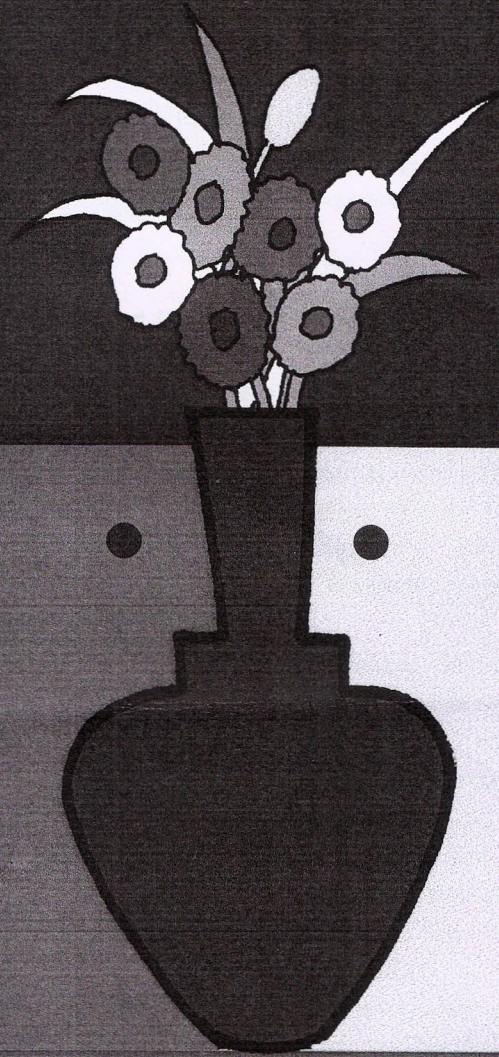


# प्रतिबिंब

अंक १६ वा । जानेवारी २०१२



The Journal of Marriage Counselling





## **BREAKDOWN OF MARRIAGE LAWS: KAUN BANEKA ACHHA PATI (CHALLENGES & REFORMS)**

**Dr. Mukund Sarda**

**Hindu** marriage is solemnized for spiritual pleasures (sacrament) and not for sexual pleasures. It is said by Manu that marriage is the means for salvation; no man is complete without marrying a woman. Marriages are made in heaven and are solemnized on earth. It was considered as permanent union under old Hindu law: a union of heart with heart, soul with soul.

With the change in the societal behavior and passing of the Hindu Marriage Act 1955, the laws of marriage under Hindu law went under a sea change and contractual color was given to Hindu marriage. The principles changed from Marriages are made in heaven and are solemnized on earth; to marriages are made in heaven solemnized on earth and can be dissolved in the courts with the permission of the Courts.

Under old Hindu law, which was male dominated the husband was considered to be Pati Parmeshwar (next to God) irrespective of his character or behaviour towards his wife and family. Under the Act of 1955 law put certain criteria for a man to call himself as good husband or accha pati. Dissolution of marriage became reality and the woman was given additional grounds for divorce if the conduct of the husband was not good.

With the amendments to the Hindu Marriage act in 1976 more freedom was given to the spouses to decide and regulate the future of their married life, marriage laws permitted convenient divorce by consent within a

reasonable period of time.

In spite of these amendments and equality of the spouses the marriage institution still stands at crossroad particularly the Hindu woman is not happy with the marriage and divorce laws as they ensure formal equality but not substantial equality. The question remains in our mind 'Kaun Banegha accha pati'.

### **Critical issues and challenges under Hindu marriage laws:**

The setback to the concept of sacramental nature of Hindu marriage was due to passing of the Hindu marriage Act, 1955 and subsequent amendments to it. The major setback to the tradition concept of Hindu marriage recently is largely due to recognition of live in relationship and same sex marriage.

Every person on this earth wants to be happy in his life and he feels that marriage is an institution which will bring happiness in his life. Every person spent three fourth of his life as married person till he dies; therefore laws regulating to this aspects of life shall be those laws which promotes happiness and reduces cruelty of life. The experience of almost every married person with the marriage laws is otherwise.

### **The challenges to the Hindu Marriage laws:**

1. Distribution of matrimonial property
2. Irretrievable break down of marriage
3. Live-in-relationship



4. Same sex marriage
5. Ceremonies of marriage
6. Non registration of marriage
7. Dilatory and costly litigation
8. Child marriages
9. Bigamy: by conversion to Islamic religion
10. maintenance rights

#### **1. Distribution of matrimonial property :**

After 1976, the nature of Hindu marriage changed from sacrament to marriage of convenience, parties are allowed to dissolved their marriage by mutual consent with the permission of Court within a specific period. In the cases of dissolution of marriage on fault theory the procedure is little painful as the parties have to prove the fault to claim divorce. The family courts in India became divorce courts, people started to taking divorce more often for trivial reason.

The major problem after divorce particularly for woman remained her right of livelihood and maintenance. A lump sum amount is fixed and wife has to live on that amount whole of her life though there is inflation the market/ill health or any other reasonable ground which forces her live below her dignity and in some cases to sell her body and soul. ]

In the foreign country like United kingdom ( the model followed in Goa) the situation is different. The divorce is not much painful in terms of division of property as the woman is given equal share in the property earned by the husband after marriage till the time of divorce in lieu to her domestic services which she has rendered to her husband or to his family.

Hindu woman enjoys equal right to the matrimonial property on the basis of principle of equality enshrined under Article 14 & 15 of the Indian Constitution. There is need of special legislation on the same lines as that of matrimonial laws in Goa in this regard to ensure equality and dignity to the married woman.

#### **2. Irretrievable break down of marriage :**

Section 13 B of the Hindu Marriage Act permits spouse to take divorce by mutual consent, it is observed in many cases the spouse gives consent initially at the time of filling petition and then hold it for a long period or withdraws it making the

marriage virtually impaired. Such irretrievable breakdown of marriage, where the marriage continued only for revenge shall be brought to an end. The draft legislation in this regard is pending, it needs to be passed and notified to facilitate the rights of the spouses to re-live happily. There can be certain safeguards to such legislation to prevent its misuse.

#### **3. Live-in- relationship :**

The biggest threat to the institution of marriage is the recognition of live in relationship by the Supreme Court of India and under the Protection of Domestic Violence Act, 2005. Supreme Court of India has observed that man and woman in love, has right to live together. It is a part of right life and it is not a criminal offence. There is urgent need to regulate live in relationship by comprehensive legislation so as to protect the institution of marriage.

#### **4. Same Sex marriage :**

With the recognition of legality of homosexual act by Delhi High Court in Naz Foundation Case the questions have been raised about the legality of Gay Marriages in India. The Hindu Marriage Act permits any two Hindus to marry under Hindu Law. It is silent as far as the sex of Hindus are concerned. If tomorrow Supreme Court India approves Homosexuality the question of gay marriages will be a challenge under Hindu Law.

#### **5. Ceremonies of Marriage :**

Many cases of prosecution of bigamy fails because of the lack of proof of solemnization of the second marriage with requisite rites and ceremonies. In order to prevent the problems of evidence a simple ceremony of marriage can be laid down and which should be uniformly applied to all marriages irrespective of any custom. Additional ceremony, customary rights can be performed.

#### **6. Non registration of marriage :**

Registration of marriage shall be mandatory in all the states. In the States like Maharashtra where registration is compulsory, non-registration does not invalidate to marriages. The effect of non registration shall be more stringent other than paying fine. No divorce/ maintenance petition shall be accepted without registration certificate. On line



registration of marriage shall be promoted.

#### **7. Dilatory and costly litigation :**

The object behind establishing Family courts was to provide speedy justice. But the fact of the matter is divorce is more expensive than marriage. The prolonged litigation due to existing appeal system to the High court and Supreme Court is very much disturbing. Separate appellate system on the lines of consumer forum shall be created for early disposal of the cases at national and state level. Delay in justice not only denies justice but also buries the chance of remarriage and right to live happily.

#### **8. Child marriages :**

The Prohibition of Child Marriage Act, 2006 does not make child marriage a void marriage. The age of the man and woman for marriage under Hindu law is not equal and such discrimination is not justified as it promotes child marriages. There is urgent need to amend the law and make the age of marriage equal for man and woman.

#### **9. Bigamy: by conversion to Islamic religion**

There are many cases wherein the Hindus has converted to Islam and performed bigamous marriage, in spite of Supreme Court judgments the confusion prevails. Absence of uniform civil code is a major challenge in cases of bigamy.

#### **10. Maintenance rights :**

The Laws of Maintenance and judgments of the Courts are contradictory in many cases. A woman today feel helpless and is cheated in spite of many legislation and landmark Judgments protecting right of maintenance. Penalty for nonpayment of maintenance shall be harsh. Procedural technicality shall not be given more importance.

#### **Conclusion:**

In absence of Uniform Civil Code, different state legislations, different personal laws, conflicting judicial opinion, the parties to the marriage in India are not happy to fall in love with the institution of marriage. Live in relationship are gearing up and the common belief is short term marriages are better than heavenly marriages in search of Kaun Banega mera Accha Pati. There is urgent need of revising the existing law in the context of modern demands of young minds who

wants more freedom and less responsibility. The day is not far when one will find live in relationship bureau instead of Marriage bureau in India, family Courts will be replaced by friends Courts.

♦♦

*The author is Dean & Principal, Bharati Vidyapeeth Deemed University New Law College, Pune. The views of the author are personal and purely of academic interest.*

#### **Tips for relationship success**

■ Without quality time, your relationship will not survive. Carve out at least half an hour a night, and at least one day a month when the two of you spend time exclusively together.

■ You will both need security, comfort. A good relationship is built on compromise and a great deal of give and take on both sides.

■ Keep your dependence and independence in balance. Tell and show your partner how much you need him, but don't cling, as that can make your partner feel trapped.

■ Learn to do the one thing that is most likely to restore good feeling in your relationship-giving your partner a genuine, loving and approving smile.

■ Money is the number one cause of couple conflict. For a relationship to work, you need to address your finances and work out a budget.

Collection : **Dr. Motiwala**  
Marriage Counsellor