



AN ANALYSIS OF THE HINDU MARRIAGE SYSTEM

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ABSTRACT Marriage is considered to be one of the most pious relations that exist in society. According to Hindu traditions, Marriage is a divine bond between two individuals which continues for many births thus, making the same an unbreakable bond. The present article will discuss the ideals of Hindu Marriage system in ancient India, the present societal norms with relation to Hindu marriage and how the present norms and laws are shaping the future of Hindu marriage system. This article is a doctrinal study and has been derived through various literary sources. The outcome of this study is that it brings out a clear understanding about the societal as well as the legal aspects of Hindu Marriage System.

KEYWORDS : Marriage, Hindu Marriage, Hindu Marriage Laws, Hindu Personal Law

INTRODUCTION

Marriage is a legal bond between a man and a woman. The piousness of the bond is such that husband and wife are considered to be not two separate humans but as one. Marriage is the base of all social relationships and it is just peculiar to only humans, it is considered that even the gods marry thus, making it a divine relationship (Chandrika M.P., 2015). The primary aim of marriage is to be relieved from one of the three debts for which every Hindu is said to be liable. The three debts are i) Debt of God, ii) Debt of Rishis and iii) Debt of father. The relief from debt of God can be obtained from doing Yagna, relief from debt of rishis can be obtained from studying the Vedas and relief from debt of father can be obtained (Tripathy, 2014, p.40). The ancient scriptures such as the Rig Veda provides us with a peek through how high the relation was placed in society in India's ancient past. In one of the verses from Rig Veda - 'After Completing the seventh step (saptapadi) the bridegroom said: 'with the seven steps we have become friends (sakha). May I attain friendship with thee; May I not be separated from thy friendship' (Shatapatha Brahmana speaks to his wife as the half of one's self) (Chandrika M.P., 2015). The purpose of marriage was to make a man a grihastha that means a householder, to make sacrifices to the Gods and to procreate sons (Singh, 2017). This union between a man and a woman is said to be continued through seven births (Makwana & Xavier, 2016). Marriage was as good as compulsory, and more in case of a female. A girl might choose her husband for herself and marry, but this is a changed condition of life, with each passing era, marriage became an option for both, male and female (Gandhi, 2016, p.260). In Ancient India every person had to go through four ashrams for individual development. The four ashrams were Brahmacharya (Student Life), Grihastha (Household Life), Vanprastha (Living in the Forest) and the fourth one was Sannyasa (to renounce life). But, out of the four Grihastha ashram has been glorified because it is significant to social values (Makwana & Xavier, 2016). Good social values begin with socially accepted marriage which has certain sanskars, where saptapadi is considered to be the necessary one (Diwan, 2009, p.50). Shabar Swami defines sanskar as 'an act by which a thing becomes fit for a certain purpose viz. Dharma sampatti, praja sampatti, performance of sacrifice and 'rathi sukham' (Rao, 2012, p.41). But if the bride and the groom do not take the seventh step of saptapadi it will not make the marriage an invalid one (Sananda, 2019). The modern Hindu marriage is a mixture of both traditional and modern values that makes the matrimonial relationship a beautiful yet complex and difficult (Singh, 2017).

DEFINITION OF MARRIAGE

The Canon Law defines marriage as a conjugal union of a man and woman which arises only from the free consent of each spouse, but this freedom relates to the question whether or not two persons want to enter into matrimony, it is entirely different from free will of spouses (Diwan, 2019, p.26). But, the term marriage has not been expressly defined in any statute (Mohapatra & Nanda, 2015, p.35). Once people get into the contract of marriage then it is regarded as sacrament and an indissoluble union and can only be separated through death. Marriage is the 'nucleus' of the family. It is a process by which the physical union of a man and woman is legalised and thereby regulated social life (Rao, 2012, p.42). According to the Vedas, a marriage is, "the Union of flesh with flesh and bone with bone". It is a union which Vedas regard as indissoluble.

THE HINDU MARRIAGE SYSTEM

According to ancient Hindu law, inter-caste marriages were certainly not allowed. This was done in order to maintain social order and discipline. The ancient Hindu law recognised eight forms of marriages, out of which four were approved and the other four were unapproved. The approved forms of marriages are- i) Brahma ii) Daiva iii) Arsha iv) Prajapatya and the unapproved form of marriage were i) Asura ii) Gandharva iii) Rakshasha iv) Paishacha. The only forms of marriage now recognised are i) Brahma form of marriage, which is the approved form and ii) Asura form of marriage, which is the unapproved form. For example: Where the father or the other guardian of the bride in marriage without receiving any consideration from the bridegroom for giving the girl in marriage, such marriage is known as Brahma marriage and where the bridegroom has received any kind of consideration which is termed as 'shulka' or bride price, such a marriage is known as Asura marriage (Mulla, 2011, p.634). In Venkata Krishnaya v. Lakshminarayana, ILR 32 Mad 185, it was held that the validity of a marriage in Asura form in the present days has been upheld by judicial decisions and there can be no questions of its being unrecognized on the score of public policy, but an arrangement to pay any consideration to the father or the brother of the bride in consideration of marriage cannot be specially enforced nor can a suit for its refund after marriage be entertained. But, in the case of Gulabchand v. Phulbai ILR 33 Bom 411, it was held that if the marriage fails though the price was paid may be recovered. Gandharva marriage is love marriage where the maiden and her lover willfully and voluntarily enter into the matrimonial union. Asvalayana defines where a man marries her after a mutual agreement has been made between the lover and the damsel, it is called gandharva marriage and Baudhayana restricted it to only Vaishyas and Sudras (Rao, 2012, p.21). In Brindavana v. Radhamani [12 M 72], The Madras High Court held that Gandharva marriages are legal if celebrated with nuptial rites having as their essential part in ceremony of homum. During 1813 to 1900 nine legislations were passed by then the British Government in India and from 1947 to 1955 that is the post-independence time nearly 5 different legislations were passed before the enactment of the Hindu Marriage Act, 1955 (Gandhi, 2016, p.264).

Modern Hindu marriage can be understood through the Hindu Marriage Act, 1955 (Hereinafter referred to as The Act). It is applicable on all Hindus which includes Buddhists, Jains and Sikhs [Section 2(b)] and it is not applicable on any other religion which is not Hindu like Muslim, Christians, Jews or Parsis [Section 2(c)]. The modern Hindu marriage prohibits the practice of polygamy [Section 5 (i)] which was very much in existence prior to the enactment of the Act. The most conditions to be fulfilled for a valid Hindu marriage includes a person should not marry any person where his or her spouse is living at the time of marriage (practice of monogamy), the parties to marriage must give their consent wilfully, also when a man is below 21 years and a woman is below 18 years marry each other, such a marriage is not considered a valid marriage, though it does not become void but remains voidable which can be repudiated when the parties attain the age of majority [Section 12(c)]. The parties to marriage should not fall under the category of prohibited relationship [Section 5(4)] unless any custom or usage allows such marriage. In Seema v. Ashwani Kumar & Others (2006 (2) SCC 578) The Supreme Court of India observed that 'marriages of all persons who are citizens of India belonging to various religions should be registered compulsorily in their respective States,

where the marriage is solemnised. Further, as and when the Central Government enacts a comprehensive Statute, the same shall be placed before the Court for scrutiny'. 230th Law commission report suggested that all marriages be registered (Law Commission, 2017).

In ancient India there were no concepts of Divorce as marriage was considered to be a divine bond and cannot be broken whereas in the modern Hindu law under the Act of 1955, parties to marriage have been provided with an option of Divorce (Section 13-15 of HMA). A person can obtain Divorce for the following reasons - i) in case of bigamy ii) where the petitioner has been treated with cruelty iii) when the petitioner has been deserted iv) when the one of the spouses has seized to be a Hindu v) where one of the spouses has been diagnosed with incurably unsoundness of mind or has been suffering from such a mental disorder to such an extent that the petitioner cannot be expected to live with the respondent vi) has been suffering from incurable and virulent form of leprosy vii) has been suffering from some communicable form of disease viii) has renounced the world ix) has not been heard of being alive for 7 years x) has resorted to adultery xi) has resorted to rape, sodomy and bestiality xii) when a judicial separation has been decreed xiii) when there has been a child marriage and the wife has repudiated the marriage.

Under section 24 and 25 of the Act, maintenance provisions have been provided to both parties in case one of the parties cannot maintain themselves. In the case of *State of Haryana v. Smt. Santra* (Panda, 2016, p.339) it was held that it is a liability created by Hindu Law and arises from the Jural relation of the parties.

CONCLUSION

Therefore, the Hindu Marriage system has gone through several changes since ancient times. From being a rigid law where even in cases of bad and troubled marriages, the law did not allow breaking free of the marital relationship, the modern marriage system allows one to get out of the troubled marital relationship through obtaining a decree of divorce. The Hindu personal law is a mixture of ancient and modern law and the HMA has inculcated many ancient practices with itself such as the Saptapadi system. The Hindu marriage system is an institution in itself and has also accommodated changes as per the needs of the society.

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