

“Growth of Hindu Law from Ancient to Modern Law”*Abhay Sharma**B.A.LL.B**Indore Institute of Law***ABSTRACT**

The Hindu religious one the oldest religion so the Hindu culture is old and their has maximum follower and if we talk about the growth of Hindu law then the point is that yes it growth day by day and Hindu law is mode still abolish the Sati Practice by Raja Ram Mohan Ray. The growth of Hindu law has main focus on marriage and yes it also for the public welfare but it also the growth on succession field and given the right of property. The Hindu marriage act 1955 the point is that the bigamy marriage is also abolish through the law and the problem of adultery and cruelty was big problem then legislation find out the solution and make a law section 13 (i) (ii) of Hindu Marriage Act 1955, the big related problem from the children. The Hindu law make from the sources to ancient to modern sources. The other thing Hindi law apply on different palace or area from different way or method. Some law from modern law apply does not apply whole country. There is exception if any family or areas follow the custom and they follow their rules, custom and usages then they have to choice to follow the law or not. The thing is that law should be followed by all the citizen then law can rule in proper way. The Hindu law some family or certain that have to different custom from all other then they would follow the rules.

KEYWORDS :-

- Mitakhasra and Dayabhagha
- Hindu Marriage act 1956
- Bigamy or polygamy
- Divorces, cruelty and adultery
- Succession Act
- Prohibited degree
- Child Marriag

GROWTH OF HINDU LAW

The Hindu is oldest religious in the world so the culture of Hindu religion is also old. The Hindu religion is one of finest law but the thing in Hindu religion still follow the their past culture which has some flaws like child marriage, banned on widow remarriage etc. these type of flaw in Hindu religion which is good for health of Hindu religion but if we see in present situation of Hindu then we find that Hindu law is on way of progress behind the reason is the Hindu law. The Hindu law provided all the valid or thing which is the need to society and in Hindu law divide many kind category like Hindu marriage, Hindu succession act, minority and guardian ship, adoption and maintenance act. Before this Hindu law is situation was very bad there was a lot of cases related to dowry death but after the law the dowry date rate is decrease. But the main or primary point is that those people law will

applicable, the law will only apply on the those person who is Hindu now the second point is that who is Hindu so the category will define given the that who will be Hindu

- Those people who was born in as Hindu or Hindu family
- Those people may be Hindu who have don't follow the any religion
- Those people also consider Hindu who was convert his religion to Hindu or may be reconvert his religion

According to Hindu mythology there is certain thing was mention which is neither morally or culturally correct after this those thing is followed by people. This should be stop in society. The most of thing is related to before marriage and after the marriage. The better thing is that in Hindu law the maximum focus on the marriage and amend the law and the better thing included is marriage

The other thing is Hindu which is like as evil from the society that also decrease the shape of evil now for the marriage the age is mention that for boy the age should be 21yrs. And girl should be above 18yrs. If any of them under the age which is mention in law and they will be marriage then they should be punished.

But after all this thing the another thing is come in front of society that is should be legalized the same sex marriage. This problem is big issue in India but some country like America, England, Japan, Russia etc. this concept get the green flag the problem is that is Indian society can't digest this culture so the court can't be legalized in India. The society of India is very conservative or consequence related to their culture or religion they don't want to change their religion actually the people of India is used to habitual they don't want to loses their comfort and they don't easily accept the new thing. So the growth of law is very slow if we want the bonafide about the society then only law will help and for this the law should be amend. Till date those law was amend or made only reason the necessity society. The growth of Hindu law is start in 1829 'banning the practice of Sati' by Raja Ram Mohan Ray.

The another need was the adoption of child this act is useful or beneficial specially those lady who can't able to get pregnant then they can adopt the child but before "**The Adoption and Maintenance Act 1956**" the adoption is not legalize but after the act the person can be legalize parent either they are single parent or the couple the act is also beneficial for children. The thing is that the Hindu law is very useful for the society through the law. The Hindu law is sufficient for present the law but the problem is that the law is not implement properly is the society. Growing the law behind the main reason is necessity of citizen of India and when the people has problem then they suit the case in court and court realize that society is needed the such kind laws then the court make the law relating to Hindu law and solute the problem of society. If we talk about the sources then we include both kind of sources ancient or modern sources in ancient sources of Hindu law are Customs, Digest and Communities, Vedas, Shruti, Smriti, Upanishads, Hindu's school is one is Mitakshara and Dayabhagha etc.

And modern sources are case comment , legislation, Good Consequence, Precedent, Equity, Justice. Through the legislation some law related to Hindu these laws are given following

- Hindu Widow Remarriage Act 1856.

- Prevention of Child Widow Act. 1929.
- Hindu Women's right to Property Act. 1930.
- Hindu Women's right to Separate Residence and Maintenance Act 1946.
- Hindu Succession Act 1956
- Hindu Marriage Act. 1955
- Hindu Adoption & Maintenance Act. 1956
- Hindu Minority and Guardianship Act 1956

Now the if the law is on path on grow then what would be ancient Hindu law then the ancient Hindu may be possible like this There is frustratingly little proof for the act of law in India preceding about the eighteenth century in India. In a few districts, for example, Maharashtra, a sort of mixture Hindu and Islamic lawful framework was formed under the Maratha kings.(Gune 1953). In different spots, for example, South India, sanctuaries were personally engaged with the organization of law (Davis 2004). What is totally missing for established and medieval India are the records of courts. In lieu of such records, different sorts of confirmation for legitimate practice must be utilized to sort out a diagram of traditional Hindu law by and by. Such confirmation incorporates unmistakably the various engravings from this period that record an assortment of lawful exchanges, endowments, contracts, orders, and so on related with political rulers, sanctuaries, corporate gatherings and others.

Nonetheless, the accompanying may be said in regards to Hindu law in pre-modern India: there was no formal chain of command of courts; each court likely worked as both a court of first case and furthermore as a court of offer. Criminal cases were attempted by a ruler's court or by panchayats, neighborhood councils, and disciplines were distributed there. There was no different circle of individual law. A wide dissimilarity of territorial laws likely won.

Numerous parts of law likely under the jurisdiction of standings or other corporate gatherings, for example, vendor organizations, military gatherings, merchants, and religious requests. Practices and debate with respect to marriage were left to the station panchayats, either organized or unstructured. A few standings allowed separation and remarriage, others didn't. All the positions permitted polygamy. All the standings prohibited and demoralized 'between position' relational unions. Also, ruptures of standing guidelines were rebuffed by the rank panchayats.

RESEARCH METHODOLOGY

The method of research the author apply way the ay of analysis the comparison between two different two different decade or century the first is ancient law and second time period is modern law. In author views this the best way to know the growth rate is how much increase and the author also the read the both period law and also aware the ancient law.

The author apply two way of research one is primary sources is to take the views of people even they would be senior citizen of youth of country from the senior citizen the author would get that some people was also unhappy from their laws then from the youth would get the modern law concept is very clear and they follow the Hindu laws.

The another way of research which is author apply the secondary way is related to books, , case comment, journals, websites, bare act. From this way author would know that how much and what is way to grow the Hindi law. There is one proverb is that no one is perfect that point prove in Hindu law but except this t6he Hindu law is almost a perfect which give to right to property to daughter.

OBJECTIVE

To research the main objective is to know that the Hindu still follow or not and if Hindu law is amend or change then how much modified and where is change the laws and to know how much people follow the modern Hindu law. The Hindu law has the most follower of that religious. And other thing to know which part or portion is change or amend so Hindu law is become better from their oldest religion and how much law is beneficial for the society

CHANGING OF CONCEPT OF HINDU MARRIAGE ESSENTIAL ELEMENT OF MARRIAGE

The concept of Hindu marriage is change very rapidly and the good thing is it changing in good way and it's consequence is also good. The valid marriage has some essential element which is describe or mention in Hindu marriage act 1955, the valid condition of Hindu marriage is given as following

- **Section 5(i)** mention that neither party has a spouse living at the time of the marriage it mean there is prohibited on polygamy or bigamy and section 11 says that it consider as a void marriage. It also a penal offence for both male and female in section 494 and 495 of Indian Penal Code 1860, in this kind of offence the punishment of imprisonment of 7 yrs. and. There is no provision of second wife or husband when one is living and they are married couple. But after the separation or divorce they can do second marriage
- **Section 5(ii)** mention that at the time of marriage, neither party –
 - (a) Is incapable of giving a valid consent to it in consequence of unsoundness of mind ;
 - (b) Though capable of giving a valid consent, has been suffering from the mental disorder of such kind or to such an extent as to be unfit for the marriage and procreation of children ;or
 - (c) Has been subject to recurrent attacks of insanity
- **Section 5(iii)** mentioned that the groom has been complete the age of 21 yrs and the bride the age 18 yrs, at the time of the marriage

Any marriage solemnized in contravention of clause (iii) of section 5 is neither void nor voidable, the only consequence being that the person concerned are liable for the punishment under section 18 and further if the requirement of clause(iv) of sub- section

(2) of section 13 as inserted by the marriage laws (Amendment) Act 1976 are satisfied at the instance of the bride, a decree of divorce can be granted; **P. Venkataramana v. Stare, AIR 1977 AP 43**

- **Section 5 (iv)** mention that Unless both the parties are governed by their custom or usage the marriage shall not occur between parties under degrees of prohibited relationship.
- **Section 5 (v)** mention that the parties should not be each otherwise the marriage would be void. The governing permit when the custom or usage should be allowed
- **Section 7** mention that in Hindu custom ceremony is primary thing so in marriage the ceremony should be like and in ceremony the saptvadi (Saat phere) without the ceremony of marriage the marriage is not complete
- **Section 8** mention that after the marriage parties should be registration by governed in such reasonable time period

In section 5(i) there is case **Sarla Mudhgal v. Union of India** basically the related to bigamy or polygamy but in the case another thing is happen this case held that first thing is that the bigamy is crime and if any person convert his religion for the do more than one marriage then it should not be tolerate and have no permission to convert his religion

In **Rampayri v. Dharamdas 1984** held that if parties there is already married living husband and wife and if any one perform second marriage then such kind of marriage shall be void. In section 7 proved **Sujeet kaur v. Garga Singh 1994**. But in the case **Nilabba Somnath Tarapur v. Divisional Controller KSRTC Bijapur 2002**, held that there saptvadi is not necessary to tradition and rituals there a marriage solemnized without saptvadi shall also be valid. The point is that the law of Hindu marriage Act is still on grow but still its working good and so much modern and it also grow.

DIVORCE

The another side of married life that is divorce or cruelty before the 1955 the situation for woman is not easy they face the high of cruelty and there is no provision of divorce. So they can't free from the relationship but now at the time the parties can separate from the other there was a policy in Hindu mythology that married is sacrament it can't be abolished easily the party do marriage in once time in life. But the now thing is change. The divorce main principal is if one person is not happy with his/her partner.

In the year 1976, the Parliament by its Marriage Laws (Amendment) Act altered Section 13 of the Hindu Marriage Act, to make cruelty a ground for separate.

Cruelty incorporates both mental and physical savagery. While physical cold-bloodedness can be resolved effectively, it is hard to set the parameters of mental remorselessness. Demonstrations of brutality are social indications fortified by various factors in the life of companions, and their environment and subsequently; each case must be chosen the premise of its own arrangement of realities.

In **Pravin Mehta v. Inderjeet Mehta**, the court has characterized mental cruelty as 'the perspective.'

- i) When other gathering after the solemnisation of the marriage had sex willfully with individual other than spouse or wife.
- ii) When other gathering after the solemnisation of the marriage, had carried on with remorselessness with spouse or wife.
- iii) When the other party preceding at least two years from the date of introduction of utilization had left the candidate.
- iv) When the other party does not stay Hindu because of transformation.
- v) When the other party is of unsound personality or is every now and again or routinely and up as far as possible, influenced by mental retardness that the candidate can't sensible be accepted to live with the respondent.
- vi) When the other party is experiencing serious infection.
- vii) When the other party is experiencing venereal disease.
- viii) When the other party has pronounced Renunciation of world.
- ix) When the other party is living or not, has not been heard by those for a time of 7 years or more, who might host heard normally if that gathering would have been living.
- x) When the living together hosts not continued between the gatherings to marriage after the expiry of multi year or more from the date of announcement of legal partition.
- xi) When the marital rights has not been resituated inside multi year or more from the date of announcement of compensation of matrimonial right.

In the case of mental cruelty there is landmark case **Raj Talreja v. Kavita Talreja S.C. 2017** In the present case, there were false charges made by the spouse against the husband. Setting dependence on points of reference, the court held that this adds up to mental cold-bloodedness for the mate and can be a ground for separate under the Hindu Marriage Act. The court has in detail examined about the idea of mental brutality in the moment case. The Honorable Supreme Court has likewise put aside the choices of both preliminary court and the incomparable court.

The court held that the issues identifying with the guardianship of the youngster are touchy in nature and are to be managed most extreme care. This is the motivation behind why authority orders are considered as interlocutory requests. In the case of case of custody of child Vikram Vir Vohra v/s. Shalini Bhalla

Brief Facts: i) The gatherings in the present case were hitched on 10.12.2000 as per the Hindu ceremonies.

ii) A kid named ace Shivam was destined to them on fifth August

iii) On account of some hopeless contrast they had consented to separate by common assent under segment 13-B of the Hindu Marriage Act, 1955.

iv) A declaration of separation was passed by the Additional District Judge, Delhi on fifth September 2006.

v) With respect to the authority of the youngster, they had some settlement,

a) The guardianship will stay with mother

b) Tyke will be with the dad once in the fortnight i.e. from 10 AM to 6:30 PM on Saturday

- c) On the off chance that the mother changes the address or takes the youngster outside Delhi, she would advise the dad multi week ahead of time
- d) Every one of the cases of mother and tyke are settled by father
- vi) At that point an application was recorded under segment 26 of the Hindu Marriage Act to adjust the terms and states of the guardianship

Held: The interest is rejected, and the kid is to remain with the mother.

CONCLUSION

The Hindu law is growth rapidly fast the fact is that the in Hindu marriage act is major part of Hindu law is change or growth. That's the very useful for Indian society there is many act which is beneficial for the society like the section 5(iii) child marriage is stop for this law. the section 5(i) beneficial for the husband and wife and then possibility of cheating is decrease and the married wife make happy of both and husband and wife. The talk about the dowry and cruelty then Hindu Marriage Act 1955 is also give relaxation of the society special woman feel safe and they live frequently but there is also provision section 13(i) of adultery and it would be punishable and apply on both husband and wife. If both husband and wife are not satisfied and happy with each other and one of the done the act which is not natural and illegal then both the parties have the option of divorce.

After the marriage we can talk about the Hindu Succession Act 1956, relating such a case law which change the history and beneficial for the daughter in **Prakash v. Phulavati (2016) 2 SCC 36..** The Supreme Court has held that little girls who were conceived before the institution of Hindu Succession Act 1956 are qualified for level with shares as child in hereditary property. The decision was rendered in an interest documented by little girls testing a declaration in a dad... The segment suit was documented by the grandson of the perished propositus of a joint family in 2002. The Trial Court held that girls were not qualified for share in property, as they were conceived before 1956, the time of order of Hindu Succession Act.

The Hindu law is growth much more from the ancient to modern period the thing there is something happen in wrong in society because of society. In other country the same sx marriage is illegal but India take time for this law because Indian need to develop their mentality. The growth of Hindu law is going to next of develop it has only need to implement properly.

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