ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 3
Issue I

August 2021

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES
ISO 9001:2015 Certified Institution
(Affiliated to GGSIP University & Approved by BCI & AICTE)
The Institute is NAAC Accredited 'A' Grade, recognized by UGC under section 2(f)
& NBA Accredited for MCA Programme

Volume 3, Issue I August, 2021 ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

TABLE OF CONTENTS

S. No. Title of the Paper/ Author **Page No.**

1. An Era Comes To An End: Soli- A Great Lawyer And A True Friend
V. Sudhish Pai 1

2. Pre-empting A rise in Human Trafficking: A Deadly Side Effect of the COVID-19 Pandemic
Shivani Chawla 7

3. Efficacy of Victim Impact Statement in Indian Criminal Justice System in the Light of International Experiences
Samriti Verma and Anuj Kumar Tiwari 23

4. Psychological Autopsy
Lovleen Sharma 36

5. Constitutional Courts and Judicial Independence: Conceptualising Judicial Dissent in South Asian Perspective
Neha Tripathi and Anubhav Kumar 44

6. Work From Home and The Need for Right to Disconnect: Aftermath of the COVID-19 Pandemic
Shivya Juneja and Divyanshu Priyadarshi 61

STUDENTS

7. Liability Dimension of The Chamoli Disaster in Uttarakhand Under the Legal Framework
Sarthak Aryan and Jayanta Boruah 73

8. The Role of Nyaya Panchayat in Delivery of Rural Justice in India: A Critical Analysis
Namrata Chakraborty and Himanshu Anand 83

9. Inadequate Environmental Laws and increasing Pollution in Space
Deepansh Tripathi 94

10. An Unvaccinated World: The Intellectual Property Rights Conundrum
Nishita Arora and Hiba Nasir 105

11. Regulating the Unregulated Video-On-Demand Platforms in India
Ravi Singh Chhikara and Abhinav Arora 114

12. Utility Model System: Need of the Hour for Small Innovators
Girish Ahuja and Aparna Singh 130

13. CSR and Ghost Beneficiaries: The New Age Fraud Mechanism
Kushal Tekriwal 145

14. The 'Unpolished' Code Barricading Cross- Border Insolvency In India.
Prateek Khandelwal and Poojal Agarwal 154

15. Evaluation of Multiculturalism and Gender Equality in Family Laws of India from Uniform Civil Code Perspective
Tejash Bhandari 167

16. Protest: Defending the Right to Protest in the Digital Age
Neha Maria Antony 177

17. Is Gambling Safe Haven for Taxation? Understanding the Applicability of GST Laws in the Gambling Industry
Sagnik Sarkar 188

18. Applicability of the POSH Act to the Virtual Workplace: Assessing the New Normal
Gunjan Garg 202

19. Cyber Defense Policy Framework and Response Mechanisms towards the Cyber Threats and Emerging Cyber Warfares
Kshitij Dahiya and Vasu Manchanda 216

CASE COMMENTS

20. To Report or Not To Report: Zooming in the Case of Chief Election Commissioner of India v/s M.R. Vijayabhaskar & Ors.
Prerna Dhingra 228

21. An Approach Towards Balancing Fundamental Rights: Amit Sahni v/s Commissioner of Police
Sarthak Bhardwaj 237

LEGISLATIVE REVIEW

22. The Hindu Marriage Act of Pakistan: A Spearhead of Social Change
Kavish Arora 247

23. Critical Analysis of Civil Liability for Nuclear Damage Act, 2010
Ayush Garg and Mridul Pateriya 256

BOOK REVIEW

24. Rashmi Salpekar and Gauri Gupta, *Moot Problems*
(Vivekananda Institute of Professional Studies, 2021)
Shweta Shukla 269

The Hindu Marriage Act of Pakistan: A Spearhead of Social Change

Kavish Arora*

VIPS Student Law Review
August 2021, Vol. 3, Issue 1, 247-255
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
© Vivekananda Institute of Professional Studies
https://vslls.vips.edu/vslr/

Abstract

Since the partition between India and Pakistan, the Hindus residing in Pakistan have been desiring their personal marriage law system. This is because the minority Hindu community in Pakistan have been subjected to gross injustice and oppression since time immemorial. Moreover, there have been abundant atrocities faced by the women belonging to the Hindu community. The only way to curb the atrocities faced by the Hindu community was to develop their own personal law system governing marriages. This breakthrough was achieved in the year 2017 when the Hindu Marriage Act was passed in Pakistan. The paper herein firstly will discuss the atrocities and problems faced by Pakistani Hindus in the absence of legislation. Secondly, it will discuss the various benign provisions of the landmark Hindu Marriage Act pertaining to the registration of marriage, termination of marriage which aims to protect the minority Hindu community. Further, it sheds some light on the concurrence of Hindu Customary law and the Hindu Marriage Act.

Introduction

Since the partition between India and Pakistan, the Hindu community in Pakistan has been on the receiving end of discrimination and marginalization. Pakistan is home to Christians (1.59% of the population), Hindus (1.60% of the population), Qadianis (0.22% of the population) and others (0.07% of the population) and the vast majority of Muslims (96.28% of the population).[1] The minority religions are regulated through laws including Christian

* Student, 2nd year, Symbiosis Law School, Hyderabad, India.

1 Pakistan Bureau of Statistics, PBS, 1998. *Census: Religious Minorities*. Islamabad: Pakistan Bureau of Statistics.

Marriage Act, 1872; Parsi Marriage and Divorce Act, 1932; Sikh Anand Marriage Act, 2007 and others. However, even though the Hindus are the largest minority in Pakistan, they did not have any marriage laws until the enactment of the Hindu Marriage Act of 2017.

The need for a Hindu marriage law was imminent as there were numerous cases of physical attacks, forced conversions, the social stigmatisation of the Hindu minorities in Pakistan.[2] Furthermore, the obligation to enact a marriage law governing the Hindus came from the Pakistan constitution as well. The Constitution of Pakistan holds that *"the protection of the law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan"*.[3] The impugned provision acknowledges the fact that the rule of law provides protection against arbitrariness, tyranny, and caprice.[4] This means that the constitutional footing of Pakistan requires the presence of a law which will regulate human conduct whenever necessary. The constitution also sets out the protection of the interest of minorities and allow them to profess their religion freely.[5] It is also an unequivocal fact that sometimes, the cultural or religious verdict may serve as the purpose of the law, which is the case of the Muslim law of inheritance.[6] The enactment of an Act was not only important for recognizing Hindus as an integral community of the country but also to mitigate the plight of women who have been subject to continuous harassment and physical agony. The females from the Hindu community were often prone to abduction and forced conversion of faith, it was believed a codified law would protect the plight of Hindu women in Pakistan.[7] A law was also required to inculcate the minorities into the legislative framework and also to provide them equal rights in accordance with the constitutional framework.

The Hindu Marriage Act of 2017 brought fresh air into the family law regime in Pakistan. Earlier there were a load of problems because of an absence of legislation which caused numerous legal and procedural irregularity. The same shall be espoused upon in the subsequent section by the author. Moreover, the Act became a milestone in Pakistan as it incorporated the essentials of marriage, terms through which a marriage may be solemnized, conditions through which marriage can be terminated and the basis through

2 Anwar Jqbal, *"1,000 Minority Girls Forced in Marriage Every Year: Report"* (Dawn, 2017) accessed 21st February 2021. Available at - https://www.dawn.com/news/1098452.

3 The Constitution of Islamic Republic of Pakistan 1973, Art. 4.

4 Shaukat Ali Mian vs Federation of Pakistan, 1999 CLC 607 (1999).

5 The Constitution of Islamic Republic of Pakistan 1973, Art. 2A.

6 Syed Nadeem Farhat, "*Hindu Marriage Law: Need, Impediments and Policy Guidelines"*, Policy Perspectives: The Journal of the Institute of Policy Studies, 12(2), pp.131-146.

7 Jqbal, s*upra* note 2, *"1,000 Minority Girls Forced in Marriage Every Year: Report"* (Dawn, 2017).

which such termination can take place. The Act is also aimed to act as a watershed against the atrocities faced by the Hindu minority community in Pakistan.

Absence of Legislation: Issues and Problems

Apropos the partition between India and Pakistan in 1947, a separate state of Muslims was created wherein marriages of Hindu minority were not recognized, leaving Hindu women without any protection.[8] Marriage is considered to be an essential institution in Pakistan, in terms of moral and social obligation.[9] The choices made in marriage determines a women's adult life and how she will be looked up by the world.[10] Women belonging to the Hindu minority in Pakistan have been deeply affected by the lack of legislation in the country. The presence of oppressive and discriminatory national laws has affected the plight of the women belonging to the Hindu community. Women belonging to the minority communities like those of the Hindu community have faced and usurped physical, mental, emotional, and psychological violence. Pakistan had seen a surge of intolerance towards religious minorities. As intolerance towards religious minorities grew in Pakistan, so did the practice of forced conversions.[11] While there exist different methods to force someone to covert religion, there are two common methods that exist in Pakistan – bonded labour and forced marriage.[12] An example of this is that most of the bonded labourers in Sindh belong to the Hindu minorities which are considered to be scheduled tribes.[13] These forced conversions have made the Hindu minorities vulnerable not only to those who are compelled with "larger ideological" motives but also to those who are involved in petty monetary gains.[14]

In furtherance, the absence of legislation meant that there was no mechanism to register and regulate aspects of Hindu Marriage and even divorces between the individuals. No mechanism for registration and identification of marriage implied that there would be complications with regards to the transfer of property, identity documents, travel documents and many more. Another problem that arose due to a lack of legislation is that there was no

8 Saleem Shaikh & Sughra Tonio, "Kidnapping, forced marriage: Pakistan's Hindu women hope for protection in new law", (Reuters, 2017), https://www.reuters.com/article/us-pakistan-women-marriage/kidnapping-forced-marriage-pakistans-hindu-women-hope-for-protection-in-new-law-idUSKBN17E11J .

9 Filomena M. Critelli, *Between Law and Custom: Women, Family Law and Marriage in Pakistan*, 43 Journal of Comparative Family Studies 5, 2012.

10 *Id.*

11 'Forced Conversion of Minority Girls and Women in Pakistan' World Sindhi Congress. 5 (UNPO, 2017), https://unpo.org/downloads/2075.pdf.

12 *Id.*

13 *Id.*

14 Tahir Mehdi, Hindu Marriage: Untying the Knots, (Dawn, 2015), https://www.dawn.com/news/1224870.

way to substantiate a marriage. In any case of a bigamous marriage, the aggrieved party had no way to establish a bigamous marriage by the opposite spouse as there was the absence of any proof of marriage. Moreover, this legal gap has hindered the rights of women and children the most. Lack of legal documents would imply that women could be thrown from their matrimonial home and there would be no legal recourse for the same. Moreover, the absence of marriage documents would mean that any child from an impugned marriage would be considered illegitimate. This implied that both wife and children would lose their legal status as heirs of the deceased.

The extremely weak legislation and lack of implementation of existing laws have not only affected the matrimonial rights but also the human rights of women. Adding to that, there was an absence of a regulatory framework to deal with marriages amongst the non-Muslim minorities in Pakistan.[15] The religious minorities perform and register marriages in accordance with their religious practices and thus, no consideration is given to the age of a child.[16] Any executor of child marriage would not be punished as there would not be any registration or a record of such marriages.

These problems of and suppression of women and children were at their peak. The problems arising because of a lack of concrete legislation was evident. These issues were first highlighted in the 1970s but they could not be formalised.[17] Moreover, to tackle the problem even the Parliament tried passing the Hindu Marriage Bill thrice – in 2008, 2011 and 2012 but it did not bear any fruits.

The Landmark Hindu Marriage Act, 2017

After a massive hue and cry the landmark Hindu Marriage Bill was finally adopted on 9th March 2017. It is considered to be a milestone as it is the first personal law for Pakistani Hindus, applicable in Punjab, Baluchistan, and Khyber Pakhtunkhwa provinces.[18] The Sindh province has already formulated its own marriage law.[19] Another significance of this law is that Hindus being one of the largest minorities did not have any law governing them. The new law has aimed to not only bring a breath of fresh air to the family law regime in

15 "Child Marriages in Pakistan", The Institute For Social Justice (ISJ) (Institute for Social Justice, 2017), http://www.isj.org.pk/child-marriages-in-pakistan/.

16 *Id.*

17 Mehdi, *supra* note 14.

18 'Pakistan Senate passed Landmark Hindu Marriage Bill', (The Hindu, Feb. 18, 2017), https://www.thehindu.com/news/international/Pakistan-Senate-passes-landmark-Hindu-marriage-bill/article17324249.ece.

19 *Id.*

Pakistan but also to protect the rights of women and children. This Act vividly encourages the perception that women should have documentary proof of their marriage as pointed out by Michael when he said, "the incumbent government was committed to protecting and promoting human rights, including the rights of women and minorities".[20] In furtherance, he suggested that the Ministry of Human Rights also "took the initiative to protect the rights of the minorities after obtaining a no-objection certificate from the Ministry of Religious Affairs."[21]

Hindu Customary Law along the lines of Hindu Marriage Act

Since time immemorial, Hindus have owned their customs and traditions in high regard. The earlier customs and traditions are being followed by the Hindu community till now. It is pertinent to note that Hindu customs have portrayed having strong and life-long bonds with spouses. The Ramayana describes a woman as '*dharmapatni'* which means "a friend and adviser to be associated by the husband in religious rites and ceremonies".[22] While the Mahabharata depicts a social obligation and mentions that those who have wives "fulfil their obligations in the world", may be able to live a true "family life", and may be able to stay "happy and lead a full life".[23] One can construe that both of the holy literature depicts that a man and woman has to live together in the faithful ties of holy matrimony. The Act describes a Hindu marriage as –

> *"The union of Hindu male and Hindu female solemnized under this Act and includes the marriage solemnized before the commencement of this Act in accordance with the law, religion and customs having force of law relating to Hindu persons."*[24]

On the perusal of the definition of Hindu marriage, it is vivid that the Act would apply to men and women belonging only to the Hindu community. Moreover, the Act has been given a wider ambit to not only include marriages solemnized after its commencement but before too. The act would not apply to a non-Hindu marrying a Hindu, which was earlier an acceptable part of Hindu customary law.[25]

20 "Pakistan Parliament Passes Landmark Hindu Marriage Bill", (The Indian Express, 2017), http://indianexpress.com/article/world/pakistan-parliament-passes-landmark-hindumarriage-bill-4563476/.

21 *Id.*

22 Raza, *supra* note 8.

23 *Id.*

24 The Hindu Marriage Act 2017, § 2(e).

25 Raza, *supra* note 8.

In furtherance, the Hindu customary law requires that certain customs, traditions, and procedures be followed during the solemnization of marriage. Moreover, there are various rites and rituals that hold spiritual importance under the Hindu customary law.[26] However, if any tradition which is unlawful or has not been uniformly observed among the Hindus for a continuous and uniform period of time, that tradition cannot be validated as a customary right.[27] If we scrutinize the essence of the Act, it can be contemplated that just like the Constitution of Pakistan abides and follows the *Shariah*, the Hindu Marriage Act accepts the laws within Hinduism.[28]

Registration and Documentation

The act through its Section 6 mandates that every marriage between Hindus should be registered in accordance with the Act within fifteen days of its solemnization. Moreover, the Act declares that "the marriage register shall be open for any inspection and shall also be held as an evidence of its contents or any certified extracts".[29] In furtherance, the original register's information may be put "on extract to be shared with the applicant on provision of such fees".[30] The impugned section allows proper verification that is required, so as to get details of the marriage as mentioned in the *Shaadiparat*.

Shaadiparat, as defined under the Hindu Marriage Act is the –

> *"Certificate of marriage issued by marriage registrar, which certifies the solemnization of Hindu marriage."*[31]

A *Shaadiparat* is a document similar to the *Nikahnama* in Muslims, it is considered to be proof of marriage between the parties.[32] It is a document whose existence can be found in every Hindu Marriage Bill but was officially recognised as a valid legal document in 2017. The document holds a high value as the same has to be signed by the pundit and has to be registered with the concerned governmental authorities.[33] Thus with this document, a Hindu will now have a credible, authentic and legally binding record of marriage. The *Shaadiparat* includes important details such as the date of marriage, name of union town/

26 *Id.*

27 The Hindu Marriage Act 2017, § 2(b).

28 Raza, *supra* note 8.

29 The Hindu Marriage Act 2017, § 6(2).

30 *Id.*

31 The Hindu Marriage Act 2017, § 2(i).

32 *Supra*, 11. Aparajita Mishra, *"Critical Analysis of Hindu Marriage Laws in Pakistan",* IPLEADERS, https://blog.ipleaders.in/critical-analysis-hindu-marriage-laws-pakistan/#_edn13.

33 Raza, *supra* note 8.

council where the spouse belong, particulars of the groom, particulars of the bride along with her signature, particulars of groom along with his signature, signature of two witnesses, and signature of the registrar.[34] In furtherance, the Act ensures that if any individual makes or gives false statements or particulars in the *Shaadiparat*, he/she shall be punished with either simple imprisonment or fine or with both.[35] Moreover, the marriage registrar is expected to make three copies of *Shaadiparat*, one for the bride, the other for the groom and the last one for the marriage registrar itself.[36]

Conditions of Marriage through the contours of Hindu Marriage Act

The Hindu culture is ever-growing with customs and traditions. Perpetuating endogamous customs are vividly seen in society. However, Section 4 of the Hindu Marriage Act mandates certain conditions that must be fulfilled for a valid solemnization of marriage. The parties are required to be of a sound mind and capable of giving a valid consent at the time of marriage.[37] It is necessary that both the parties are not below eighteen years of age and that they do not come under the degrees of prohibited relationship.[38] In furtherance, the Act prohibits polygamy and polyandry.[39] Even though polygamy is commonly practiced in Islam, it has been kept prohibited for the Hindu Community as the Hindu culture declares it to be forbidden.

Section 10 of the Act authorizes that if the conditions of Section 4 clauses (c) and (d) are proved to be true then the marriage can be declared as null and void. Clause (c) of Section 4 prohibits any form of degree of prohibited relationship, while Clause (d) prohibits the existence of any other spouse at the time of marriage. The Act also considers the option of Voidable Marriages as enunciated under Section 11 of the Act. Section 11 states that "any marriage can be declared voidable and may be subsequently annulled by a decree of nullity passed by the court if – a) marriage has not been consummated owing to the impotence of the respondent; b) both parties were below the age of eighteen during the solemnization of marriage; c) consent obtained through coercion or fraud; d) the respondent at the time was pregnant by some other person other than the petitioner".

Decree of Termination of Marriage

An integral facet of the Hindu Marriage Act 2017 is the provision which deals with the

34 The Hindu Marriage Act 2017, Schedule A.
35 *Id.*, § 23 (2).
36 *Id.*, § 7 (4).
37 *Ibid.*, § 4(a).
38 *Id.*, § 4(b) & 4(c).
39 *Id.*, § 4(d).

termination of Hindu marriages in Pakistan. The termination clause just like the Act has been given a wider scope and it includes marriages solemnized before and after the commencement of the Act. This implies that any Hindu married individual can use this provision of the Act to terminate his/her marriage if, after the solemnization of marriage, he/she has been treated with cruelty[40] or has been deserted for more than two years.[41] A marriage can also be terminated if the other party has ceased to be Hindu or has converted to another religion[42] or has renounced the world by entering any religious order.[43] In furtherance, a spouse can apply for a decree of termination if the other party has been suffering from incurable leprosy[44] or has venereal disease in a communicable form or HIV Aids[45] or has mental order to an extent that the petitioner cannot be reasonably asked to live with the party.[46]

The Act also seeks to provide much needed protection to women. Section 12 also incorporates rights provided only to Hindu women to seek a decree of termination of the marriage. It provides that any Hindu wife may file a petition for termination of marriage if the husband has married again or has a wife alive from any marriage before.[47] Thus, providing protection to women in case their husbands commit bigamy. A wife can also seek termination if the husband has failed to provide her maintenance for 2 years.[48] Furthermore, a decree of termination can be availed if the husband has been sentenced to imprisonment for 4 years or more.[49] Moreover, termination of marriage can be availed if the marriage was solemnized before the wife attained the age of 18.[50]

Security & Safety of Women and Children

The Act also protects and ensures the rights of women and children. Section 13 of the Act is a benign provision that ensures financial security and upliftment of women and children. Section 13(1) of the Act gives the wife power to oppose the decree of termination on the grounds of financial hardship that may behest her. In furtherance, Section 13(2) mandates the responsibility of the courts to not pass a termination decree unless adequate provision

40 *Id.*, § 12 (1)(a)(i).
41 *Id.*, § 12 (1)(a)(ii).
42 *Id.*, § 12 (1)(a)(iii).
43 *Id.*, § 12 (1)(a)(vii).
44 *Id.*, § 12 (1)(a)(v).
45 *Id.*, § 12 (1)(a)(vi).
46 *Id.,* § 12 (1)(a)(iv).
47 *Id.*, § 12 (2)(a).
48 *Id.*, § 12 (2)(b).
49 *Id.*, § 12 (2)(c).
50 *Id.*, § 12 (2)(d).

for maintenance for the child being born out of the marriage has been made.

Conclusion and Recommendations

> *"In the state of nature...all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law."*
>
> - Charles De Montesquieu

Law spearheads a social change. Ever since the partition of India and Pakistan, the Hindu minority were oppressed not by the majority but also by the people within their own community. The Hindu Marriage Act 2017 spearheads a social change in Pakistan wherein the rights of the minority Hindu community, women and children are aimed to be protected and uplifted. A social change was observed with the passing of the Act as for the very first time the rights of the Hindu minorities were given the limelight. By giving the spotlight to the minority community the government paved a way for their upliftment and to stop the oppression they have faced.

The Hindu Marriage Act 2017 is a landmark provision not only for the minority Hindu community but also for other minority communities as it showcased the direction in which the Pakistan government seeks to move forward. It was a win for the Pakistani Hindus as they finally got their personal law system which they have desired since independence. In furtherance, with the Pakistan legislation taking this historic step in improving the conditions of the Hindu minority community, the ties between Hindus and Muslims can also be improved. A positive feeling of brotherhood can be hoped for between the two religious' communities.

The presence of valid legal documents and other legal provisions will positively benefit Hindu women and children. The cases of kidnapping, child marriage, forced conversions, and forced marriages can be hoped to diminish because of this Act. However, this is only possible if there is a concrete implementation of the Act. Till now no appropriate steps have been taken to implement the law, which will only hinder the aim of the legislation. In furtherance, Hindus should be provided with more personal laws to govern aspects such as adoption and inheritance. This will ensure stronger legal protection to the safety and security of women, whilst also enabling equality with men. Also, the laws should be applied in a flexible way rather than applying them rigidly to ensure protection and financial security to women and children as to safeguard them from vagrancy.