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Dharmasūtras and Modern Hindu marriage (Vivāha)

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Abstract

The Saṃskāras are necessary for the purification of both the body and mind. Vivāha Saṃskāra is an important Saṃskāra in our life. Vivāha or Marriage is accepted as a religious obligation by the ancient compilers of Hindu Law. In the period of the Dharmasūtras, It makes a man eligible to become a worthy member of the society in the householder's status of life, it helps him in the performance of those religious rites which are only to be discharged by a man with his wife. The Hindu marriage has undergone change from earlier period to present day legislation. The Hindu marriage Act, 1955 received the assent of the president on the 18th May, 1955 and from that date it became a law. When this act has brought the ground of divorce, the sacramental nature of Hindu marriage has gone as it one of the characteristics of the Hindu marriage that it is a permanent and indivisible union. Thus the Hindu marriage in the present scenario cannot be said a sacramental marriage, but also a contractual one.

Keywords: Vivāha, Dharmasūtras, Hindu marriage Act. 1955, Hindu Law

Introduction

This paper deals with how the concept of Hindu marriage and how it has undergone change from earlier period to present day legislation. Thus the study covers the various forms of marriage, conditions of marriage, prohibition of marriage as codified in the ancient Hindu Law books specially in the Dharmasūtras and under the Hindu marriage Act, 1955. The word Vivāha, is derived from the root 'vah' (to carry) preceded by the prefix 'vi' and followed by the suffix 'ghan'. So, it may mean the act of carrying the maiden for the purpose of marriage. The term Udvāha is similarly derived from the root 'vah' preceded by the prefix 'ut' and followed by the suffix 'ghan'. So, it may mean to carry from father's house. The word Pariṇaya is derived from the root 'ni' (to lead) preceded by the prefix 'pari' followed by the suffix 'ac'. The word may refer to the ritual of going round the fire by the bride and the bridegroom¹. Besides, these the words 'parigraha' and 'pānigrahaṇa' were used in course of time to indicate marriage in general. It is very difficult to precisely determine the date when the institution of marriage came into presence amongst the Hindus. The R̥gveda is the oldest literary record of the Hindus. In the last Mandala of the R̥gveda we come across the famous marriage hymn² depicting the marriage of Śūrya with Soma.

In the period of the Dharmasūtras, marriage was looked upon as a religious and a compulsory sacrament for both man and women. According to the Āpastamba Dharmasūtra, it is said that so long as one's wife participates in religious rites and bears children, a man may not take another wife³. This shows that the importance of marriage lies in two reasons – (a) through this sacrament a wife becomes eligible to assist her husband in performing religious rites. (b) To continue family.

Marriage under the Hindu Marriage Act, 1955

The Hindu marriage Act, 1955 received the assent of the president on the 18th May, 1955 and from that date it became a law. Though the Hindu marriage has been considered to be a

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¹ Chanchal Kumar Chatterjee, The rites and rituals of Hindu marriage in ancient India, 1st ed. p-23, Sanskrit Pustak

Bhandar, Calcutta.

² R̥gveda. X.85

³ ĀD. 2.5.11-12

sacrament, but the sacrament character of Hindu marriage has undergone a change with the passing of the Hindu Marriage Act, 1955. When this act has brought the ground of divorce, the sacramental nature of Hindu marriage has gone as it one of the characteristics of the Hindu marriage that it is a permanent and indivisible union. Thus the Hindu marriage in the present scenario cannot be said a sacramental marriage, but also a contractual one. It is both sacramental as well as contractual in nature.⁴

Types of Marriage

The Dharmasūtras are mentioned eight types of marriage. These are – i) Brāhma, ii) Prajāpatya, iii) Ārsha, iv) Daiva, v) Gāndharva, vi) Āsura vii) Rāksasa and viii) Paisāca.

But in the Āpastamba Dharmasūtra, only six types of marriage are mentioned excluding Prajāpatya and Paisāca types of marriage. Boudhāyana and Goutama both are mentioned all these types of marriage. Again in the Vasiṣṭha mentioned about six types of marriage – i) Brahma, ii) Arsha, iii) Daiva, iv) Gandharva, v) Ksatriya and vi) Human.⁵ Here we get two more types marriage, but Ksatriya from of marriage can be categorized under the Rāksasa of marriage. Again Human marriage also can be categorized under the Āsura form of marriage since both of these convey the same features. Thus, there are altogether eight types of marriage as codified in the different Dharmasūtras. These types of marriage were formed on the basis of the extinction of the dominion of the father over his daughter.

It therefore appears appropriate to accept the eight types of marriage. The other two forms Ksatriya and Human types of marriage mentioned by Vasiṣṭha get assimilated in these eight types.

1. **Brahma Vivāha:** according to Āpastamba Dharmasūtra, in this type of vivāha, the gift of daughter by her father takes place after having enquired regarding (the bridegroom's) family, character, learning and health and after having given (to the bride) ornaments according to his power.⁶ Again according to Boudhāyana, when a girl is given to a Vedic student who requests her, after inquiring into his learning and character, it is a Brahma Vivāha.⁷
2. **Ārsha Vivāha:** when the father gives away his daughter according to the rule, after receiving from the bridegroom, a cow and a bull, for the fulfilment of the sacred law that is named as the Ārsha Vivāha.⁸
3. **Daiva Vivāha:** The gift of daughter to the officiating priest during the course of a sacrifice, they call it Daiva Vivāha.⁹ According to Govindaswami, the commentator of the Boudhāyana Dharmasūtra, the damsel is given as a part of the sacrificial fee to the priest. Govinda adds that

the recipient has to accept the gift with the six mantras 'प्रजापतिस्तियां यज्ञः'¹⁰

4. **Prajāpatya Vivāha:** The gift of daughter by her father after he has addressed the couple with the text "May both of you perform together your duties" and has shown honour to the bridegroom is called the Prajāpatya Vivāha.¹¹
5. **Āsura Vivāha:** when the groom gives a bride-price to the best of his ability and then marries the girl, it is Āsura Vivāha.¹² The acceptance of some consideration by the father for giving the girl in marriage has made this form as an unapproved one.
6. **Gandharva Vivāha:** when a couple in love engages in sexual intercourse, it is Gandharva Vivāha. In this type of Vivāha, union of the lover and beloved is made by mutual consent, without informing the guardians.¹³
7. **Rāksasa Vivāha:** when a group of men violently overcomes the girl's guardians and carries her away, it is Rāksasa Vivāha.¹⁴
8. **Paisāca Vivāha:** when a man has intercourse with a girl who is asleep, intoxicated or insane, it is a Paisāca Vivāha.¹⁵ This type of marriage was the most reprehensible one because of its cruel nature.

Type of Marriage in Modern Hindu Law

The Hindu marriage Act, 1955, does not prescribe any type of marriage. Any form of marriage that is performed in accordance with *Shāstric* rites and ceremonies or in customary ceremonies prevalent in the community to which the bride or the bridegroom belongs is termed as a Hindu Marriage.¹⁶ But this does not mean that the marriage cannot now take place in any one of the aforesaid types of marriage. In Hindu society, there are mainly two types of marriage – arranged marriage and love marriage. An arranged marriage may be either in the Brahma type or Ārsha Vivāha. While on the other hand, love marriage i.e., Gandharva type of Vivāha is becoming more popular among the present generation.

Condition of a Hindu Marriage

Under old Hindu Law, the following conditions were required for a valid marriage, these are –

1. Parties are not within the prohibited relationship i.e., not of the same *gotra* or *pravara*.¹⁷ Gautama also in his Dharmasūtra prohibited the marriage between the persons of the same *pravara*.¹⁸ The Boudhāyana Dharmasūtra sasy – if a person unintentionally marriage a female who belongs to his own family (*gotra*), he shall support her, treating her like his mother. And if such a woman has

⁴ Sukhdev Singh- Hindu Law of Marriage and Divorce, p-6, University Law Publishing Co. Pvt. Ltd., New Delhi.

⁵ BD.1.29, 'ब्राह्मो देव आर्षो गान्धर्व क्षात्रो मानुषश्चेति..'

⁶ ĀD.2.5.11.17, -ब्राह्मे विवाहे बन्धुशीललक्षणसंपन्नश्रुतारोग्याणि बुध्वा प्रजां सहत्वकर्मभ्यः प्रतिपादयेच्छक्तिविषयेणा....

⁷ BD.1.11.20.2 and GD.1.4.4, -श्रुतिशैले विज्ञाय ब्रह्मचारिणैर्धिने कन्या दीयते स ब्राह्मः

⁸ आर्षे दुहितृमते मिथुनौ गावो देयो- ĀD.2.5.11.18, BD.1.12.20.4, GD.1.4.6 and Manu.III.29

⁹ ĀD.2.5.11.19, -दैवे यज्ञतन्त्र ऋत्विजे प्रतिपादयेत्

¹⁰ BD.1.11.20.5 commentary of Govindaswami.

¹¹ आच्छाद्यालङ्कृत्यै षा सहधर्मं चर्यता मिति प्राजापत्य-BD.1.11.20.3, GD.1.4.7, Manu.III.30

¹² शक्तिविषयेण द्रव्याणि दत्वावहेरन स आसुरः,-ĀD.2.5.12.1, BD.1.11.20.7, GD.1.4.9 and Manu.III.31

¹³ मिथः कामत्सावर्तते स गान्धर्वः,- ĀD.2.5.11.20, BD.1.11.20.6, GD.1.4.8 and Manu.III.32

¹⁴ दुहितृमतः प्रोथयित्वावहेरन् स राक्षसः,- ĀD.2.5.12, BD.1.11.20.8, GD.1.4.10

¹⁵ सुप्तां मत्तां प्रमत्ता वोपयच्छेदिति पैशाचः-BD.1.11.20.9

¹⁶ Paras Diwan, Modern Hindu Laws, p-86, Allahabad Law Agency, Faridabad

¹⁷ सगोत्राय दुहितरं न प्रयच्छेत्- ĀD.2.11.15

¹⁸ असमानप्रवरेविवाहः- GD.1.4.2

borne a child, he shall perform the arduous penance.¹⁹ Generally the people related to each other within the seven degree on the father's side and within five degrees on the mother's side are called 'Sapindas'. According to Āpastamba Dharmasūtra, one should not give his daughter to a man who is related on the mother's or the father's side.²⁰ Gautama is also against the marriage of the same *pravara*. According to him, the girl should be given to a person who is not related within six degrees on the father's side nor within four degrees on the mother's side.²¹

2. Proper performance of ceremonies of marriage.
3. The parties should belong to the same caste.²²

Under section 5 of the Hindu Marriage Act 1955, as well as the Dharmasūtras prohibit the marriage between the parties of *Sapindas*. But according to the Dharmasūtras, *Sapinda* relationship extends up to seven degrees on the father's side and five degrees on the mother's side. According to section 3 (f) of the Hindu Marriage Act 1955, the extension of the *Sapinda* relationship lowered down to limits to five degrees on the father's side and three degree on the mother's side unless the custom or usage governing each of them permits of a marriage between the two.²³

Age of Marriage under Hindu Law

The seers of Dharmasūtras did not prescribe any specific age for marriage. There was no specific age of marriage for male. Generally they entered into married life after the Brahmacharya period. Originally, this is at the completion of 25 years. This naturally meant that the bridegroom should be a major. Regarding the age of marriage for girls different opinions were prescribed. According to Gautama, a girl should be given in marriage before she attains the age of puberty.²⁴ Vasiṣṭha prescribed that a father should give his daughter in marriage while she still runs about naked, for if she stays in the home after the age of puberty, sin falls of the father. From this view of Vasiṣṭha²⁵, it is clear that he is also a supporter of the marriage of girl should be performed before puberty. The Boudhāyana Dharmasūtra²⁶ also supported the view that the girls should be given in marriage before puberty. According to educational psychology, adolescence is most critical period of individual development which begins from 12-13 years and ends at 18-19 yrs. It is characterized by the 'change' in psychological, sociological and physiological aspects of individuals.²⁷ So, the Dharmasūtrakāras are supporter of the marriage of girls before puberty means before the age of 12 or 13. Though, it may be noted that the start of adolescence may differ in various climates. Generally, the mentioned period is the most accepted period of adolescence.

¹⁹ बिभृयात्सगोत्रं चेदमर्त्यापयच्छेन्मातृवेदनां । प्रजाता चेतृच्छ.....BD.2.1.1.38

²⁰ मातुश्च योनिसंबन्धेभ्यः -ĀD.2.11.16

²¹ ऊर्ध्वं सप्तमात्पितृबन्धुभ्यो बीजिनश्च मातृबन्धुभ्यः पञ्चमात्, -GD.1.4.3

²² सवर्णापूर्वशास्त्रविहितायां.....ĀD.2.6.1, गृहस्थ सहर्षी भार्या विन्दे.....GD.1.4.1

²³ Sukhdev Singh- Hindu Law of Marriage and Divorce, p-38, University Law Publishing Co. Pvt. Ltd., New Delhi.

²⁴ प्रदानो प्राग्नितो, -GD.2.9.21

²⁵ VD.17.70

²⁶ BD.4.1.11

²⁷ S.P.Kulashresth,- Educational Psychology, p-67, R. Lall Book Depot. Meerat, 2004

While, in section 5(iii) of the Hindu Marriage Act, 1955, the minimum age at the time of marriage for girl is 18 and 21 for a boy.

Dharmasūtras and Modern Hindu Marriage

Some influences of the Dharmasūtras on marriage got reflected in the Modern Hindu Marriage system under legislative enactments in the modified form. For the establishment of this view, some of the points are elaborated below –

1. The Dharmasūtras prohibited the 'sapinda relationship' which extends up-to seven degrees on the mother's side. On the other hand, the Hindu marriage Act, 1955 is also against the marriages between parties of 'sapinda'. But according to section 3(f) of the Hindu marriage Act, 1955 the extension of the 'sapinda relationship' lowered down to the limits to five degrees on the father's side and three degrees on the mother's side.
2. According to the Dharmasūtras, proper performance of ceremonies of marriage is a condition for a valid marriage. Section 7 of the Hindu marriage Act, 1955 describes the ceremonies of marriage. The performance of rites and ceremonies according to religious belief (e.g. saptapadi) or according to custom or usage has been preserved by the Hindu marriage Act, 1955.
3. Āpastamba said – if one's wife is not able to bear a child, on that ground he is allowed to remarry. Similarly we see under sub-clause (b) of the Hindu Marriage Amendment Act, 1977, which is the reframed form of the earlier, section 5 (ii) of the Hindu Marriage Act, 1955.²⁸
4. Ancient Indian law codes have strongly opposed the extra-marital relationship. Different types of penalties of were prescribed by the ancient law compilers for the offence of adultery. The Hindu marriage Act, 1955, is also against the offence of adultery. Under section 13 (1) (i) of the Hindu marriage Act, 1955, a woman can file a petition for divorce on the ground of adultery.
5. Though the *Sutric* law does not provide any specify age for marriage. There is an injunction for men that they should marry on the completion of *Brahmacharya*. Originally, this is the completion of 25 years. This naturally meant that the bridegroom should be a major. Under the section 5(iii) of the Hindu marriage Act, 1955 the minimum age at the time of marriage for girl is 18 and 21 for a boy. Here the matured age of the bridegroom seems to be suggested from the ancient law codes.

Conclusions

Under old Hindu Law Codes, the conditions required for a valid marriage were strict and elaborate. With the advent of the British rule, the ancient sources of Hindu Law began to be modified by judicial decisions and legislative enactments. To some extents, these are the modified forms of the ancient principles or codes those were prescribed in the ancient Hindu law books by the ancient Hindu law compilers. These law codes are the précised, modified and expanded forms of the ancient seers. Though of course, later additions were also made. Lastly we may conclude that the some ideas of the

²⁸ Under sub-clause (b) – Though capable of giving a valid consent, has been suffering from mental disordered of such a kind (or) to such an extent as to be unfit for marriage and the procreation of children. Then it would be a voidable marriage.

ancient principles or law codes as given by the ancient law compilers got reflected in the Hindu Marriage Act, 1955.

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