Cruelty (physical and mental)
- Adultery
- Desertion for at least two years
- Conversion of religion
- Mental disorder
- Venereal disease
- Presumption of death
- Special grounds for women:
- Husband’s second marriage
- Rape, sodomy, or bestiality by husband

10. Divorce by Mutual Consent (Section 13-B)

- One year of separation
- Mutual agreement to dissolve marriage
- Six-month cooling-off period, which courts may waive.

11. Maintenance (Sections 24 and 25)

- Section 24: Interim maintenance during proceedings.
- Section 25: Permanent alimony after decree.

- Provisions are gender-neutral in nature.

12. Custody of Children (Section 26)

- Court decisions are guided by the Doctrine of Child Welfare.
- The child’s best interest overrides parental claims.

13. Irretrievable Breakdown of Marriage

- Not expressly included in the Act.
- Recognised through judicial interpretation.
- Supreme Court often applies this doctrine using Article 142.

14. Role of Article 142

- Empowers the Supreme Court to do “complete justice”.
- Used to dissolve marriages where reconciliation is impossible.
- Helps bridge legislative gaps in matrimonial law.

15. Criticism of the Act and Judicial Practice

- Excessive use of Article 142 raises concerns of judicial overreach.
- Need for legislative recognition of irretrievable breakdown.
- Social realities often outpace statutory reform.

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