

2023

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Recommended Citation

Dr. Hina Gupta, 'Ancient and Modern Forms of Hindu Marriage: An Analytical Study' (2023) 2 IJHRLR 113-124.

Available at www.humanrightlawreview.in/vol-2-issue-5/.

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ANCIENT AND MODERN FORMS OF HINDU MARRIAGE: AN ANALYTICAL STUDY

Dr. Hina Gupta¹

ABSTRACT

India has always been a country of traditions and cultures, especially when it is the matter of the institution of Hindu marriage. Hindu marriage has always been considered as a very pious institution. According to Hindu mythology, sometimes it is known as Grahasth-Ashrama and it is also called as a Sanskar among the sixteen Sanskars as discussed in Hindu Dharmashastras. In Ancient Hindu marriage system, the marriage was not only about the meeting of two individuals though it was the amalgamation of two families or two cultures. The Hindu marriage has also been categorized into eight different forms, as briefly discussed in the research paper, which were actually the result of human behavior. On the other hand, modern Hindu marriage system also has various forms of marriage, which are again the result of changing scenario and change in human lifestyle. In this research paper, the author is making an analytical approach towards different forms of Hindu marriage in Ancient and Modern times. The paper also focuses on the theories and different grounds for divorce in Ancient and Modern times. It also pours light on the reasons for such transformations in different forms of Hindu marriage in these times.

KEYWORDS

Ancient Hindu marriage, Modern forms of marriage, Hindu marriage, Transformation.

INTRODUCTION

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Hindu marriage is an institution of ceremonies and traditions, due to that it is also considered as the festival, a get-together or a sacrament too. In Hindu society, this institution was considered a very pious one since the ancient times. In the very beginning of human race, marriage did not have the limits or boundaries of an institution. During that period, it was not easy to live into the husband-and-wife bond. But when the concept of civilized society begun, that also changed many concepts in society, even to the form of marriage too. In the ancient Hindu marriage system, the Hindu personal law did not have any legal authority but only social and ethical obligations were there. Every society has good and bad approach of personalities, who develop the society accordingly. Consequently, we face decent and indecent activities, whether it is ancient or modern society. The difference is only regarding the terminology we are using in Ancient and Modern times. To which we call a Gandharvavivah in Ancient era, we are calling it Love-marriage in present scenario.

FORMS OF HINDU MARRIAGE IN ANCIENT TIMES

In ancient Hindu society the institution of marriage was bifurcated into two heads, such as:

- a) Approved
- b) Unapproved

The approved form of marriages have been further divided into four categories like- Brahmavivah, Daivavivah, Prajaptyavivah and Arshavivah

- 1. Brahmavivah:** In ancient Hindu marriage system, this form of Hindu marriage was considered as best form of marriage. In this, bride, who has a good character, good behavior and family status, was being invited by the bridegroom's family to get marry with him. Generally, the bride was send by her father with lots of goodies for

her marital life. Today's arranged marriage can be compared with this form. This is also fixed by the family member².

- 2. Daivavivah:** In this form of marriage, the father or any guardian of the girl's family visit to any Yagya and finds a suitable groom for their daughter and consequently give the girl as gift to them. In this form of marriage no specific ceremony is being executed but the girl becomes the wife of that chosen person as soon as her guardian gives her in gift.³
- 3. Prajaptyavivah:** This form of Hindu marriage is totally opposite to Brahmavivah. In this form of marriage, the father of the bride goes in the search of the suitable groom for his daughter. As soon as he finds the suitable match for his daughter, the daughter becomes the bride after the acceptance of her by the bridegroom. At the end, all the family members give blessings to the married couple.⁴
- 4. Arshavivah:** In arshavivah, the groom side pays the value of the bride to her guardian. This form of marriage was specially done with the daughter of the poor family. In this form of marriage, a pair of cow was being given to the bride's family by the groom side. As soon as this gift is executed, the arshavivah was considered to be executed.⁵

The Unapproved form of marriage have also been divided into four

² 'Shrimad Bhagwat Katha: Brahma Vivah is the best: Anil Shastri' (*Dainik Bhaskar*, 22 February 2023)

<<https://www.bhaskar.com/local/haryana/kurukshetra/news/brahma-marriage-is-best-anil-shastri-130955467.html>> accessed 13 September 2023.

³ Krishna, 'What is divine marriage? Know all the information about divine marriage' (*Dharm Yaatra*, 24 October 2020) <<https://dharmyaatra.in/dev-vivah-in-hindi/>> accessed 13 September 2023.

⁴ 'Prajapatya Marriage' (*GK Today*, 21 April 2023)

<<https://hindi.gktoday.in/%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%9C%E0%A4%BE%E0%A4%AA%E0%A4%A4%E0%A5%8D%E0%A4%AF-%E0%A4%B5%E0%A4%BF%E0%A4%B5%E0%A4%BE%E0%A4%B9/>> accessed 13 September 2023

⁵ Krishna, 'What is Arsh Marriage? Know all the information about Arsh Marriage' (*Dharm Yaatra*, 25 October 2020) <<https://dharmyaatra.in/aarsh-vivah-in-hindi/>> accessed 13 September 2023.

categories such as – Asurvivah, Paishach vivah, Rakshas vivah and Gandharva vivah

- 1. Asuravivah:** This form of marriage is the most criticized marriages in ancient Hindu marriage system. In this form of marriage, the groom provides all his property to the father of the bride or sometimes to the bride herself. According to Hindu mythology, the father of the bride should not accept even the smallest amount for his daughter as it is a sin.
- 2. Gandharvavivah:** this form of ancient Hindu marriage system is so much similar to the Love-marriage of current scenario. This is the marriage of a girl and a boy by mutual consent. In ancient India people do not consider this form of marriage according to a good form of Hindu marriage. This was not acceptable in the society because there were no rites or rituals for the establishment of the Hindu marriage. The marriage of Dushyant and Shakuntala is best example on this form of marriage⁶.
- 3. Rakshsavivah:** In this form of marriage, the groom had to win the war against the family members of the bride. After winning the war against them, the groom takes away the bride even without the permission of the father or other family members of the bride. But in this form of marriage, it is necessary to take the consent of the bride otherwise it will fall in the category of Paishachya Vivah⁷.
- 4. Paishachyavivah:** this form of Hindu marriage was considered as worst form of marriage. In this marriage, the groom intoxicates the girl either forcibly or by any misrepresentation and make sexual

⁶ 'Gandharva Marriage' (*IndiaNetzone*) <https://www.indianetzone.com/12/gandharva_marriage.htm> accessed 13 September 2023.

⁷ Krishna, 'What is monster marriage? Know all the information about monster marriage' (*Dharm Yaatra*), 26 October 2020) <<https://dharmyaatra.in/rakshas-vivah-in-hindi/>> accessed 13 September 2023.

relations with that girl. This form of marriage seems only the fulfillment of sexual satisfaction of the male.

FORMS OF HINDU MARRIAGE IN MODERN INDIA

In modern era, we are living in the time where things change in every second and so as the institution of the marriage. In modern scenario, we are under the boundaries of legislation. Thus, the institution of a Hindu marriage has also been codified and for this we follow- The Hindu Marriage Act, 1955. In this we find few conditions for a valid Hindu marriage⁸. Under these conditions a marriage is called “a valid Hindu marriage”. If any of the conditions have not been performed, such marriage may fall under the provisions of, either void or a voidable marriage. But in the present scenario, there are so many emerging forms of marriage. Such as:

a) Marriage in Hindu personal Law

After considering all the approved forms of Hindu marriage of the Ancient or Classic era and after analyzing different essentials of Hindu marriage, we got a codified Hindu personal law i.e. The Hindu Marriage Act, 1955. Section 5⁹ of the HMA, mentions the following conditions for a Hindu Marriage:

1. neither party has a spouse living at the time of the marriage;
2. at the time of the marriage, neither party[□]
 - i. is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - ii. though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

⁸ Hindu Marriage Act 1955, s. 5.

⁹ Hindu Marriage Act 1955, s. 5.

- iii. has been subject to recurrent attacks of insanity;
3. the bridegroom has completed the age of 21 years and the bride, the age of 18 years at the time of the marriage;
4. the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
5. the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.”¹⁰

b) Inter-caste Marriage

In this contemporary world, where we all are finding new things every second, the concept of Inter-caste marriage is finding its new dimensions. This form of marriage has its own challenges in a rigid society. In this form of marriage, two individuals, of different gender, decide to spend life as husband and wife after getting tied in the wedding knot. This form of marriage can also be considered as a little bit different from a general form of Hindu marriage. Inter-caste marriages face so much resistance in the society and family disapproval too, which causes emotional breakdown for the couple. Presently, the inter-caste marriages also discourage the practices of heavy dowry, exorbitant bride evaluation and extra-ordinary pomp and show in the weddings. Inter-caste marriages include two major persons having different castes only, otherwise it is on the equal footing to a general form of Hindu marriage.

c) Inter-Religion Marriage

Inter-religion marriages are different from a general form of Hindu

¹⁰ *Id.*

marriage. It involves two persons of different sex, who belong to two different religions. In recent times this form of marriage has changed the structure of the civilized society. It was a challenge for involved parties in this form of marriage to recognize their marital status in a society which is orthodox and rigid society for its religion. It also provoked towards honour killing, by those, who are so possessive for their religion, faith and social status. It also became the matter of status of 'Khap Panchayats', which was later on decided by the Hon'ble Supreme Court of India. The main features of Inter-religion marriage are - two adults, a male and a female; diverse religion; willingness to enter in the institution of marriage; marriage according to concerned rites and rituals and such rites and rituals must be in accordance with any party to the marriage.

d) Live-in-Relationship

Live-in relationship was not considered as a valid form of marriage in the beginning of the 21st century, but the Supreme Court of India considered it as a '*cultural exchange*'¹¹. In this form of relationship, the living persons get the status of husband and wife after particular years, if they are considered as husband and wife by the people of their surrounding. In the case of, **Khushboo vs. Kanniammal and Another**¹² it was mentioned that there is no offence if two adults want to live together and spend life like a husband and wife. In another case, **Revanasiddappa vs. Mallikarjun**¹³ the Hon'ble Supreme Court of India while deciding the legality of live-in-relations, it was said that

*"With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today."*¹⁴

e) Homosexual Relations

¹¹ S. Khushboo vs. Kanniammal and Another (2010) 5 SCC 600.

¹² (2010) 5 SCC 600.

¹³ (2011) 11 SCC 1.

¹⁴ *Id.*

Homosexual relation is so burning issue of 21st century. The legality of such relation gave birth to many other issues too, like protest, riots, suicides, murders and many arrests too. It has become a big threat for the well-established institution of Hindu marriage now. One of the objects of the marriage is to establish relations for the procreation of child. But this form of relation has change the priority of objectives of a marriage. This form is more focused on the fulfillment of sexual needs only. In case of **Navtej Singh Johar & Others Vs. Union Of India and Others**¹⁵, the Hon'ble Supreme Court of India mentioned explained the word 'Homosexual', such as-

*"People of either gender, who are attracted sexually, emotionally and in relationships, towards the person of the same sex."*¹⁶¹⁷

Supreme Court of India protected the rights of LGBT group.

f) Sologamy

Sologamy is a known as the marriage of one with oneself. Around the world so many incidences have been observed time to time. Recently, in 2022 few incidents have also been observed in India. This includes just a declaration by one for his self-marriage. But it is a big question that – Can it be considered as a marriage? Or does it really follow any of the essentials or objectives of a general form of marriage? Or it is only a misleading concept? Or it is related to mental sickness of that person? These all question are still unfolding in front of our modern society. This type of declaration is based of the extra-ordinary introvert nature of people. In this, the person executing, even does not follow any ceremony for marriage. This is not legally binding too.

¹⁵ (2018) 1 SCC 75.

¹⁶ By Michael Kirby.

¹⁷ CJI Dipak Mishra and Js. A.M. Khanwilkar.

REASON FOR SUCH TRANSFORMATION

In our everyday life we are busy to look after our children's activities. They feel themselves very liberal to do anything, whatever they want to do, either that is good or bad for them. Freedom, equality, liberty, justice, equity, welfare-state and fairness etc., these concepts are the root-cause for above mentioned transformed concepts of marriage. The persons indulged in this form of marriages take the advantage of the here mentioned principles of the civilized society. Adaptation of modernization, in our daily life, is also one of the causes. Exchange of culture, education system, technology and exchange of services are additional reasons for this transformation in Hindu marriage system. One more reason is, the concept of nuclear family. People are living alone for any reason, for earnings, for education or for services etc. People only want to have their companion and for that companionship they find someone, who can fill gap in their lives.

CONCEPT OF DIVORCE

Under the Ancient Hindu marriage system, the divorce was considered as a sin. Even in Manusmriti does not give permission for divorce. But under the Hindu Marriage Act, 1955, Section 13¹⁸ mentions different grounds and theories for divorce. This provision includes- the fault theory, frustration theory, mutual consent theory and irretrievable theory of divorce. Section 13¹⁹ includes few grounds for divorce like cruelty, adultery, desertion, conversion, insanity, leprosy, insanity, venereal disease, renunciation, presumption of death, rape, sodomy and repudiation of marriage etc. Any forms of Hindu marriage which do not fall under the HMA have provision under The Special Marriage Act, 1954. But few rising forms of relations or so marriage which do not have any legality or status in society, they do not have any provision in any legislation.

¹⁸ Hindu Marriage Act 1955, s. 13.

¹⁹ *Id.*

CONCLUSION

From ancient to modern time, we have not only developed in technology but also developed in economic, social and cultural dimensions. Our day-to-day life is also floating with this development. The institution of Hindu marriage have also transformed now. We have codified our personal laws like The Hindu Marriage Act, 1955, The Special Marriage Act, 1954 and The Hindu Adoption and Maintenance Act, 1956 etc. In ancient Hindu marriage system, the evil of civilized society were Paishachyavivah, Rakshsavivah, Gandharvavivah and Asuravivah, on the other side, the other four forms of Hindu marriage were legalized and considered as a good form of marriage in Hindu society. There were so many other sub-branches of these marriages too, such as Anulomvivah-Pratilomvivah and Aarohi-Avrohivivah. These forms of marriages can also be considered as the categories of today's Inter-Caste marriages.

In modern society, the form of marriage whichever is not for the development of civilized society or creating hindrance in the growth of civilized society is evil of the society. The Homosexual-relations and Sologamy do not fulfill the actual object of the marriage thus neither it falls under category of Hindu marriage nor beneficial for the civilized society. After the analysis of both the eras, Ancient and Modern forms of marriage, it can be concluded that the evils of the society cannot be scrapped ever. They will exist in the society till its existence. The need is only to approve or legalize only those forms of marriage which are helpful for the development of the civilized society.

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