

The Concept of Marriage and Its Form: An Indian and Western Perspective



LAW

KEYWORDS :

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ABSTRACT

The concept of marriage and its form has radically changed and it has some time become a status of symbol in society. There are lot of wrong notions have come up like dowry and show of wealth and status in marriage ceremony.

On the other hand there are simpler form of marriage as prescriber under Special Marriage Act 1955, providing registration of marriage with no ceremony it also facilitates marriage between persons of different cast and religion.

The notion under Hindus that once marriage is perform second marriage is discouragement in case of death of husband. This concept has gradually changed now and widows can perform a remarriage basically for safety and security, while under the western culture male female stay together without marriage and even though there are marriages the result in break down and divorces in multiples.

So gradually human society is progressing and developing with the institution of marriage though it may not be as strong as it use to be with lot of alternatives and forms and the rate of dissolution of marriage has also gone up suggesting a new trend.

Introduction:

"Marriages are settled in Heaven but celebrated on earth, sacred unity of two unknown souls are written right from birth"¹

It is said that the marriages are settled in heaven but in practice marriages are solemnized on earth between man and women. Every individual has to play a number of roles in his or her life. Of the various roles one plays, two roles have a very great significance in life. One is the economic role and the other is the marital or family role. Human being is designed to live in a family. He always needs a person in his boat to share his love, grief, success, failure, sorrow etc. In Nutshell, he needs his sole-mate.

Marriage is taking the relationship with your sole-mate to a definite & socially acceptable conclusion. It creates a legal bond of relationship which binds the two parties for a life. Healthy and happy family is outcome of successful marriage.

Marriage is one of the universal social institutions. It is established by the human society to control and regulate the life of man. It is a corner stone of a society. It is in the family that children learn to become citizens; it is in the family that children learn about relationships; it is in the family that children learn about what is expected of them in society, how to act and how to be. Central to the nuclear family is the traditional idea of marriage, consisting of one man and one woman in a monogamous and permanent relationship. We need to promote and protect marriage to secure a healthier society. Marriage has legitimate recognition to get united. Society accepts union of two souls because primary object of marriage is to beget and bear offspring, and to them until they are able to take care of themselves.

Generally marriage is union between a man and a woman. Another concept of marriage is understood that it is a social acceptance of the union and it is carry out by the different rituals and ceremonies in the society.

Marriage is one of the deepest and most complex relationships. It is the corner stone of society. It involves social sanction, generally in the form of civil or religious ceremony, authorizing two persons of opposite sexes to engage in sexual union.²

Dr. Radhakrishnan³ observes,

"Marriages are not a mere convention, but an implicit condition of human society. It is institution devised for the expression and development of love. Its purpose is not only the generation and nurturing of children but also enrichment of the personality of the husband and wife through the fulfillment of

*their need for a permanent comradeship, in which each may supplement the life of the other and both may achieve completeness"*⁴

The purpose of marriage is to spiritually, emotionally and physically unite a man and a woman together, as husband and wife, in a covenantal relationship between themselves and their Creator. Spiritually in the sense to get spiritual benefit by performing religious duties.

Marriage is not just living together. It is co-existence. Which does not imply that neither of the party have independent existence from each other, but it implies that their togetherness itself becomes their reorganization. It is not mandatory of imposed relationship. It is not liability on either party. But it is a promise to be special for each other throughout the life. It is assurance to stand by each other in every aspect of life and to be with each other in their mistakes as well.

Definition of marriage:

The dictionary defines marriage as-

"Marriage means the legal union of a man and woman as husband and wife."

The definition of marriage can be looked at from a legal perspective. A legal dictionary defines marriage as-

"Marriage means the state of being united to a person of the opposite sex as husband or wife in a legal, consensual, and contractual relationship recognized and sanctioned by and dissolvable only by law."

The Diversity of Marriage:⁵

Marriage means many different things according to the time and place of the culture and people involved. What for some people are obvious assumptions are for others unthinkable. No-one is correct: there simply are different forms of marriage. It is the right of no culture to impose its own ideas of marriage on other cultures, and the right of no sub-culture or religion to control marriage taboos within their own culture.

Governments should allow their people access to all forms of marriage according to peoples' wishes but this is impossible. In order for legal contracts to have legal value, they must abide by certain known specifications. So in the West we have a particular type of marriage that is legal; other forms are illegal. What this does is alienate and standardize marriage, codifying traditions into unchanging legal codes and making them stagnant as society changes. In modern legalized culture, the illegalisa-

tion of forms of marriage not recognized by one set of institutionalized norms causes other unrecognized forms to become taboo, *wrong* and looked down upon.

“Pythagoreans taught that marriage is unfavorable to high intellectual development. On the other hand, the Pharisees taught that it is sinful for a man to live unmarried beyond his twentieth year.”

“The Woman’s Bible” Elizabeth Cady Stanton (1898)⁶

A problem of modern cultures therefore is that we become biased towards our own form of marriage and come to consider any other form “wrong”, “stupid”, “silly”, etc. So, those who practice arranged marriages consider those who marry freely and romantically to be silly, short-sighted pleasure seekers. This is not how romantic couples see themselves. They probably see arranged marriages as inhuman, inferior and oppressive. Both people lack understanding that other forms of marriage are *different* and *mean different things*. When one victim-of-culture argues that another victim-of-culture prescribes an immoral form of marriage, no agreement is possible because in arguing about “marriage” they are arguing about completely different things. In different cultures, marriage means different things.

And even within cultures, marriage means different things to different people. So apart from looking at a few forms of marriage outside of traditional Western ones, I also talk a bit about some internal differences in the West of how people think marriage should be.

Types of Marriages:⁷

Marriages are of different types across the world. Types of weddings are not to be confused with types of marriages, as weddings can be of different types as per the community even if the type of marriage is Monogamous. Forms of marriage are also culturally driven and different types of marriages in the world are prevalent among variant societies. The types of marriages in sociology are as listed and explained below.

Polygyny:

It is a form of marriage in which one man marries more than one woman at a given time. It is of two types –

Sororal polygyny-

It is a type of marriage in which the wives are invariably the sisters. It is often called sorority.

Non-sororal polygyny-

It is a type of marriage in which the wives are not related as sisters.

Polyandry:

It is the marriage of one woman with more than one man. It is less common than polygyny. It is of two types

Fraternal polyandry-

When several brothers share the same wife the practice can be called alephic or fraternal polyandry. This practice of being mate, actual or potential to one’s husband’s brothers is called levirate. It is prevalent among Today.

Non - fraternal polyandry-

In this type the husband need not have any close relationship prior to the marriage. The wife goes to spend some time with each husband. So long as a woman lives with one of her husband’s; the others have no claim over her.

Monogamy:

It is a form of marriage in which one man marries one woman. It is the most common and acceptable form of marriage.

Serial monogamy

In many societies individuals are permitted to marry again often on the death of the first spouse or after divorce but they cannot have more than one spouse at one and the same time.

Straight monogamy:

In this remarriage is not allowed.

Group Marriage:

It means the marriage of two or more women with two or more men. Here the husbands are common husbands and wives are common wives. Children are regarded as the children of the entire group as a whole.

Concept of marriage in Hindus –

In India Marriage is considered as **an important ritual**. It is believed that the marriage performed in the presence of God and Brahmin lasts forever and gives an important meaning to the life.

Marriage is considered as not only a life time relation of husband and wife but it abides both the spouses for seven births. There are certain rituals which form the very basis of Indian Marriage more specifically Hindu marriages.

Marriage is one of the **Samskaras** (sacraments) for every Hindu. Every Hindu man and woman must marry. “To be mother were women created and to be fathers men, the Veda ordains that Dharma must be practiced by man together with his wife.”⁸ “He only is a perfect man who consist of his wife, himself and his offspring’s” those who have wives, can fulfill their due obligations in this world; those who have wives, truly have a family life, those who have wives can be happy, those who have can lead a family life.⁹

The fundamental objective of the Hindu society is considered to be the fulfillment of the Samskaras. There are a number of Samskara that are to be performed during the course of human life, with the earliest being the Pumsavana and last being the Antyasamskara. According to manu, the Vivah Samskara is the most important one. Though we do come across several references to the word ‘marriage’ in the Dharmshastras but they remain silent’s to when it was conceptualized as an institution and the only source which actually speaks of when marriage might have been conceptualized in the Maharashtra.¹⁰

Thus, Hindu conceived of marriage as a sacramental union, as a holy union. This implies several things. First, the marriage between man and woman is of religious or holy character and not a contractual union. For a Hindu marriage is obligatory, for begetting son, for discharging his debt to his ancestors and for performing religious and spiritual duties. Wife is not merely a ‘*Grihasptni*’ but also ‘*Dharmpatni*’ and ‘*Sahadharmini*.’¹¹

A wife is considered as ‘Arhangini’ (better half) which means that, a man is incomplete without his wife. A Wife gives meaning to the life of man. It is concluded from the research that a contented and fulfilling married life makes the man more confident and successful. The man who gets respect, love and pleasure from his wife always found to be more successful.

Likewise the woman is also incomplete without man. Woman word itself is inclusive of word man. The modern woman has become assertive, financially independent and is capable of handling and heading her own family. However it does not mean that marriages have become dispensable.

The most beautiful word after independence is inter-dependence. Marriages expose the human being to the beauty of being inter-dependant. It helps to establish and strengthen bond

of relationship not only within spouses but also within family. However marriage implies that, that independent space should be used with responsibility and with utmost ethics of marital life.

Concept of marriage in Islam-

Marriage is said to be a civil contract signed by two parties, one for each side. The consideration of the contract is '*Mehr*';¹² gift to the bride, the amount of which, not being fixed by law varies from one *dinar* upwards.¹³

In later times in pre-Islamic Arabia the woman lost their original freedom to dismiss their husbands at their own pleasure, on the contrary talak became the sole privilege of the men, the old practice leaving its remnant in *muta* marriage, i.e. a consensual union between a man and a woman for a specified contractual period. Such a wife called *Sigha* unlike ordinary wife could have no legal claim to maintenance and inheritance. In later time in pre-Islamic Arabia the prevalent form of marriage reflected a complete domination of male over female. The females were treated as property of the males subject to buying and selling.

Woman, captives in warfare were either married or kept as concubines. It was customary amongst the pre-Islamic Arabs to lend one's wife to a guest to manifest hospitality, an Arab on journey handed over his wife to a friend during her absence without a qualm of conscience. The *Holly Quran* in a passage (iv 23) in putting an embargo upon a widow being inherited against her volition by the heirs of the deceased husband clearly manifests the practice in pre-Islamic Arabia of women being heritable like chattels.¹⁴

Marriages among Muslim is having universal and obligatory preposition. It is considered as civil contract as it is meant for procreation of children and to legalise sexual intercourse. Also it is considered as religious duty as '*Ibadat*'.

In Muslim Law, the marriage depends upon the free volition of the parties concerned, so does it dissolution through the wife's volition in this regard in subordinated to that of the husband, since the Muslim jurists subscribe to the notion that of the two partners, the husband, on account of his physical and intellectual superiority, has to play a dominant role, and the wife is therefore, subordinated to him, so much so that she practically enjoys no marital freedom. Some theorists treat the dower as consideration for the alienation of her marital freedom.¹⁵

It is also considered as a protection of Muslim woman against Talak, which were very frequent at the will of Muslim husbands.

Western Concept of Marriage-

Marriage according to Western traditions is considered as a contract, a spiritual association, a social estate and a natural institution. In spite of comprising the four perspective of voluntary formation, religious sanction, social legitimating and natural origin, marriage today is in trouble, which can be seen from the increasing number of broken marriages, abortion, single parents home etc. the protestants perceive marriage not as sacrament, but as a covenant where there is an association of different parties of community. With the passage of time, the Protestant models of marriage became accepted. The jurisdiction of marriage shifted from the church to the local state government. With the rejection of the sacramental nature of marriage, divorce became possible. In the eighteenth century, the contractarian model of marriage, which did not believe in marriage as a sacrament but looked at it as a bargain between the partners was introduced.¹⁶

Conclusion:

Although there is a freedom to marry with a person of once won choice a new trend has emerged popularly known as *Honour Killing*. If a person marry outside the community he is punished and killed such a barbaric and uncivilized act should be discourage altogether

Every human being was given right to marry even by UNO resolution and also it is recognized by all the legal systems. But the aspect of duty toward each other cannot be enforced by law but only with affection, togetherness and unity which can be found in once mind set only and that is a need of the hour.

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