HINDU MARRIAGE ACT, 1955: FRAUD AS A GROUND FOR ANNULMENT

Hindu Marriage Act, 1955 (referred to hereinafter as the Act) has been in operation for about thirteen years now. The courts have had considerable difficulty during this period in applying and interpreting the provisions of the Act. In most cases they have followed the English principles and precedents. Such reliance has been heavy specially as respects fraud in the context of matrimonial relief. The object of this paper is to critically evaluate the case law pertaining to this field and examine the attitude of the Indian courts.

Section 12(1)(c) of the Hindu Marriage Act provides

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

that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force or fraud.

Fraud is not defined in the Act. Human ingenuity at inventing new forms of deception being what it is, it is futile to define the term.


2. Nullity of marriage where the consent is obtained by force is omitted from the discussion.

3. This clause has to be read with sub-section (2) of § 12 which provides:

(2) Notwithstanding anything contained in sub-section (1), no petition for annuling a marriage,

(a) on the ground specified in cl. (c) of sub-section (1) shall be entertained if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, a the case may be, the fraud had been discovered.
An attempt however was made to import into the Act, the definition of fraud given in the Indian Contract Act, in Babui Panmato v. Ram Agya Singh. This case is discussed in ensuing pages.

II

According to common law "there is no fraud unless there is a wicked mind." Fradulent misrepresentation, as it is called in English law, derived its inspiration from the ecclesiastical courts. It is classified into four types of errors or mistakes. They are error personae, error of condition, error fortunae, and error of quality. As regards error personae, which is a question of identity, there need not be any elaborate argument. A person marrying another thinking that it is yet another is definitely entitled to the remedy of annulment. As respects error of condition it must be said that in view of the abolition of slavery these types of errors have become obsolete. Errors about the fortune or financial status have been found to be too flimsy a ground to annual a marriage. It is with regard to the error in quality that divergence of opinion exists in the Anglo-American system.

The quality of fraud depends upon the nature and extent of its effect upon a free and full consent of the parties concerned. If the fraud played upon is only frivolous or fanciful and does not go to the root of the consent it should not be regarded as sufficient ground for nullity. In a celebrated statement Rayden affirms:

fraudulent misrepresentation, or concealment, does not affect the validity of a marriage to which the parties freely consented with the knowledge of the nature of the contract. But if a person is induced to go through a ceremony of marriage by threats or duress or in a state of intoxication without any real consent to the marriage, it is invalid; in all such cases the test of validity is real consent to the marriage.

It is clear therefore, that the rationale behind this rule is that a consent obtained through fraud is not free and voluntary. There is no real meeting of the mind. However, if fraud is played upon as an inducement to obtain consent such consent is considered valid. In the words of Sir F. H. Jeune:

But when in English law fraud is spoken of as a ground for avoiding a marriage, this does not include such fraud as induces a consent, but is limited to such fraud as procures the appearance without the reality of consent....But when there is consent no fraud inducing that consent is material.

4. A.I.R. 1968 Pat. 190. It may be pointed out that § 25(iii) of the Special Marriage Act, 1954, provides that a marriage may be annulled by a decree of nullity if “the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872.”


Also in American law, not all fraudulent misrepresentations are considered fraud. As the dissenting judge Crane, picturesquely put it:

Surely every representation leading up to marriage can not be material—the fact that a brunette turned to be blonde overnight or that the beautiful teeth were discovered to be false, or the ruddy pink complexion gave way to pallor, or that the woman misstated her age or was not in perfect health, would lead no court to annul the marriage for fraud...9

According to Mr. Justice Bedle the fraud charged must be “extraordinary, peculiar, and of most flagrant character, entering into the very essence of the contract.”10

Thus fraud practised upon by a party as an inducement to obtain consent is not regarded as sufficient ground for nullity. It is only that kind of fraud which procures a false consent or which affects it severely that constitutes a valid ground for nullity.

III

Fraudulent representation about the chastity of a person before marriage has attracted considerable controversy. It is a point worth pondering as to whether or not it goes to the very root of the consent thus obtained. According to the causa celebre, Moss v. Moss, concealment of pregnancy or loss of virginity was not the type of fraud “which renders the mind of one of the parties not a truly consenting mind.”11

When a false representation was made by a woman that she was virgin and chaste, when in reality she was neither, it was held that the representation was not sufficient to justify annulment.12 As observed by Sir William Scott

A man who means to act upon such representation should verify them by his own enquiries; the law presumes that he uses due caution in a manner in which his happiness for life is so materially involved, and it makes no provision for the relief of a blind credulity, however it may have been produced.13

Fraud which applies to concealed pregnancy per alium was first statutorily recognised in England in the year 1937 and subsequently incorporated in the Matrimonial Causes Act, 1950.14 Loss of virginity or non-existence of chastity is still not a valid ground to avoid the marriage if the consent is one vitiated by fraud.


11. Supra note 8.


In American law, the general rule is that pre-marital unchastity of one of the parties to the marriage though concealed from, and unknown to the other at the time of the marriage, does not afford a ground for annulment of the marriage. Some statutes expressly provide for annulment or divorce where there has been concealment of pre-marital unchastity. In the absence of any statutory provisions the courts of Kansas, Massachusetts, Michigan, New Hampshire, New Jersey, New York and Pennsylvania have under exceptional circumstances involving extraordinary fraud, held that concealment of pre-marital unchastity was a good ground to annul the marriage. The reason for departing from the general rule, apart from the reason based on public policy, seems to lie in the fact of recognising the type of fraud which is material for the purpose of invalidating the marriage. In most of the New York decisions the courts have used the language as, "if the misrepresentations are material" to the marriage contract; "if they induce the person to whom made to enter the marriage;" or if the victim of the fraud or concealment would not have entered the marriage otherwise, while granting the relief.

The American law differs from state to state and shows a marked contrast to the English principles. While under the English traditions, no amount of misrepresentation with regard to personal qualifications, character, physical health or the fact of chastity can justify the annulment of marriage, the so-called "New York rule" allows misrepresentations as to prior marital status a good ground to avoid the marriage, under certain circumstances and conditions. Commenting upon the American practice in this regard Sir F. H. Juene made the following observation:

Speaking with all respect, these courts have in my opinion, introduced a novelty into the law common to the two countries, and have broken in on the principle that only fraud which annuls a marriage is that which renders the mind of one of the parties not a truly consenting mind.

An examination of the Indian case law in this perspective might now be made. In Harbhajan Singh v. Smt. Brij Balab the husband prayed for the annulment of his marriage with his wife on the ground that consent to the marriage was obtained by fraud. The fraud alleged was wilful misrepresentation and fraudulent statement as to the fact of virginity and good character of the respondent. The petitioner claimed that he gave his consent on the assurance of the bride's

15. See 64 A.L.R. 2d. 742-50 (1959). The Maryland statute is the only one which expressly authorizes a divorce for concealment of pre-marital unchastity. See also 82 A.L.R. 528 (1933) and the case of Hoff v. Hoff reported therein.
16. Supra note 15 at 747.
17. See "Annulment—Fraud—Prior Marital Status," 15 A.L.R. 3d. 769 (1967). See the difference on the question whether misrepresentation is or is not a valid ground for annulling the marriage under various jurisdictions at pages 760-73.
18. Supra note 8 at 274.
father that the bride was virgin and unblemished in character. Soon after the marriage, the husband came to know that a child was born to the respondent before her marriage with him. In his evidence the husband placed reliance on the letter where his wife had admitted in writing the fact of a child being born to her due to the illicit connection with some other person. The appeal of the petitioner was dismissed. It was proved that the letter which was supposed to have been written by the wife was a forged one. It was also revealed that the parents of the husband were greedy and were harassing the wife's people in order to obtain money from them and that the petitioner had made the petition at his parents instance. Furthermore the marriage was consumed and the husband lived with his wife even after the detection of the alleged fraud which disentitled him to obtain a pronouncement upon the vitiating effect of illicit pre-marital relations on the validity of the marriage.

In Surjit Kumar v. Smt. Raj Kumari, the husband petitioned for annulment of his marriage with the respondent on the ground that representation was made by the uncle (husband of the respondent's father's sister) at the time of betrothal that the girl was a virgin, but after marriage it was discovered that she had been unchaste. Under these circumstances, the petitioner alleged that his consent was obtained by fraud. The learned additional district judge found the respondent to have been guilty of lapses in the matter of chastity but dismissed the petition:

since neither the respondent nor her relatives who negotiated the marriage, were dutybound to disclose the unchastity of the respondent it could not be said that any fraud had been committed on the petitioner in obtaining his consent.

Agreeing with the learned judge of the lower court, Mr. Justice S. K. Kapur, dismissed the appeal of the husband stating that the relatives of the girl could not without any enquiry in this behalf be expected to speak about every event in the girl's past life. The learned Judge, however, was of the opinion that if specific enquiry with regard to the past character of the girl was made and if "they (parents of the girl) had given a wrong or an evasive reply, things may have been different. In other words, according to the Court, had the petitioner asked questions about the virginity or chastity of the other party and if it was fraudulently concealed from the petitioner the fact of the character of the respondent, then a valid ground of annulment existed. It hardly needs to be affirmed that questions pertaining to the chastity of the girl seldom figure during the negotiations. And even if asked by one party (in an extreme case) and the other party reveals the truth (which cannot normally be expected) who at all would be willing

21. Id. at 172.
22. Id. at 173. Parenthesis supplied.
to marry unchaste girls. The crux of the problem is not whether any enquiry was made by the petitioner but in the circumstances, did he stipulate chastity as a pre-condition to give consent. This is another difficult question which has got to be investigated by the court, as in every case, the presumption is that the bride is a virgin.

Clearly, there is a conflict between a cluster of principles in this kind of a situation. On the one hand, are the claims of the public policy to protect the integrity of the marriage and the necessity to give a chance to a repentent sinner to reform herself. On the other hand, is the principle of a free and full consent as the basis of marital status. In order to harmonise these conflicting principles one might take a clue from the ruling of Moss v. Moss and say that only such cases of fraud as would strike the base of the consent should be recognized as sufficient ground for nullity and not fanciful or frivolous tricks played by the other spouse.

Whether or not the particular act is regarded as a serious fraud depends upon the nature and development of a society. The concept of virginity, if it can be called so, has undergone quite a change in the West in the recent time. In a society where the rate of divorce is palpably high and pre-marital relations are not viewed with particular abhorrence, a passing affair between a boy and girl might not be taken so seriously by a different boy that happens to marry the girl. But in a traditional society like that of India, with all the concern for purity and virginity in women, any suggestion of unchastity before marriage would assume critical significance. It would be unrealistic to assume that the Indian husband would lead a life of perfect conjugal bliss even after finding out the wife’s past unchastity.

The courts in such cases must tread the path of the common law judges with caution.

IV.

In English law concealment of loathsome and incurable venereal disease from the other party is generally recognised as a fraud sufficient to warrant annulment, especially where the existence of the disease is discovered by the other party before the marriage is consummated and the parties immediately separate.

The case of Birendra Kumar Biswas v. Hemalata decided under section 18 read with section 19 of Indian Divorce Act, 1869 which is modelled on the then English matrimonial law is a good pointer to

23. Supra note 8.
this rule. The husband filed a suit for nullity of the marriage on the twin grounds of impotency and fraud. The fraud alleged was that the wife was suffering from incurable syphilis which was concealed from the petitioner and that his consent to marriage was obtained by fraud. The petitioner also alleged that the marriage was not consummated. Following the English and American authorities on the subject, the court remanded the case for further investigation. It was stated that annulment was granted notwithstanding a mere remote possibility of a cure.

The Chief Court of Oudh in *Wylie v. Wylie* was called upon to decide the case on similar facts as that of *Birendra Kumar*. The fraud alleged by the petitioner in this case was that the respondent and her parents gave out that the girl was "a virgin, healthy and clean" whereas in fact she was suffering from syphilis. The Court while agreeing on the point decided in *Birendra Kumar* that incurable syphilis would amount to impotence, dismissed the petition on the ground that the disease of the respondent was cured. It was observed:

> There is no evidence that they did so although it must be presumed that the petitioner was under the impression that the girl was not diseased when he married her. Something more than this is required to prove a fraud.

It is against this background that the case of *Anath Nath v. Lajjabati Devi* (under the Hindu Marriage Act) must be viewed. The husband petitioned against his wife for the annulment of the marriage on the ground of fraud under section 12(1)(c) of the Act. He alleged that fraudulent mis-representation was made by the relatives of the respondent (wife) that she was of sound health. Thereupon, the petitioner gave his consent for marriage. Afterwards it was found that the wife was afflicted with tuberculosis (before the marriage) and this fact was known to the respondent’s relatives who concealed the fact from the petitioner. But, greatly influenced by the decision in *Birendra Kumar* and other cases in the Indian Divorce Act, the learned Judge dismissed the appeal. He held that in order to establish fraud as a valid ground for nullity, the suppression of a disease must correlate with the kind of disease mentioned in section 13 of the Act. This in the present submission is an erroneous view. For, section 13 of the Act deals not with grounds of nullity, but with grounds for divorce. The diseases mentioned under this section are leprosy and venereal disease.

The rationale obviously is that it would not only be difficult for the spouses to continue cohabitation with these kinds of diseases but also dangerous for their mutual health and hygiene. The deadliness

27. *Supra* note 25 at 296.
29. *Id.* at 452.
31. § 13(1)(iv) and (v) of the Hindu Marriage Act, 1955.
of the diseases is insisted upon on the further ground that every frivolous disease should not dramatise into a divorce suit.

The rationale behind the rule that suppression of disease constitutes fraud—a valid ground of nullity—is not that the subsistence of marriage becomes difficult or dangerous, but there never was a free and full consent. Thus the determination of the extent of fraud does not depend upon the nature of the disease, but upon the fact of concealment. If suppression vitiates the true consent of the injured party fraud must be deemed to have been played.

V

In addition to the above cases carving out the contours of the quality of fraud the Indian courts have had occasion to pronounce upon situations peculiar to the Indian context. In this connection it can be said that the courts have not relied specifically on the English authorities. Such a situation came up before the single Judge of the Patna High Court in Babui Panmato v. Ram Agya Singh.32

A few days before the marriage the petitioner (the wife, a sui juris) overheard her father telling her mother that he (father) had fixed up a husband for her (daughter) who was in affluent financial circumstances and was between 25 to 30 years of age. Having heard this, the petitioner did not object to the proposed marriage. In this sense it could be said that she gave her consent to the marriage impliedly. At the time of solemnization of the marriage she was under a heavy veil, and as in most cases of Indian marriages, she was a tense bundle of hope and, as such, could not see the bridegroom (respondent). The respondent left alone the next morning after the marriage. The wife joined the respondent after a few days. Thereupon, she saw to her dismay that her husband was not only not in affluent financial condition but also older than her father, over 60 years of age. She petitioned for nullity on the ground that her consent to the marriage was obtained by fraud. The petitioner also alleged that the marriage was not consummated. The learned judge of the lower court accepted the allegations which were not controverted, but rejected the petition on the grounds that there was no representation directly to the petitioner herself and that fraudulent misrepresentation within the meaning of section 12(1)(c) of the Act must be made at the time of the solemnization of the marriage and not earlier. The appellate court did not accept the reasons given by the lower court. Mr. Justice G.N. Prasad decided the case with the help of the definition of fraud as embodied in the Indian Contract

32. Supra note 4.
Act, 1872. The learned Judge drew ample support from the illustrations engrafted to section 17 of the Contract Act. Applying and explaining the principles in the said illustrations the learned Judge stated that:

It was the duty of the petitioner's father to disclose to the petitioner that the respondent was a man of nearly 60 years so that she might be free to give or withhold her consent to the proposed marriage.

It was further observed that the petitioner's father should have known the true facts and made a false representation without belief in its truth to the daughter (through the mother) and hence the consent was obtained by fraud. Hence, the definition of fraud as affording a relief to the defrauded party. The fact of the concealment of the age, to adopt the terminology of Sir F.H. Juene, was not considered as an inducement but as a fraud that procured the appearance without the reality of consent. It would be interesting to speculate whether the court would have lent its helping hand to the aggrieved lady if the disparity in the age was not as great as it was in this case.

As regards the court's adoption of the definition of fraud from the Indian Contract Act, a small comment seems to be called for.

There is a cleavage of juristic opinion among the High Courts as to whether the definition of fraud given in the Indian Contract Act could be imported in the settlement of disputes arising in the Hindu Marriage Act. The Punjab High Court in the Harbhajan Singh case took the view that fraud as defined in the Contract Act could not be the same for the purpose of Hindu marriage because the Hindu

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33. The Indian Contract Act, 1872 § 17:
Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) The active concealment of a fact by one having knowledge or belief of the fact;

(3) A promise made without any intention of performing it;

(4) Any other act fitted to deceive;

(5) Any such act of omission as the law specially declares to be fraudulent.

Explanation:—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself equivalent to speech.

34. Illustrations to § 17 of the Indian Contract Act, 1872 read:

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here the relation between the parties would make it A's duty to tell B if the horse is unsound.

35. Supra note 4 at 192.

36. Supra note 8.
marriage is a sacrament and not a contract and further held that "if the term fraud is to be interpreted according to the Indian Contract Act, then it would become impossible to maintain the sanctity of the marriage." The writer is in respectful agreement with this view. In no legal system marriage is treated as a purely civil contract. Thus the type of fraud recognised for the purpose of avoiding an ordinary commercial transaction can never be the same for annulling the Hindu or for that matter any, marriage. But where it is possible for the courts, without causing injury to the sanctity and stability of the marriage institution there is no harm in importing the definition of fraud from the contract law in order to provide a remedy when it is most needed.

But, as regards the question whether the Hindu marriage is still a samskara, it must be said that the shastric notion of Hindu marriage is fast sinking into oblivion. Under the Act the only truly shastric element that is retained is the ceremony of saptapadi. Even this can be dispensed with if the customary rites of either parties do not include this ceremony. As rightly pointed out by Professor S. Venkataraman, "The Hindu Marriage Act, 1955, is, in its basic ideology, a repudiation of the former concept of marriage as being essentially a religious and dharmic institution." Therefore, while giving or

37. Supra note 19 at 362.
38. Eversely, Domestic Relations 13 (2d ed. 1937).
39. As stated in Moss v. Moss:

While habitually speaking of marriage as a contract, English lawyers have never been misled by an imperfect analogy into regarding it as a mere contract, or into investing it with all the qualities and conditions of ordinary civil contracts.

Supra note 8 at 267.

Mr. Justice Story writing about the essential character of marriage states:

I have throughout treated marriage as a contract, because this is the light in which it is ordinarily viewed by jurists, domestic as well as foreign. But it appears to me to be something more than a mere contract. It is rather to be deemed an institution of society founded upon the consent and contract of the parties; and in this view it has some peculiarities in its nature, character, operation and extent of obligations, different from what belongs to ordinary contracts.


39. It would be interesting to note that the Madras District Court has held valid the "self-respect" marriages under the Madras Amendment of 1967. The amendment validates "self-respect" or "seerthurutha" marriages in which religious rituals and the services of the priest are dispensed with. See The Hindustan Times, New Delhi, Jan. 10, 1969.


the present Hindu Marriage Act, 1955, while professing and propagating the retention of the sacramental aspect of the marriage, is in fact a bold declaration that the marriage amongst the Hindus has become a civil contract.

5 Jaipur L.J. 111 at 115 (1965).
refusing remedies under the Act, the courts should take into consideration the socio-economic condition of the society in general and the parties in particular, rather than invoke the out-dated and discredited notion of samskara.

A special characteristic of the Indian society is the enormous importance attached to caste, gotra, and other matters. Legitimacy plays a predominant role in the determination of the caste, etc. Therefore a fraudulent representation as regards legitimacy assumes grave significance in Hindu marriage. This does not mean that caste continues to play as important a role as it used to in Hindu marriages. Yet, in view of illiteracy coupled with conservatism of a large section of Indians, it does play a great role. Despite the fact that the Hindu Marriage Act specifically abolishes caste distinction and the old Hindu dogma which prohibits inter-caste marriage ceases to have legal operation, inter-caste marriages are as infrequent as intercommunal, and inter-regional marriages. In such a society any fraud relating to legitimacy has a vitiating effect on the validity of the marriage.

As an illustration the case of Bimla Bai v. Shankerlal\(^1\) may be put up. The plaintiff Bimla Bai and the respondent Shankerlal were married according to the Hindu rites. The plaintiff's case was that it was represented to her father and herself by the father of the respondent that the latter was a Brahmin and a legitimate son, whereas, in fact the respondent was an illegitimate son (dasi putra) born of a Kurmi woman. Under these circumstances, the plaintiff alleged that there was a misrepresentation of the legitimacy and status of the respondent which amounted to fraud and her marriage was thus null and void. The marriage was not consummated. The Court held that there was misrepresentation which amounted to fraud and the marriage was set aside. It was observed, \textit{inter alia}, that the consideration that the bride's father had not made adequate enquiries and was thus negligent would not help because "the effect of false representation is not got rid of and the ground that the person to whom it was made has been guilty of negligence."\(^2\) Professor Derrett is of the opinion that it is "undesirable" on grounds of policy that this decision "should be followed or approved in India."\(^3\) Certainly the Court in this case has taken a very wide view of fraud.

Yet another contribution that the Indian courts attempted to make to the concept of fraudulent representation was in terms of

\(^{1}\) A.I.R. 1959 Madh. Pra 8. It is not known whether this case has been decided under the Hindu Marriage Act, 1955. The Act has no where been referred to.


time. That is, at what stage the consent obtained by fraud would justify the court to annul the marriage. The Calcutta High Court in the Anath Nath case held that where the petitioner gave his consent to the proposal for marriage and that there was no allegation of fraud at the time of marriage, the petitioner did not disclose any cause of action. Thus the learned Judge drew a distinction between the consent obtained prior to the marriage and consent obtained at a time when the marriage is actually celebrated. According to the learned Judge, consent at the time of solemnization was therefore critical. In support of this theory, the Court cited the words 'at the time of marriage' which appear in clause (a), (b) and (d) of section 12 read with section 5(ii) of the Act. In the opinion of the Court:

'any marriage solemnized...shall be voidable and may be annulled by a decree of nullity on any of the following grounds' imply that at least one of the grounds must be existing at the time of the marriage. It is a very narrow interpretation of clause (l)(c) of section 12, to hold that fraud must have been practised at the time of solemnization of the marriage. Because it is not the actual perpetration of fraud that affects the solemnization but the continued existence of the same. It is common knowledge that in every case where the marriage is solemnized, it is in pursuance of the acceptance of the proposals. A consent obtained at the time of proposal through fraud thus remains vitiated and unreal till the actual marriage is celebrated, provided of course that the fraud had not been detected in the mean time.

This view can further be supported by the fact of omission of the words at the time of the marriage in clause (l)(c) of section 12, which deals with the ground of fraud or force. The Court viewed this omission as important and read these words by implication. But in the present submission the omission was deliberate. If the legislature had intended that fraud must have been actually perpetrated at the time of marriage nothing could have prevented it to insert those few words in this clause especially when it was done so in the other clauses of the same section.

The view taken by the Calcutta High Court in the above case has been rejected by the Patna High Court in Babui Panmato v. Ram Agya Singh and the Punjab High Court in Surjit Kumar v. Smt. Raj Kumar although followed by the same Court (Punjab High Court) in Harbhajan Singh v. Brij Balab Kaur.

44. Supra note 30 at 778.
45. Id. at 780.
47. Supra note 4.
48. Supra note 20.
49. Supra note 19.
VII

In addition to the time factor the court takes into consideration in any enquiry as to the existence of fraud, the capacity, the age, and the mental condition of the party which is the victim of fraud. As an example the following cases may be mentioned.

In *Kunta Devi v. Siri Kalu Ram* the husband filed a petition for restitution of conjugal rights against his wife. The wife took the plea that there was in fact no marriage between her and the petitioner. She stated that the petitioner had abducted her under the pretext of helping her in getting rid of her pregnancy, and married her. As a result of this deception, she maintained that she was not a willing party to the marriage. The girl was a minor and hence the consent of the guardian was necessary. At the time of the marriage no relations of the girl were present. The marriage was procured by the help of the office-bearers of Arya Samaj. There was no evidence that the essential ceremonies such as *saptapadi*, etc. were performed at the time of marriage. In the absence of all these and the fact that the girl was of young and immature age and the circumstance under which she was lured to leave her parental home, the Court readily granted the relief. It was held that there was no marriage in law where one of the parties was induced to enter into matrimonial alliance under duress and fraud. The fact that there was no voluntary cohabitation between the parties made the task of the Court easier in granting the remedy to the wife.

In *Mt. Kalavati v. Devi Ram* the wife petitioned for nullity of her marriage. It was alleged among other things that at the time of the marriage she was a minor and that the guardian, her brother, who gave her in marriage was also below eighteen years of age. Under these circumstances the wife stated that the marriage was procured by fraud. The appeal by the wife was dismissed. On the question of fraud, the Court held that the mere fact that the appellant was below fifteen years of age and her brother who had given her in marriage was below twenty-one could not lead to the conclusion that the marriage was obtained either by force or fraud.

It has been seen that fraud ranging from legitimacy to chastity, disease to old age has figured in the matrimonial suits in Indian courts. These are but a few of the many varieties of fraud where the court's jurisdiction was invoked. Other kinds of fraud and misrepresentations which vitiate the true consent of the party to a marriage are bound to come up before the courts, especially when betrothals are effected by mail with the help of newspaper advertisement, or by exchange of

photographs and horoscopes. A false mangli (horoscope) may be shown to the other party to the marriage in pursuance of which a marriage may take place might lead to a charge of fraud. Will or will not the courts recognize this as a valid fraud in order to annul the marriage under the Act?

Professor Derrett has rightly pointed out (a decade earlier) that not a single instance has come to light to guide us in respect of the most important question, what sort of fraud or misrepresentation will suffice to entitle the deceived spouse to petition for a decree of nullity; and in what circumstances he or she may lose the right to present the petition.

It may be said at this stage that the law has not yet crystallized and it will take some more time for the courts to put the concept of fraud on firm and sound footing.

It is not desirable for the Indian courts to import the concept of fraud in toto from analogous statutes or from English principles into the Hindu Marriage Act. B. Sivaramayya has deplored the tendency on the part of the courts to rely on cases under the Indian Divorce Act, 1869, and on English precedents. He says that "such a trend is apt to inhibit the development of Indian concept." There is a necessity to evolve a new concept which has a reference to the social conditions of the Hindu society.

It has been suggested, both by foreign and Indian writers that a distinction ought to be drawn between the consummated and non-consummated marriages. This would certainly obviate the difficulty to some extent when the courts are confronted with the task of determining the ambit of fraud.

A distinction has to be made in cases of fraud which go to the root of the marriage relations and cases where it is not so. For example, fraud pertaining to fortune, status, beauty and personal qualifications cannot be valid a ground to impeach the marriage; whereas fraud relating to legitimacy, religion, virginity or even old age can be a valid ground for annulling the marriage. The weight attached to the kind of fraud, of course, varies with social upbringing, the economic and cultural status, etc. of the parties concerned. What may be a matter of progressivism in one state of society might be looked upon with abhorrence in another. Added to this the continuing effect of

52. See J. D. M. Derrett, Religion Law and the State in India 394 (1968).
53. It is believed by many Hindus that if a mangli girl is married to a non-mangli boy the latter meets his death and vice-versa. Therefore great care is taken by the parties to avoid such matrimonial alliances unless there is a countervailing mangli of the other spouse.
54. J. D. M. Derrett, "Nullity of Marriage and Adverse Possession by a Female," supra note 43 at 82.
56. Supra note 43 at 193-94.
57. Supra note 55 at 82.
fraud upon the mind of the victim may be an important factor which should be taken into account in an enquiry as to the existence of fraud.

A caveat must be entered at the end. The courts have shown a lot of judicial chivalry (like in other cases in granting relief under the Act) in deciding in favour of women. The reason of course is not far to seek. The economic dependence of the wife on the husband, the dim prospect of the judicially divorced or separated wife to contact a fresh matrimonial alliance must have weighed heavily in the minds of the judges in taking a liberal attitude towards women. But in their zeal to protect the new-found freedom of the Indian woman there is a hazard that the courts may swing to the other extreme by refusing relief to the innocent and unfortunate cheated husbands. The farsight, ingenuity and the wisdom of the court lies in the fact of counterbalancing the claims of social interest in the sanctity of the marriage on one hand and the individual interest on the other.

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