



Annulment of Hindu Marriage: An Analysis

KEYWORDS

Void Marriage, Voidable marriage

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ABSTRACT *This article is an attempt to reflect the concept of dissolution of Hindu marriage through annulment in India. There are three types of marriages under the Hindu Marriage Act, 1955: (i) valid, (ii) void, and (iii) voidable. The author has made a critical analysis on the grounds of Void and Voidable marriages. Also has discussed the effects, status of the parties, question of maintenance and legitimacy of children born out of those marriages.*

INTRODUCTION:

Marriage is the basis of social institution and the foundation of marital legal rights and obligations. Under Hindu Personal Law Marriage is treated as a Sacrament. The term "Marriage" has not been defined in any statute. However different Personal laws cleared that, it is known to be a process or event signifying the assumption of roles of husband and wife in accordance with the jural tenets prevalent in the society or stratum of society to which the parties belong, in contemporary societies, marriages are by and large contracts which have the legal sanction of the State. The Form or Ceremony of marriage is not essential, so long as the marriage is intended and the law is observed and the contracting parties. Under the Hindu Marriage Act, 1955 Sec- 5 clearly defines the essential conditions for a valid marriage. Judicial Separation or Divorce however is a negative approach and annulment of marriage is a very unusual remedy in the society. Annulment refers only to making a voidable marriage null; if the marriage is void *ab initio*, then it is automatically null, although a legal declaration of nullity is required to establish this. If the said conditions laid down under Sec- 5 of the Hindu Marriage Act, 1955 are not fulfilled then the marriage may be declared as void or voidable as the case may be. However Sec-11 and Sec-12 of the Hindu Marriage Act, 1955 stipulates the contraventions grounds, when a marriage is declared as Void or Voidable respectively. A marriage may be void Marriage if it has (a) Living spouse at the time of marriage (b) Marriage under Prohibited degrees of relationship (c) Marriage under Sapinda relationship. A marriage may be declared voidable Marriage if it has (a) Impotency (b) Lunacy or unsoundness of mind (c) Mental disorder of spouse (d) Defective formalities; (e) Fraud, coercion, undue influence or misrepresentation etc.

Void Marriage:

A void marriage is no marriage though the formalities of a marriage might have been fulfilled. Some marriages are void *ab initio*, and neither the wishes of the parties nor their living together can change the situation and status the validity of the marriage. When either of the party has a spouse living at the time of the marriage, such marriage is void *ab initio* excepting Muslim marriage. It implies that the former marital relationship is still continuing though the husband and wife may be living separately. In **Swapna Ghosh v Sadananda Ghosh AIR¹** the court held that a second marriage, valid at least in form, is necessary to sustain a charge of bigamy, though it may be invalid in law

for being bigamous. "A person already married who, having the intention of appearing to contract a second marriage, goes through a form known to and recognized by the law as capable of producing a valid marriage, is guilty of bigamy although the second marriage would be otherwise invalid."² Section 494 of the Indian Penal Code lays down provisions on punishment for the offence of bigamy that is, marrying again during life-time of husband or wife. There are two exceptions in cases of (a) earlier marriage with such husband or wife having been declared void by a court of competent jurisdiction; or (b) such husband or wife at the time of subsequent marriage was absent and unheard of for seven years continuously and his whereabouts were not known to those who would have known it had he or she been alive in the meantime. This exception is again based on the principles laid down in Sec.108 of the Indian Evidence Act, 1872 which says Burden of proving that person is alive who has not been heard of for seven years, provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive shifts to the person who affirms it." Thus, to attract the punishment for bigamy there must be a subsisting marriage. And the another ground, if the parties are within the degrees of prohibited relationship or are sapindas of each other the marriage is void unless the custom or usage governing each of them permits of a marriage between them, the marriage is not merely, voidable but void.

Voidable Marriage:

A voidable marriage is also called an avoidable marriage or a marriage which can be cancelled at the option of one of the parties. The marriage is valid but is subject to cancellation if contested in court by one of the parties to the marriage. The grounds of voidable marriage under the Hindu Marriage Act, 1955 are laid down in Section 12(1). These ground are as following: impotency of the respondent, respondent's incapacity to consent and mental disorder, consent of the petitioner obtained by fraud or force., concealment of pre-marriage pregnancy by the respondent. In **Sarlabai V.Komal Singh³** the court held that where the petition for annulment of marriage is filed after 8 years of marriage, such a petition would be barred by time. In an another case **Mukesh Mathur V.Veena Mathur⁴** the court held that where mental disorder of the wife was the ground for obtaining divorce, there cannot be a challenge

to the grant of alimony on the ground that mental disorder was in existence prior to the marriage and therefore the marriage was voidable under sec 12.

In **Deepayan Chatterjee V.Papiya Chatterjee**⁵ the court held that where the annulment is sought on the ground of fraud, details which the professional match makers supply bear no relevancy as the parties are at liberty to verify the facts.

Legitimacy of children born out of Annulled Marriages:

The Legislature has made it very clear in order to establish the rights or legitimacy of children born out of Void or Voidable marriages that , they are legitimate children of their parents and shall enjoy all the rights and obligation as if they have been born out from a valid marriage. The court has the ability to establish rights and obligations related to the children from such marriages. Section 16 of Hindu Marriage Act, 1955 articulates(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the 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. (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case, where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents. Thus, such children would be regarded in law as legitimate children of the parents for all purposes including succession.

Maintenance:

Another important question that often arises is whether the wife whose marriage is void under section 11 of the Act can claim maintenance from her husband of that void marriage. The Supreme Court has held that where a marriage is void, wife cannot claim maintenance under Sec.

488 CrPC, sec 125 under the Act of 1973⁶. However it is a generally accepted rule that even in such cases, the wife is entitled to maintenance under sec. 18 of the Hindu Adoptions and Maintenance Act,1956 and also under section 24 of the Hindu Marriage Act 1955

Effects of Annulment Marriage:

Annuling a marriage deletes all things from the records, as if it never took place before. The outcome of a marriage annulment is a decree that the marriage never existed. It nullifies the marriage, returning the parties to their status before existed before marriage.It's very usual misinterpretation that short marriages can be annulled, but the length of the marriage is not a measuring factor. Many times, annulments occur even after very short marriages, so there is no need to distribute the property between the parties or to decide the custody of children produced by the marriage. In the case of a longer marriage that is annulled, the court will distribute the property of the parties.

Conclusion:

There are two ways to legally end a marriage (a) annulment (b) divorce. It can be initiated by either the husband or the wife in the marriage. A marriage which is void *ab initio* does not alter or affect the status of the parties nor does it create between them any rights and obligations which must normally arise from a valid marriage except such rights as are expressly recognised by the Act. A voidable marriage remains valid and binding and continues to subsist for all purposes unless a decree is passed by the court annulling the same on any of the grounds mentioned in Section 12.