

The Hindu Marriage Act 2017: A Review

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Ever since Pakistan gained independence in 1947, the Hindu community has been subject to severe discrimination and marginalization. Hindu women, especially, have had to face the brunt of this unjust treatment and are regularly subjected to forced conversions, rape, and oppression within the domestic sphere.¹ According to a report released by the Movement of Solidarity and Peace in Pakistan, up to 300 Hindu women are forced to convert and marry Muslim men every year in Pakistan.² In this context, Hindu Personal Law and, specifically, law regulating marriages had been largely ignored as a legislative matter by the Parliament until two years ago, reflecting the Pakistani state's extended failure to provide legal protection to the basic social institution of family for its Hindu citizens. The Hindu Marriage Act 2017 marked a breakthrough as the first legislation dealing with personal law of Pakistani Hindus. This review will discuss ancient Hindu beliefs about marriage, problems that were caused by the lack of legislation in this respect, the Sindh Hindu Marriage Registration Act 2016, the Hindu Marriage Act 2017, its purpose, and analyze its provisions.

Introduction

Physical attacks, social stigmatization, psychological insecurity, forced conversions and continued institutional degradation shape the lived experiences of religious minorities in Pakistan.³ Hindus have particularly been a distressing target of discrimination which has left them feeling unsafe and insecure. Despite this, Pakistan is home to the world's fourth largest Hindu population. Hinduism, followed by 4% of a population of 200 million, constitutes the second largest religion in Pakistan after Islam.⁴

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¹ Salim Shaikh, 'Pakistan's Hindu Women Hope New Marriage Law Will Protect Them From Abduction, Forced Conversions' (*Scroll*, 2017) <<https://scroll.in/article/834440/pakistans-hindu-women-hope-new-marriage-law-will-protect-them-from-abduction-forced-conversions>> accessed 29 December 2017.

² Anwar Iqbal, '1,000 Minority Girls Forced in Marriage Every Year: Report' (*Dawn*, 2017) <<https://www.dawn.com/news/1098452>> accessed 8 September 2017.

³ Dr. Iftikhar H Malik, 'Religious Minorities in Pakistan' (2002) *Minorities Rights Group International* 22.

⁴ 'Hindu Population (PK) – Pakistan Hindu Council' (*Pakistanhinducouncil.org.pk*, 2017) <http://pakistanhinducouncil.org.pk/?page_id=1592> accessed 29 December 2017.

While forced conversions take place with different methods every month, two common forms in Pakistan for Hindus are through bonded labor and forced marriage.⁵ The incidents of reported cases of non-Muslim girls being forced to marry Muslim men and convert to Islam has noticeably increased in the past few years. Hindu girls and women have lived in the constant fear of being kidnapped, forced to abandon their faith, and convert and re-married to someone not from their religion. According to the patron-in-chief of the Pakistan Hindu Council, Ramesh Kumar Vankwani, 'It is the responsibility of the state to provide all sorts of protections to the country's minority groups including Hindus from all sorts of atrocities meted out to them, and ensuring they enjoy the same rights as any other person in the country'.⁶

The Objectives Resolution, now a substantive part of the Constitution of Pakistan through Article 2A sets out protection of the legitimate interests of minorities and their ability to profess their religion freely as one of the guiding principles for governance.⁷ This principle is also reflected in Article 36 of the Constitution of Islamic Republic of Pakistan 1973 ('Constitution'), which enshrines the policy of protection of minorities. The lack of a law that regulated the institution of family for Hindus was, therefore, in direct contravention of the obligations set out for the state in the Constitution.

Problems caused by Absence of Legislation

The problems faced by Hindu women demonstrate the dire need for effective legislation. Before the current law was enacted, no specialized legal mechanism existed in the law to register a Hindu marriage. The Hindu community used to get their marriages recognized with the help of guidelines present in the Special Marriage Act 1872: the local *panchayat*, the Pakistan Hindu Council, and the local union council. Numerous Hindus, from Bheel and Meghwar groups, used to get to sign an affidavit before an oath commissioner to prove their marital unions. Some time ago, National Database and Registration Authority ('NADRA') had additionally started registration of marital unions. Despite the fact that the Supreme Court had asked NADRA to register the marital unions of the Hindu group and

⁵ 'Forced Conversion of Minority Girls and Women in Pakistan' World Sindhi Congress. 5 (UNPO, 2017) <<http://unpo.org/downloads/2075.pdf>> accessed 29 December 2017.

⁶ '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>> accessed 19 October 2017.

⁷ The Constitution of Islamic Republic of Pakistan 1973, art. 2A.

encouraged the issuance of Computerized National Identity Cards ('CNIC'), still the certification itself kept overflowing with many issues. For instance, the terms used were *nikkah* rather than *shaadi*, *nikkahkhan* rather than *maharaj* or *pundit*; and these formed only a small part of the problems that were not being catered to.⁸ However, registration with *pundits* and *panchayats* failed to provide any substantial lawful grounds to prove the marriage.

Prior to the enactment of this law, no mechanism existed to regulate the registration and other aspects of Hindu marriages, including divorce. This created problems with regards to identity documents, documents required for travel, and transfer of property (mutation).⁹ In cases of bigamy, without any proof of marriage, the aggrieved spouse had no way to establish the bigamous nature of the second marriage contracted by the other spouse.¹⁰ Women were much more likely to be affected by the lack of registration of marriage documents. Husbands used to enter into second marriages during the subsistence of a valid marriage. However, the lack of documentation meant that the wife had no recourse against the husband. Another problem caused by the lack of proof of marital documents was the constant distress faced by Hindu women of being thrown out of their matrimonial homes. Hindu men could deny their first marriage due to the absence of evidence; the unfortunate wife would be left with no maintenance and no financial security.¹¹ The need for a law was also felt as the lack of marriage registration papers failed to adequately provide for the property rights of wife and children after the husband had died.¹² If the wife or children were unable to provide a solid proof of the marriage, the marriage was essentially considered invalid and the children classed as illegitimate. Such cases would result in both wife and children losing their legal status as the heirs of the

⁸ Zarmina Haq, 'The Sindh Hindu Marriage Bill 2016 – What About Hindu Pakistanis Of Other Provinces?' (*Courtingthelaw.com*, 2017) <<http://courtingthelaw.com/2016/06/07/commentary/the-sindh-hindu-marriage-bill-2016-what-about-hindu-pakistanis-of-other-provinces/>> accessed 27 July 2017.

⁹ Jamal, 'Is The Hindu Marriage Legislation Divorced From Reality?' (*Herald Magazine*, 2017) <<http://herald.dawn.com/news/1153359>> accessed 4 November 2017.

¹⁰ 'The Hindu: Proof Of Marriage' (*The Hindu*, 2017) <<http://www.thehindu.com/2003/09/05/stories/2003090500551000.htm>> accessed 1 December 2017.

¹¹ Qasim Ali, 'The Protections Afforded By The Hindu Marriage Bill, 2016 - LEAP Pakistan' (LEAP Pakistan, 2017) <<https://www.leappakistan.com/7563-2/>> accessed 29 December 2017.

¹² 'Salient Features of The Hindu Marriage Act, 1955' (*Legal Services India*, 2017). <<http://www.legalservicesindia.com/article/article/salient-features-of-the-hindu-marriage-act-1955-558-1.html>> accessed 1 December 2017.

property of the deceased. The lack of legislation on this matter meant that young Hindu girls were in greater danger of being forced into marriage.¹³ Perpetrators of child marriages could not be punished for violating any law as the marriage was not registered and no record existed to be presented later in front of a court. Hence, due to an increased in the rate at which these problems were spreading, it became essential to cater to the needs of the Hindu community and enact a legislation that could benefit their family system.

The issue of the lack of a Hindu Marriage Bill was first highlighted in 1970s in the Parliament, but unfortunately could not be formalized into a law.¹⁴ Civil society and women rights activists have also been long advocating for legislation on this issue. In 2011, the fourth National Commission on the Status of Women put forward the Hindu Marriage Bill 2011, but the effort did not bear fruit. The Parliament also tried to pass the Hindu Marriage Bill thrice: once in 2008, then in 2011, and finally in 2012; however, to no avail.

With the passing of the 18th Amendment in April 2010, the issue of family law legislation was delegated to the provinces. Hence, the law under consideration in the National Assembly in 2012 would have been just been applicable to Islamabad.¹⁵ It was not until the provincial assemblies of Baluchistan, Khyber Pakhtunkhwa ('KPK') and Punjab passed their resolutions under Article 144 of the Constitution extending the jurisdiction of the federal law to their provinces that the law became expansive in its application.¹⁶ The final Act that was passed in 2017 extends to Khyber Pakhtunkhwa, Baluchistan and Punjab, accommodating the most important requirements of a marriage and equips itself with well-written laws that will be implemented for all Hindus.¹⁷ However, Sindh, which is home to the majority of Pakistani Hindus, seemed removed from the overall process and had formulated its own Hindu Marriage Law earlier in 2016. The Pakistan People's Party ('PPP') in Sindh considers Hindus as their vote bank; and hence, its apprehension about the success of a PML-N initiative on such an

¹³ 'Child Marriages In Pakistan | The Institute For Social Justice (ISJ)' (*Institute for Social Justice*, 2017) <<http://www.isj.org.pk/child-marriages-in-pakistan/>> accessed 29 December 2017.

¹⁴ Tahir Mehdi, 'Hindu Marriage: Untying The Knots' (*Dawn*, 2017) <<https://www.dawn.com/news/1224870>> accessed 18 June 2017.

¹⁵ *Ibid.*

¹⁶ The Hindu Marriage Act 2017.

¹⁷ Kalbe Ali, 'Senate Passes Landmark Hindu Marriage Bill' (*Dawn*, 2017) <<https://www.dawn.com/news/1315482>> accessed 26 July 2017.

important matter led it to work towards an even broader non-Muslims' marriage bill for the province.¹⁸ It considered PML-N's attempt as detrimental to its political wellbeing.

The Supreme Court also seems to be involved since the past few years in the discussions of the adoption of a bill for the minorities. The landmark Supreme Court judgment on the rights of religious minorities that was passed in June 2014 was followed by an order directing the government to enact a law within two weeks.¹⁹ The case had earlier been brought up by a bench headed by Chief-Justice Iftikhar Muhammad Chaudhry in 2012. It took *suo moto* notice of the matter, issuing 'instructions to NADRA to amend the rules to register Hindu marriages'.²⁰ Hence, issues regarding Hindus obtaining passports and CNICs were being taken into proper consideration.

The Sindh Hindu Marriage Registration Act 2016

Sindh, home to the majority of the Hindu population in Pakistan, became the first province to pass legislation for the registration of Hindu and other non-Muslim marriages through the Sindh Hindu Marriage Bill, which was later enacted as the Sindh Hindu Marriage Registration Act 2016.²¹ With the realization that the Muslim Family Laws Ordinance 1961 gives Muslims a complete legal umbrella to solemnize and register marriages, the Hindu Marriage Bill passed by Sindh was appreciated as a milestone in the direction of protecting minorities.

Moreover, some common elements can be easily seen in the bills passed by the federal government and Sindh itself. While both require the minimum age of marriage to be set at 18 and there to be witnesses present at the time of marriage, there is a difference between the numbers of days within which the solemnized marriage should be registered. In Sindh, the law allows for the provision of 45 days, but also imposes a fine of Rs. 1000 if the individuals fail to register the marriage within the given time period.²² While the Hindu Marriage Act 2017 provides for provisions of a divorce, the Sindh Hindu marriage law does not mention such provision.

¹⁸ 'Pakistan: National Assembly Passes Hindu Marriage Bill | Global Legal Monitor' (*Loc.gov*, 2017) <<http://www.loc.gov/law/foreign-news/article/pakistan-national-assembly-passes-hindu-marriage-bill/>> accessed 20 June 2017.

¹⁹ (n 14).

²⁰ *Ibid.*

²¹ (n 18).

²² The Sindh Hindu Marriage Registration Act 2016.

The bill moved in the assembly by Parliamentary Affairs Minister Nisar Khuhro is applicable to the entire province of Sindh²³ and helps observe how the Eighteenth Amendment has allowed for provinces to take up marriage and minority affairs under their jurisdiction and make laws.

The Landmark Hindu Marriage Act 2017

Pakistan's Parliament finally passed the Hindu Marriage Bill on 9 March 2017 after a lengthy process of deliberation and enactment.²⁴ Kamran Michael who is Pakistan Muslim League – Nawaz (PML-N's) Christian lawmaker and the Minister of the Human Rights, reiterated that there was no law to regulate the registration of Hindu marriages and ancillary matters; and hence, it was a constitutional obligation to legitimately safeguard rights and interests of minorities.²⁵ This legislation holds great significance for the Hindu community because it allows the regulation of marriages of one of the largest minorities in Pakistan. The National Assembly unanimously adopted the bill in September 2016 but due to a few amendments made by the Senate, the National Assembly had to pass the bill again after the Senate adopted it on Friday, 17 February 2017. The bill, after being signed by President Mamnoon Hussain became law, and is officially known as the Hindu Marriage Act 2017.

This Act vividly supports the notion of women also having a 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'.²⁶ According to him, 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'.²⁷ This Act acts as a breakthrough document that protects and empowers women, as the process of marriage registration

²³ 'Sindh Becomes First Pak Province To Adopt Hindu Marriage Bill' (*NDTV*, 2017) <<http://www.ndtv.com/india-news/sindh-becomes-first-pak-province-to-adopt-hindu-marriage-bill-1277663>> accessed 30 July 2017.

²⁴ 'Pakistan Parliament Finally Passes Landmark Hindu Marriage Bill' (*The Hindu*, 2017) <<http://www.thehindu.com/news/international/pakistan-parliament-passes-landmark-hindu-marriage-bill/article17441272.ece>> accessed 14 June 2017.

²⁵ Muhammad Bilal, 'NA Passes Amended Hindu Marriage Bill' (*Dawn*, 2017) <<https://www.dawn.com/news/1319432>> accessed 14 June 2017.

²⁶ 'Pakistan Parliament Passes Landmark Hindu Marriage Bill' (*The Indian Express*, 2017) <<http://indianexpress.com/article/world/pakistan-parliament-passes-landmark-hindu-marriage-bill-4563476/>> accessed 19 July 2017.

²⁷ *Ibid.*

highlights them as much as it highlights men and allows for Hindu women to keep marriage records in their possession too.

The Act serves as a milestone for Hindus because of its most important mechanism for the registration of Hindu marriages that includes the terms on which the marriage may be contracted, the proceedings for dissolution of the marriage, and the basis on which such marriage may be dissolved. The Act provides provisions for divorce allowing women the freedom to leave a marriage on the ground of oppression or for reasons mentioned in the analysis section. The Act also provides for judicial separation which entails keeping the marriage intact, but both the parties no longer being obliged to cohabit with each other.²⁸

Moreover, the Act most significantly helps to prove marriage in cases of property inheritance, and bigamy by any of the partners, at police stations, public offices, and while applying for any business deals. The CNICs of the partners may be matched with the marital document known as the *Shaadiparaat* that will provide evidence of the authentic biographical information required in any family law related matters in the future.

Analysis of the Act along with Hindu Customary Law

Along with different kinds of legislations that pertain to the Hindu marriages, Hindus hold their customs and traditions in high regard. The old customs that they follow comprise many rituals and emphasize on the relationship a bride may have with the bridegroom. It is important to note how married Hindu people embrace the life-long bond flourishing their relationship as commanded in religious provisions. Ramayana, one of the holy books of the Hindus, refers to woman as half of that of man and she may be called *dharmapatni* ‘a friend and adviser to be associated by the husband in all religious rites and ceremonies’.²⁹ However, in Mahabharata, it is clearly mentioned that those who have wives may be able to ‘fulfill 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’. Hence it is noted how prudent it is for both husband and wife to be faithful to each other and not be separated. In the Act, a Hindu Marriage has been defined as:

²⁸ The Hindu Marriage Act 2017, s. 9.

²⁹ Havalkumar Makwana and M. Sreedevi Xavier, ‘Hindu Marriage: A Study of Changes from Vedic Period to Modern Times’ (2016) 5 (3) *Global Journal for Research Analysis* 427.

The union of Hindu male and Hindu female solemnized under this Act and includes the marriage solemnized before commencement of this Act in accordance with the law, religion and customs having force of law relating to Hindu persons.³⁰

The law requires Hindus to follow this Act not only for marriages taking place after the implementation of this Act but also for marriages that took place before the Act was adopted. The Act is not valid for a Hindu marrying a non-Hindu, which was initially acceptable as part of the Hindu customary law.

Along with many customs that the Hindus staunchly believe in, those that hold mystical importance and are significant marriage obligations for them are the rites and rituals they follow in their religious realm. Consequently, far more uniformity of behavior than of belief is found among Hindus, as they follow the guidance scripted in Vedas – the ultimate canonical authority for all Hindus – and observe the teachings over the generations they have lived in.³¹ However, in the Act, Customs and Customary Rites have been defined as:

Any tradition which is not unlawful and the same has been continuously and uniformly observed for a long time among Hindus in any local area, tribe, community, group or family.³²

Hindu customary law is required to be observed and practiced during the procedure of a Hindu marriage. However, any law that rejects or contradicts the Hindu beliefs may not be continued with or allowed within the religious domain. Moreover, this definition also applies to the rules and regulations that the Hindus have been following for years now and passing them on from one generation to another. Whether they are beliefs of a tribal community or just a local *panchayat*, Hindus are expected to believe in the sayings and follow them religiously.

Analyzing the two definitions mentioned above, it can be clearly observed that just as the Constitution of Islamic Republic of Pakistan focuses on and follows Shariah, the word of Allah, the Hindu Marriage Act obeys the

³⁰ The Hindu Marriage Act 2017, s. 2(2)(e)

³¹ 'Philosophy of Religions' (*Queensborough Community College: Social Sciences*, 2017) <http://www.qcc.cuny.edu/socialsciences/ppecorino/phil_of_religion_text/CHAPTER_2_RELIGIONS/Hinduism.htm> accessed 24 July 2017.

³² The Hindu Marriage Act 2017, s. 2(2)(b)

religion, and abides by the law compressed within Hinduism. The statutory law is intertwined with its customary law and exists as an addition to the religious word by their gods and goddesses. The Hindu marriage is required to be a religious ceremonial matter between a Hindu man and Hindu woman, unlike Islam where Muslim men are even allowed to marry the ‘Women of the Book’ and not only Muslim women.

Furthermore, *Shaadiparat* has been defined as the:

Certificate of marriage issued by marriage registrar, which certifies the solemnization of Hindu marriage.³³

The final text which was approved by both the Houses included the *Shadi Parath* – a document similar to the *Nikahnama* of the Muslims.³⁴ The *Shaadiparat* had been mentioned in almost all potential Hindu Marriage Bills but it only became an official legal document in 2017. This important document needs to be signed by the pundit and has to be registered with the concerned government department. Due to this registration process, a Hindu may now have a marriage solemnized with an adequate, authentic record and its credibility may not be doubted anymore since this document serves as an evidence for marriage. The information asked for in the *Shaadiparat* first is the date of the marriage, followed by a blank for the name of the union council, tehsil, town, and district. The document further allows the particulars of the bridegroom and the bride to be noted down respectively; such as their full names, fathers’ names, mothers’ names, and the mentioned people’s CNIC numbers. The date of birth, temporary address and permanent address are also asked for. It then requires for both the groom and the bride to mention their matrimonial status by choosing one of the four boxes provided: Single, Married, Divorced, Widower. It may then separately ask for the number of dependents for both the partners. The date and place of solemnization of marriage must also be provided in the *Shaadiparat* as it holds great significance under the law and religion both. The document is concluded with the signature of both the groom and the bride, along with the two witnesses of the marriage ceremony and the signature of the registrar.³⁵ Women have been given their own space under this Hindu family law, where not only their identity matters, but also the identity of their guardians is taken into account for the marriage to take place. The particulars that a bride needs to submit are equal and the same as the ones a groom has to submit, clearly

³³ The Hindu Marriage Act 2017, s. 2(2)(i)

³⁴ (n 25).

³⁵ The Hindu Marriage Act 2017, Schedule A.

indicating towards the impartiality and equality of treatment this document pertains to. This set of basic biographical data indicates the importance of record-keeping in a solemnized marriage for not only further religious ceremonies but also other legal affairs.

Conditions for a Hindu Marriage

Traditional customs made Hindus believe that they must get their daughter married before she attains puberty. Vedas, Brahmins and *Kama-sutra* strongly abide by the law that the bride is to have a lesser age than the bride groom at the time of their marriage. As Brahmins have been the most influential and reputable caste in Hindu religion, many Hindus in other caste systems began following the Brahman pattern of pre-puberty marriage.³⁶ Under the Hindu customary law, old traditions encompassed peculiar Hindu notions of consanguinity and caste. Neither inter-caste marriages nor inter-sub caste marriages were allowed. However, marriage with a non-Hindu was not considered to be invalid or unacceptable. *Sagotra* and *saprarava* marriages were also prohibited.³⁷

Before 1955, a vast majority of Hindus and Muslims in India used to practice polygamy, with unlimited number of wives for Hindus and number of marriages restricted to four for Muslim men. Though ever since the enforcement of the Hindu Marriage Act in India, in 1955, polygamy became a criminal offense punishable by imprisonment for up to seven years. However, if the first marriage is kept a secret from the spouse, the punishment may increase up to ten years of imprisonment.³⁸

Moreover, mate selection also holds special significance in the concrete procedural order of the Hindu Marriage in the present day. Where endogamy stands as a mate selection procedure of choosing a spouse from within the community or group, it also serves as the purpose of preserving community bonds and relationships and making marital adjustments easier.³⁹ However, exogamy, also called out-marriage is described as a custom enjoining marriage outside one's own group.⁴⁰ Although this is known as the other mate selection procedure, it is still out rightly banned in the Hindu society. With encouraging and perpetuating endogamous customs in society,

³⁶ (n 30) 428.

³⁷ Paras Diwan, *Law of Marriage and Divorce* (Universal Law Publishing Co. 2002) 87-89.

³⁸ *Ibid*, 89.

³⁹ (n 30) 428.

⁴⁰ 'Exogamy | Sociology' (*Encyclopedia Britannica*, 2017) <<https://www.britannica.com/topic/exogamy>> accessed 28 July 2017.

cross cousin marriages are being more inclined towards and customary laws are supporting these 'rather than religious sanctions'.⁴¹

However, according to section 4 of the Act, the conditions of the marriage are set such that both the parties are to have a sound mind and must be capable of giving valid consent.⁴² Any person who is not mentally capable of making a decision or granting consent shall not be forced into marriage and this is applicable to both Hindu men and women. The age at the time of marriage for both the parties is set at eighteen (18)⁴³ and the parties are prohibited from being in any sort of an illegal or adulterous relationship as forbidden by their law, religion and customs.⁴⁴ The fourth condition is that none of the parties must have a spouse living at the time of marriage.⁴⁵ This clearly shows how in modern day polygamy or polyandry is strictly forbidden in Hindu culture, unlike Islam, where polygamy is commonly practiced to up to four wives at the same time.

Registration of Hindu Marriages

Section 6 of the Act clarifies that the registration of the marriage must be done in accordance with the provisions of this Act and every marriage must be registered within fifteen days of solemnization of Hindu Marriage.⁴⁶ Moreover sub-section (2) of Section 6 mentions that the marriage register shall be open for inspection and shall be admissible as evidence of the contents contained therein or certified extracts there from shall, on application, be given by the marriage registrar on payment of such fee, as may be prescribed.⁴⁷ This means that the original register's information may be put on the extract in order to be shared with the applicant on provision of the fee. The purpose of such inspection may be a verification that needs to be done and the reason of such verification would be required in the application so as to get a copy of the details of the marriage mentioned in the *Shaadiparat*.

Further, according to sections 4 and 6 of the Act, the legal age and the registration of marriage prove to be an important purpose of the bill because the Convention on Elimination of All forms of Discrimination

⁴¹ (n 30) 428.

⁴² The Hindu Marriage Act 2017, s. 4(a).

⁴³ Ibid, s. 4(b).

⁴⁴ Ibid, s. 4(c).

⁴⁵ Ibid, s. 4(d).

⁴⁶ The Hindu Marriage Act 2017, s. 6(1).

⁴⁷ Ibid, s. 6(2).

against Women ('CEDAW') that Pakistan has signed and ratified includes both. Article 16 (2) of CEDAW says:

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.⁴⁸

Hence, for the individuals to be 18 or above and for there to be an official document such as the *Shaadiparat* is extremely necessary for the marriage registration to take place. The registration cannot be done by a fake or unauthorized marriage registrar who may be doubtful in his actions or be involved in a fraud. Under the legal umbrella of CEDAW, any child marriage will not be considered valid and may instead be discontinued.

Appointment and Function of Marriage Registrar

According to section 7 of the Act, the marriage registrar is also required to make three copies of the *Shaadiparat*, one for the bride, other for the bridegroom, and the third for the marriage registrar to keep it as a record. The peculiarity of such a section comes out to be seen as women having a right to distinctively protect their marriage and keep a proof of it. Hindu women before this law were 'unable to produce a legal document to substantiate their relationship with their spouse in police stations and courts, at NADRA kiosks, visa counters and all governance windows that require CNICs'.⁴⁹ However with the advent of the Act, women are now able to possess a legal document and may stand up for their rights whenever denied, in public places or private realms.

Void and Voidable Marriages

According to section 10, any Hindu marriage may be null and void if the conditions of section 4, clauses (c) and (d) stand true. Clause (c) indicates

⁴⁸ UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), art. 16 (2). It was adopted in 1979 by the UN General Assembly and is often described as an international bill of rights for women. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention also defines discrimination against women as '...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'.

⁴⁹ (n 14).

any prohibited relationship between the two parties, and clause d) talks about another spouse living at the time of marriage.⁵⁰ Moreover, for Hindus there also exists a concept of Voidable Marriage as explained in section 11 of the Act. Any marriage before or after the commencement of the Act may be nullified by the court if: (a) the marriage has not been consummated owing to impotence of the respondent; (b) there is breach of clause (b) of section 4; (c) consent of the petitioner was obtained by force, coercion, or by fraud; or (d) the respondent was at the time of marriage pregnant by someone other than the petitioner.⁵¹ However, there exist conditions of cases when such petitions may not be entertained by the court: if the petitioner lodges complaint after one year of being forced into marriage, or one year after the fraud has been discovered. Furthermore, the case in which the petitioner was ignorant of the facts alleged, and the proceedings have been instituted one year before the commencement of the Act and after the commencement within one year of such marriage, the petition may be entertained.

Termination of Hindu Marriage

One of the most important sections of the Act is about the termination of marriage. Any Hindu marriage under section 12 of this Act may be terminated if the petitioner has been treated with cruelty,⁵² or if the petitioner has been deserted for a period of not less than two years.⁵³ ‘Desertion’ under this law means that the petitioner, either the husband or the wife, has been isolated without any reasonable cause, or without their consent, and includes willful neglect of petitioner by the other party. Moreover, the marriage may also be terminated on the basis of either the husband or wife converting to some other religion,⁵⁴ or having an unsound mind that would inevitably lead to the petitioner not being expected to live with the respondent.⁵⁵ The mental disorder referred to is defined as some mental illness that may lead to seriously irresponsible or abnormally aggressive conduct. However, suffering from other diseases such as leprosy⁵⁶ or HIV/AIDs⁵⁷ may also be a cause to terminate marriage. If either of the parties renounces the world by entering into any form of religious order, then too the marriage is not

⁵⁰ The Hindu Marriage Act 2017, s. 10.

⁵¹ The Hindu Marriage Act 2017, s. 11.

⁵² The Hindu Marriage Act 2017, s. 12(1)(a)(i).

⁵³ Ibid, s. 12(1)(a)(ii).

⁵⁴ Ibid, s. 12(1)(a)(iii).

⁵⁵ Ibid, s. 12(1)(a)(iv).

⁵⁶ Ibid, s. 12(1)(a)(v).

⁵⁷ Ibid, s. 12(1)(a)(vi).

required to be continued with.⁵⁸ This section also successfully provides for the rights of Hindu women. If the wife finds out that the husband married again, or there is a wife still alive from the marriage before the commencement of this Act, such a marriage can be terminated.⁵⁹ Hence, under this marital legislation Hindu women are allowed to end the marriage if their husbands are committing the crime of bigamy and are given the right to be the first one to file for a termination. Therefore, under section 20, any marriage solemnized after commencement of this Act is considered to be void if any of the partners had a spouse living at the date of marriage and the provisions 494 and 495 of the Pakistan Penal Code 1860 ('PPC') shall apply accordingly for the punishment to be given. Under section 494 of PPC:

Whoever, having a husband or wife living, marries in any case in which, such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.⁶⁰

And under section 495 of PPC:

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.⁶¹

Moreover in other cases, if the husband failed to provide for her needs for more than two years,⁶² or if he is sentenced to imprisonment for a period of four years or more,⁶³ or if her marriage –whether consummated or not – had been solemnized before she attained the age of 18, the marriage is subject to termination.⁶⁴

⁵⁸ Ibid, s. 12(1)(a)(vii).

⁵⁹ Ibid, s. 12(2)(a).

⁶⁰ The Pakistan Penal Code 1860, s. 494

⁶¹ The Pakistan Penal Code 1860, s. 495

⁶² The Hindu Marriage Act 2017, s. 12(2 b)

⁶³ Ibid, s. 12(2)(c).

⁶⁴ Ibid, s. 12(2)(d).

In the case *Jagsi v Shr. Marwan*,⁶⁵ the Family Court, under the West Pakistan Family Courts Act 1964, decided in the favor of the respondent who instituted a suit for the dissolution of marriage on the grounds that she belonging to Hindu Menghwar community was subjected to the custom providing for dissolution of marriage; she was treated with cruelty and was not provided maintenance. After expulsion respondent left the house of petitioner while the fact of belonging to Menghwar community; custom of dissolution of marriage and the marriage itself were admitted by the petitioner in his written statement.

Financial Security of Wife and Children

Section 13 looks after the financial security of the wife and the children born out of marriage and clearly emphasizes on the role the Court plays in order to make sure the wife and children are compensated for, and any financial hardship is met with before the marriage is terminated. It is ensured that both the parties will make adequate provisions for the maintenance of the children, within the financial capacity of the parties to the marriage.⁶⁶

Termination by Mutual Consent

Section 15 talks about the mutual consent of the parties to terminate a marriage. The condition for such an action is that both the parties must be living separately for more than a year, and must agree that they cannot live together; hence, the marriage should be terminated.

Fresh Marriage after Separation

The Act also provides respect and dignity to especially the Hindu women in accordance with section 16 that allows for separated people to marry again. Any party, who wishes to marry another person after the said expiration period of six months from the final decision of termination, may do so in order to live a happy and peaceful life they choose for themselves. Widows only need to complete a period of six months after their husband's death, and then may remarry.⁶⁷ This is one another step towards women empowerment that the Hindu Marriage Act 2017 strongly endorses.

Legitimacy of Child in Void and/or Voidable Hindu Marriage

⁶⁵ PLD 2005 Karachi 334.

⁶⁶ The Hindu Marriage Act 2017, s. 13.

⁶⁷ Ibid, s. 16.

Moreover, the Act also defines the identity of the children born out of void or voidable marriage. Under section 18, it clearly mentions how children born out of such marriages are legitimate. This provides for the innocent children to be taken care of even after the marriage is terminated. Hindu culture widely promotes the protection of illegitimate children and considers them equally important to the children conceived without any nullifying consequences. Such laws flourish the society with tolerance, awareness, and a much more mature identity.

Punishment for Contravention of Certain Conditions for Hindu Marriage

According to section 21, any person who gets his or her marriage solemnized under this Act in violation of the conditions specified in section 4, clause (b) – forcing someone to get married or forcibly marrying someone under the age of 18, or clause (c) – are parties to the marriage within degrees of prohibited relationship – shall be punishable by imprisonment which may extend to six months but will not be less than three months, or with fine which may extend to five thousand rupees, or with both imprisonment and fine.⁶⁸

Jurisdiction of the Courts

Furthermore, according to section 22, every petition under this Act shall be presented to the Family Court.⁶⁹

Penalty for Violating the Provision of the Act

The penalty, according to section 23, is that of simple imprisonment that may extend up to three months or a fine of one thousand rupees, or both. Such punishment may be given to anyone who rejects the law, or tries to take it in their own hands.

Cognizance of Offences under the Act

‘Notwithstanding anything contained in the Code of Criminal Procedure 1898 (Act V of 1898), all offences under this Act shall be non-cognizable and

⁶⁸ The Hindu Marriage Act 2017, s. 21.

⁶⁹ The West Pakistan Family Courts Rules, rule 6(b).

non-compoundable and the same shall be triable by a Magistrate First Class on a complaint in writing by a marriage registrar'.⁷⁰

Conclusion

Ever since independence, Hindus have desired to obtain their own marriage law under which their marriages could be solemnized and legally registered. This landmark Act has now brought minority rights under the spotlight and serves to protect the Hindus that have lived in Pakistan for years now, waiting for this breakthrough to take place. With the country's legislature taking a step towards the protection of the interests and rights of minorities, both in statutory and customary law, a positive light is emerging out of the Hindu-Muslim relations. It can be hoped that such laws help Hindu women and men both to stand up against the oppression they face every day, and live as equal citizens within Pakistan. The marriage registration documents may now help Hindus to prove their marriage whenever it requires them to, and will surely benefit Hindu women as it will hopefully lower the rate of forcible marriages, rape, kidnapping, and forced religious conversions. Whether it is their domestic or the public sphere, this Act has encouraged Hindus to raise their voice, as the society is moving towards better and fair lawfulness.

⁷⁰ The Hindu Marriage Act 2017, s. 24