

**TITLE OF THE E-CONTENT – HINDU LAW**

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## **Hindu Marriage Act, 1955**

### **Section 7. Ceremonies of a Hindu Marriage**

This section gives statutory recognition to the marriage under the Hindu law as a sacrament. Sub-section (1) lays down that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. From the use of the expression "Customary rites and ceremonies" it is not to be understood that one can ignore the sastric ceremonies. That expression would include and mean all such sastric ceremonies as the caste or the community to which the party belongs has been customarily following. When one speaks of a custom it should come within the definition of "Custom" under section 3(a) of this Act. Even under the old law only such customs which are followed since time immemorial and not opposed to public policy were recognized. In *Baby v Jagtap*<sup>1</sup> the parties to the marriage were Hindus who were converted to Buddhism under a movement started in 1956, the marriage was performed according to Buddhist customary rites. Though the custom was therefore not ancient, it was held that as the customary rites and ceremonies had been constantly followed for more than 25 years, and had been uniformly observed and had not suffered any discontinuance at any point of time the marriage was valid. Sub-section (2) says that where such rites and ceremonies include the Saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the sacred fire) the marriage becomes complete and binding when the seventh step is taken. Till then the marriage is not complete and is revocable.

This section speaks of solemnization of marriage in accordance with customary rites and ceremonies. The word "solemnized" means to celebrate the marriage with proper ceremonies with the intention that the parties should be considered to be married.

Merely going through certain ceremonies with the intention that the parties be taken to be married would not make the ceremonies prescribed by law or approved by any established custom.<sup>2</sup> Under the section it is sufficient if the marriage is solemnized in accordance with customary rites and ceremonies of either party. It is not necessary that the customary rites and ceremonies of both the parties should be followed. Where a marriage is performed according to the customary rites and ceremonies of one party which did not include Saptapadi, even though according to the customary rites and ceremonies of the other party Saptapadi was an essential ceremony, it was held that it was a valid marriage.<sup>3</sup> Where the essential ceremonies of Saptapadi and invocation before sacred fire were observed, the absence of some customary ceremonies neither ancient nor definite nor obligatory does not invalidate a marriage.<sup>4</sup>

#### **Amendment in Tamil Nadu:**

In order to undo this conservatism, the Madras State passed a law namely, the Hindu Marriage (Madras Amendment) Act, 1967 by which an amendment was inserted in the HMA after clause (2) of Section 7 to the effect that if in the presence of the relatives, friends and other persons, the bride and the bridegroom (i) declare themselves as husband and wife, or (ii) garland each other or exchange signs, or (iii) tie a thali to each other, they will be taken to be validly married.<sup>5</sup>

This ceremony or formality of marriage does not require datta homa, Saptapadi and the presence of a priest. If a second marriage is celebrated in accordance with the Amendment, it will no doubt be violative of Section 5(i) with its consequences under HMA, i.e. voidness of marriage under Section 11 and punishment under Section 17 HMA read with Sections 494 and 495 IPC.<sup>6</sup>

#### **'May' means 'Shall'**

Though clause (1) of Section 7 uses the word "may" denoting option for the observance of customary rites and ceremonies for a marriage, the courts have held in a number of cases that the rites and ceremonies are compulsory.<sup>7</sup> This means that the word 'may' occurring in Section 7(1) is to be construed as 'shall'. If it is proved that the marriage ceremonies were not celebrated no man and woman can become husband and wife simply because they call themselves so.

If marriage is asserted, the presumption of law is that the necessary ceremonies were celebrated. This presumption is rebuttable.<sup>8</sup> Therefore, when a party alleges that

no ceremonies were performed, the court will enter into the enquiry, whether or not they were celebrated. The standard of proof here is not as strict as required for the offence of bigamy under Section 494 of the IPC. The ceremonies may be proved by the preponderance of probabilities.<sup>9</sup> The presumption arises from long cohabitation as husband and wife, birth of children and the positive treatment by the community.<sup>10</sup>

1. 1981 Bom 283 : 1983 HLR 73 : 1983 Bom LR 312.
2. Bhaurao v State of Maharashtra 1965 SC 1964: 1965 (2) Cri LJ 544: 1965(1) SCWR 579.
3. Asrabai v Dhondiram ILR 1977 Bom 870; Channa Basavaiah v Shivamma (1989) 2 HLR 228 (Kant).
4. Chakki v Ayyappan AIR 1989 Ker 89: (1988) 2 HLR 107 (Ker).
5. Ananthai v. Mungaiah, (2005) 1 HLR 133 (Mad); K. Mathialagam v. Mala Devi, (1991) 1 HLR 242 (Mad).
6. S. Nagalingam v. Sivagami, (2001) 7 SCC 487.
7. Bhaurao Shankar Lokhande v. State of Maharashtra, AIR 1965 SC 1964: (1965) 2 SCR 837.
8. Namita Patnaik @ Mohanthy v. Dilip Kumar Patnaik, (2002) 1 HLR 543 (Ori DB).
9. Vinit Kumar Behl v. Ruchi, (2003) 1 HLR 497 (P&H).
10. Gokulbai v. Laxminarayan, (1991) 1 HLR 402 (MP)

**References:**

Mayne's Hindu Law and usage, 14<sup>th</sup> Edition, Bharat Law House, New Delhi.

Modern Hindu Law by Ramesh Chandra Nagpal, Eastern Book Company, Lucknow.