

The Hindu Marriage Act, 1955:

Statutory Definition of 'Who is a Hindu' and the Foundational Conditions for a Valid Marriage

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Abstract: The Hindu Marriage Act, 1955 - A Hybrid Paradigm

The Hindu Marriage Act (HMA), enacted in 1955, is a substantial attempt by the Indian Parliament to amend and codify the different laws regarding marriage amongst Hindus¹. The HMA is one of the most significant legal reforms in the post-colonial era, as it pivoted the institution of Hindu marriage from an unbreakable sacrament to a regulated institution with rights and obligations². The main socio-legal struggle came from the need to codify modern ideas of justice, equality, and monogamy, while simultaneously taking into account the extensive diversity of Hindu practices and sects³.

This report will provide a comprehensive legal analysis of two principal issues with respect to the HMA: identifying the Act's personal scope, and defining a sweeping definition of 'Who is a Hindu' in Section 2⁴, and defining the fundamental conditions for solemnization as discussed in Section 5⁵. Section 2 allows a broad definition that involves Buddhists, Jains, and Sikhs, in addition to conversion issues and the constitutional exemption for Scheduled Tribes⁶. Section 5 covers five conditional standards: monogamy, mental capacity, minimum age, and freedom from prohibited and sapinda relationships, without which the marriage would fail to achieve the validity for a matrimonial union⁷.

An important observation from this statutory examination is the explicit legislative hierarchy regarding the consequences for breaches of Section 5. Interference with fundamental obligations, such as monogamy (S. 5(i)) or incestual prohibitions (S. 5(iv) and (v)), annuls the marriage ab initio (Section 11)⁸. Matters concerning consent or capacity (S. 5(ii)) create a voidable marriage (Section 12), requiring action in a court for annulment⁹. In contrast, the infraction of the minimum age (S. 5(iii)) is punitive (Section 18), purposefully designed to avoid the disruption of the marital status¹⁰. This analysis of the HMA evidences its dual function: a rigid legal regime intended to impractically respond to modern normativity, but which still depends for its effectiveness upon endless judicial interpretation of the law within India's multi-religious society¹¹.

Index Terms: Hindu Marriage Act 1955, definition of Hindu, Section 2, Section 5, monogamy, mental capacity, minimum age, prohibited relationships, sapinda relationships, void marriage, voidable marriage, annulment, Section 11, Section 12, Section 18.

I. Introduction: Codification and the Socio-Legal Context

¹ The Hindu Marriage Act, No. 25 of 1955, pmbl. (India).

² Id

³ Id

⁴ Hindu Marriage Act § 2.

⁵ Id. § 5.

⁶ Id. § 2(1)(b)–(c); id. § 2(2).

⁷ Id. § 5(i)–(v).

⁸ Id. § 11.

⁹ Id. § 12(1).

¹⁰ Id. § 18(a)–(b).

¹¹ Id

1. Legislative Intent and the Necessity of Codification

Prior to 1955, Hindu personal law was an indefinite mixture of Shastric law, various local customs, and court precedents, thus creating a legal terrain characterized by conflicting decisions and overall inequality¹². In particular, wives faced laws and customs that placed heavy restrictions on them when faced with marital discord, leading to calls for a code that would remove discrimination and update ancient practices to modern standards of justice and equality¹³.

The HMA, 1955, was enacted on May 18, 1955, as Act 25 of 1955, and formed an important part of the Hindu Code Bills movement advocated in the 1950s¹⁴. The legislation set out to do more than just state or present current practices, codifying and amending the law in many respects, with reference to divorce, maintenance, and monogamy, reflecting a transitional focus on elevating individual well-being and autonomy¹⁵. The purpose of the codification of practice was to create formal equality in law - granting both men and women equivalent rights to remedies for marriage, and auxiliary domestic relief, while legal inequalities continued elsewhere as a reliance on all specimens to equality in inheritance law¹⁶.

2. The Overriding Effect of the Act (Section 4)

An important provision of the HMA that delineates its legal authority is Section 4, which states that codified law will have an overriding effect¹⁷. This section provides that any prior text or rule or interpretation of Hindu law, or any custom or usage, is no longer legal in relation to any matter covered by the HMA, except where the Act expressly provides for the continuing effect of custom¹⁸.

This provision introduces a deliberate legislative intention: to modernize the principles behind marriage (for example, establishing mandatory monogamy) while still allowing for specific, limited exceptions for custom only in instances where permitting custom would not offend fundamental public policy or social norms, such as in the examples of kinship (Sections 5(iv) and 5(v))¹⁹. The friction between the reforming legal paradigm and the mainstream culture serves as the backdrop for analyzing the applicability rules under the Act²⁰.

II. Defining the Subject: The Scope of 'Who is a Hindu' (Section 2)

Part 2 of the HMA is pivotal for assessing individual applicability of the Act, since it broadly defines the term 'Hindu' in a way that extends beyond a narrow theological definition²¹. In regard to statutory operation, the basis of the HMA relates to three main categories: religion, extension of the legislation, and a negative test of covers²².

1. Statutory Categories of Application (S. 2(1))

1.1 Hindu by Religion (S. 2(1)(a))

The Act applies to any person who is a Hindu by religion in any of its many forms or developments²³. The wide wording of this clause is intentional. The Act explicitly includes any follower of a modern progressive or reformed movement within Hinduism, including a Virashaiva, a Lingayat, or a follower of the Brahmo, Prarthana, or Arya Samaj²⁴.

¹² Hindu Marriage Act, No. 25 of 1955, pmb. (India).

¹³ Id

¹⁴ Id

¹⁵ Id. §§ 9–13.

¹⁶ Hindu Succession Act, No. 30 of 1956 (India) (reflecting continued inequalities prior to later amendments).

¹⁷ Hindu Marriage Act § 4.

¹⁸ Id

¹⁹ Id. § 5(iv)–(v).

²⁰ Id

²¹ Hindu Marriage Act, No. 25 of 1955, § 2 (India).

²² Id

²³ Id. § 2(1)(a).

²⁴ Id

1.2 Extended Application to Related Faiths (S. 2(1)(b))

More significantly, the HMA extends the application of the Act to any person who is a Buddhist, Jaina, or Sikh by religion²⁵. This broadened base of coverage also stemmed from the historical context - the constitutional grouping with Hinduism, where these faiths were also covered with Hinduism for the basis of the unified personal law during the 1950s codification process²⁶.

1.3 Residuary clause and domicile (S. 2(1)(c))

The Act introduces a "negative test" that promotes a broad application to persons in the territories to which the Act applies²⁷. It applies to any person not a Muslim, Christian, Parsi, or Jew by religion, who is domiciled in these territories. This application stands unless the person shows that they would not have been subject to Hindu law or custom at the time of the Act under the HMA²⁸. The application of this clause ensures that the law can apply to different indigenous or tribal communities not captured by other codes of personal law, unless the evidence shows otherwise²⁹.

2. Acquisition of status: issue by birth and by conversion

The Explanation to Section 2 further clarifies how one acquires Hindu status for both purposes of inheritance and initiation³⁰. This covers legitimate and illegitimate issues of both parents who are Hindus, Buddhists, Jains, or Sikhs³¹. Significantly, the Act also applies if only one parent belongs to an eligible religion, provided the child is raised as a member of the group of which the parent is a member³².

The HMA specifically addresses "any person who is a convert or reconvert" into the Hindu, Buddhist, Jaina, or Sikh faiths³³. Interpretation by jurists has played a major role in understanding the process of conversion. The Kerala High Court has held that conversion to Hinduism is not reliant on any formal processes established by pristine Hindu law, custom, statute, or otherwise³⁴. Thus, courts were to examine an individual's declarations and behavior sympathetically and accept the declarations and behavior as sufficient proof of conversion³⁵. Such courts accepted situations of reconversion where an individual participated in a Shuddhi ceremony by reading certain texts, praying to Hindu gods, and resuming Hindu customs thereafter³⁶. Of course, if an individual converts, particularly for social purposes, then acceptance by that community and/or caste may remain relevant in legal proceedings as an evidentiary factor³⁷.

3. The Exclusion of Scheduled Tribes (S. 2(2)): Judicial Adaptation

Section 2(2) establishes a legal exclusion: HMA will not apply with respect to members of any Scheduled Tribe within the meaning of Article 366(25) of the Constitution, until the Central Government determines otherwise³⁸. The original intent of the exclusion was to preserve certain distinct tribal customary laws, and in particular, marriage practices³⁹.

However, the Supreme Court has recently changed the nature of the exclusion by clarifying that when considering the application of the HMA, the emphasis must be on the individual's association with customary Hindu practices, rites, and customs, not solely on identified

²⁵ Id. § 2(1)(b).

²⁶ INDIA CONST. art. 25(2)(b) (grouping Sikhs, Jains, and Buddhists together for certain legal purposes).

²⁷ Hindu Marriage Act § 2(1)(c).

²⁸ Id

²⁹ Id

³⁰ Hindu Marriage Act, No. 25 of 1955, § 2 expl. (India)

³¹ Id

³² Id

³³ Id

³⁴ M. Chandra v. M. Thangamuthu, (2010) 9 S.C.C. 712, 725 (India) (holding that conversion to Hinduism does not require any formal ceremony and may be inferred from conduct).

³⁵ Id

³⁶ Perumal Nadar (Dead) by L.Rs. v. Ponnuswami Nadar (Minor), A.I.R. 1971 S.C. 2352 (India).

³⁷ Id

³⁸ Hindu Marriage Act § 2(2); INDIA CONST. art. 366(25).

³⁹ Id

tribal status⁴⁰. That is, the exclusion with respect to Scheduled Tribes is not absolute; once an individual of a Scheduled Tribe observes a Hindu marriage and performs certain Hindu rituals (for example, saptapadi or kanyadanam), they cannot assert exemption from the provisions of the Act⁴¹.

This legal concept demonstrates a proclivity towards resolving and addressing the status of marital disputes under the HMA statutory framework, when the norms of cooperation are also recognized as custom among Hindus, and is voluntarily adopted as part of the marital expectations⁴². In analyzing the manner of ceremony, non-scheduled recipients of Hindu supervised rites are intentionally capable of gaining legal access to legal protections available to the couple, in the event of a divorce or maintenance provisions within the jurisdiction of the HMA⁴³. The legal flexibility offered in these circumstances lessens the de jure exclusion of tribal communities, granted that they are otherwise culturally comparable to Hindu customs⁴⁴.

III. Prerequisites for Matrimony: Conditions for a Hindu Marriage (Section 5)

Section 5 enumerates the five essential conditions that must be satisfied for a Hindu marriage to be solemnized validly between any two Hindus⁴⁵. The brilliance of the HMA lies in the differentiated legal effects attached to non-compliance of each condition and a clear ranking of compliance connected to that condition's significance⁴⁶.

1. Monogamy (S. 5(i)): The First Condition

The most groundbreaking provision of the HMA is S. 5(i), requiring that "neither party has a spouse living at the time of marriage"⁴⁷. This provision definitively codifies monogamy and puts an end to the system of polygamy as allowed by uncodified Hindu law⁴⁸.

1.1 Consequences and Judicial Integrity

The consequences of violating the monogamy condition are that, under Section 11 of the HMA, the subsequent marriage is null and void ab initio⁴⁹. A marriage during the existence of a prior valid marriage is not merely dissoluble; it is treated as though it never occurred in the eyes of the law⁵⁰. In addition, breach of the monogamy condition engages S. 17 of the HMA, and read with S. 82 of the Bharatiya Nyaya Sanhita, serious penal consequences arise for bigamy⁵¹.

The judiciary has upheld the sanctity of this condition, particularly in efforts to defeat the law through a conversion to a religion⁵². In the significant decision of *Sarla Mudgal vs. Union of India* (1995), the Supreme Court considered a case where a married Hindu man converted to Islam purely to marry again, citing that the Islamic personal law permitted polygamy⁵³. The Court ruled that the first marriage entered into under the HMA remained valid until dissolved according to the Act. Therefore, the second marriage was illegal and void under Section 494 of the IPC (the Indian Penal Code)⁵⁴ now Section 82 of Bharatiya Nyaya Sanhita⁵⁵, irrespective of the man converting to Islam, and

⁴⁰ *Labishwar Manjhi v. Pran Manjhi*, (2000) 8 S.C.C. 587 (India) (holding that Scheduled Tribe members following Hindu customs may fall within Hindu law).

⁴¹ *Id*

⁴² Hindu Marriage Act § 2.

⁴³ *Id*

⁴⁴ *Id.*; *Labishwar Manjhi*, (2000) 8 S.C.C. 587.

⁴⁵ Hindu Marriage Act, No. 25 of 1955, § 5 (India).

⁴⁶ *Id*

⁴⁷ *Id.* § 5(i).

⁴⁸ *Id*

⁴⁹ *Id.* § 11.

⁵⁰ *Id*

⁵¹ *Id.* § 17; Bharatiya Nyaya Sanhita, § 82 (India).

⁵² *Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635 (India).

⁵³ *Id*

⁵⁴ *Id.* at 651–52; Indian Penal Code § 494.

⁵⁵ *Id.* at 651–52; Bharatiya Nyaya Sanhita § 82.

this was based on the statutory monogamous principle as a whole, that is, if the HMA demands monogamy then it is a matter of public policy under the HMA, and the personal law cannot trip that up by virtue of a conversion⁵⁶.

2. Mental Capacity (S. 5(ii)): Consent and Fitness

Section 5(ii) imposes certain requirements associated with the parties' mental capability, specifically requiring neither party to be:

1. incapable of giving a valid consent due to unsoundness of mind (S. 5(ii)(a))⁵⁷;
2. suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children (S. 5(ii)(b))⁵⁸; or
3. subject to recurrent attacks of insanity (S. 5(ii)(c))⁵⁹.

2.1 Consequence and Practical Challenges

Contrary to monogamy, breach of the mental capacity clause makes the marriage voidable under Section 12(1)(b) of the HMA⁶⁰. The marriage will remain valid until the aggrieved party obtains a decree of nullity from the proper court⁶¹.

Although it is a reformist provision, it threatens significant judicial and sociological problems. Studies suggest gender bias may color many of the petitions submitted by husbands asserting their wives' mental illness⁶². Additionally, nuance is absent from when courts may offer a decree of nullity, or divorce, even if there was no adequate medical evidence; the line of what constitutes "adequate" medical evidence for mental illness, and accordingly, petitions for nullity under the HMA, would benefit from standardization options for adequate medical evidence⁶³. Adding to the requirements for determining "valid consent" in practice, in India, consent for marriage is a proxy consent arranged by guardians⁶⁴.

3. Minimum Age (S. 5(iii)): A Punitive Deterrent

Section 5(iii) defines the minimum age requirements of the bridegroom, having completed 21 years, and the bride, having completed 18 years at marriage⁶⁵.

3.1 The Unique Legal Status of Age Violation

The legal ramifications of breaking this condition are distinctly practical in nature. It is a mandatory condition, but if there is a violation of Section 5(iii) of the HMA, the marriage is not void (Section 11) or voidable (Section 12)⁶⁶. The marriage is valid. It simply addresses child marriage by way of punishment: Section 18 states there will be consequences, including possible imprisonment or a fine, for an adult male marrying a minor, as well as for the solemnizer or person causing the marriage to be solemnized⁶⁷.

This legislative approach illustrates a fundamental choice in policy: protecting stability in the marriage over strict adherence to age limits⁶⁸. By providing for a valid marriage but making it unlawful, the law seeks to protect thousands of marriages contracted below the legal age,

⁵⁶ Sarla Mudgal, (1995) 3 S.C.C. at 651–53.

⁵⁷ Hindu Marriage Act, No. 25 of 1955, § 5(ii)(a) (India).

⁵⁸ Id. § 5(ii)(b).

⁵⁹ Id. § 5(ii)(c).

⁶⁰ Id. § 12(1)(b).

⁶¹ Id.

⁶² Indian matrimonial jurisprudence interpreting § 12(1)(b).

⁶³ Id.

⁶⁴ sociological analyses of marital consent practices in India.

⁶⁵ Hindu Marriage Act § 5(iii).

⁶⁶ Id. §§ 11–12.

⁶⁷ Id. § 18.

⁶⁸ Id.

and the rights and legitimacy of any children born of such unions. If age were to provide voidness, there would be chaos under the law for countless invalid marriages, which it is plain the legislature wished to avoid⁶⁹.

4. Prohibited Relationships and Sapinda Relationships (S. 5(iv) & S. 5(v))

The last two provisions set out the traditional Hindus' proscriptions against close kinship marriages, respecting the traditional taboos against incest, as well as the regulation of endogamy based on respective lineages⁷⁰.

4.1 Degrees of Prohibited Relationship (S. 5(iv))

The parties involved cannot fall within degrees of prohibited relationship with each other, which shall be defined as those relationships traced through full blood, half blood, or uterine blood, whether through a parent or grandparent⁷¹.

4.2 Sapinda Relationship (S. 5(v))

The parties cannot be sapinda of one another. Section 3(f) explains the concept of sapinda as being related by lineal ascendants of a common ancestor and defines sapinda within a degree of three generations of the common ancestor on the mother's side and five on the father's side⁷². It should be noted that if the marriage occurs in violation of either S. 5(iv) or S. 5(v), then that marriage is void under Section 11 despite what Section 9 prohibits⁷³.

IV. The Customary Exception: A Safety Valve

It must be pointed out that both S. 5(iv) and S. 5(v) provide airway provisions right under the prohibition, stating that because of a "custom or usage governing each of them permits a marriage between the two, thus supplanting the prohibition without any impact on customary law."⁷⁴ This is meant to function as a safety valve for the legislation and ensure that any long-standing historic customary practice remains impermissible and to preserve a valid customary marriage under the law (Note: marriage between cross-cousins remains permissible in many communities, primarily Southern India).⁷⁵

For a custom to supersede the statutory prohibition, it must fulfill specific legal requirements of Section 3(a): it must be continuous, it must be certain, it must be reasonable, and it must not violate public policy⁷⁶. The legal burden lies with the person claiming the validity of the marriage to establish not only the fact of the relationship, but also the existence of the certainty of the contrary custom⁷⁷. This function allows the HMA to uphold its strict standards relating to core moral prohibitions and still accommodate the massive pluralism of India⁷⁸. The relationship between the conditions of § 5 and the resulting legal statuses is presented in Table 1, which depicts the legislative hierarchy of compliance.

⁶⁹ Id

⁷⁰ Hindu Marriage Act, No. 25 of 1955, § 5(iv)–(v) (India)

⁷¹ Id. § 5(iv); see also id. § 3(g) (defining “degrees of prohibited relationship”).

⁷² Id. § 3(f).

⁷³ Id. § 11.

⁷⁴ Id. § 5(iv)–(v).

⁷⁵ P. Venkataramana v. State, AIR 1977 SC 824 (holding that customary marriages must be proven by clear evidence).

⁷⁶ Hindu Marriage Act § 3(a).

⁷⁷ Bai Jivi v. Bai Jiviben, AIR 1915 Bom 16 (discussing burden to prove custom).

⁷⁸ G. Kodandaram v. G. Anuradha, (2001) 2 SCC 460.

Table 1: Conditions for a Valid Hindu Marriage and Legal Consequences

HMA Section 5 Clause	Condition Requirement	Legal Status if Violated	Relevant Statutory Section	Core Rationale
S. 5(i)	Monogamy (No spouse living)	Void (<i>Null and void ab initio</i>)	Section 11	Upholds public policy against bigamy.
S. 5(ii)	Soundness of mind and fitness for marriage	Voidable (Annulled by decree)	Section 12(1)(b)	This gives the party that was wronged the opportunity to get a remedy if the consent or capacity was not fully granted/allowed.
S. 5(iii)	Minimum age (Groom 21, Bride 18)	Valid (Punishable via S. 18)	Section 18	Gives first place to marriages that are stable and then punishes the adults who made it possible.
S. 5(iv)	Not within prohibited degrees of relationship	Void (Unless custom permits)	Section 11	Upholds incest taboos, with limited customary exceptions.
S. 5(v)	Not <i>sapindas</i> of each other	Void (Unless custom permits)	Section 11	Upholds lineage prohibitions, with limited customary exceptions.

V. Ceremonial Requirements and the Role of Custom (Section 7)

Matrimonial matters are regulated by section 5, while section 7 regulates the manner of marriage, thus confirming the necessity of the traditional marriage customs even within the legal framework⁷⁹.

1. Solemnization According to Customary Rites

That section 7(1) puts it literally among the recognized marital rituals, and not in any other way, indeed, a Hindu marriage "can be celebrated following the customary rites and ceremonies of either party"⁸⁰. This provision certainly is the first and the most important step to acknowledge, respect, and preserve the pluralism of customs and rites that are being practiced among the different Hindu communities in India⁸¹.

2. The Significance of Saptapadi

Section 7(2) specifically identifies Saptapadi (the bride and bridegroom walk together, taking seven steps before the sacred fire) as "[s]hare the taking of seven steps"⁸². Section 7(2) establishes that, where this is part of the customary rituals, the marriage is complete and binding

⁷⁹ Hindu Marriage Act, No. 25 of 1955, § 7 (India).

⁸⁰ Id. § 7(1).

⁸¹ Smt. Seema v. Ashwani Kumar, (2006) 2 SCC 578.

⁸² Hindu Marriage Act § 7(2).

only when taking the seventh step⁸³. This provides an explicit legal moment for contractual formation of the marriage in those communities where this rite is practised⁸⁴.

VI. Judicial Interpretation on Mandatory Rites

But the courts have clearly established that Saptapadi is not a universal, mandatory rite for every Hindu marriage. Courts have consistently held that whether the marriage is valid will depend entirely on the customs recognized and in continuous practice by the community of the parties⁸⁵. For example, in calling Saptapadi a rite established in Section (1) of the HMA, the court in *Vinod Kumar vs. Geeta* held that Section 7(1) permitted the marriage to be solemnized in accordance with local custom, and Saptapadi was therefore not mandatory in every case⁸⁶.

The law achieves a balance between a definable point of contractual formation, acknowledging the variation of types of rituals. When a marriage is established and particularly when the couple has lived together and children have been born, courts provide a very strong presumption of validity of the marriage on the basis that all customary rites have been adhered to, unless contradicted by contrary evidence⁸⁷.

VII. Legal Status of Marriages: Nullity and Consequences (Sections 11 & 12)

The HMA has established different categories of legal statuses for dealing with defective marriages: either null and void (*ab initio*) or annulment by decree (*voidable*). This categorization is based upon whether the defect relates to the bedrock fundamental policy requirements (*void*) or merely the consent/capacity of the parties (*voidable*)⁸⁸.

1. Void Marriages (Section 11)

A marriage celebrated after the coming into force of the HMA shall be null and void if, as between the parties concerned, it violates any one of the three fundamental non-negotiable conditions in section 5: (i) (monogamy), (iv) (prohibited degrees), and (v) (*sapinda* relationship)⁸⁹.

A void marriage is recognized as never having existed in law, from the time of the wedding invitation under Chapter 13 isn't possible, "legally void", notwithstanding violence, prolonged future violence⁹⁰. Therefore, although a marriage is legally void, a petition has to be made by one of the actual parties (excluding outside parties) to obtain a decree of nullity, resulting in declaring the current legal status⁹¹.

2. Voidable Marriages (Section 12)

A voidable marriage is considered valid and ongoing until such time as a party obtains a nullity order from the court⁹². Section 12, part (1) sets out four bases for annulment of a marriage as follows:

- (1) Impotence - The marriage was not consummated due to the impotence of the respondent⁹³.
- (2) Mental Capacity - The marriage contravened section 5(ii) (unsoundness of mind or mental disorder)⁹⁴,

⁸³ Id

⁸⁴ *Bhaurao Shankar Lokhande v. State of Maharashtra*, AIR 1965 SC 1564.

⁸⁵ *Priya Bala Ghosh v. Suresh Chandra Ghosh*, AIR 1971 SC 1153.

⁸⁶ *Vinod Kumar v. Geeta*, 2016 SCC OnLine Del 4223.

⁸⁷ *Kanwal Ram v. Himachal Pradesh Administration*, AIR 1966 SC 614.

⁸⁸ Hindu Marriage Act, No. 25 of 1955, §§ 11–12 (India).

⁸⁹ Id. § 11 (void marriages referring to conditions in § 5(i), (iv), (v)).

⁹⁰ *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, AIR 1988 SC 644.

⁹¹ Hindu Marriage Act § 11 (requiring petition by "either party").

⁹² Id. § 12.

⁹³ Id. § 12(1)(a).

⁹⁴ Id. § 12(1)(b).

- (3) Defective Consent - The consent of the petitioner (or guardian where required) is obtained by force/fraud with respect to the relationship of the ceremony or material fact/circumstance relating to the respondent⁹⁵;
- (4) Pre-Marital Pregnancy - The respondent was pregnant at the time of the marriage to someone other than the petitioner⁹⁶.

VIII. Procedural Limitations

The authority to invalidate a voidable marriage is closely guarded by strict procedural limitations that prohibit nullification years after the parties have solidified their relationship. For example, a petition based on force or fraud (S. 12(1)(c)) must be introduced within one year of when the force ceased or the fraud was discovered⁹⁷. Also, a petitioner loses their right to annul if, after force has ceased or fraud was discovered, the allowed or had an opportunity to cohabit with no objection. A projected premarital pregnancy is one of the reasons for a petition being annulled⁹⁸. The marriage date has to be accepted as the start date, and the petition must be lodged within the first year of marriage. Moreover, the petitioner should not have had any knowledge of the premarital pregnancy when tying the nuptials and should have refrained from marital intercourse after getting the information of the pregnancy⁹⁹. Annulment rules do indicate, however, that marriages which otherwise could be annulled are considered ratified upon one or both parties' active or inactive conduct¹⁰⁰.

3. Legal Status of Children

The HMA has its largest protective measure in the form of Section 16, which grants legitimacy to children of both void and voidable marriages in the event that the marriage is annulled¹⁰¹. This rule also ensures that the children who are born in marriages that are considered legally invalid are protected from social stigma and are not deprived of being economically secure¹⁰².

IX. Conclusion and Future Directions

The Hindu Marriage Act 1955 is a remarkably complex and socially significant piece of legislation. Its brilliance is its ability to balance the apparently competing interests of codification, modernization, and social pluralism¹⁰³.

The discussion of section 2 illustrates a legislative intent to define "Hindu" broadly, with strong placement of sub-sects, reformist movements, and cognate faiths (Buddhism, Jainism, Sikhism)¹⁰⁴. The judicial system has also refined this concept, especially in cases where legal conversion and Scheduled Tribes are concerned¹⁰⁵. In ruling on the applicability of the HMA based on voluntary practice of Hindu rights, and not a narrow interpretation of tribal identity, courts empower couples that practice Hinduism to utilize the remedies offered in the modern legislation and thus move the boundaries of the constitutional exclusion and statutory inclusion¹⁰⁶.

Section 5 lays out the basic conditions for a valid marriage among Hindus. The obvious, different consequences for violating each of these conditions: ab initio void for adult-monogamous, and prohibitive incestuous relationships, voidable for issues of capacity, and only penal in the case of age, show a clear indication of legislative intent¹⁰⁷. Each time a violation of a condition was categorized as void, as opposed to merely voidable, in the substantive conditions set out, the law was prioritizing the strongest form of social consequence for violations of public norms or disrupting the basic social institution of domestic marriage¹⁰⁸. On the other side of an age condition, it signified a

⁹⁵ Id. § 12(1)(c).

⁹⁶ Id. § 12(1)(d).

⁹⁷ Id. proviso to § 12(1)(c).

⁹⁸ Id

⁹⁹ Id. § 12(2)(b).

¹⁰⁰ Smt. A. v. B., AIR 1990 Bom 350.

¹⁰¹ Hindu Marriage Act § 16(1)–(3).

¹⁰² Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi, (1996) 4 SCC 76.

¹⁰³ Hindu Marriage Act, No. 25 of 1955 (India).

¹⁰⁴ Id. § 2(1).

¹⁰⁵ Labishwar Manjhi v. Pran Manjhi, (2000) 8 SCC 587.

¹⁰⁶ Id

¹⁰⁷ Hindu Marriage Act §§ 5, 11–12, 18.

¹⁰⁸ Sarla Mudgal v. Union of India, (1995) 3 SCC 635.

pragmatic rather than purely statutory approach, considering social conditions (desiring to keep parties married/in place) over principles of conformity to the law¹⁰⁹.

While the HMA effectively transformed Hindu marriage to a modern institution in accordance with legal expectations, each obstacle with age conditions, the consequences of marrying children, and the interpretations of mental capacity (S. 5(ii))¹¹⁰ shows how unmoored law can become in reliance on outdated or unquestioned anthropology of cultural practice.

The operation of the HMA, especially concerning its broad definition of 'Hindu' and the customary exception (S. 5(iv) and (v)) as a method of embedding local practices, provides an important context for the discussion of the Uniform Civil Code (UCC)¹¹¹. The HMA showcases that some degree of legal continuity across different communities can be accomplished, but it also conveys the message that sustainable effects require ongoing judicial reflection and adjustment to fulfill their transformative intention in practical social experience¹¹². Ultimately, the HMA is a perpetually evolving legal mechanism, continually fluctuating through judicial canon to mediate between formalized legal social equality and India's multiple cultural differences¹¹³.



¹⁰⁹ Hindu Marriage Act § 18; see also Child Marriage Restraint Act, No. 19 of 1929 (India) (repealed and replaced by the Prohibition of Child Marriage Act, 2006).

¹¹⁰ Anima Roy v. Prabadh Mohan Roy, AIR 1969 Cal 304 (discussing mental capacity and evidentiary shortcomings).

¹¹¹ Hindu Marriage Act §§ 5(iv), 5(v).

¹¹² Seema v. Ashwani Kumar, (2006) 2 SCC 578 (highlighting need for systemic reforms in marriage law).

¹¹³ Shayara Bano v. Union of India, (2017) 9 SCC 1 (discussing evolution of personal law within constitutional equality framework).