

INTERPRETATION OF FRAUD AS MATRIMONIAL OFFENCE

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The principle that opposite sex always attracts each other, is recognised universally in the animals and human beings. But human mating differs in the sex-indulgence from other species because society everywhere limits the choice of partners biologically possible for sex satisfaction.¹ But from the very beginning of our civilization, men have been attracted toward women and vice-versa for satisfying their sexual urges. The institution of marriage is an outcome of the sexual relations of the two opposite sexes and regulation thereof by the society. Sex is a natural phenomenon which creates a weakness in the human mind to satisfy it by whatever means he may do so. History of human civilization explains the glaring examples of sex weakness. A great many battles were fought causing loss to lives and property mainly to get a women. Many crimes in the society now are committed due to three main factors i.e. to get money, land and woman. The ancient Hindu philosophy, is full of instances where the worshipping saint for years together were disturbed by their sexual weakness. Recently², one sixty year old saint ended his twenty years worship in matrimony i.e. marrying a beautiful sixteen year old girl who used to visit him and supply him milk, food, etc. Even today, a good percentage of crime in the society is related with sexual behaviour.

2. Thus, sex is very important not only for enjoyment but also for the existence of the society itself. If the sex is regulated according to the norms of morality and behaviour, perhaps there would not be any need to legislate or regulate the sexual affairs. Alas ! the things are otherwise. Man by nature tries to get the other sex first by legal means than by illegal means too. Out of the various illegal means which are generally adopted in the society by the persons of different caste, creeds and races, fraud is the most important one. In the society fraud is committed not only for commercial purposes or benefits but also for marriage. But marriage by fraud has got far reaching consequences because contract of marriage is most important of all contracts³ and give rise to the most complex human relationship. Marriage is the very

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1. Encyclopaedia of Social Sciences, Vol. IX, 146 (1968).
2. Sunday Magazine, April 30, 1978 page 56.
3. R.O. Sulliwán, L.Q.R. Vol. IV 398.

foundation of civil society, and no part of the laws and constitution of a country can be of more vital importance to its subjects than those which regulate the manner and conditions of forming and if necessary of dissolving the marriage. Hence, where marriage has been contracted by way of fraud, how we should provide effective relief to the victim of fraud, is the main question for investigation and determination.

MARRIAGE: IT'S MEANING :

3. A marriage, is the relationship between man and woman, recognized by custom or law to create certain rights and duties of the contracting parties⁴; a socially recognized assumption by man and woman of the kinship status of husband and wife⁵; a family relationship within which sexual relationship is legitimate⁶; a social arrangement giving to the child a legitimate status in the society;⁷ a behaviour pattern related to sexual activity, child bearing and rearing and spouse relationship;⁸ a contract between man and woman to marry each other;⁹ a contract founded on intention to legalising generation,¹⁰ a physical, legal and moral union between man and woman in complete community of life for establishment of family,¹¹ an act of worship¹² and an institution came before law and state, founded on the social nature of a man.¹³ Marriage a positive duty by the law of the State¹⁴ and no human power may dissolve a marriage that has been consummated.¹⁵

UNDER HINDU LAW : IT'S MEANING :

4. Hindu Law prior to codification in 1955 dealt with the concept of marriage differently from other religions of the world. Marriage was and

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4. Westermarck, *The History of Human Marriage*, Vol. I, 26.
 5. Peter of Denmark; quoted by Kapadia; *Marriage & Family in India*, 168.
 6. Robert F. Wind, *Family Formation*; *Encyclopaedia of Social Sciences*, Vol. X, Marriage.
 7. Redcliff Brown; *An Introduction to Anthropology*, Marriage
 8. Vernon G.M.; *Sociology of Religion*, 324.
 9. Halsbury, *Laws of England*, Vol. 19, 768, Note 1219.
 10. Macnaghten, *Principles & Precedents of Mohd. Law*, 56.
 11. Gopal Krishnan T.P., *Family Laws*, 47.
 12. Prophet Mohammed, Quoted in Klin, *The Religion of Islam*, 183.
 13. Raphael Powel, concept of Marriage in *Ancient & Modern Law*; *Current Legal Problems*, Vol, III (of 1950), Page 55.
 14. **Law v. Peers** (1770) Wilm 364.
 15. *Corpus Juris America*, Vol, XI 952.

has been considered as a sacred tie continuing upto next births. Thus marriage means a union between a man and woman for social and religious purposes.¹⁵ (a) made with three purposes, dharma, praja (progeny) and rati¹⁶ (pleasures). It is a sacrament done for religious purposes.¹⁷ The Courts, in several decisions prior to 1955¹⁸ and post 1955¹⁹ have held that Hindu marriage is a sacrament solemnized to perform religious duties and in it, the consideration of sex comes at last place.

5. In 1955, Hindu Marriage Act was passed by Parliament. This Act has introduced certain basic changes in the concept of marriage among Hindus. One of the basic changes brought by it was, the introduction of doctrine of consent under section 5 and 12 to the Hindu marriage. But the Act did not define 'marriage' and 'consent' which gives rise to a doubt that in what sense this consent should be interpreted i.e. socially, religiously or according to the general rules and procedures of ordinary law of the realm. Section 12(1)(c) of Hindu Marriage Act, 1955 lays down that where consent was caused by way of force and fraud of another party to the marriage, it will be voidable at the option of defrauded party. In 1976 Hindu Marriage Amendment Act, 1976 was passed and this Act added few words in Clause (1)(c) of Section 12. The amended section runs as :-

- (1) Any marriage solemnized whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree on any of the following grounds, namely :

X X

- (c) That the consent of the petitioner or where the consent of the guardian in marriage of the petitioner was required under Section 5, the consent of such guardian was obtained by

15.(a) G.K.Banerji, Hindu Law of Marriage & Stridhan, T.L.L.S., P.20.

16. P.V.Kane, History of Dharmasastra, Vol. III 729.

17. Mayne J.D., A treatise on Hindu Law, 104.

18. **Venkatacharulu v. Rangacharaulu** (1891) 14 Mad. 316, **Mulchand v. Budhia**, (1898) 22 Bom. 812, **Sundrabai v. Shivnarayana** (1908) 32 Bom. 82, **Titliv Jones**, A.I.R.1934 All, 273 **Kshitish Chander v. Emperdr**, A.I.R. 1937 Cal. 214, **Bai Appi Bai v. Khemji** A.I.R.1936 Bom. 138, **Ankamma v. Bamnappa**, A.I.R.1937 Mad. 332, **Deviani Achi v. Chidambaram**, A.I.R. 1954 Mad 657.

19. **Anant Nath v. Lajavati**, A.I.R. 1959 Cal. 778; **Madhusudan v. Smt. Chandrika**, A.I.R.1975 M.P. 174.

force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent.

JUDICIAL CONTROVERSY:

6. When the consent of one party has been caused by way of fraud, then how the court should interpret this term with a view to give relief to the affected party, has been the main task before the Courts in this regard. No guideline has been given by Section 12 for this purpose. This has resulted into a judicial controversy among the text-writers and Courts, that whether the term 'fraud' used under Section 12(1)(c) of the Hindu Marriage Act, 1955 has the same meaning as given in the definition of fraud under Section 17 of the Indian Contract Act, 1872 or not. Two views have been advocated in this regard. The majority view says 'no' while the minority view says 'yes'. The majority view maintains that the meaning of 'fraud' provided under Section 17 of the Indian Contract Act, 1872 does not apply to Section 12(1)(c) of the Hindu Marriage Act, 1955 as, Hindu Marriage is not a contract but a sacrament. The minority view advocates otherwise. The ideologies of both the views are discussed and distinguished hereunder.

MAJORITY VIEW:

7. The majority view maintains that definition of fraud given under Section 17 of the Indian Contract Act, 1872 cannot be applied to Hindu marriage solemnised under the Hindu Marriage Act, 1955. This view is supported by various text writers and Courts. Even in England and America, where the marriage is considered purely as a contract, few writers favoured this view and maintained that a marriage cannot be avoided on the mere ground of concealment of certain facts²⁰ as false representations of family, fortune, qualities,²¹ diseased mental conditions,²² artificial teeth and colour of skin or age or health²³. But suppressing venereal disease in a communicable form and imbecility of mind can be a sufficient ground to avoid a marriage on the ground of fraud.²⁵

20. Colebrook, Digest of Hindu Law, Vol, II, 171;

21. Dr. Tolstoy, Law & Practice of Divorce, 19;

22. Joske, P.F.; Matrimonial Causes, Marriage Law & Practice, 212.

23. American Jurisprudence, Vol. XXXV, 116.

24. **Shonfeld v. .Shonfeld**, 260, N.Y.477.

25. Halsbury, Laws of England, Vol, 19, 776, Note-7.

ACADEMIC APPRECIATION OF THE PROBLEM:

8. In India few scholars and textwriters have favoured this view. For example, Prof. Sivarammayya deplored the tendency on the parts of the courts to rely on English cases and those cases which arose under the Indian Divorce Act, 1869 to interpret the meaning of the term 'fraud' with a view to give or not give relief to affected party on this ground.²⁶ Prof Jaffer Hussain, in his detailed article on this very topic, expressed his opinion that the type of fraud recognized for the purpose of avoiding an ordinary commercial transaction can never be the same for annulling the Hindu, or for that matter any marriage²⁷ because marriage creates a life long tie which cannot be broken lightly. Similarly, L.M. Singhvi has expressed his opinion that Hindu marriage is not a contract but a sacrament and cannot be annulled on the ground of 'fraud' used in Section 17 of the Indian Contract Act, 1872.²⁸ Thus, these three articles vehemently support the idea that the definition of 'fraud' given under Contract Act, should not be applied to a Hindu Marriage solemnized under the Hindu Marriage Act, 1955.

9. Various other text writers maintain that as the word 'fraud' is not defined in this Act hence it should be given its ordinary meaning²⁹ and further it is not co-extensive with fraud given under Section 17 of the Indian Contract Act,³⁰ and it should not be understood as used in commercial world,³¹ and does not cover every sort of misrepresentation or concealment,³² because marriage contract is far away from being the nature of an ordinary contract.³³ Thus here fraud must be such as has procured the form without the substance of the agreement.³⁴ In other words, only that fraud is actionable where the party was deceived as to the identity of the party³⁵ or to the nature of the marriage ceremony.³⁶

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26. Sivarammayya B., Annullment for Fraud, Jaipur Law Journal, pp. 70, 79 of (1965).
27. Jaffer Hussain S., Fraud as a ground for Annulment, Journal of Indian Law Institute, Vol, XI of (1969) p. 520.
28. Dr. Singhvi L.M. & Smt. K. Singhvi; Hindu Marriage: contract or sacrament, saptahik (weekly) Hindustan 15 to 20 July, (1979) p. 19-20.
29. Gupte S.V. Hindu Law of Marriage, 186, ed. of (1961)/
30. Shah A.N. Marriage & Divorce, 97, ed. of (1961).
31. Sarkar K.C. Hindu Law, 158, ed. of (1977)
32. Sarkar U.C. An Introduction to Hindu Law, 232, ed. (1971)
33. Desai S.T. Principles of Hindu Law, 681, ed. of 1970.
34. Gyan Prakash, The Hindu Code, Vol, I, 313, ed. of 1961.
35. Gour H.S. Hindu Law of Marriage & Divorce, 353 edn. (1971).
36. Paras Diwan, Modern Hindu Law, 118, ed. of 1972.

Further, fraudulent misrepresentation should be at the time of marriage³⁷ and such fraud should reach to the root of that marriage.³⁸ Thus, mere silence or misrepresentation of status and financial conditions,³⁹ qualifications, character, reputation, habits, health,⁴⁰ origin, social status⁴¹ chastity⁴² etc. does not amount to 'fraud' within the meaning of this sub section. But these views were expressed before the Marriage Amendment Act, 1976 and these support the traditionalist ideology of society.

JUDICIAL APPRECIATION:

10. The majority view is further shared by various High Courts of the country namely Bombay, Calcutta, Madhya Pradesh, Madras and Punjab. The High Court of Bomay dealt with this question in various cases, which came in the year of 1936, 1970, 1972, 1982 and 1983. In **Bai Appi Bai v. Khimji**⁴³ a lady concealing her profession that she was a naikin and representing herself as a Brahmin married the plaintiff. Plaintiff, the husband later on came to know the reality of his wife and applied to the Court for avoiding the marriage on the ground of her past immoral conduct and profession. The Court held that suppression of profession and caste cannot be considered as fraud in cases of marriages specifically. Hence, marriage was not voidable on this ground. Further in **Dastane v. Dastane**⁴⁴ the honourable Court held that concealment of the disease of schizophrenia at the time of marriage, does not amount to 'fraud' within the meaning of Section 12(1)(c) of the Hindu Marriage Act, 1955. **Justice Mavlankar in Raghunath v. Vijay**⁴⁵ case did not consider concealment of curable epilepsy as sufficient to avoid the marriage on the ground of section 12(1)(c) and on page 136 he further observed:

"That the word 'fraud' used in Section 12(1)(c) of Hindu Marriage Act does not speak fraud in any general way nor does

37. Bindra P.S. Hindu Marriage Act, 314, ed. of 1965.

38. Aggarwal Raj Kumari, Matrimonial Remedies, 205, ed. (1974).

39. Gour H.S. Hindu Code Vol. I, 613, ed. of (1974).

40. Raghvachariar N.R., Hindu Law, 1002, Ed. of (1965).

41. Gour H.S. Hindu Code, Vol. I 613, ed. of (1974).

42. **Bai Appi Bai v. Khimji**, A.I.R. 1936 Bom. 138.

43. **Bai Appi Bai v. Khimji**, A.I.R. 1936 Bom. 138.

44. A.I.R. 1970 Bom. 312; on/appeal it was decided by the Supreme Court in A.I.R. 1975 S.C. 1534.

45. A.I.R. 1972 Bom. 132 pp. 136.137.

it mean every misrepresentation or concealment which may be fraudulent. If the consent, given by the parties is a real consent, to the solemnization of marriage, the same cannot be avoided on the ground of fraud. The marriage, therefore, solemnized under Hindu Marriage Act cannot be avoided by showing that the petitioner was induced to marry the respondent by fraudulent statement relating to her healththat marriage is also a sacrament. I am, therefore, of the opinion that section 17 of Indian Contract Act, 1872 does not apply to a case of fraud under Section 12(1)(c) of Hindu Marriage Act.

But the honourable High Court overruled this view in PVK⁴⁶ case in 1982 and held that the decision of **Ragunath v. Vijay** is no longer a good law. In **Meena v. Prakash**⁴⁷ case the High Court again reiterated the view advocated in PVK case.

11. Similarly, the High Court of Calcutta considered concealment of religion as fraud in **Aiyakat v. Aiyakat**.⁴⁸ But concealment of curable disease was not held sufficient ground for fraud in matters relating to marriage, in the case of **Birendar Kumar v. Hemlata**.⁴⁹ This view was further carried and applied in **Ananth Nath v. Lajavati**^{49 (a)} case. Justice Dutta in this case did not consider the concealment of tuberculosis as sufficient ground for fraud for the purpose of Section 12(1)(c) of the Hindu Marriage Act. Similarly, concealment of curable epilepsy does not fall within the ambit of Section 12(1)(c) because the definition of fraud under Section 17 of the Indian Contract Act which governs a contract cannot be made to apply lock, stock and barrel to a marriage which is a sacrament. The Hindu Marriage Act and the Indian Contract Act are not *pari materia*. A marriage can never be regarded as a mere contract. Nor can it be invested with all the qualities and conditions of ordinary civil contract.⁵⁰ In **Kartik v. Manju Rani** case, the Hon'ble High Court laid down the rule of law that for fraud, all particulars are necessary to establish and prove it.⁵¹

46. A.I.R. 1982 Bom. 400.

47. A.I.R. 1983 Bom. 409.

48. A.I.R. 1940 Cal. 75.

49. A.I.R. 1921 Cal. 459.

49.(a) **Anant Nath v. Lajavati**, A.I.R. 1959 Ca I. 778 pp. 779-782.

50. **Ravi Bala Debnath v. R.K. Debnath** (1969) 73 Cal. W.N. 751.

51. A.I.R. 1973 Cal. 545.

12. The Madhya Pradesh High Court in **Raja Ram v. Deepa Bai**⁵² held that minor misrepresentations or concealment cannot be treated as fraud within the meaning of Section 12(1)(c) of the Hindu Marriage Act, 1955. In **Madhusudan v. Smt. Chandrika**,⁵³ the bench consisting of Justice G.P. Singh and Justice C.P. Sen, overruling **Bimala Bai v. Shankar Lal**⁵⁴ case held that concealment of syphilis by the wife cannot be treated as amounting to fraud and further remarked that :

"In matrimonial law "fraud" has a technical meaning and does not include every misrepresentation or concealment of material fact. Fraud in the context of annulment of marriage means such fraud which procures the appearance without the reality of consent i.e. where there is no consent at all. Thus, fraud in Hindu marriage Act must be understood in the same sense."

The view expressed in **Madhusudan v. Chandrika** case was again approved in **Gindan v. Bare Lal**⁵⁵ in 1976 and in **Nand Kishore v. Munni Bai**,⁵⁶ in 1979.

13. The High Court of Madras has taken the same view that as marriage is a sacrament, hence it can not be broken on the basis of minor concealments. Refer to the decision of **Rukmani v. Chari**,⁵⁷ and **Deviani Achi v. Chidambaram**⁵⁸ cases. But where marriage has been solemnised by way of duress, misconception or forcibly, such marriage can be avoided as was done in **Ankamma v. Bamnappa**⁵⁹ case by the honourable High Court.

14. The High Court of Punjab, except in **Kunti Devi v. Kalu Ram**⁶⁰ case, followed the view that Hindu marriage cannot be dissolved by applying the definition of 'fraud' given under the Indian Contract Act, 1872. In Kunti Devi case, the marriage ceremonies were performed in

52. **Raja Ram v. Deepa Bai**, A.I.R., 1974, M.P. 52.

53. A.I.R. 1975 M.P. 174 pp. 179.

54. A.I.R. 1959 M.P. 8.

55. A.I.R. 1976 M.P. 82.

56. A.I.R. 1979 M.P. 45.

57. A.I.R. 1938 Mad. 616.

58. A.I.R. 1954 Mad. 657.

59. A.I.R. 1937 Mad. 332.

60. A.I.R. 1963 Punj. 235.

Punjabi language which the lady did not understand. The High Court found this as a sufficient ground to avoid the marriage on the basis of fraud under Section 12(1)(c) Hindu Marriage Act, 1955. Similarly, in **Harbhajan Singh v. Smt. Brij Balab**⁶¹ case, where at the time of marriage the girl was represented to the husband as virgin and of unblemish character. But after marriage, it was found by the husband that the girl was not a virgin and even a child had been born to her before the marriage from some other man. The husband filed a suit for avoiding the marriage on the ground of 'fraud' committed with him by the girl and her relatives. The Court held that the marriage was not voidable on this ground. Justice P.C. Pandit rejecting the husband's plea for dissolution of marriage on the basis of fraud remarked:

"The definition of fraud given in Section 17 of the Indian contract Act would not be applicable to a marriage under Hindu Law because a Hindu marriage is a sacrament and not a contract - The word 'fraud' as a ground for annulment of the marriage under Hindu Law is limited only to those cases where the consent of the petitioner at the solemnization of marriage was obtained by some sort of deception. It is not used in general way, and on every misrepresentation or concealment, the marriage cannot be dissolved. If the term 'fraud' is to be interpreted according to the definition given in Indian Contract Act, then it would become impossible to maintain the sanctity of marriage. All sorts of misrepresentation will be alleged by the petitioner in order to break the marriage tie. This obviously could not be the intention of the Legislature. In fact the respondent was bad character before the solemnization of marriage cannot be ground for annulment of marriage because there is a specific clause dealing with this matter.

15. Justice S.K. Kapur, applying the socialistic approach in **Surjit v. Smt. Raj Kumari** case held that concealment of past unchastity of the girl does not come within the ambit of fraud provided under Section 12(1)(c) of the Hindu Marriage Act, 1955. Rejecting the appeal of the husband, Justice Kapur observed:-

"that merely keeping quiet about such past history would not therefore, lead to a conclusion that the consent to the marriage

61. A.I.R. 1964 Punj. 359 pp. 362.

had been obtained by fraud. Relations of the girl cannot be without an enquiry in this behalf, be expected to speak about every event in the girl's past life. Of course, if an enquiry has been made of them and they have given a wrong or evasive reply, things may have been different the same rule applies in this country so far as the past unchastity goes. If the husband attaches the value to the past unchastity of his would be wife, he would make enquiry on his own or from the girls' relation at the time of negotiations of marriage. It is only then he should be able to show that though the relations of the girl were aware of her past unchastity, they misled him. Thus it does not amount to fraud within the meaning of 12 (1) (c).⁶²

16. Evidence plays a very important role in granting or refusing reliefs to the affected parties even in matrimonial or so called personal law cases too. In *Trilochan Randhawa v. Smt. Devinder*⁶³ case, the husband failed to support the allegation that the girl married to him was not the same, who was shown to him while negotiating marriage with him. Hence, he could not get any relief in the Court. In the same way where husband⁶⁴ failed to establish the fact of force or fraud used against him by the parents and relatives of his wife for marriage, he could not get any relief in this regard.

17. After the passing of Marriage Amendment Act, 1976, the High Court has adopted liberal view and it is evident that the High Court gave up the prevailing traditional view. This became clear in *Gurmit Koer v. Narendar Singh*⁶⁵ case where the girl was discovered after marriage as illiterate, having few teeth missing, having grey hair and aged over forty years while she was represented as a young, educated and beautiful. Considering the effect of new amendment in Section 12(1)(c) of Hindu Marriage Act, the Court expressed the view that concealment of age now may be a material fact concerning the respondent according to the spirit of amended section 12(1)(c). But the High Court further took the view that the relief to avoid marriage is available only in such cases where marriage has not been consummated. Once marriage has been consummated, then husband could not get any relief irrespective of the fact that he got an ugly and illiterate wife as was done in *Mohinder Koer*

62. *Surjit v. Raj Kumari*, A.I.R. 1967 Punj. 172 p.173.

63. (1975) H.L.R. 36.

64. *Harmohinder Singh v. Sukham Preet* (1975) H.L.R. 382.

65. (1978) H.L.R. 521.

v. **Bikkar Singh** case.⁶⁶ The High Court further expressed the view that there should not be undue delay in claiming the relief for fraud against the fraud committing spouse as was laid down in **Shakuntla Devi v. Amar Nath**⁶⁷ case by Justice S.P. Goyal in 1982.

Conclusion of this view:

18. The close study of the above mentioned material reveals that in matrimonial law the word 'fraud' has got a restricted meaning. It does not include every kind of concealment, misstatement or misrepresentation. Only that concealment or misrepresentation may amount to 'fraud' which relates to the identity of the parties; nature or object of the ceremony religion; design and scheme of marriage or in other words, goes to the root of the marriage. Thus, the main observations of this view are:

- (a) Hindu marriage is a sacrament and not a contract;
- (b) The word 'fraud' within the meaning of section 12(1)(c) of Hindu Marriage Act, has not been used in the sense of 'fraud' within the meaning of section 17 of the Indian Contract Act, 1972;
- (c) Only misrepresentation about identity of parties, nature of ceremony, religion, design and scheme of marriage amounts to fraud;
- (d) Misrepresentation of caste, creed, age, education, illness, chastity, health, employment, wealth, nature and complexion are not sufficient basis to establish fraud in matrimonial law;
- (e) It is the duty of the plaintiff only to enquire specifically about the past conduct, history, chastity of the other spouse from his or her own source. In absence of such specific enquiry, if other party keeps silence about these matters, it does not amount to fraud on his or her part;
- (f) To decide matrimonial cases on this ground the fraud must be of such a nature which may impair the

66. A.I.R. 1979 P. & H. 248

67. A.I.R. 1982 P. & H. 221.

fundamental or main object of the marriage between the parties. If this purpose may be achieved by its continuance, then such marriage should not be annulled on minor misrepresentation, concealment or misstatements or informations.

- (g) To maintain sanctity of marriage in the society, fraud should be interpreted strictly;
- (h) The definition of fraud which governs a contract cannot be applied to a Hindu Marriage as the two Acts are not in parimateria with each other and the object of the two legislations were entirely different;
- (i) Fraud must have been played at the time of solemnization of marriage and not thereafter or earlier;
- (j) Fraud should have been committed with the conscious knowledge of facts and with malafide intention of the respondent;
- (k) Marriage creates a life long tie and hence it should not be broken on the basis of minor misrepresentations, concealment and misstatements.

MINORITY VIEW:

19. Apart from the above mentioned view there is another view in this regard which maintains that the word 'fraud' under section 12(1)(c) of the Hindu Marriage Act should not be given strict or special interpretation, but it should be interpreted in the sense of 'fraud' as used under section 17 of the Indian Contract Act, 1872. This view is shared by various authors such as Derret,⁶⁸ Narsimhachar,⁶⁹ Raghvacharior,⁷⁰ Ghose⁷¹ and Dayal.⁷² After the Marriage Amendment Act, 1976, Justice B.P. Beri⁷³ and Jaspal Singh⁷⁴ further supported this view. Shri Jaspal Singh in very clear words referring to this controversy, has written that:-

68. Derret J.D.M., A. Critique of Modern Hindu Law, 319 (edn. of 1970).

69. Fraud & Mistakes in Law, 191 (edn. of 1965)

70. Hindu Law, Principles & Precedents, 1002 (edn. of 1965).

71. Principles of Hindu Law, 682 (Ind. edn.)

72. A Text Book of Hindu Law, 326 (9th edn.).

73. B. P. Beri, Law of Marriage & Divorce, 84.

74. Hindu Law of Marriage & Divorce, 112.

incorporating the words "any material fact or circumstance" the scope for all kinds of flimsy excuses for avoiding marriage, has been eliminated.... Earlier view shall have to be discarded. Fraud affecting vital matters can no more be disregarded. Thus concealment of loathsome and incurable venereal disease from the other party would be recognised as a fraud sufficient to warrant an order under this provision, specially where the existence of the disease is discovered by the other party before the marriage is consummated and the parties immediately separate. It is submitted that the view taken in **Madhusudan v. Smt. Chandrika**⁷⁵ that venereal disease having been made a ground for judicial separation and divorce, goes to suggest that .. Parliament intended to make a marriage voidable on the ground, it would have specifically said so in sec. 12, the respondent was suffering from venereal disease and thereby affected fraud, the husband would be at liberty to avail of Section 12(1)(c)A woman may be unchaste and still may not get pregnant. Thus, the view of **Harbhajan Singh v. Smt. Brij Balab**⁷⁶ is not good⁷⁷

Under old Hindu law too, Manu has specifically discarded marriages and laid down " in the blameless marriages blameless children are born to man, in blamable marriages, blamable (offsprings), one would therefore, avoid the blamable form of marriage." ⁷⁸

In Sloka 72, Manu further provided: though a man may accept a damsel in due form, he may abandon her if she be blemished, diseased, deflowered, and she has been given with fraud.

20. This view is further shared by the High Court of M.P.,⁷⁹ Patna,⁸⁰ Bombay⁸¹ and Allahabad.⁸² The decisions of M.P. and Patna High Courts were given before the Marriage Amendment Act, 1976 while the

75. A.I.R. 1975 M.P. 174.

76. A.I.R. 1964 Punj. 359.

77. Supra Note 74 at page 112.

78. The Laws of Manu. Sacred Books of the East Series 83, Sloka 42; Chapt. IX Sloka 72.

79. **Bimia Bai v. Shankar Lal**, A.I.R. 1959 M.P. 8.

80. **Babul Panmato v. Ram Agya Singh**, A.I.R. 1968 Pat. 191.

81. **PVK** A.I.R. 182 Bom. 400; **Meena v. Prakash**, A.I.R. 1983 Bom. 409.

82. **Smt. Kiran Bala v. Bhaire Prasad**, A.I.R. 1982 All. 242.

decisions of Bombay and Allahabad High Courts were given after this Amendment. Justice T.P. Naik of the M.P. High Court in **Bimla Bai v. Shankar Lal** case ^{82(a)} for the first time in India, took a bold step and gave relief to an aggrieved lady, by way of applying the definition of fraud given under Section 17 of the Indian Contract Act, 1872 while deciding a case under Section 12(1)(c) of Hindu Marriage Act, 1955. In this case both parties were Brahmin and the bridegroom was falsely represented by his father as his only legitimate son, to the father of the bride while negotiating marriage with him. In fact the bridegroom was his illegitimate son born to a Kurmi mother. The marriage was arranged and performed. After marriage, wife came to know that the husband was illegitimate son of his father born to a Kurmi mother. She filed a suit for avoiding the marriage on the ground of fraud under Section 12(1)(c) of the Hindu Marriage Act, 1955. The Court held that the marriage was voidable. Justice T.P.Naik allowing the relief to Bimla Bai observed:

"When a person speaks of another as his son, in my opinion, he holds him out as his legitimate and natural born son or adopted son. It would not possibly include illegitimate son. At any rate the statement of K that S was his son would only be a half truth and it is well established that a partial statement verbally accurate may be as false a statement in effect as if the facts had been misstated altogether Half truths are often worse than lies. If K so stated the purity of his caste and strait-forwardness of his relation-ship to S as to induce the father of the plaintiff not to make any further enquiry as to facts, which if discovered might have affected his judgement, his conduct cannot be said to be anything but fraudulent."

21. The author submits that the case was rightly decided and the honourable Court rightly provided relief to the plaintiff because nobody would like to live in the company of a bastard spouse, howsoever enduring nature she or he may have. The statement of the plaintiff, Bimla Bai itself in this case that "if she had known that Shankar Lal was shudra born to Kurmi mother, she would have not married him at any cost," reveals the state of mind of the plaintiff. The object of marriage is to provide a social status to both the parties. But in this case, the object of marriage was defeated and thus, to meet the ends of justice, the Court

82(a). Supra Note 79. p. 10.

rightly gave relief to her by way of applying the definition of fraud given under Section 17, Indian Contract Act, 1872.

22. In **Babui Panmato v. Ram Agya Singh**⁸³ case the bridegroom was represented to the girl as a young man, rich and educated while in fact he was an old man over sixty years age. The girl could not see her husband at the time of marriage ceremonies because of heavy veil. After marriage she saw her husband and in place of young man, she found an old man as her husband. She filed a suit for avoiding the marriage on the ground of 'fraud' under Section 12(1)(c) of Hindu Marriage Act, 1955. The Court held that the marriage was voidable on the ground of fraud perpetrated upon her. Allowing the relief to Panmato, Justice G.N.Prasad observed:

"that the scheme of Section 12 leaves no room for doubt that in a case, falling under Clause (c) it is not necessary to prove that consent was obtained by force or fraud at the time of the marriage. All that the section requires is that the consent should have been obtained by force or fraud before the marriage was solemnized.... Here relevant facts were suppressed from her knowledge, although it was the duty of her father to convey the true position to her. This view received ample support from illustration (b) of Section 17 of the Indian Contract Act."

23. The author humbly submits that the honourable Court took the right view and gave her just relief by way of applying the definition of 'fraud' given under Section 17 of the Indian Contract Act, 1872. The hon'ble judge applied the practical approach to the problem. It is very much clear that no girl would respect her husband who had committed fraud on her and when her future hopes were shattered. No girl, howsoever religious minded she may be, can bear this atrocity upon her. Suppose, the High Court had refused to give her any relief then the happiness of marital home would not be assured and she could not have proved to be faithful and helpful wife. The facts of the case reveal the misery which she had suffered even for claiming the help of the Courts. Hence the Court was not wrong in providing her a relief by applying the rules of contract to a Hindu marriage. Further it is submitted that fundamental object of marriage in this case was defeated as the old man could not meet the requirement of his young wife, hence the Court

83. Supra note 80 p. 192.

travelled on the right path in providing her desired relief. It was also argued in this case that age of the other party does not affect or impair the happiness of matrimonial home in any way. But only a minor gap of age between the spouses is endurable and adjustable but a wide gap or too wide gap in their age, definitely impairs their marital pleasure and happiness and continuity of their marriage tie and this ultimately affects the root or corner-stone of the marriage building. Practically, no boy or girl would like to marry an old man or woman, whether he/she is educated or uneducated, belong to a village, town or cosmopolitan city. Hence it cannot be said that the Court was wrong in giving relief to Panmato by applying the rules of contract law.

24. The view expressed in **Bimla Bai v. Shankar Lal** by Justice T.P.Naik and **Babui Panmato v. Ram Agya Singh** by Justice G.N. Prasad, was carried further by Justice Mody in PVK⁸⁴ and in **Meena v. Prakash**⁸⁵ by Justice Masodkar. Both these cases were decided after Marriage Amendment Act, 1976 and the effect of amendment was considered in these cases. IN PVK case, the fact of prolapse of uterus of the girl was concealed from the plaintiff. Husband filed a suit against her for avoiding the marriage on the ground of fraud. Respondent contended that suppression of prolapse of uterus does not amount to fraud according to the view advocated in **Raghunath v. Vijay** case in 1972. But the Court held that concealment of above fact now comes under the interdict of amended portion of Section 12(1)(c). Further Justice Mody held that prolapse of uterus affects marital life or pleasure including sexual pleasure which is a material fact in a marriage. Again normal sexual intercourse was not possible without protruding uterus by hand, which obviously is likely to cause dislike, abhorance, or disgust to newly wed husband. Hence, the concealment of above fact was within the meaning of the term "material fact or circumstance concerning the respondent" inserted in Section 12(1)(c) by Amendment Act, 1976.... and the decision of **Raghunath v. Vijay**⁸⁶ is no longer a good law in view of the Amendment Act. In the light of above case, in **Meena v. Prakash**, Justice Masodkar considered the concealment of mental disorder of wife, as "material" fact concerning the respondent" sufficient for fraud according to the spirit of amended sub- section 12(1)(c).

84. A.I.R. 1982 Bom. 400.

85. A.I.R. 1983 Bom. 409.

86. A.I.R. 1972 Bom. 132.

25. Carrying the above view further, Justice Deokinandan in **Kiran Bala v. Bhairo Prasad**⁸⁷ held that concealment of idiocy, treatment for mental disorder and earlier marriage of the respondent was the suppression of material fact concerning the respondent within the meaning of Section 12(1)(c) of Hindu Marriage Act, 1955. Thus, the Court held that the marriage was voidable on the ground of fraud perpetrated by the relatives of wife.

26. In all the above mentioned cases, the Hon 'ble High Courts provided relief to the affected parties by way of taking into consideration the definition of fraud given under Section 17 of the Indian Contract Act, 1872 as now a Hindu marriage has come into the category of special contract too.

Legislative Amendment:

27. In 1976, the Hindu Marriage Amendment Act was passed. The Act amended Section 5, 9, 11, 12 and 13. The Amendment Act affected the nature of a Hindu marriage upto a substantial extent and clearly brought the marriage in the category of special civil contract too. Section 6, sub-clause (11) of the Marriage Amendment Act, 1976 added the following words in Clause (c) of Section 12(1) of Hindu Marriage Act, 1955.

" In Clause (c) for the words "as fraud" the words "or by fraud" as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent shall be substituted."

This amendment has eliminated the scope for all kinds of flimsy excuses for avoding marriage on the ground of fraud and tried to resolve the controversy of applicability or non-applicability of Section 17 of Contract Act to a Hindu marriage.

CONCLUSION:

28. After going through the above mentioned two viws and their opinions and observations, it is submitted that the minority view appears to be more practical and correct. The reasons are:

- (1) It is true that marriage is not purely a contract and should not be avoided on every minor misrepresentations, concealment,

87. A.I.R. 1982 All. 242.

omissions or silence. But in genuine and gravest cases of fraud, the affected party should be provided relief even by applying the definitions of fraud given under section 17 of the Indian Contract Act. In two latest cases under Indian Divorce Act, 1869 the Court applied the definition of 'fraud' given under section 17 of the Indian Contract Act with a view to provide relief to the affected party. In *Veena James* case one already married man having children, contracted marriage with another woman representing himself to be a bachelor. After marriage, the wife came to know the reality and applied to the Court for avoiding her marriage on the ground of fraud. The Court held the marriage voidable.⁸⁸ In *Ranjak Ranjan Das*⁸⁹ case the concealment of pregnancy by the wife at the time of marriage was held sufficient for the relief claimed by the husband. The decision of PVK,⁹⁰ *Meena v. Prakash*⁹¹ *Kiran Bala v. Bhaire Prasad*⁹² clearly reveals the fact that the Courts applied general definition of fraud to avoid marriages in these cases. Thus, the Courts have started applying general definition of fraud in marriage cases too after the Marriage Amendment Act, 1976.

- (2) Sections 5, 12 and 13 of the Hindu Marriage Act, 1955 and the recent amendment of these sections clearly brings the Hindu marriage in the category of a special civil contract. The relevant phrase of amended section 12 (1)(c) of Hindu Marriage Act, 1955 "any material fact or circumstance concerning the respondent" in very clear words supports this conclusion.
- (3) The active concealment of any material fact is fraud according to section 17 of the Indian Contract Act. The simple reading of Section 12(1)(c) of the Hindu Marriage Act indicates that the concealment of any material fact or circumstance has been made as ground for fraud also in matters of a Hindu marriage. Refer to the decision of PVK⁹³ case decided by Bombay High Court in which concealment of prolapse of uterus was held

88. *Veena James v. Kewal Krishan*, A.I.R. 1982 P & H 47.

89. *Ranjak Ranjan Das v. Pranti Kumari* A.I.R., 1982, Orissa, 37.

90. Supra note 84.

91. Supra note 85.

92. Supra note 87.

93. A.I.R. 1982 Bom. 400.

concealment of material fact, sufficient to avoid a marriage on this ground.

- (4) The Hindu Marriage Act does not define 'fraud' or 'material circumstance' hence these terms should be interpreted according to the ordinary law of the land.
- (5) In all the cases of marriage decided prior to 1976, the question to decide the materiality about a fact relating to other party was exclusively in the hands of the court, but after the Marriage Amendment Act, 1976, it has come to the hands of the plaintiff too. Thus to consider a fact as material or immaterial, is the outlook of the plaintiff and his/her discretion is final in this regard. In the decision of **Gurmeet Koer v. Narendar Singh**, grey hair, age, illiteracy, missing teeth of wife were considered as material fact.⁹⁴ But it has become the duty of the plaintiff to enquire all details about any fact relating to the respondent specifically from his/her own source or through the relations of the respondent-before finally deciding to marry or not to marry the other party. In the absence of this duty, he/she cannot take the plea of concealment of any material fact. In **Mahendra Koer**⁹⁵ and **Trilochan case**⁹⁶ the Punjab High Court recognised the responsibility of plaintiff to enquire all facts from his/her own source and then only can claim relief on the basis of concealment of material fact.
- (6) As regards the doubt which was expressed by Justice P.C. Pandit in **Harbhajan Singh v. Smt. Brij Bajab**⁹⁷ that "if we apply the definition of fraud given in Contract Act to a Hindu marriage, it would be impossible to maintain the sanctity of marriage" the author humbly submits that social conditions may be taken into consideration to grant or refuse a relief but these cannot be the only deciding factors in all cases and in every situation. The welfare of the society is the object of law but at the same time the object of the law is to provide protection and relief to the innocent and aggrieved persons in genuine cases.

94. (1978) H.L.R. 521.

95. (1975) H.L.R. 36.

96. A.I.R. 1979 P & H 248.

97. A.I.R. 1964 Punj. 359 p. 362.

In Panmato⁹⁸ and Bimla⁹⁹ Bai cases the High Courts provided reliefs to the plaintiffs due to the above reasons.

- (7.) While concealment of pregnancy in itself is an independent ground for avoiding the marriage under clause (1) (d) of Section 12 of the Act, then there seems no justification about the view expressed in Surjit Koer case¹⁰⁰ that concealment of it should not be considered as material fact and amounting to fraud and a ground for annulment of marriage. Concealment of pregnancy may be a very very relevant and material fact to one party for deciding to marry or not to marry the other party. Hence it's concealment should be considered as a material fact concerning the respondent to such a person who attaches much weight to it, and non-material or of not much value to a person who does not consider it relevant for marriage. A practical reasonable man's test should be applied in such cases.
- (8.) In a marriage, love and affection, trust, confidence, help, truthfulness, sincerity cannot be expected from the other spouse when his/her consent and company has been obtained by way of fraud. Further it will be unjust to bind them forcefully by way of not providing relief on technical grounds. The experience shows that in matrimonial homes once the bitter water starts flowing from any source, then it becomes very difficult to stop it and even courts could not check its' flow when we want to stop it from one source, it finds out another way to come. Refusing reasonable relief on technical grounds, creates hardships for the innocent parties. Thus, it will be impossible as well as it will be unjust to bind a party to live as a husband or wife when he or she does not desire at all. In Bimla Bai case the plaintiff herself stated that if she had known that Shankar lal was a shudra born to Kurmi mother, she would not have married him at any cost. Thus, the High Court was right in providing her a relief by applying even law of contract to the marriage.
- (9) If we want that the innocents should not become victims of fraud we have to provide them reliefs whenever they become prey of the fraud-committing spouses. Such fraud committing

98. A.I.R. 1968 Pat. 191.

99. A.I.R. 1959 M.P. 80.

100. A.I.R. 1967 Punj. 172.

persons should not be allowed to play with the life, career and status of the other innocent spouses in the society.

- (10) To keep pace with the changing time we should change and liberalise our matrimonial laws too.
- (11) Generally, the mentality of the Indian population is to bear a trouble (thing) upto the maximum extent. The same rule applies to matrimonial problems. In view of the social values prevailing in our country the desires of spouses are always censored by the so called moral obligation and there seems to be direct and indirect pressures on the spouses to tolerate abnormal marital relations in the guise of their fate. Hence few persons are coming to the Courts to claim matrimonial reliefs. Out of the few, very few get the desired relief. It seems unjust to discourage and restrain the parties to seek the recourse of courts even in such abnormal situations too.
- (12) The recent insertion of the concept of divorce by mutual consent under Section 13(b) has its origin from Muslim Law's Khula and Mubarat type of divorce which are based on consent of both the parties for the purpose of divorce where they are not happy with their matrimonial relations. This insertion has widened the gate for incorporating the doctrine of consent in the matters of marriage and divorce and bring the Hindu marriage in the category of special contract.
- (13) The concealment of chastity, incurable disease, long age difference and blemish background affect the fundamental object of marriage and now these should be treated as material circumstance concerning the respondent according to Section 12(1)(c) of Hindu Marriage Act. In this direction the start has already been done by Justice Mody in *PVK*¹⁰¹ and in *Meena v. Prakash*¹⁰² case by Justice Masodkar.
- (14) A sacramental marriage cannot be dissolved by human actions. The provisions for restitution of conjugal rights, judicial separation, divorce and divorce by mutual consent in Hindu Marriage Act, 1955 support the view that now Hindu Marriage has started stepping towards contractual nature and the

101. A.I.R. 1982 Bom. 400.

102. A.I.R. 1983 Bom. 409.

Marriage Amendment Act, 1976 provided fuel and speed to it, to reach toward contractual nature from sacramental garb.

- (15) The present social behaviour of educated masses in contracting marriages through the help of newspapers, magazines, marriage bureau and other similar marriage negotiating agencies, indicates that now Hindu society has started treating Hindu marriage as contract. Hence now it is not unreasonable to provide relief to the victim of fraud even by applying the rules of contract law.
- (16) Justice M.P. Thakkar of Supreme Court of India recently in **Bhoginbhai v. State of Gujrat** ¹⁰³ rightly remarked that the Courts should adopt a soft attitude towards the women plaintiffs in cases of matrimonial and sex relating matters.
- (17) Lastly, there is no harm to provide relief in those cases where young giri has been married to an old man,¹⁰⁴ illegitimate boy to religious minded traditional nature girl,¹⁰⁵ beautiful young man to a woman suffering from prolapse of uterus¹⁰⁶ or where other party is suffering from mental disorder¹⁰⁷ or idiocy¹⁰⁸ because concealment of these facts are very vital and impair the fundamental object and happiness and pleasure of matrimonial home. Hence, the High Courts were right in these cases in providing relief against the fraud committed by the respondents on the plaintiffs.

103. A.I.R. 1983 S.C. 753.

104. **Babai Panmato v. Ram Agya Singh**, A.I.R. 1968, Pat. 191.

105. **Bimla Bai v. Shankar Lal**, A.I.R. 1959, M.P. 8.

106. **PVK** A.I.R. 1982 Bom. 409.

107. **Meena v. Parkash** A.I.R. 1983 Bom. 409.

108. **Kiran Bala v. Bahire Prasad**, A.I.R. 1982 All. 242.