EVOLUTION OF MARRIAGE UNDER HINDU LAW

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INTRODUCTION

According to Hindu law, marriage is a sacrament in the name of God, achieved by religious rites and the control of artha and kama through adherence to dharma. This is a result of the Hindu philosophy of life, which views marriage as a union of social and religious obligations.

This sacrament is performed with vedic mantras and and rituals in order to own high character, moral and provide intellectual progeny for improved human race to attain moksha. It is through marriage that everything and anything in society is maintained by householders-the man and his wife. The Hindu marriage is thus linked with Hindu philosophy of life. The marriage thus remained indissoluble and eternal union in name of God for more than 2500 years.

The evolution of marriage under Hindu law has been a dynamic process, shaped by social, religious, and legal changes over centuries. Traditionally, Hindu marriage was regarded as a sacrament, an indissoluble union aimed at fulfilling religious duties and ensuring societal stability. Rooted in ancient scriptures like the **Dharmashastras** and **Manu Smriti**, marriages were heavily influenced by caste, rituals, and familial consent, with little regard for individual choice or equality, especially for women.

Post-independence India saw significant reforms in Hindu marriage laws to align with modern values of equality, freedom, and individual rights. The most transformative legal reform came with the **Hindu Marriage Act, 1955**, which codified various aspects of marriage, divorce, and maintenance. The Act introduced critical changes such as monogamy, the right to divorce on specific grounds, the recognition of inter-caste marriages, and provisions for maintenance and alimony. The Act also mandated the consent of both parties for a valid marriage and set the minimum legal age for marriage, curbing child marriages to an extent

EVOLUTION OF MARRIAGE

Hindu marriage law has developed throughout centuries, reflecting social, legal, and cultural

shifts that have influenced the institution. This process involves the transition from ancient customs to contemporary statutory laws, which are impacted by judicial rulings, reforms, and the shifting demands of society.

ANCIENT AND VEDIC PERIOD

The ancient and Vedic period of Hindu history marks a pivotal era in the evolution of marriage, defined by profound spiritual significance and rich traditions. This overview examines the key elements of marriage during these periods, highlighting its purpose, rituals, and societal impact.

Hindu marriages were regarded as indissoluble and sacramental in prehistoric times. With the main goals of achieving moksha (salvation), procreation, and dharma (duty) fulfilled, it was viewed as a religious duty rather than a contract. Marriages were revered ceremonies known as "Vivaha Samskara," which denoted an unbreakable lifelong vow

In ancient Hindu society, marriage was seen not just as a social contract but as a sacred union that fulfilled both worldly and spiritual responsibilities. It was a spiritual unification of man and a woman by recitation of Vedic mantras.

It was believed to be essential for the continuation of the family lineage and for performing the essential rites and rituals. The vedic texts emphasize that living and working together as a pair is the path to achieving dharma and moksha through marriage and Hindu law's view of marriage has been connected to the Hindu philosophy of life, which holds that dharma is the path to moksha, which can only be attained via marriage.

Since the marriage was an irreversible bond, nobody could end it. An irreversible union involved two mature individuals who were aware of and cognizant of rituals. The married couple should enjoy the good things in life together and live in harmony and love, just like the birds known as Chakva and Chakai. They should both be pleased and not feel as though one should be sacrificed at the altar of marriage. Only then would the house truly become a home for the two of them, and only then might they be fortunate enough to have wise and kind children.

However, the concept of Hindu marriage evolved from *Vedic* mantras to religious duty to sacrament as well as contract . Hindu Shastras, Manusmriti, and other texts on Hindu law, such as Yajnavalkya Smrti, Kautilya's Arthasastra, Puranas, Commentators, and Digest Writers, list

Hindu marriage as one of the sacred rites. Some of these customs and norms have been incorporated by the authors, who consolidated Hindu Law as part of ceremonies for the solemnization of marriage. Customary Law was established by ancient society, and it established certain norms for various Hindu societies regarding the performance of marriage.

Husbands were regarded as bharti, pati, and swami in the era of the sutras and epics. Additionally, wives were regarded as sachive, grihini, jaya, and sakhi. She goes by the names ardhangini, samrajini, and grihalakshmi. Since a man could not sit in a yajna without his wife, she is known as dharmapatini. Throughout this time, the wife was also treated with respect. In Manusmriti, the woman has a great rank. Manu stated that a good wife is the result of a man's good karma, and that a wife is received by God's blessing. We may observe from this that marriage was valued highly in Manusmriti.

Manu further underlined how the family is made sparkler by her sparkling wife. Even in situations where children, sons, daughters-in-law, and grandkids are present, the house is deemed vacant if the wife is not present to oversee it. This indicates that the wife was enmeshed in whatever her husband did. Up to the time of the Ramayana and Mahabharata, this custom persisted. Furthermore, women were still respected throughout the era of the Smrities and Puranas. According to Yajnavalkya, a wife must submit to her husband. Medhatithi equated wife to goddesses of wealth and stated that man is powerless and poor without a wife. Thus, importance of marriage and wife is seen in *Vedic* and all Hindu periods.[1]

MEDIEVAL PERIOD

But , during the Medieval Ages, women's standing was diminished and they lived in misery.the medieval period saw a decline in the status of women as a new socio and religious practices emerged such as:[2]

Purdah System and Seclusion: Upper-caste Hindu women in North India adopted the practice of purdah (veiling and seclusion) more frequently as a result of Islamic control, especially under the Delhi Sultanate and Mughal Empire. Women's mobility and engagement in public

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[1] "The Concept of Marriage Under Hindu Law and its Changing Dimensions" 1 *ILI Law Review* (2022).
[2] Disha Khare*, "Status of Women in Medieval India" 16 *Journal of Advances and Scholarly Researches in Allied Education* (2019).

life were thereby restricted.[3]

Widow Burning, or Sati: During the Middle Ages, widow burning, or the self-immolation of a widow on her husband's burial pyre, became more common, especially among Rajput groups in North India. Even if sati was practiced earlier, it gained popularity in the Middle Ages and was frequently praised as a widow's greatest gesture of devotion and sacrifice on behalf of her husband.[4]

Additional Institutionalization of Dowry: Especially among the upper castes, the dowry system become even more ingrained. Marriages developed into important business dealings, and the size of the dowry might occasionally dictate the standing and prosperity of matrimonial partnerships. This made raising daughters more difficult for households and reinforced the social norm that favors boys over girls.

Gender Roles and Child Marriage: During this time, child marriage spread nearly entirely among the upper classes. Girls were frequently married off at an early age, depriving them of the opportunity to go to school or grow up. After marriage, girls were supposed to focus only on taking care of the home and raising the children, according to rigid gender norms.

Widowhood and Non-Remarriage: The definition of widowhood has become increasingly limited. Widows were frequently shunned by society and were not permitted to be married again. They were supposed to live penance-filled lives, wear simple clothing, and live in seclusion or in ashrams. Women's standing was further lowered by the stigma associated with widowhood.

Child Marriage: During this period, the age of marriage for girls was lowered significantly, as early marriage was believed to protect a girl's chastity.[5]

TYPES OF MARRIAGE

Hindu scriptures, particularly the **Manusmriti** and **Dharmashastras**, described **eight forms**

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[3] Disha Khare*, "Status of Women in Medieval India" 16 *Journal of Advances and Scholarly Researches in Allied Education* (2019).

[4] "Problems and Improving Status of Women in Medieval India" 12 *International Journal of Creative Research Thoughts* (2024).

[5] "Problems and Improving Status of Women in Medieval India" 12 *International Journal of Creative Research Thoughts* (2024).

of marriage, some of which were considered more virtuous than others. These are:

Among the many kinds of marriage that were popular at the time, society recognized and acknowledged some forms. These arrangements were referred to as the authorized types of unions. The following types of marriage fit the definition of authorized types since these were the ones that society acknowledged and used:

- *Brahma,*

- *Daiva,*

- *Arsha,* and

- *Prajapatya.*

In India, brahma is widely accepted and respected type of marriage that is observed in daily life. Of all the Hindu marriage ceremonies, this one is regarded as the most sacred. Manu's Manusmriti also makes reference to its significance. In this type of marriage, the daughter is presented to a man chosen by her father to be her husband after being decorated with diamonds and accessories. The man is typically intelligent and knowledgeable about the Vedas. Another name for this type of union is Brahma vivah.,

The term "marriage related to the rite of the gods" refers to this kind of union. In contrast to Brahma, in this type of marriage, the father offered his daughter to the priest in exchange for a sacrificial payment known as a dakshina. In this type of union, the father looked for a suitor for his daughter. But the fact that a daughter was offered as dakshina distinguishes and lessens the significance of this type of marriage from Brahma. A woman's son who marries in accordance with Daiva customs, according to Manu, can free seven generations of their forefathers and descendants.

Arsha is the third type of sanctioned marriage. A daughter married a sage in this type of union. Unlike the other versions where the father of the bride has to offer anything to the bridegroom, the father of the bridegroom gives the father of the bride two cows or bulls. This explains why this type of marriage was distinct from other recognized marriage ceremonies.

This type of marriage resembles Brahma quite a bit. The father finds a husband for his daughter

in this type of marriage; there is no kanyadan involved. That is the only distinction. But in this kind of marriage, the bride's father places a requirement on the pair: they must faithfully carry out their religious duties, or Dharma, as a couple. The father's only demands of the bridegroom were that he respect and treat his daughter as his partner in their shared religious commitments. Manu believed that the son of a married woman may free his six forefathers and descendants by following the Prajapatya procedures.

The following forms of marriage were neither accepted nor recognised and hence categorised as unapproved forms of marriage. People were prohibited from practising such forms of marriage. These are:

- *Asura*,

- *Gandharva*,

- *Rakshasa*, and

- *Paishacha*.

In society, this type of marriage is frowned upon, decried, and rejected. In an Asura marriage, a girl is given in marriage once the groom bestows on the bride's father all conceivable wealth. For this reason, this type of marriage is the most frowned upon. The bride is traded for money provided by the bridegroom, signifying that she is bought, much like in a business transaction.

In this type of union, the consent of the parents is not required because the man and the woman decide to wed each other out of mutual lust. Without following any religious rites or ceremonies or getting their parents' approval, the man and the woman unite physically. Because of this, Gandharva marriage is distinct and improper.

In ancient civilization, the Rakshasa marriage custom was regarded as one of the cruelest and most disapproved kinds of unions. A woman was kidnapped and her family tortured in this type of marriage. To claim the bride as his own, the bridegroom battled the bride's family. Because it included the violent kidnapping of a girl and the severe treatment of her family—which could possibly result in their death—this type of marriage was denounced for its cruelty. The bride and her family's obvious disrespect for their own liberty and human decency was the source of the society's criticism.

The Rakshasa marriage ritual was considered one of the cruelest and most undesirable types of couplings in ancient culture. In this kind of marriage, a woman was abducted and her family was subjected to torture. The bridegroom fought the bride's family to take the bride as his own. This kind of marriage was condemned for its harshness since it involved the violent kidnapping of a girl and the cruel treatment of her family, which may have led to their deaths. The bride and her family were the target of ridicule from society because of their blatant disregard for human decency and their own freedom. family were the target of ridicule from society because of their blatant disregard for human decency and their own freedom.[6]

Hindu Marriage is regarded as sacrament in different senses.[7] First of all, the Vedas declare that a man and his wife must practice dharma together. In order to satisfy his home and religious duties, a man must complete Panch Mahayajnas, which he could only accomplish through marriage. In the past, the male would remarry if his first wife passed away in order to do Mahayajnas. Second, a marriage must be solemnized by performing the ceremony in front of God since it is a religious rite. The girl becomes a wife during this ritual, and the participants to the marriage then acquire the status of husband and wife. A religious ceremony is crucial to a marriage's legality.[8]

Finally, Marriage was regarded as essential for fulfilling physical needs through sexual gratification. In Hindu tradition, the sacrament of marriage is performed in the presence of God through religious ceremonies, without any material consideration, with the purpose of achieving spiritual duties. It is viewed as an indissoluble and eternal union. Consequently, marriage as a sacrament required both man and woman to adapt to one another, and even if they faced difficulties, they were expected to adjust in temperament, behavior, experience, and beliefs to achieve dharma, raise progeny, and satisfy physical needs . Manu also declared **"mutual fidelity till death as the essence of *dharma*** for the husband and the wife because according to him, man and woman, unite in marriage, should constantly exert themselves that they may not be disunited and may not violate their mutual fidelity.[9]

Different criteria used to the idea of marriage as a sacrament. The selection of a spouse, investigation of family history, eligibility and disqualification of the prospective spouse, age at

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[6] Types of marriages, ipleaders,https://blog.ipleaders.in/forms-marriage-hindu-religio
[7] K.M Kapadia, *Marriage and Family in* India167-170 (Calcutta, Oxford University Press, 3rd edn., 1982).
[8] "The Concept of Marriage Under Hindu Law and its Changing Dimensions" 1 *ILI Law Review* (2022).
[9] Manusmriti, IX 101-2

marriage, caste structure, restrictions, etc. were all significant factors.[10]

The families of the bride and groom organized the majority of marriages. Marriage was viewed as a social tie between families rather than a relationship founded on personal choice or desire, and the idea of a love marriage was uncommon. Caste was a major factor in marriage, and it was customary to discourage being married outside of one's varna (caste). Marriage within the same caste, or endogamy, was commonplace since it was thought that caste purity was essential to preserving social order. Inter-caste marriages were strictly forbidden, while anuloma—marriage between a man of a higher caste and a woman of a lower caste—was occasionally permitted

Monogamy was the ideal for most of the population, and it was considered the norm for common people.

Polygamy was allowed, particularly among royalty and the upper classes. It was more common for rulers and noblemen to have multiple wives, especially when there were strategic or political reasons for alliances through marriage.

According to Manu, a person should marry into a respectable household. "Those who are pure from their deeds done in accordance with the injunction of the Sruti and the Smriti should always be made relatives.[11]

CEREMONIES OF MARRIAGE

The important ceremony known as **Saptapad**i is when the bride and groom take a seven steps around the sacred fire (Agni) and exchange vows to support and carry out each other's responsibilities as a wedded couple.The Vedic era (around 1500–500 BCE) is when Saptapadi first appeared, especially in the later Vedic period when the idea of Agni (fire) serving as a marriage witness was codified.

The ceremony known as **"Kanyadaan,"** the father of the bride formally hands over his daughter to the groom, giving him full custody and responsibility for her.The Dharmashastras and

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[10] Factors that make a difference in marital success, by Thomas R. Lee, PhD
Department of Family and Human Development
Utah State University
[11] Manusmriti, III, 6. See also: Manusmriti, III, 17.

Grhyasutras (c. 500 BCE–200 CE) are two Post-Vedic manuscripts that provide a clearer account of the Kanyadaan rite. These texts stressed the significance of the father "giving" his daughter to the groom in a solemn and sacred ceremony, and they outlined the regulations for a number of samskaras (rituals), including marriage.[12]

Hindu law's dowry customs developed gradually over time, starting in the Vedic era and becoming increasingly codified in the post-Vedic and medieval eras. The transfer of money or gifts from the bride's family to the groom or his family is known as a dowry. The concept of dowries has a complicated history that reflects changes in social, economic, and religious values.

Furthermore, There were also restrictions on getting married as a Hindu. Marriages between sapinda, pravara, and gotra were strictly prohibited. These restrictions applied to every caste and varna. Law text authors such as Vashishta (fourth generation to mother's side) and Narada (seventh generation to father's side) had different prohibitions. Manusmitha and Dharamshastra forbid these kinds of unions. In this sense, Gautama's sentence specifies that the pair will be considered outcasts. Other prohibitions included the giving of two daughters to the same family and the exchanging of daughters and sons for marriage.[13]

COLONIAL PERIOD

The colonial period brought significant changes in the evolution of marriage under Hindu law. especially considering the impact of British law on Indian legal systems. Hindu rites and practices were attempted to be codified by British colonial rulers. These changes were influenced by the social reform movement , legal codification and the need to address the issue of personal rights and gender equality.

By the middle of the 19th century, British courts started to develop a more methodical legal framework based on case law rather than religious doctrine, and their reliance on religious texts had decreased. This change made it possible for laws to be applied more consistently among various localities.

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[12] Marriage ceremonies in ancient India ,
https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=3155&context=ocj
[13] "The Concept of Marriage Under Hindu Law and its Changing Dimensions" 1 *ILI Law Review* (2022).

HINDU WIDOW REMARRIAGE ACT 1856

Social reform : This action was a reaction to the shame that widow remarriage carries in society. It attempted to elevate women's status in society and outlaw the then-common practice of sati by allowing widow remarriage.

AGE OF CONSENT ACT 1891 : This act raised the age of consent for girls to 12 years, marking the first legal intervention against child marriage.

POST INDEPENDENCE PERIOD

Following India's independence in 1947, marriage in the country has undergone a number of notable legal and sociocultural modifications. This change is indicative of a larger trend in Indian society brought about by modernization, globalization, and the pursuit of gender equality.

HINDU MARRIAGE ACT 1955

one of the most milestone in post independence Hindu marriage law is the enactment of the Hindu marriage act 1955.this legislation aimed to codify and reform existing mar;ital practices, introducing several crucial changes.

A marriage cannot be deemed lawful under the Hindu Marriage Act unless certain requirements are fulfilled.

Monogamy: When two people become married, none of them should be married to someone other. This indicates that bigamy or polygamy is forbidden by the Act.

Sound Mind: In order to be able to provide their legitimate consent to the marriage, both parties must be of sound mind.

Age at Matrimony: The minimum age to marry is eighteen for the bride and twenty-one for the groom.

Not inside Prohibited Degrees of Relationship: Unless custom allows such marriages, the couples should not be in one of the prohibited degrees of relationship. Prohibited degrees include brothers, uncles, and aunts, among other close blood relatives.

 Not Sapinda Relationship: Unless their custom permits such a marriage, the pair should not be considered to be in a "Sapinda" relationship. A relationship within a specific generation of ancestors is referred to as sapinda (usually three on the mother's side and five on the father's side**).**

CERIMONIES FOR HINDU MARRIAGE UNDER SECTION 7

This section provides that the Hindu Marriage is to be solemnised according to the customary rites and ceremonies of either party to the marriage.

Where 'saptapadi' is part of the ceremony, the marriage becomes complete and binding when the 7th step is taken by the bride and the bridegroom before the sacred fire. Hence, saptapadi is optional but must be performed if it is par; of the customary rites and ceremonies of the parties.

 In Ram Singh V. Sushila Rai the Supreme Court, declared the marriage as void, as this customary ceremony common to both parties, had not been performed

REGISTRATION OF MARRIAGE

While the Act allows for the registration of marriages, registration is not mandatory for a marriage to be valid. However, many state governments in India have made marriage registration compulsory for better legal enforcement of marriage-related rights.

JUDICIAL SEPARATION AND DIVORCE

The Act introduced provisions for both **judicial separation** and **divorce**, which were not part of traditional Hindu law.

Judicial Separation: Based on criteria similar to those for divorce, one spouse may file for judicial separation from the other. It permits spouses to live apart without ending their union. They are able to file for divorce after a year of separation.

Reasons for Divorce: Prior to the Act, divorce was not permitted under traditional Hindu law. Among the reasons for divorce are:

Adultery is defined as one spouse willingly engaging in sexual activity with someone other

than their partner.

Cruelty: When one spouse treats the other cruelly, either physically or mentally.

Desertion: Prior to requesting a divorce, one partner must have abandoned the other for a continuous period of time lasting at least two years.

 Conversion: One partner has changed their religious

Mental Illness: When one partner has a mental illness that prevents them from cohabiting with the other partner.

Leprosy and venereal disease: These were once legitimate reasons, but contemporary medical developments have changed how these illnesses are treated.

Renunciation of the World: When one partner decides to become a monk or nun and renounce the outside world.

Presumption of Death: In the event that a spouse is missing for seven years,

ADDITIONAL GROUNDS FOR THE WIFE TO CLAIM JUSTICE: In the cases of bigamy, rape, sodomy or bestiality , no cohabitation for one year , wife can claim justice.

MAINTENANCE AND ALIMONY

: The Act stipulates that either spouse may get maintenance and permanent alimony upon a divorce, depending on a number of variables including the parties' respective financial situations, their behavior during the marriage, and the wellbeing of any children they may have together.
Both throughout the course of the divorce process and after it is finalized, maintenance may be granted.[14]

AMENDMENT AND RELATED LEGISLATION

Since the enactment of the Hindu Marriage Act, several key amendments and associated laws

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[14] Prof.Kusum (ed.), *Family Law I* (4th edn., 2011)

have contributed to further reforms in marriage practices:

Marriage Laws (Amendment) Act, 1976: This amendment made divorce more accessible by introducing the concept of "mutual consent divorce," allowing both parties to mutually agree to end their marriage.

Dowry Prohibition Act, 1961: Although separate from the Hindu Marriage Act, this legislation played a crucial role in combating the dowry system, a practice closely tied to Hindu marriages.

Prohibition of Child Marriage Act, 2006: Replacing the earlier Child Marriage Restraint Act of 1929, this law strengthened the ban on child marriages and imposed harsher penalties on those facilitating or conducting such marriages.

Hindu Succession (Amendment) Act, 2005

Although not directly related to marriage, this amendment gave daughters equal rights in ancestral property, thus empowering women and influencing the way marriage-related issues like dowry and inheritance are perceived.

MARRIAGE AS A CONTRACT

So, we can see, with changing times marriage has become a contract. There are two characteristics of marriage these are contractual and status. Marriage gives legal status to parties consequently rights and duties arise between them. This makes marriage a contract.

it presents similar problem like other contracts like void, voidable, consent obtained by fraud, dissolution of marriage etc. In regard to status of parties to the marriage belonging to a specific group that is married persons, whatever the form of contract may be, marriage constitutes, if not an express, at all events, an implied contract between the parties that the husband shall maintain the wife" and wife will be loyal to her husband and both will do their matrimonial duties well. It is one way process after entering into marriage both parties themselves cannot exit except through will of court. Thus, both parties cannot themselves exit from the marriage contract at their own will like other contracts.

Marriage involves the rights and duties of both parties and is enforceable similarly to contracts,

covering aspects such as claims for maintenance, the right to residence, and custody of children. Hindu marriages are governed by personal laws, including the **Hindu Marriage Act, 1955**, the **Hindu Adoption and Maintenance Act, 1956**, the **Hindu Succession Act, 1956**, and maintenance provisions under criminal law. In this context, marriage is neither purely a sacrament nor merely a contract, but rather a blend of both elements.

When a Hindu marries under the **Special Marriage Act, 1954**, the marriage is treated as a civil contract, as no traditional marriage ceremonies are required for its solemnization. Since the marriage takes place in the registrar's office, it is considered a civil contract and requires only a 30-day notice prior to registration, along with the presence of three witnesses. Both parties must be eligible to marry, with the bride being at least 18 years old and the bridegroom at least 21.[15]

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[15] "The Concept of Marriage Under Hindu Law and its Changing Dimensions" 1 *ILI Law Review* (2022).