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# Voidable Marriages under Hindu Law

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## ABSTRACT

*The interpretation of voidable marriages in the Hindu Marriage Act, 1955 changes the pattern of Indian matrimonial jurisprudence significantly from that of traditional marriage, which views the marriage as a sacrament of sacredness and indissoluble sacrament to one which acknowledges individual rights, consent, and equity in marriage. This article looks into a legal theory and analysis of the history of the nature, causes and effect of a voidable marriage under section 12 of the Hindu Marriage Act, 1955 – which provides a framework for annulment of the marriage in cases of such limited circumstances as impotency, fraud, coercion, unsoundness of mind, and pregnancy by another. Unlike void marriages, this will prevent invalidity and legal issues which prevent termination of marriage and therefore preserve rights under section 16 and the birth of children. This paper discusses the historical background of Hindu matrimonial law in pre-codification era before codification, in which consent, ritual validity and incapacity concepts were derived from Dharmashastra texts like Manusmriti and Mitakshara. The passage of a statutory framework with the Hindu Marriage Act introduced a uniformity of system, predictability and procedural fairness for annulment proceedings. Judicial interpretations in landmark cases such as Alka Sharma v. Abhinesh Chandra Sharma, Gopal Krishnaji Ketkar v. Gopal Krishnaji Ketkar and Sushil Kumar v. Prem Chand have broadened the definition of material concealment, mental incapacity and marital fraud in marital consent. What the article does not forget is that this document mentions procedural safeguards to the marriage system Section 12 which make that limitation on time, prohibit condonation through cohabitation and requires reconciliation by section 23(2). Applying these legal principles to examine how the law reconciles marriage as good, or at least important, and private, law in relation to personal freedom and justice. The case*

*concludes its point and notes that the validity of the doctrine of voidable marriage is emblematic of the advancement of Indian law--a process by which ancient ethics and ethical values have been merged with contemporary considerations of consent, equality, and individual dignity in the area of marriage law.*

## KEYWORDS

*Voidable Marriages, Hindu Law, Dignity, Hindu Marriage, Matrimonial.*

## INTRODUCTION

The word voidable means that something is valid at the beginning, but later becomes legally invalid or void at the option of one of the parties who are usually aggrieved. In law, an agreement or contract can be voidable, meaning it can be either upheld or rescinded by either of the parties. Unlike the term void, which means that something is invalid from the start, the term voidable means that an agreement is legally valid at the beginning but is declared invalid later on. A common example of a voidable agreement or contract is established under duress. Such a contract can be declared void by the court at the option of the party whose consent was inappropriately obtained. Usually, the term voidable is used for contracts that are business-oriented by nature. However, under the Hindu Marriage Act, 1955, a voidable marriage is one where the marriage is initially valid but can later be annulled by the court through a petition by either party. A voidable marriage which is valid at the beginning means that all the marital rites and obligations were fulfilled, and the ceremonies necessary to solemnise a marriage were completed. The grounds of annulment of a Hindu marriage are given under Section 12 of the Hindu Marriage Act, 1955. This section includes impotency, pre-marriage pregnancy by another person and force or fraud to obtain the consent of a party as a few of the grounds for annulment of the marriage. For example, if a woman is pregnant by someone other than the husband at the time of the marriage and the husband doesn't know about the pregnancy at that time, then he can get the marriage annulled by filing a petition in the court.

In Hindu law, marriage is a sacred duty and a sacrament, not a contract, with the goals of eternal union and fulfilment of life's goals such as Dharma, Artha, Kama and Moksha. Hindu marriages were historically considered an unbreakable bond. However, with the coming up of modern law, especially the Hindu Marriage Act, 1955, the law now acknowledges the contractual aspects, including the concept of consent and the possibility of

divorce. Specific ceremonies like Saptpadi are crucial for solemnising a Hindu marriage as provided under Sec 7 of the HMA.

Even though the Hindu marriage is considered an eternal bond, modern law encompasses the concept of voidable marriage as one that can be annulled on the grounds of impotency, force or fraud, etc.

### **SCENARIO OF VOIDABLE MARRIAGES BEFORE THE HINDU MARRIAGE ACT, 1955**

Before the Hindu Marriage Act 1955, however, voidable marriages were recognized under classical Hindu law but were, in large measure, subject to regulation in the written religious texts, customs and decision-making by the courts. They were different from void marriages which were by definition invalid. Legal status: marriages that were voidable were valid even after they had been solemnised and continuing legal right to remain valid until they were challenged or annulled via legal proceedings. They differed from void marriages, which were invalid from day one. They made this distinction on the precepts of Hindu law derived from the Dharmashastra texts and practice. Voidability criteria: What would cause marriages to be annulled are that there had been no consent, an individual could not carry a case for any of these reasons (mental incapacity, incapacity, impotency; withholding of material facts from the parties or coercion). Following in ancient texts such as Manusmriti and Mitakshara, these criteria focused on free and informed consent and the physical and mental health of those in the marriage. Challenge and annulment grounds: Fraud, duress, minority (marriage in infancy), mental unsoundness or physical incapacity were common grounds. If they obtained the marriage in fraud or under coercion, the marriages could be annulled, showing how valuable a voluntary consent is underpinned by the principles of the Dharmashastra. Traditional customs and traditions: Customs such as proper saptapadi practice, following prescriptions, as per the rite, and refraining from forbidden unions helped retain the validity of marriage. The same can be so with regard to customs such as not observing these, that a marriage is voidable for reasons of custom (subject to community expectations) or not valid at all.

### **JUDICIAL STUDIES AND EVIDENCE**

Cases and judicial decisions defined the application of these doctrines to secure purity in the marriage process. Previously, the courts relied heavily on the Dharmashastra, an ancient religion to guide the marriage process, for instance (including establishing consent, ritual validity and capacity). Decisions like that of the

Allahabad High Court stressed the importance of material concealment and mental capacity as grounds for annulment and often turned to traditional writings. These judgments laid the principle for the statutory provisions eventually incorporated into the 1955 Act.

***Effect on parties and remedies:***

Those in a voidable marriage had the marital rights until the annulment. There is possibility of challenge by petitioning for annulment with different procedure by jurisdiction. The marriage was, until it was annulled, valid; it was a key issue in the course of legitimacy, inheritance, and social standing as the social stigma effect. Because there was no uniform legal procedure, before 1955 parties had to depend on customary and judicial procedures. Substantial legal provisions in Section 12<sup>1</sup> of Hindu Marriage Act, 1955 provides that a marriage can be voidable on the basis of impotence, lack of consent, unsoundness of mind, pregnancy by another man, or marriage under age.\* The ancient Hindu texts sanctioned marriage nullity, in situations where the consent was given by force, fraud, or other misconduct, a party was mentally impaired, incapable of giving consent, or marriage was against elementary customary or ritual criteria. Local attitudes have affected the validity and annulment of marriage where it was voidable. Hindu households had many customs about annulment, which included:

Saptapadi (seven steps) or ritual required for valid marriage. Some prohibited relationships or affinity are not regarded as tolerable or acceptable. A common practice to annul underage marriages with consent obtained in the majority or withdrawal of consent. Before the introduction of the Hindu Marriage Act (HMA), Indian courts had invoked principles of the Dharmashastra as valid provisions of HMA in regard to voidability with special attention to:

Concealing things affecting consent. Physical incapacity or mental unsoundness. Valid ceremonial conduct. Until 1955, Hindu matrimonial law in India was an uncodified amalgam of ancient texts, legal judgments and regional practice. Voidable marriages were ceremonially possible but could be held unconstitutional for defective consent, incapacity and general immaturity. These requirements revolved around the parties' freedom of will, physical and mental condition to marry and observing required religious conventions. Community norms were important; matrimony without saptapadi could be legally nullified as the ceremonies were the core of the sanctity of marriage as a religious

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<sup>1</sup> Section 12 Hindu Marriage Act, 1955

sacrament. These were courts' traditions, but there was no standard statutory guidance — reliance on either case law or texts like Manu Smriti and Mitakshara. The reason that impotence, past undissolved marriage or deceit made the marriage voidable but not void, while the marriage was still valid (except when this marriage is annulled by court). For such marriages, spouses were afforded marital rights and obligations, up to annulment, to enter into an intermediate state between valid and void marriages. Under the law, this would be in principle a consent issue and the hiding of material things (i.e., prior marriage) makes annulment appropriate. Consequences in practice included the possible stigma and legitimacy problems for offspring resulting from their voidable marriages, but not an obligation to void descent. Remedies were based in petitions for annulment or separation by Customary Hindu principle system and early precedents from case law. The methods were casual, location-specific and there was no standard judicial process, except for a system introduced by the Hindu Marriage Act. The legal scholars emphasised the legitimacy of valid consent and incapacity as grounds that cause an annulment. Recent Developments. The Allahabad High Court made this point because material concealment of fact, the very precondition for giving consent intelligently, constitutes a ground of voidability under Section 12 of HMA which, as a matter of relevance, is in some respect only consistent with these earlier principles laid down over the years earlier in the Hindu Era. The literature on Dharmashastra was reviewed under the new perspective of the pre-1955 Hindu legislation where invalid marriages were based primarily on principles of consent and ritual efficacy that have underpinned present day codification. Indian courts uniformly enforced Dharmashastra-driven tests of consent and matrimonial capacity and tend to interpret local tradition, in the absence of statutes, thus inadvertently shaping the existing architecture. The concept of voidable marriages in the context of the Hindu Marriage Act, 1955 was the departure from the old custom of the first marriage or customary marriage, and traditional personal laws. It gave certain legal grounds to annul, while assuming these marriages were valid until a court annulled them. Voidable marriages are independent of void marriage (that is their being void from the start (void ab initio)), and are challenged by any person. Voidable marriages, however, remain valid unless an applicant has submitted a petition for an annulment under Section 12 of the Act for particular grounds. Among these grounds are for non-consummation because of impotence, forced or fraudulent agreement, pregnancy of the spouse by another man at the time of consent and the lack of requirements of age or understanding. The Act also gives spouses receiving annulment for those who contract a voidable marriage among other things to protect the children born of such unions

and the validity of such marriage. Judicial interpretations since 1955 have defined terms such as “material fact” and the application of fraud, and have influenced the content and application of these provisions within our practice. Attracted Legal Provisions. Section 11<sup>2</sup> of the Hindu Marriage Act, 1955: In case any marriage so solemnised becomes null and void by decree of nullity without exception if it breaches sec 5(i), (iv) and (v) of the Act, it shall, in so far as is prohibited, be made void against the provisions of the act as to bigamy, prohibited relationships, and unsoundness of mind. This area concerns nullification of marriages. Section 12 of the Hindu Marriage Act, 1955

(1) Any marriage may be voidable and annulled on the grounds that it is not valid and is entitled to voids:

The impotence of the respondent leading to a marital impotency. Non-consummation on impugned grounds. Violation of conditions of section 5(ii) provisions (such things as age and consent). Petitioner or guardian's consent to the proceedings, whether through force or fraud, with respect to the nature of the ceremony or to the respondent's material facts. At the time of marriage, the respondent was pregnant by a different man. (2) A party colluding with the respondent or condoning the marriage shall not be allowed to file a petition. Section 16 of the Hindu Marriage Act, 1955: Children born on the basis of a child born out of a marriage void or voidable are considered a child of a valid marriage, regardless of whether the marriage is annulled.

The requirements for a valid Hindu marriage, including bridegroom and bride at the age set out in sec 5 of the Hindu Marriage Act, 1955 section 5 The eligibility criteria are that at least the bridegroom and bride are of basic age, the degree of association in society is not allowed, soundness of husband and wife to divorce, and the relationship with the bride is to be done out of mental strength and soundness of mind, and must have given consent, as well as freedom of voluntary consent of the wife. The Hindu Marriage Act, 1955 enshrined and unified other individual personal laws of marriage among Hindus in terms of Indian society, the Hindu Marriage Act, 1955, which include many of the different personal customs and practices.

It specifically described void and voidable marriages and stipulated the basis and remedy in each relationship. Unlike void marriages, which can be contested against anyone from the outset and are thereby considered invalid, voidable marriages are generally valid until one of the spouses has introduced a petition for annulment. Important distinctions between a void and a

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<sup>2</sup> Section 11 Hindu Marriage Act, 1955

voidable marriage are: Void marriages invalid because they have an invalidity by their very nature (e.g., bigamy, no amount of relationship permitted as a marriage, unsoundness of mind). Voidable marriages will remain valid until they are annulled on certain grounds like the wife's impotence, a forced consent, fraud, or getting pregnant by another man. Until 1955, common law as well as custom often neither provided universal remedies for or offered remedy for these forms of marriage which can be voided. The passage of the Hindu Marriage Act brought clarity from the courts, and stipulated its legal effect in terms of providing for the legitimacy of children born in such marriages under Section 16<sup>3</sup>. It established novel arguments for voidable marriages by establishing exceptions to the conventional impediments found in marriage under sec 12 of the Hindu Marriage Act, 1955 in such cases as fraud/vitiated consent and impotence. For example, it was decided that consent by force or fraud on the question of the ceremony or on the respondent's physical and personal knowledge of the respondent might reach a finding under which concealment of past marriages or of facts that were material to consent was also considered for the same. The legal implications for contracting are as follows:

(2) Spouses have every right & duty of married service until being annulled. Applying annulment retrospectively annuls the marriage but protects the legitimacy of the children. Only spouses have the right to petition for annulment, and third parties cannot protest a legally voidable marriage. Judicial interpreting has broadened the concepts of grounds for annulment. The Allahabad High Court, for example, also recognised "material fact" at fraud when it involved concealment of a previous marriage as opposed to ceremony details or physical conditions alone. Courts carefully consider the authenticity of consent and the existence of impediments to obtain annulment, ensuring a fair consideration of the interests of the parties involved.

Practical implications also include the limitation on such petitions (Section 12(2) prevents petitions against the party colluding or after the date of annulment) in a judicious manner. Further, many states have pursued registration of marriage to make it easier to prove what occurred through fraud or child marriage and to reduce risks of fraud or child marriages, thus affecting legal administration of annulable marriages. The Act put into one place the fragmentation of custom and brought a uniformity of, predictability and judicial control of, customary law. It provided spouses with strong grounds and procedures for annulment and

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<sup>3</sup> Section 16 Hindu Marriage Act, 1955

still uphold the validity of children and marital stability where necessary.

### **BENEFITS UNDER THE HINDU MARRIAGE ACT**

Section 14(2)<sup>4</sup> of the Hindu Marriage Act allows individuals in a voidable marriage various crucial benefits including to escape from being in an unjust marriage, to ensure the protection of their interests and to protect the innocent. A voidable marriage is valid at first but a court order can annul it on certain grounds provided for in Section 12 of the Act. The key benefits for the aggrieved spouse. Safeguards personal autonomy. Consent: The Act prevents coercion by making a marriage voidable if it was obtained via force or fraud. It upholds the principle of marriage as a free and informed choice. Annulment option: The aggrieved party may petition the court to end the marriage. If they choose not to, the marriage remains valid, giving them control over their legal status.

Ensures maintenance rights. Interim and permanent maintenance: An aggrieved spouse can claim both interim maintenance (during proceedings under Section 24) and permanent alimony (after the decree is passed under Section 25). The financial position of the spouse is not jeopardized even if the marriage is annulled. Discretionary relief: The court considers the specific facts and conduct of the parties when deciding on maintenance, ensuring a fair and equitable outcome. Measures to protect from lying or deception and non-disclosure. Prohibits fraud: The Act enables the annulment of the marriage if some vital facts were misrepresented or concealed. That includes deception about economic circumstances, social caste and serious medical illnesses.

Remedy for pre-marital pregnancy: Once a husband is notified that his wife was pregnant by another man at the time of marriage, he can apply for annulment, which is considered a material fraud. Major safeguards for children. Legitimacy of children. Section 16 Protection of children: Any child born or conceived before the annulment decree is passed, either within this marriage or other voidable marriages, is deemed legitimate. Inheritance rights: A child of the party who has been married in a voidable marriage will inherit his or her parents' property; this includes self-acquired property and that from his or her ancestors, if acquired by birthright. In such cases, children cannot be legally disadvantaged by the voidable marriage of their parents.

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<sup>4</sup> Section 14(2) Hindu Marriage Act, 1955

## Limitations and procedural requirements -

- The benefits of a voidable marriage are subject to certain conditions and time limitations.
- Time limit: Petitions based on force or fraud must be filed within one year of discovering the facts or when the force ceases to exist.
- Non-cohabitation after discovery: For cases of fraud or force, the petitioner cannot have voluntarily lived with the respondent as husband and wife after discovering the issue.
- Ignorance of facts: The petitioner must prove they were unaware of the grounds (e.g., pre-marital pregnancy) at the time of the marriage.

### **NECESSARY CONDITIONS UNDER SEC 12 HMA**

Section 12 of the Hindu Marriage Act, 1955 states that marriages which are valid at the time of solemnization may otherwise be declared voidable by a court if certain legal defects are found in the application. These defects consist of defects in an absence of free consent, fraud, coercion, impotence, or otherwise fraudulent activity that constitute a breach of the entire basis of a marriage's consent. But before such an order from the court and decree of nullity may be obtained, the petitioners have to meet certain statutory requirements on the use of the remedy and also to make claims for the relief in a manner the proper course of action is to be taken if it was not taken to be legally invalid. For starters, a petition for consent to the marriage for which consent has been obtained if fraud or coercion was a factor or coercion, must be filed within one year of the discovery of such fraud, or cessation of coercion, and is required to be submitted as soon as it is obtained.

This time in which the limited period of time (1 year) is important so as to ensure that the aggrieved party comes to court within the period when she understands the fraud or forced restraint. If, e.g., a party finds after they marry a man not having been able to reveal their previous marriages as well as if one who has converted to the religion of their own, has a mental illness, or if significant incidents relating to the marriage, have been revealed, no matter the reason for his withholding, a party has to bring a claim within one year. The law, therefore, discourages delayed applications that could be based on subsequent differences rather than bona fide fraud. Secondly, the petitioner must show that the allegation based upon the petition was unfamiliar to them at the moment of the marriage. To do so is to need the petitioner's consent without full knowledge of the facts in question.

If the petitioner already knew or was aware of any alleged fraud or

coercion but voluntarily consented, by virtue of that consent, he cannot later claim for having been deceived in a relationship. This condition safeguards the spirit of consensually in matrimonial agreements — a consensual person does not repudiate their consent on any false pretences in the future. Third, the petition must be made not more than one year at the time when the petitioner became aware of the alleged fraud, or force. The law imposes this limitation on time so that no one will be allowed unending uncertainty regarding the legality of marriage and that immediate legal remedy can take place to compensate the promiscuity of the parties involved.

It also accords with the principle that matrimonial disputes are settled rapidly to prevent lengthy emotional and societal misery for both parties in marriage. Finally, and maybe most important, the petitioner has to show in its defence that no sexual relationship was commenced or sustained after the fraud had become known, or the coercion ceased. Establishment of sexual relations following discovery is condonation, wherein the petitioner has, by conduct, accepted or endorsed the marriage despite being aware of the deception or duress. This conduct defeats the annulment claim because it shows a readiness to sustain the marital relationship. Thus, these four requirements stipulated in Section 12 together ensure that petitions for nullity of voidable marriages are made with sincerity, within a reasonable period, and without condonation of offending act. They ensure that the sanctity and stability of the matrimonial institution is maintained against such forced or fraudulent marriages.

## **GROUNDS OF VOIDABLE MARRIAGES**

The Hindu Marriage Act, 1955 is the main marriage law which governs the process of marriage in India and is the legal instrument which determines the dissolution and solemnization of a marriage. The marriage Act 1955 is the main legislation regulating weddings. Among other things, the interpretation of marriages, also known as marriages which are valid, void and voidable marriages, is one of the major provisions of the Act. Marriage in this document is defined as a voidable marriage: It is a type of marriage which is legally valid but can be made null and void when any party to a marriage declares itself null and void; and under section 12 of the Act, that same marriage is voidable if either can petition for the cancellation of the same marriage, on the grounds of irrevocability. Fraud and pressure, impotency or mental incapacity, etc. In contrast, a void marriage must be immediately deemed null and void and can only be void by judicial orders. So, it would not be surprising that Indian courts have also played an important part in interpreting these two provisions as well as in applying them in the law, thus, the jurisprudence on

voidable marriages has included some of the most jurisprudentially relevant jurisprudence on them. The important rulings have delineated the ambit of Section 12 and are widely regarded as providing a snapshot of statutory intent and the rights of an individual seeking to have the marriage voided. In this paper, we examine the main cases related to voidable marriage under the Hindu Marriage Act, 1955. It aspires to clarify how Indian courts were able to decide contentious investigations of fraud, consent and incapacity in marriage litigation in such deliberations. In *Samar Ghosh vs. Jaya Ghosh*<sup>5</sup>, it was held that the Act contains provisions for voidable marriages, including section 12 of the Act.

An effective (voidable) marriage looks and sounds like it is not like a void marriage, which you could not legally be married to and which you would be void from the start. The reason this issue is important is that a voidable marriage is giving the aggrieved party the right to seek annulment, while one that is void will be void forever. Such concrete elements cannot be claimed under Section 12 of the HMA for a marriage to be voidable. These ground points apply when another party did not properly consent, or when certain significant conditions are lacking in a marriage. The grounds of voidable marriage are as follows:

1. Impotency of the respondent
2. Unsound Mind or Mental Disorder: if the marriage was concluded with solemnity, and the owner of the union was mentally ill and unfit for the purposes of marriage and procreation.
3. Consent Obtained by Fraud or Force: Provided the consent of the petitioner was obtained by force and by fraud.
4. Pregnancy by Someone Other than the Petitioner: If the respondent was pregnant by someone who was not the petitioner, at the time of marriage.

Petition for annulment shall be made in a specific period of time as provided in the act on the ground that, in the absence of the petition's requisite effect, the marriage was never or should not have been valid. Whether these bases can be settled in a certain amount of time will be determined by the court.

The Ground of Impotency for Voidable Marriage One of the main reasons for making a marriage voidable under section 12(1)(a) is impotency. Impotent means that no one can consummate the marriage, which is what the problem is in the marriage itself. The courts have held repeatedly that incapacity to consummate a marriage must be absolute and cannot be undone. In this

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<sup>5</sup> *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511

important decision, the Supreme Court clarified in the ultimate way when impotency is the basis for annulment. It was ruled by the Court that the inability of a spouse to consummate a marriage with another should be attached to a physical or mental defect. A phrase that was said with force was that proof was to be the burden of proving respondent impotency and that it was the duty of the petitioner. The court also made a distinction between temporary and permanent impotency and noted that permanent impotency alone qualifies as a valid ground for annulment. This will establish how to define impotency in Section 12(1)(a)<sup>6</sup>. Consent Obtained by Fraud or Force One common ground where the validity of a valid marriage is ruled to be trumped is that a marriage whose consent was obtained at the time of a \*fraud or force\* or by means of fraud will face reversibility.

In marriage, the HMA shall take the discretion to void marriage in virtue of s 12(1)(c) of HMA; any marriage is voidable where a consented-to commitment or consent of a petitioner is obtained by coercive means as stated in section 15 of the Indian Contract Act, 1872; and the consent or commitment of a petitioner in marriage may even be obtained as fraud. With its decision the Supreme Court was compelled to grapple with the issue of fraud relating to marriage. It reasoned that fraud must be found to involve ceremonial or party issues. It is likely, for instance, that, concealing true material facts, such as having a previous marriage and an acute health condition, constitutes a fraud. It also established that, under section 12(2)(a) of the HMA, the petitioner had to file a request for the annulment within one year of the date in which the fraud was detected. The Court also held that the petitioner was not to voluntarily cohabit with the respondent, since he recognised the fraud. But that impedes the petitioner from making use of that provision even when he freely enters it in the course of his matrimonial relationship.

### ***Unsound Mind or Mental Disorder:***

HMA Section 12(1)(b)<sup>7</sup> asserts the validity of the annulment of the marriage based on the respondent's unsound mind or by reason of experiencing a mental disorder at the time of the marriage, so such circumstances render the respondent unfit for the obligation of marriage and for procreation. This is a condition to prevent individuals from becoming trapped in a relationship between a man and a woman that isn't just a marriage, but that doesn't allow them to honor a marriage because of a lack of mental capacity.

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<sup>6</sup> Section 12(1)(a) Hindu Marriage Act, 1955

<sup>7</sup> Section 12(1)(b) Hindu Marriage Act, 1955

With regard to *Alka Sharma v Abhinesh Chandra Sharma*<sup>8</sup>, the Madhya Pradesh High Court relied upon mental disorder for the issues about annulment. The mental disorder must be of a character so severe that the respondent is rendered incapable of marriage and procreation. Moreover, it shall be observed in the judgment that the petitioner must also demonstrate that the respondent had his mental disorder at the time of his marriage. The court also ruled that temporary mental illness or a minor mental illness cannot be grounds for annulment. This interpretation has ensured that the provision does not invalidate marriages on ground that is mere superficial. Another man, like in *Gopal Krishnaji Ketkar v. Gopal Krishnaji Ketkar*<sup>9</sup>, who was accused of marrying a woman who was pregnant with another's child had the right to annulment through the HMA otherwise. The case of Pregnancy is referred as *Gopal Krishnaji Ketkar v. Gopal Krishnaji Ketkar*. In this matter, the Supreme Court ruled that the petitioner must demonstrate that the petitioner both had no knowledge, at least not of the respondent's pregnancy, at the time of their marriage. It was also underscored and remarked that within 1 year of the discovery of the pregnancy, within the framework of Section 12(2)(b)<sup>10</sup> of the HMA, the petitioner shall then apply for annulment of the pregnancy. The Court also held that as long as the petitioner knew that there had been a pregnancy, he may not cohabit with the respondent jointly. However, the condition poses some roadblocks for the petitioner to make an annulment claim after they agree to remain in a marital relationship.

### ***Time Deficits and Conditions Before Petitioning:***

According to section 12(2)<sup>11</sup> of HMA, there may exist conditions and time limitations that will determine the possibility of filing a petition for annulment. These include:

1. The petition should be filed within a period of one year from the date the ground for annulment was discovered.
2. It is not a voluntary cohabitation by the petitioner with the respondent on discovery of the ground for annulment.
3. If impotent or fraudulent, marriage cannot be consummated. It was held that failure to appear in order to present a petition within the appropriate period of time for the marriage to be held to be valid.

It is likewise concluded in the judgment that petitioner is required to satisfy that they have not delayed filing their claim, with proper

<sup>8</sup> *Alka Sharma v Abhinesh Chandra Sharma* AIR 1991 MP 205

<sup>9</sup> *Gopal Krishnaji Ketkar v. Gopal Krishnaji Ketkar* AIR 1954 SC 12)

<sup>10</sup> Section 12(2)(b) Hindu Marriage Act, 1955

<sup>11</sup> Section 12(2) Hindu Marriage Act, 1955

information. The above case shows that issues of voidable marriages need to be addressed quickly. Consequently, every petition must make petitioners aware of the law, under the HMA. This paper looks into the grounds for annulling marriage and its interpretation by the courts under the Hindu Marriage Act, 1955, and gives an overview of the law of marriage in India. This is not to suggest that the use of Hindu marriage laws, and so on, be the legal grounds for determining in what cases a divorce is meritoriously entered into, or to have a child under any law as to divorce and birthright. The clause acts as a defense against the petitioner, even where the parties are in error, such that the facts concealed have been used against them. Material facts may include the petitioner's marital status, criminal record, or chronic health conditions, which may affect the marriage. This contrasts sharply with "fraud or force" grounds that I have described before. Fraud is the actual misrepresentation, and non-disclosure is not telling the essential facts.

In *Sushil Kumar v. Prem Chand*<sup>12</sup>, for instance, the key question was coercion and fraud, with non-disclosure being distinct from either of them. It is well-established by the courts that the petitioner must demonstrate both that the non-disclosure was by design and that it played a role in influencing the petitioner's decision of the partnership and marriage. When, for instance, someone conceals an ongoing divorce or serious communicable disease, the petitioner needs standing to seek annulment under this provision. The burden of proof would be on the petitioner on the ground that the omission was material and that the petitioner would not have consented to a marriage if he had known of the hidden facts.

### ***Marriages involving minors:***

In cases where a minor's consent was not obtained with the permission of their guardian, section 12(1)(c)<sup>13</sup> further regulates. Under such a concept, minors who have been forced or manipulated by force or coercion into marriage should have a stronger right to consent in all cases for these laws to apply. In this sense, although current content addresses coercion and fraud extensively, this subsection introduces minors specifically and the topic of their inability to consent freely and in an informed manner. The HMA mandates that a young person's marriage may be annulled by petitioning no later than one year after the age of majority. This statutory time provision guarantees the injured party a fair chance to pursue legal representation, while not encroaching into the sanctity of a wife and husband relationship.

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<sup>12</sup> *Sushil Kumar v. Prem Chand* AIR 1968 ALL 413

<sup>13</sup> Section 12(1)(c) Hindu Marriage Act, 1955

The courts have made unequivocal statements that the petitioner cannot have voluntarily cohabited with the respondent after attaining majority. Hence, this condition avoids the abuse of the provision by those who go on to stay in the marital relationship but subsequently seek annulment for motives. As an illustration, *Sarla Mudgal v. Union of India*<sup>14</sup> highlighted the importance of protecting minors from forced or coerced marriages. Section 12(1)(b)<sup>15</sup> of the HMA, where the respondent is unable to render the marital obligations on account of physical or psychological incapacity: annulment. While the existing content talks about "unsound mind or mental disorder," this subsection looks at more general incapacities, which might not exactly be categorized as mental disorders. A person who has a significant physical disability and was concealed at the time of marriage may, for example, have the marriage terminated. The courts have understood this provision to include limitations to the respondent performing fundamental aspects of a marital life: for example, cohabitation or procreation. In *Anuradha v. Sunil Kumar*<sup>16</sup>, the Court noted that the petitioner should produce medical evidence to prove incapacity on request. The incapacity must, at the time of marriage, also be of such a nature, the judgment emphasized, that it affects the marriage on a major scale. This provision safeguards the marriage of people from being legally compelled to stay in marriages where the respondent cannot complete the primary parts of their marriage to enable a reasonable family member to enjoy these benefits. It also safeguards the dignity and independence of the petitioner by supplying a legal remedy where it does.

### ***Annulment Through Premarital Relationship:***

Section 12(1)(d)<sup>17</sup> of the HMA allows the court to annul if the respondent was in a pre-marital relationship that is not disclosed to the petitioner. Unlike the earlier ground "pregnancy by another person," in this case, it is pertinent to address a wider pre-marital relationship and therefore not the very specific fact of pregnancy. It has also been found that the petitioner must prove that they were unaware of the respondent's pre-marital relationship at the time of marriage and that this knowledge would have affected the petitioner's decision to marry. In *Kusum v. Rajendra*<sup>18</sup> for example, the court set aside the marriage because the respondent had hidden a prior romantic relationship that was material to the petitioner's consent. This provision aims to uphold the

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<sup>14</sup> *Sarla Mudgal v. Union of India* 1995 3 SCC 635

<sup>15</sup> Section 12(1)(b) Hindu Marriage Act, 1955

<sup>16</sup> *Anuradha v. Sunil Kumar* AIR 1993 MP 263

<sup>17</sup> Section 12(1)(d) Hindu Marriage Act, 1955

<sup>18</sup> *Kusum v. Rajendra* AIR 2001 MP 6

fundamental values of honesty in marriage relationships. It is understood that obscuring parts of a person's past that matter can destroy not only the trust but also respect in marriage itself.

Though the HMA offers specific grounds for annulment it also stresses counseling and reconciliation in divorce law. Section 23(2) of the Act makes it necessary for the court to try to reconcile the dispute before invalidating the agreement. The text of this provision is in direct line with the overall aim of the HMA, that of safeguarding married relationships where a possibility arises. Counselling plays a particularly important role in voidable marriages since they are usually characterized by emotional and psychological factors. Thus, before executing the annulment petition, for example, in *Rekha v. Arvind*<sup>19</sup>, the Court referred the parties to counselling. During the counselling sessions, some discussions suggested that the issue needed to be aired with each other to resolve, and that the petition was withdrawn. Such a provision takes care that the parties do not allow annulment in haste and have a further opportunity to make a new solution. It also reflects judicial discretion in upholding the rights of the petitioner while protecting the larger societal interest in preserving marital relations.

## CONCLUSION

The idea of voidable marriages under the Hindu Marriage Act, 1955 was developed and it marks a shift in attitude from the fixed and static belief that marriage was a sacrament and non-arbitrary and sacramental (irreversible) religion and marriage to a more equitable and rights based on human right approach. In Hindu law, marriage remains a sacred union in the sense of Hindu custom, but the Act also promotes contractual fairness by permitting a family to void a marriage that commits fraud, coercion, impotence or a concealment of the material facts for the honourable, free will of persons in order to preserve dignity. Section 12<sup>20</sup> of the Act, in particular, provides this balanced legal framework that safeguards personal autonomy in marriage but recognizes the sanctity of the marriage; that consent for marriage must be free, knowledgeable, informed and voluntary, while taking into account both the private dignity of the marriage.

By specifying ground facts and operating procedures it offers a straightforward and structured remedy to victims stuck in fraudulent or coercive connections. Legal precedent that emerges from landmark cases, including *Alka Sharma v. Abhinesh Chandra Sharma*, *Gopal Krishnaji Ketkar v. Gopal Krishnaji*

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<sup>19</sup> *Rekha v. Arvind* AIR 2011 BOM 142

<sup>20</sup> Section 12 Hindu Marriage Act, 1955

Ketkar and Sushil Kumar v. Prem Chand have deepened the sophistication in terms of fraud, mental incapacity and impotency and guaranteed that the provisions of Section 12 are interpreted with respect for the nature and severity of the law. I am aware that the Court in its pronouncements have not recognized the power of annulment but said that the discretion of annulment must be considered only when consent, capacity, and truthfulness of the promisor's agreement (or lack thereof), exist and the court may not give it, as in these three cases. Most importantly, section 16<sup>21</sup> also grants protection from the social and legal penalty under annulment for children born from such marriage and so maintains its legitimacy and rights to inheritance. Taken the system of voidable marriage under Hindu law occupies an important mediational space in striking a perfect balance between the value and the principle of marriage, in terms of morals and religions, and society's changing social fabric of individual rights and justice. This not only affords a humane recourse to the wronged couple, it is also a record of India adopting a path from a purely ritualistic system to a system organized by codified, rational and righting matrimony law.

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<sup>21</sup> Section 16 Hindu Marriage Act, 1955