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Forms of Marriage

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I. FORMS OF MARRIAGE UNDER RELIGION

Marriage is a social as well as legal sanction between a man and a woman according to Hindu law. It is regulated by laws, rules, customs and beliefs, which states the rights and duties of both the partners of marriage. The all-inclusiveness of marriage inside various social orders and societies is described to the numerous fundamental social and individual capacities for which it gives structure, for example, sexual delight and guideline, division of work between the genders, financial creation and utilization, and fulfilment of individual requirements for warmth, status, and friendship. Maybe its most grounded work concerns multiplication, the consideration of youngsters and their schooling and socialization, and guideline of lines of drop. Through the ages, relationships have taken an extraordinary number of structures.

Various forms of dharma texts of Hindu religion such as various smritis and Vedas. These marriages have been specified under Hindu marriage act, 1956. Marriage in Hindu religion is a hallowed (sacrosanct) and blessed association of 2 people. There are different functions, as indicated by various stations, that are fundamental for a union with become solemnized (official). A portion of these functions and conventions are currently arranged into the Indian overall set of laws as customs. Be that as it may, for a specific function, practice or a type of union with be a custom according to the law, it ought to have been consistently and persistently noticed for an exceptionally lengthy timespan and it ought not be preposterous or contradicted to public approach. As talking about forms of marriage, this paper will basically deal under the 8 forms of Hindu marriage where four forms are approved and other four not approved. Approved forms are Brahma, Davia, Arsha, Prajapta. The unapproved forms are Asura, Gandharva, Rakshasa, and paishacha.

After the forms of Hindu marriage, the term paper will also focus on classification of marriages under Muslim law. Marriages under Islam are a social contract. The bride and groom with their respective families enter into an agreement wherein the groom's family agrees to pay some amount of money to the bride and her family in respect to which she agrees to marry. The amount given my groom's family is called as Mehr. There are four classification- sahih nikah (valid), batil nikah (void), fasid nikah (irregular) and muta

marriage. Marriage under Islam is a wedding connection and an establishment which legitimizes the sexual exercises between a male and female for the object of multiplication of children, advancement of adoration, shared help and production of families which are viewed as a fundamental unit in a general public. Much the same as Hinduism, Islam is likewise a solid supporter of marriage. Notwithstanding, the Muslim origination of marriage varies from the Hindu origination as indicated by which marriage is anything but a simple common agreement yet a ceremony. Concurring numerous thinkers, marriage in Islam is a strict obligation. Everybody should wed to satisfy one's craving of reproduction of children legitimately.

(A) Hindu Religion

Hinduism is said to be the world's oldest religion with origins and traditions dating back more than 4,000 years, according to many scholars. Hinduism is the third-largest religion in the world, after Christianity and Islam, with nearly 900 million adherents. There are 8 forms of Hindu marriages, The Hindu Marriage Act of 1956, which regulates Hindu marriages, does not define the various types of Hindu marriages. These forms of marriages, however, are still present and specified in the law as 'customs' under Sec. 3(a)[2] of the Hindu Marriage Act, 1956, which has been granted legal status. There are 8 forms of marriage under Hindu religion in which they are divided into 2 categories, 4 are approved forms and other 4 are not approved.

Approved forms of Hindu marriage are-

- **Brahma**

'Brahma' is one of India's most practised forms of marriage and has the highest ranking among all eight forms of marriage. The Brahma marriage is described in dharma texts as the gift of a daughter to a man selected by the father himself and who is versed in Vedas after she has been adorned with ornaments and honoured with jewels. In Reema Aggarwal vs Anupam And Ors, 2004[3], the Supreme Court addressed the possibility of Brahma marriage being the root of the Indian dowry scheme, but did not come to a conclusion about it. "Brahma" marriages do not give rise to dowry cases, according to the researcher, since the father of the girl himself willingly gives gifts to the bridegroom.

- **Daiva**

Daiva-vivha is a Sanskrit term that means "marriage linked to the gods' rite." Unlike Brahma, in

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[2] https://indiankanoon.org/doc/166195/
[3] Appeal (crl.) 25 of 2004

this type of marriage, the father gives his daughter to a priest as a Dakshina (sacrificial fee) for officiating in the bride's father's sacrifice. In this type of marriage, the bride's parents go looking for her daughter's groom. Researcher doesn't think that this form of marriage should come under the approved ones because daughter is not a form of sacrifice to be made, also looking for groom is considered degrading for a woman.

- **Arsha**

Arsha Marriage, implies that Rishi or sages be married. This differs from Brahma and Daiva marriages in that the bride's father is not expected to give anything to the bridegroom in Arsha. The father of the bridegroom is the one who gives the father of the bride two cows or bulls in the Arsha. This form of marriage takes place when father of bride cannot afford her daughter's marriage. this type of marriage was not considered noble.

- **Prajapatya**

The form of marriage in Prajapatya is similar to the form of marriage in Brahma, except that in Prajapatya there is no trade or Kanyadan, and the father of the bride is searching for the groom. Prajapatya is, because of these differences, inferior to Brahma. In this type of marriage, the father approaches the couple with a condition that both the bride and the bridegroom should perform their dharma together while giving away her daughter.

Unapproved forms of Hindu marriage are-

- **Asura**

This is one of the most commonly condemned styles of marriage. In this type, the father gives her daughter away to the father of the bride and the bride herself after the bridegroom has given all the wealth he can. Basically, this is a business transaction where the bride is purchased. In the case of Kailasanatha Mudaliar v. Parasakthi Vadivanni, 1931[4], the test for deciding whether a marriage is "asura" or not was created. Asura marriage happens when the bridegroom gives money or something of value (such as wheat, cows, or other livestock) to the bride's father for his benefit or in return for him giving her daughter in marriage.

- **Gandharva**

This is a one-of-a-kind form of marriage that is distinct from others. A mutual arrangement to get married between the girl and the boy exists. This shared understanding is born of pure desire. Parents' approval does not play a part. In the old Hindu system, the idea of mutual consent for marriage was predominant, but the solemnization of marriage resulting from

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[4] 159 Ind Cas 845

mutual consent was very low. In the case of Bhaurao Shankar Lokhande & Anr vs State of Maharashtra & Anr[5], the Supreme Court addressed the requisite ceremonies for performing a Gandharva marriage. The ceremony was the father of bride should touch the forehead of bride and groom to each other.

- **Rakshasa**

By abducting the bride and violently murdering her family and friends, the Rakshasa form of marriage is carried out. Kshtraiyas, or military schools, practised this form of marriage. The marriage of "Rakshasa" resembles a victor's right over the person held prisoner in battle. This is a criminal act under section 366[6] of the Indian Penal Code in the modern period.

- **Paishacha**

This is the eighth and final form of marriage since it is the most heinous of the eight. A man seduces a woman and performs a sexual act on her while she is asleep, drunk, or mentally ill, usually at night. Out of shame of such an activity, the girl and her parents have to agree to marry the man. Paishacha means goblins that are made-up to act furtively at dark. It looks like an act of rape, which is the most abominable act one might ever perform in the modern world and is punishable by the IPC's section 376[7].

(B) Muslim Religion

Muslims are those who practise Islam. Muslims are monotheistic and worship one God of all wisdom, who is revered as Allah in Arabic. Islamists aspire to live a life in which they are absolutely obedient to Allah. There is no celibacy in Islam, according to the Prophet. Marriage is a social necessity because families are created through marriage, and families are the cornerstone of our society. Furthermore, marriage is the only legal or halal way for a man and woman to engage in sexual intimacy. Sunni Muslims and Shia Muslims are two groups of Muslims that are separated by their views and practises all over the world. Marriages in both religions are done in various ways, with different rituals and practises, resulting in a number of marriage styles in the Muslim religion. There are 4 classification of marriage under Muslim religion-

- **Muta Marriage**

Muta marriage is a short-term union. Only Shias accept Muta marriage. It is not recognised by Sunni law. (Baillie, 18). A Shia of the male sex may marry a woman who practises the

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[5] 1965 AIR 1564, 1965 SCR (2) 837
[6] https://indiankanoon.org/doc/796352t
[7] https://indiankanoon.org/doc/1279834/

Mahomedan, Christian, or Jewish religions, or even a woman who practises fire worship, but not with a woman who practises any other religion. A Shia woman, on the other hand, cannot contract this kind of marriage with a non-Muslim.

- **Sahih Marriage (Valid)**

A legitimate marriage, according to Muslim law, is one that has been established in accordance with the essential conditions. It bestows dower, upkeep, and residence upon the wife, as well as the duty to be faithful and obedient to her husband, admit sexual intercourse with him, and observe Iddat.

- **Fasid Marriage (Irregular)**

It was held in Ata Mohammed v. Saiqul Bibi[3] that when a marriage is temporarily prohibited but not generally restricted, it is only irregular or fasid and not void. There are many facets of an irregular marriage, as well as different points of view. Irregular marriages occur only among Sunni Muslims, while an irregular marriage is a void marriage under Shia law.

- **Batil Marriage (Void)**

A marriage that is illegal from the outset. It does not grant the parties any civil rights or responsibilities. A void marriage's children are illegitimate. They are the product of- (a) Marriage focused on coercion, (b) Husband's plurality, (c) Marriage is forbidden because of consanguinity, (d) Marriage is forbidden because of kinship, (e) Marriage is forbidden because of fosterage.

Marriage is a religious requirement for all Muslims, as well as a spiritual and social imperative. Marriage is my custom, according to the prophet, and everyone who refuses to engage in it is not from among me. Unlike in Hinduism, where marriage is treated as a sacrament, marriage in Islam is regarded as a civil contract. Marriage is expected for the legitimization of a child in both religions. When a marriage is conducted according to the rules, it confers different rights and responsibilities on both parties.

II. FORMS OF MARRIAGE IN MORDERN ERA

As time passed, society's thoughts changed. Changes in ideals, styles, and principles of marriage have arisen as a result of many factors such as urbanisation, industrialization, secularisation, modern education's effect on Western culture, and marriage legislation. There has been change in the aim of marriage, earlier we saw that the main aim of marriage was dharma and sexual intercourse was the least important but now it is reversed. Selection of

mate process got changed, earlier parents used to select the bride and the groom but because of the ideas of liberalism and industrialisation, things changed and now bride and groom also select their mates. In terms of endogamy and exogamy rules, there have been some noticeable changes. Legislation has made it illegal to practise Varna, caste and sub-caste endogamy, as well as Gotra and Pravara exogamy. On the one hand, we find that the rites and rituals associated with Hindu marriage have been reduced due to a lack of time. In general, people have been known to request that the priest hasten the marriage ceremonies. Some marriages, on the other hand, are performed in civil courts. As a result, the sacredness of rites and rituals has been greatly diminished, also now a days there has been a change in the stability of marriages as divorce was not a practice in the earlier days but as society evolved and people started to become more independent the trend of divorce grew. In past times society was against person selecting their own partners, whom they love (love marriage) or person marrying in another caste (inter-caste marriage) or even 2 persons of same gender getting married to each other (same sex marriage). These types of marriage are not wholly acceptable in society but are still making their place in it.

Inter-Caste Marriages

India is a nation with many different cultures. Also, with so many people from various backgrounds living together, it has its own set of restrictions. Inter-caste marriages are still one of India's most significant issues. Caste is an integral component of Indian society. From the beginning of Indian society there has been caste component through which people have been divided and were not allowed to do the work of other caste. This caste system was divided into 2 upper and lower caste. This created hatred and tension among the various groups of the society. Marriages between members of the same caste and religion are the norm in Indian society. Marriages between people of various castes and sects are difficult to imagine and socially unacceptable in this society. Inter-caste marriages are still popular in Indian society today, but they are mainly associated with urban culture. Urbanization, schooling, jobs in a modern profession, and a middle-class economic context have appeared to be a collection of characteristics necessary for inter-caste marriages to occur. marriages in rural area are still dominated by same sex marriages as we have seen many incidences where couple is being killed just because they performed inter-caste marriage. According to a survey conducted in rural Andhra Pradesh, 936 people preferred that their sons and daughters marry only within their caste, whereas only 29 people were unconcerned about caste marriage. The problem of caste system is so deep rooted in the Indian society that it will not vanish just so easily. Education is the key through which we can make people aware of the

problems and solutions of this and this is the only reason why in urban areas there are people who accept these kinds of marriages. Talking about inter-caste and inter- religious marriages which seems like a taboo to most of the people, but to remove the inequality, race and caste system inter-caste marriages should happen. Some of the important factors affecting inter-caste marriages are the women's age at the time of marriage, the freedom granted to her to choose her husband, and the range of female education. With people, legal field is also developing in 2019 madras high court said that inter-caste marriage should be encouraged to vanish the caste system from the society. As a nation, India demands that our future generations be safe, educated, and prosperous. However, we must offer knowledge and independence to our current generations so that they can make educated decisions about their spouses. In one way or another, promoting inter-caste marriage would brighten India's future.

Same-Sex Marriage

Marriage between two men or two women is referred to as same-sex marriage. While most countries have laws, religions, and customs prohibiting same-sex marriage, legal and social reactions have ranged from celebration to criminalization. Countries like Denmark allows same-sex marriages were talking about India, same-sex marriage is still not legalised here. The right to marriage is not explicitly recognised as a fundamental or legislative right in the Indian Constitution, unlike Article 16 of the Universal Declaration of Human Rights. In 2019 government of India abolished section 377 of IPC, which made sexual activities among same gender an offence. Though this section has been repealed but India's society will take a long time to accept these kind of marriages as they are having hard time in even accepting this fact that section 377 has been abolished. Despite statutory recognition of the relationship of marriage between a biological man and a biological woman in our country, marriage is inextricably linked to age-old customs, rituals, practises, cultural ethos, and societal values," the centre told the Delhi High Court in response to three petitions seeking recognition and registration of same-sex marriages under the Hindu Marriage Act, the Specular Marriage Act, and the Specular Marriage Act. Such slavish devotion to archaic ideals and standards, which refuses the sacred right to marry the spouse of one's choosing, runs counter to the spirit of Article 21 of the Constitution, which guarantees the right to life and personal liberty. India is a developing nation which needs to end these orthodox societal thoughts as to develop a nation first it's people should be developed. Because of these thoughts and old views country cannot move forward. Why can't the country's law accept their union if it can recognise "love of two souls irrespective of gender"? Love is what gives life meaning. The right to love is the right that distinguishes us as human beings. If this love is not permitted to be bound together

in the knot of marriage, it will always be incomplete, and society will never embrace it. While India's Constitution allows for same-sex marriages, there is a clear need for citizens and society to let go of the rudimentary shackles of so-called "values and culture" and adapt to the natural changes.

III. CONCLUSION

Based on cultural, social, and personal factors, marriage is described differently and by different individuals. Marriage is defined as "a formal union and social and legal contract between two persons that unites their lives legally, economically, and emotionally," according to a widely accepted and comprehensive definition. In most cases, a contractual marriage arrangement means that the couple has legal commitments to each other for the remainder of their lives or until they divorce. Being married also gives sexual relations within the marriage legitimacy. Marriage has long been thought to play an important role in the protection of morality and civilization. Different religions have different laws which are applied to its followers, these laws have marriage laws too. Hindu marriage has 8 forms in which 4 are unapproved, Muslim marriages have 4 forms. After time passed people's mindset changed and there came few different forms of marriage too. Inter-caste marriage which used to be looked as a crime is being somewhere accepted in the society now-a-days also the same sex marriage has also been legalised in some nations where india is not a part of but it is on the path of being the one. From these kinds of marriages, we can see that how society is developing and moving towards the overall growth of mankind. Researcher through this paper has highlighted various kinds of marriages in both religious and modern time. By reading the paper a person can get a gist of what marriage is and how it has been developed from the ancient time to the modern era where people are independent and make their decision on their own.

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