

MARRIAGE UNDER HINDU LAW

- Marriage in Hinduism is one of the 16 sacraments (Samskar). Hindu marriage harmonizes two individuals for ultimate eternity so that they can pursue dharma, arth, and karma. It is a union of two individuals as spouses and is recognized by livable continuity
- Hindu marriage is “a religious sacrament in which a man and a woman are bound in a permanent relationship for the physical, social and spiritual need of dharma, procreation and sexual pleasure.”
- The concept of marriage is to establish a relationship between husband and wife. Based on Hindu law, the marriage is a sacred tie and last of ten sacraments that can never be broken. In India no concept of Divorce was recognized before 19th Century.
- Primary Legislation for Hindu marriage- **Hindu marriage Act,1955**

Types of Hindu Marriage

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1. **Brahma**- When boy has completed his student hood (brahmcharya)he is married with the girl on basis of his knowledge of vedas. The bride is given as a gift to the groom by the father generally known as the arranged marriage that is mostly followed in India.
2. **Daiva**- Daughter given in lieu of Dakshina if she gets over the age of marriage and doesn't get husband. The Daiva form of marriage was slightly different from the Brahma form of marriage in the sense that the suitor was an official priest.
3. **Arsha**- the Groom (sage) presents a bull or a cow to girls father because the Groom doesn't have special qualities. (this is not considered a noble marriage because noble marriages don't have monetary transactions involved)

4. **Prajapatya**-The Prajapatya form of marriage is an orthodox form where the parental approval figures and the economic complications of betrothal are bypassed. The prajapatya form of marriage is construed to be inferior to the first three forms because here the gift is not free but it loses its dignity due to conditions which should not have been imposed according to the religious concept of a gift the Father of Bride goes looking for a groom and not the other way round.

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5. **Gandharva**- The Gandharva form of marriage is the union of a man and a woman by mutual consent. According to Manu “The voluntary connection of a maiden and a man is to be known as a Gandharva union which arises from lust”.
6. **Asura**- In the Asura form of marriage, the bride was given to the husband in payment of a consideration called ‘sulka” or bride-price. When the bridegroom, having given its much wealth as he can afford to the father or paternal kinsmen and to the damsel herself, takes her voluntarily as his bride ‘ it Is called the Asura Marriage. In short Groom is not at all compatible with bride but the father of the bride likes wealth and the groom is happy to give him that.
7. **Rakshsa**- Groom will battle the bride’s family, take away the bride and convince her to marry. In simple terms the ‘Rakshasa’ form of marriage may be described as marriage by capture, resembling the right of a victor to the person of the captive in war.
8. **Paischacha**- Worst kind of marriage, the groom will forcefully marry the bride and won’t even give money or anything for it. It is the worst form of marriage among the Hindus. When the lover secretly embraces the damsel, either sleeping or flushed with strong liqueur, or disordered in her intellect, that sinful marriage, called paishacha is the eighth and the lowest form. This form of marriage was the most abominable and reprehensible, originating from a sort of rape committed by man upon a damsel either when asleep or when made drunk by administering intoxic

Sec.5- Conditions for a Hindu marriage.

- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled:
 - i. Neither party has a living spouse at the moment of marriage**
 - ✓ It is not permissible to have two living wives at the same point in time, which amounts to bigamy.
 - ✓ **Yamunabai vs Anant Rao 1988** Supreme Court held that in a bigamous marriage the second wife has no status of a wife because the second marriage is Null and void
 - ✓ **Apostasy to Islam:** Supreme Court in **Sarla Mudgal versus Union of India** held that there was no automatic dissolution of marriage by apostasy of a spouse to another religion. The second marriage of Hindu apostate to Islam during substance of first marriage is violation of the provision of Hindu Marriage Act
 - ✓ Decision in **Sarla Mudgal** case was a reviewed in **Lily Thomas versus Union of India 2006** the court held that marriage solemnized according to one personal laws cannot be dissolved according to another personal because of the change of religion of parties
 - **Effect of contravention of Section 5(i)**
 - a) The marriage will be null and void under **section 11**
 - b) The person will be liable for punishment for bigamy under **section 17** of Hindu Marriage Act read with **section 494 and 495** of Indian penal code

ii. At the time of marriage, neither party-

- a. Is giving consent because of unsoundness of mind

- b. Suffering from mental disorder of such a kind or to an extent where he/she is unfit for marriage and the procreation of children
 - c. Is subject to recurrent attacks of insanity
 - **Effect of contravention of Section 5(ii)**
 - ✓ If the marriage take place in contravention of 5(ii) of the marriage will be **voidable** under **section 12(1)(b)**
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iii. Bridegroom is 21 years, bride is 18 years

- Originally the age fixed by Hindu Marriage Act was 18 years for bride groom and 15 years for the bride. The Child Marriage Restrain (Amendment) Act 1978 fixed the minimum age of the **bridegroom to 21 years** and minimum age of the **bride to 18 years**
 - **Effect of contravention of Section 5(iii)**
 - ✓ The Hindu Marriage Act does not provide for any effect of contravention of this provision. Thus according to this the marriage in contravention of this section is **neither void nor voidable.**
 - ✓ The only consequence which Hindu Marriage Act provides is the punishment under **Section 18**. It provides for rigorous imprisonment which may extend to **two years** or with fine which may extend to **100000 rupees** or with both
 - ✓ Further if the requirements of the **section 13(2) (iv)** are satisfied then at the instance of brides, a decree of divorce on the ground of option of puberty can be granted.
 - ✓ The **Prohibition Of Child Marriage Act, 2000** provide every marriage shall **voidable** at the option of contracting party who was a child at the time of marriage
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iv. Parties are not within degrees of prohibited relationship unless the custom or usage governing each of them permits for such a marriage

- **Section 3 (g) Degrees of prohibited relationship**
- Two persons are said to be within the degrees of prohibited relationship-

- i. If one is a lineal ascendant of the other; or
- ii. If one was the wife or husband of a lineal ascendant or descendant of the other; or
- iii. If one was the **wife of the brother** or of the fathers or mothers brother or of the grand fathers or grandmothers brother of the other; or
- iv. If the two are brother and sister, uncle and niece aunt and nephew, or **children** of brother and sister or of two brothers or of two sisters;

- **Rules for Prohibited relationship**

- ✓ Full/half/uterine relationship
- ✓ Legitimate/illegitimate relationship
- ✓ Blood/adoption relationship

- **Effect of contravention of Section 5(iv)**

- ✓ A marriage in contravention of the section is **void under section 11**
- ✓ **Section 18** also prescribed simple imprisonment which may extend to one month or with fine which may extend to 1000 rupees or with both

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- v. Parties are not **sapindas** of each other, unless custom or usage permits.

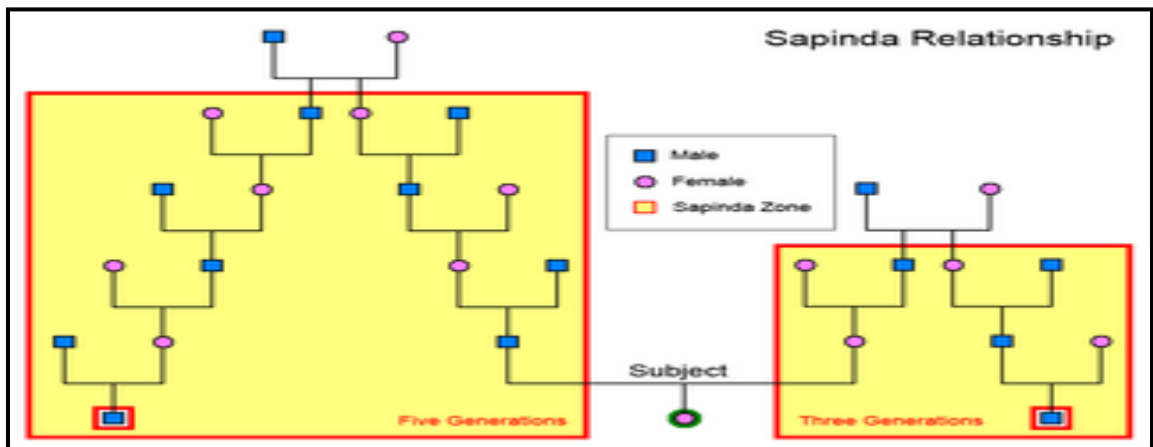
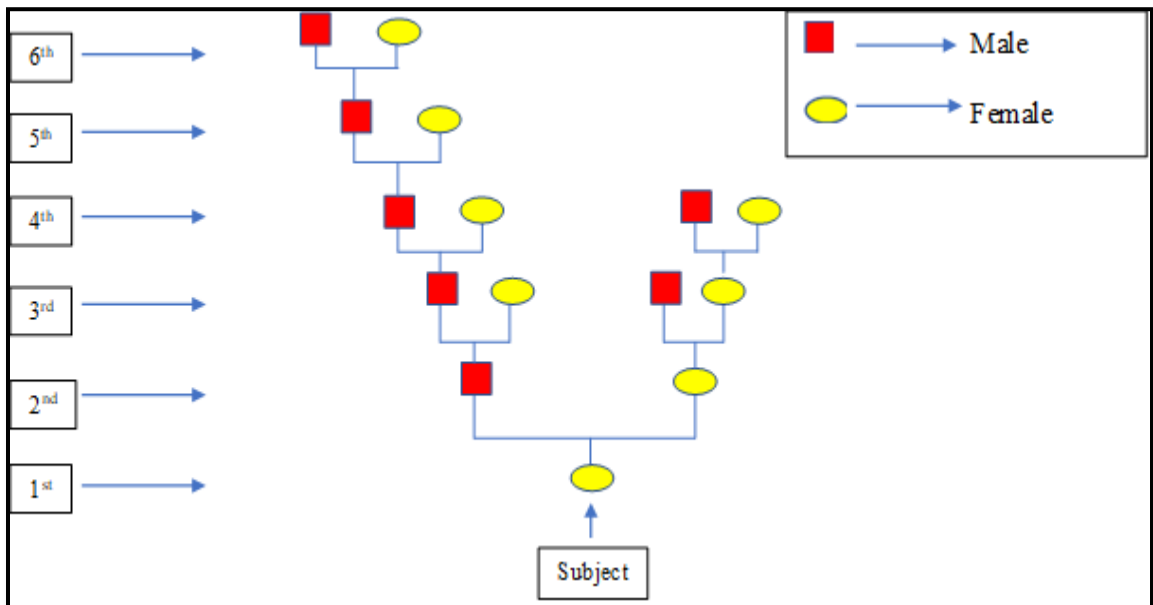
- **Section 3 (f) Sapinda**

- i. "Sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upward in each case from the person concerned. Who is to be counted as the first generation.
- ii. Two person are said to be "spindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

- **Rules for sapinda-**

- ✓ Always goes upwards

- ✓ Mother-3rd generation
- ✓ Father-5th generation
- ✓ Full/half/uterine relationship
- ✓ Legitimate/illegitimate relationship
- ✓ Blood/adoption relationship



- **Effect of contravention of Section 5(v)**

- ✓ The marriage in contravention of the section is **void under section 11**
- ✓ **Section 18** also prescribed simple imprisonment which may extend to 1 month or with fine or which may extend to 1000 rupees or with both.

Sec.7- Ceremonies for Hindu marriage.

- The act does not prescribe any particular form of ceremony to be performed by the parties.
 - i. A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.
 - ii. Where such rites and ceremonies include the Saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the fire), the marriage becomes complete and binding when the seventh step is taken.
- Saptapadi as well as Kanyandan is not a mandatory ceremony to make a Hindu Marriage valid.
- This section gives statutory recognition to the marriage under Hindu law as a sacrament
- **In Bhaurao versus state of Maharashtra 1965** the supreme court held that unless a marriage is celebrated on performed with proper ceremonies in due form it cannot be said to have been solemnized

Sec. 8- Registration of Hindu marriages.

1. For the purpose of facilitating the proof of Hindu Marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject such to conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.
2. Notwithstanding anything contained in sub-section (1) the state Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, in all cases or in such cases as may be specified, and whether any such direction has been issued,

any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

3. All rules made under this section shall be laid before the State legislature, as soon as may be, after they are made.
 4. The Hindu Marriage Registrar shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts there from shall, on application, be given by the Registrar on payment to him of the prescribed fee.
 5. Notwithstanding anything contained in this section the validity of any Hindu Marriage shall in no way be affected by the omission to make the entry.
- A registration of a Hindu Marriage is not compulsory.
 - In **Seema vs. Ashwani Kumar 2006** Supreme Court ordered compulsory registration of marriage irrespective of their religion. It directed the Central and the state governments to make relevant rules to the effect
 - **Gullipilli Sowria Raj v. Bhandaru Pavani (2009)**
Christian man and Hindu woman Marriage is not valid even after registration. Under HMA only two Hindus can get married. Registration under HMA does not make a marriage between a Hindu and non-Hindu valid. Special Marriage act is for that purpose.
 - **V.D. Grahalakshmi vs T. Prashanth on 21 November, 2011** – non registration does not make a marriage void.
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Void and Voidable Marriage

- A Void marriage is no marriage at all, court considers a void marriage as if the marriage never existed in the first place. Void ab initio i.e. void from inception.
- A Voidable marriage is binding and valid until the decree from court is passed for annulling it

Sec. 11 Void marriages.—Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 2[against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in **clauses (i), (iv) and (v)** of section 5.

12. Voidable marriages.—

- (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—
- (a) that the marriage has not been consummated owing to the impotence of the respondent; or]
 - (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or
 - (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent; or
 - (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.
- (2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

- (a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—
- i. the petition is presented **more than one year after the force had ceased to operate** or, as the case may be, **the fraud had been discovered**; or
 - ii. the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or **wife after the force had ceased to operate or, as the case may be, the fraud had been discovered**;
- (b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—
- (i) that the petitioner was at the **time of the marriage ignorant of the facts alleged**;
 - (ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act **within one year of such commencement** and in the case of marriage solemnized after such commencement **within one year from the date of the marriage**; and
 - (iii) that **marital intercourse with the consent** of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.

Summary

- If the condition number **II and III are violated then it is a Voidable marriage.**
- Also Voidable under **Section 12**, if **the marriage is not been consummated owing to impotence of the respondent, the respondent is pregnant at the time of marriage by some other person other than petitioner or if the consent is obtained by fraud or force.**
- In Hindu marriage Act, 1955 in Sec.5 (iii) the minimum age limit for marriage is given, but we can also see that if the bride or groom are not of the minimum age the marriage is 'Voidable' and not void'. This is not the case in Special marriage Act, 1954 where it is considered a void marriage.
- **This child marriage is still punishable under Section 18** of Hindu marriage act and also under **Prohibition of Child Marriage act, 2006.**
- **P. Venkataramana v. State (1977)**

- A woman filled complaint against his husband under section. 494 (bigamy) Husband defended himself with the fact that his first marriage was void. As he was 13 years old and his wife was only 9 years old at the time of marriage. Court held the marriage was only voidable and not void so the 2nd marriage would constitute an offence under section 494 IPC.
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Legitimacy of children of void and voidable marriage [section 16]

- **section 16** provides that even if the marriage is Null and void under section 11, any child of such marriage who would have been legitimate If the marriage have been valid, **shall be legitimate** whether or not a decree of nullity is granted in respect to the marriage under this act and whether or not the marriage is held to void otherwise than on the petition under this act.
- where the decree of nullity is granted in respect to voidable marriage under **section 12**, any child begotten or conceived before the decree is made, who would have been legitimate child of the parties to the Marriage if at the date of the decree it had been dissolved instead of being annulled, shall be Deemed to be their legitimate child notwithstanding the decree of nullity.
- The above provision shall not confer any child of marriage which is Null and void or voidable any rights in law to the property of any person other than the parents.