

## Ceremony and Valid Marriage among the Hindus-A Dichotomy

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### Abstract

Marriage among the Hindus is a sacramental relation. From the time of Vedas marriages have been performed according to tradition and culture. There is no uniform system followed or say uniform ceremony to conclude that the marriage has been performed. Recently, when matters reached the courts, the courts had to decide two basic questions before proceeding further, whether the parties were married and if married, whether the marriage is valid according to the law. To answer these queries they had to look into the codified law and the customs. Ceremonies, today have become innovative, may be due to mounting expenditure or due to communication and technology or due to lack of time. The repercussion is that bigamous marriages are mounting, custody of children and divorce has raised the eye-brow for if the court decides the requisite ceremony has not been performed the marriage is void, and ultimately creating chaos in the society. The author here is trying to address the issue and bring out some suggestions which if implemented would drive away the difficulties in deciding the issues.

### I Introduction

In Hinduism, the institution of marriage is not peculiar to humans only. Even gods do marry and lead married lives just as humans. Marriage and sonship constitute some of the unique chapters in the *literal legis*<sup>1</sup> of ancient Hindu law. Marriage is necessarily the basis of social organization and the foundation of important legal rights and the obligations. Marriage has assumed significance from the time of Rig Veda.<sup>2</sup> The *smritis* deal with the subject of marriage with meticulous care. Marriage is treated as sacramental relation among the Hindus and it is propounded that marriages are made in heaven. The Indian life has presented almost every possible form of conjugal rights, from the grossest polyandry to the purest and the most rational

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<sup>1</sup> Literal rule.

<sup>2</sup> The *Rig Veda* pronounces some impressive texts: After completing the seventh step (*saptapadi*) the bridegroom said: 'With the seven steps we have become friends (sakha). May I attain to friendship with thee; may I not be separated from thy friendship'. *Shatapatha Brahmana* speaks of the wife as the half of one's self.

form of monogamy.<sup>3</sup> It is a symbol of status to men and women among the Hindus to be married. If a couple is married they automatically have certain rights and duties.

According to general definition, Marriage is a state of being united to a person of the opposite sex as husband or a wife in a consensual and contractual relationship recognized by law. Hindu Marriage joins two individuals for life, so that they can pursue *dharma* (duty), *artha* (possessions), *kama* (physical desires), and *moksa* (ultimate spiritual release) together. In Hinduism, marriage is followed by traditional rituals for consummation. In fact, marriage is not considered complete or valid until consummation. It also joins two families together. Hence, the elders in the house or the community arrange these marriages.

There are numerous considerations that are attached for consummation of marriage.<sup>4</sup> Recently, the young generation has overcome all these obstacles and is on looking at their life partners beyond the castes and cadres. Yet, if both the parties are Hindus then a particular system, either followed by the bride's family or the groom family will be adopted

According to Hinduism there are eight types of marriages though all do not have religious sanction. They are *Brahma*,<sup>5</sup> *Daiva*,<sup>6</sup> *Arsha*,<sup>7</sup> *Prajapatya*,<sup>8</sup> *Gandharva*,<sup>9</sup> *Asura*,<sup>10</sup> *Rakshasa*<sup>11</sup> and *Paishacha*<sup>12</sup> marriage. Depending upon the customs and tradition women have symbolic way of showing that they are married. For ex. wearing *magalsutra*, *sindoor*, glass bangles, etc are the symbolic way. Divorce was not recognized among Hindus.

## II Concept of Hindu and Hinduism

Hindu as is propounded is not a religion like Christianity and Islam. Anyone born in India is automatically is a Hindu (the ethnicity fallacy). Neither the Vedas nor the epics such as Mahabharata and Ramayana mention any religion as Hinduism. People who lived on the other

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<sup>3</sup> Banerjee, 'Law of Marriage and Stridhan', 5<sup>th</sup> ed., Thacker Spink and Co., Calcutta, 1923, p. 32.

<sup>4</sup> For ex. Matching of *kundali*, caste, sub-caste, *gotra*, etc.

<sup>5</sup> In this, the father gives his daughter in marriage to a man of good conduct learned in Vedas.

<sup>6</sup> Here the father of the bride gives her in marriage to a person who is priest and who performs religious ceremonies.

<sup>7</sup> The father of the bride gives to a person who will in turn gives to the father a cow and a pair of bulls as a brides price.

<sup>8</sup> It is marriage with blessings from the father of the bride.

<sup>9</sup> Here the bride and the groom who are in love perform their marriage by exchange of garlands. This marriage was not much recognized in past and now this is not regarded as marriage at all.

<sup>10</sup> The bridegroom pays heavy price for marrying the bride. The payment is so heavy that the calculation rest whether the amount is sufficient to meet the expenses of the bride as well as her kinsmen.

<sup>11</sup> The marriage takes place against the will of the maiden, after abducting her and wounding and killing her kinsmen.

<sup>12</sup> When a man by fraud seduces a girl to when she is sleeping or intoxicated or when she is mentally challenged is called *Paishacha* marriage.

side of Sindhu River were called as Hindus. The actual term Hindu first occurs as a Persian geographical term for the people who lived beyond the river Indus (Sanskrit: Sindhu).<sup>13</sup> The term Hindu then was a geographical term and did not refer to a religion.<sup>14</sup>

Unlike the Christians and Muslims,<sup>15</sup> Hindus have numerous holy books<sup>16</sup> and number of Gods. Some writers are of the view that a Hindu is a person if his parents are Hindus or if the person believes in reincarnation or practices a religion which has originated in India or if the person belongs to a caste then he is a Hindu. It is also true to say that a person is said to be Hindu if he believes in Vedas and Dharma.<sup>17</sup> The concept still is not clear as it is not a religion but way of life. It is not a mere laconism to observe that it is easier to say who are not Hindus or that the practical separation of Hindus from non-Hindus is a not a matter of much difficulty.<sup>18</sup> Hence section 2 sub-clause (1) of *Hindu Marriage Act, 1955*<sup>19</sup> adopts the negative form and in effect, lays down that it is to be presumed, until the contrary is proved, that any person who is not a Muslim, Christian, Parsi or Jew by religion is governed by the Act.

Towards the end of the 18th century, the European merchants and colonists began to refer to the followers of Indian religions collectively as *Hindus*. The term *Hinduism* was introduced into the English language in the 19th century to denote the religious, philosophical, and cultural traditions native to India.

Our Apex Court in *Bramchari Sidheswar Bhai v. State of West Bengal*,<sup>20</sup> stating who is a Hindu gave following formulae for who is a Hindu,

1. Acceptance of the Vedas with reverence as the highest authority in religious and philosophic matter and acceptance with reverence of Vedas by Hindu thinkers and philosophers as the sole foundation of Hindu philosophy.
2. Spirit of tolerance and willingness to understand and appreciate the opponent's point of view based on the realisation that truth was many-sided.
3. Acceptance of great world rhythm, vast period of creation, maintenance and dissolution follow each other in endless succession, by all six systems of Hindu philosophy.
4. Acceptance by all systems of Hindu philosophy the belief in rebirth and pre-existence.
5. Recognition of the fact that the means or ways to salvation are many.

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<sup>13</sup> Gavin D. Flood, 'An Introduction to Hinduism', Cambridge University Press, New York, 1996, pp. 6-9.

<sup>14</sup> *Ibid.*

<sup>15</sup> Among the Christians Jesus is only the God and Bible is their holy book and among the Muslims Allah is the only God and Quran is their holy book.

<sup>16</sup> Vedas, Puranas, Upanishads, Ramayana, Mahabharath, etc.

<sup>17</sup> But what is dharma is still not clearly defined. Some say it is justice and others morality.

<sup>18</sup> Sir Dinshah Fardunji Mulla, '*Principles of Hindu Law*', edn. by Satyajeet Desai, 21<sup>st</sup> Edition, LexisNexis Butterworths Wadwa Nagpur Publication, New Delhi, 2010, p. 820.

<sup>19</sup> Act No. 25 of 1955.

<sup>20</sup> 1995 SCC (4) 646.

6. Realisation of the truth that Gods to be worshipped may be large, yet there being Hindus who do not believe in the worshipping of idols.
7. Unlike other religions or religious creeds Hindu religion not being tied-down to any definite set of philosophic concepts, as such.

### III Hindu Valid Marriage

In a Marriage among the Hindus, a man and a woman are believed to come together as a husband and wife primarily for spiritual reasons rather than sexual or material, although they may not be mentally aware of the fact. Once married, the couples are expected to carry out their respective traditional duties as householders and upholders of family traditions and work for the material and spiritual welfare of each other, the members of their family and also society. Hindu marriage is sacramental and hence at times the conditions laid down in the law are not fulfilled yet it is a valid marriage. Usually, there are steps which are followed such as *varaasathkarah*, *madhuparkha*, *kanya dan*, *vivah homa*, *panigraha*, *lajahoma*, *mangal phera*, *saptapadi* and *vidhahi*. All these need not performed or only few can be performed yet it is a valid marriage. In a *mandapa*, canopy or marriage stage decorated with flowers and with a fire as witness the Hindu marriage ceremony begins. It is a long and elaborate ceremony, with every step rooted in *vedic* tradition, signifying various aspects of life that is to follow after the marriage.

Under *Hindu Marriage Act*, 1955 certain conditions<sup>21</sup> are to be fulfilled for a marriage to be valid. It says, “A marriage may be solemnized between any two Hindus<sup>22</sup>, if the following conditions are fulfilled, namely:-

1. Neither party has a spouse living at the time of the marriage which means hindu law propounds for monogamy.
2. At the time of marriage, neither party should be unsound mind due to which they cannot give valid consent, or are suffering from mental disorder due to which they are unfit for marriage or procreation of children or is subject to recurrent attacks of insanity or epilepsy.
3. The bridegroom must have completed the age of 21 years and the bride must be of 18 years of age at the time of marriage.<sup>23</sup>
4. The parties should not within the degrees of prohibited relationship, unless otherwise the custom or usage governing them permits such marriage.

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<sup>21</sup> Section 5 of Hindu Marriage Act, 1955.

<sup>22</sup> *M. Vijayakumari v. K. Devabalan*, AIR 2003 Ker 363.

<sup>23</sup> *Rabindra v. Sita*, AIR 1986 Pat 128. In this case it was held a marriage between minors, if necessary ceremonies have been performed then though the condition of age is not fulfilled it is a valid marriage. The reason is that Section 11 of the Hindu Marriage Act speaks about void marriage whether section 5 (iii) i.e. of age is not a void marriage.

5. The parties should not be *sapindas* (one is lineal ascendant or descendant of the other), unless the custom or usage permits such marriage.

## IV Ceremonies of Marriage

The Hindu marriage ceremony consists of several steps. The following is a description of this colourful and unique ceremony. This is a generalized wedding ceremony, and there are regional and community variations. Some of the steps may be omitted or added from the following list based on local and family customs. The dichotomy is that there is no uniformity in the ceremony of the marriage. There is no uniformity of following ceremonies, rites, rituals or customs in Hindu marriages, neither, there is strict rules in Hindu law to be followed for solemnizing marriage nor there is consensus among pundits about essential ceremonies to be followed by Hindu couples. The customs or rituals vary from region to region or caste or family.

The Hindu Marriage Act, 1955 codified the law relating to marriage among Hindus. Section 2 rules that the Act applies to any person who is a Hindu by religion in any of its forms and developments. Thus for instance, Lingayats, Brahmos, Aryasamajists and others who have deviated from orthodox standards of Hinduism in matters of ceremonial observances are Hindus within the ambit of the Act. So are Buddhists, Jains and Sikhs and also persons converts and reconverts.

Section 4 is of vital importance and gives an overriding effect to the provisions of the Act. It abrogates all rules of the law of marriage hitherto applicable to Hindus, whether by virtue of any text or law, in respect of all matters dealt within the Act. The Act also supersedes any other law contained in any central or state insofar as such legislation is inconsistent with the provisions contained in the Act. Another section is section 29 which states that nothing contained in the Act is to be deemed to affect any right recognized by custom or conferred by any special enactment to the same.

The merely wearing *mangalsutra* or *sindoor* on forehead does not constitute legally accepted marriage, if other rites like *saptapadi* before holy fire were not performed.<sup>24</sup> But *Homa* or *Kanyadhan* is not obligatory in *Hindu marriage Act*. A clear proof of usage outweighs the written text on the ceremonies of marriage among the Hindus.

According to Section 7 of the *Hindu Marriage Act*,

1. A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

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<sup>24</sup>*Shanti Dev Barma v. Kanchan Prawa*, AIR 1991 SC 816.

2. Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

Before the codification, it was a rule that the marriage should be solemnized according to *shastric* or customary rites. If the necessary ceremonies are not performed then it is not a valid marriage.<sup>25</sup> The Hindu marriage contemplated by the Act is a ceremonial marriage and it must be solemnised in accordance with the customary rites and ceremonies of one of the two parties and the word 'solemnise' means, 'to celebrate the marriage with proper ceremonies and in due form'. Unless the marriage is celebrated or performed with proper ceremonies and due for, it cannot be said to be 'solemnised'. Merely going through certain ceremonies with the intention that the parties are taken to be married, will not make them ceremonies prescribed by law or approved by any established custom.<sup>26</sup>

Non-observance of the essential ceremonies is, under the Act, no marriage at all. What amounts to customary rites or mandatory ceremonies is not clear. Once the law<sup>27</sup> says necessary ceremonies are *saptapadi* and on the other hand the same law says it is not.<sup>28</sup> Therefore, the law recognized in Hindu Society does not make "*saptapadi*" an indispensable custom in every incident of marriage. The court further stated that, what is required is substantial compliance with only those rites and ceremonies, performance of which is, by the customary law of either party, peculiar to it and deemed as absolutely necessary, and, non-performance of such rites and ceremonies of prime necessity would be regarded as failure to solemnize the marriage and no valid Hindu marriage can result. This is because a marriage, not duly solemnized by performance of the essential ceremonies prevalent in the society which the parties or either of them, belong to, is no marriage at all.

One particular custom observed in one group or clan is very often not recognized by the other and is often incompatible with the custom followed by any other group of clan or tribe. Though the law emphasizes the importance of the *saptapadi*, it does not insist upon the same. So marriage may be complete by the performance of ceremonies other than those referred when the custom of the case to which the parties belong are followed. *kanyadaan* is an essential ceremony. Its absence, however, may not invalidate a marriage.<sup>29</sup>

The court in *Virasangappa v. Rudrappa and Anr*<sup>30</sup> observed that, in matters where the ceremonies are of different kind (other than stated in vedic text or types of marriage ceremonies) hearsay evidence like tradition may be received and direct evidence of such marriages was not

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<sup>25</sup> *Dr. A N Mukherji v. State*, AIR 1969 All 489.

<sup>26</sup> *Surjit Kaur v. Garja Singh*, AIR 1994 SC 135.

<sup>27</sup> Or the court says.

<sup>28</sup> *Shakuntalabai and Anr v. L.V. Kulkarni and Anr*, AIR 1989 SC 1359.

<sup>29</sup> *Ramlal Agarwal v. Shantadevi*, AIR 1999 AP 251.

<sup>30</sup> 1885 I.L.R. 8 Madras 440.

always possible and one of the ways in which they might be proved was from the manner of their living and from the way in which they were treated by the neighbours. Such incidents can be observed among the *lingayats*, *Dudekulas*, and other communities.

Among the *Dudekulas* the marriage is performed according to Mohammedan law though they observe certain Hindu rituals on the matters pertaining to right to property by birth, joint family system and in celebration of Hindu festivals, the court held that the parties are Mohammedans as marriage was performed according to the Muslim law.<sup>31</sup> And among the *lingayats* who predominantly reside in northern part of Karnataka and southern part of Maharashtra, the ceremonies are very simple where the bridegroom gives the bride a pair of *saree* and blouse and there is tying of *magalsutra* after *haldi* (turmeric) application ceremony. There is no ceremony such as *saptapadi* or *homa*, yet it is a valid marriage. Among the Gujaratis, the ceremony of the marriage is again different. The main ceremony is garlanding the groom by the bride and vice versa which is called *vara mala*. And only four steps are taken as *saptapadi*. There is no specific sign to say that they are married.<sup>32</sup>

There has also been an innovation in ceremonies of marriage. In one such case in Tamil Nadu, there exists an organization, now for at least half a century, known as Anti-Purohit Association or Self-Respectors' Cult.<sup>33</sup> The question was whether these kinds of marriage are valid marriage as there is no prescribed ceremony being performed? The court declared it as void.<sup>34</sup> Later the Madras Legislature amended the *Hindu Marriage Act* by inserting a new Section 7-A which validates such marriages.<sup>35</sup>

## V Conclusion

The ceremonies and rites for Hindu marriages are not laid down in the *Dharmashastras*. These are laid down in the *Grihya sutras*. The *Grihya-sutras* prescribe very elaborate rites and ceremonies for marriage. The ceremonial day of the solemnization of the marriage begins with the *vriddhi sraddha*. The ceremony of *panigrahana* is followed by the ceremony of *agni-parayana*.<sup>36</sup> The *saptapadi* is the most material of all the nuptial rites, as marriage becomes complete and irrevocable on the completion of the seventh step.

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<sup>31</sup> *Rosanna v. Subbanna*, ILR (1970) A.P.

<sup>32</sup> Like wearing of *mangalsutra*, *sindoor*, foot finger ring, etc.

<sup>33</sup> This is an inter-caste organization, the main objective of which is to do away with the traditional rites and ceremonies prevalent among the Hindus. The marriage is performed in front of few friends and relatives and some elders of the locality and the bride and the groom exchange garlands and rings. At times *mangalsutra* is also tied. The couple declare themselves to be husband and wife.

<sup>34</sup> *Deivayani v. Chidambara*, AIR 1954 Mad 657.

<sup>35</sup> Sub-section (1)(a) of Section 7-A stipulates that a mere declaration by the parties that they take each other as husband and wife is enough for the solemnization of marriage.

<sup>36</sup> Means *saptapadi*, or *pheras*, (seven steps).

According to Manu : "The nuptial texts are a certain rule in regard to wed-lock ; and the bridal contract is known by the learned to be complete and irrevocable on the seventh step of the married pair, hand in hand, after those texts have been pronounced."<sup>37</sup> Apart from the mentioned ceremonies, judicial pronouncements have been towards one important ceremony that is 'saptapadi',<sup>38</sup> though in some community this has been dispensed.<sup>39</sup>

In *Rampiyar v. Deva Roma*,<sup>40</sup> the court said that though *vivaha homa* is a usual ceremony of a Hindu marriage, but its non-performance does not render the marriage void, if the *saptapadi* has been performed. Hence, the Madras High Court, after examining all the relevant texts, came to the conclusion that in reality for the ceremonial validity of a Hindu marriage only two ceremonies are essential, one consists of the secular element, *i.e.* the gift of the girl (this will include *sampradana* and *kanyadana*); and the second consists of religious element, *i.e.* the performance of *panigrahana* and *saptapadi*.<sup>41</sup> In view of this state of judicial authority, the text-book writers also do not add to clarity. Mulla holds the view that (i) invocation before the sacred fire, and (ii) the *saptapadi* are the only two essential ceremonies of marriage.<sup>42</sup> But he quotes no authority.<sup>43</sup>

The problem arises in cases of bigamy. A man solemnizes second marriage under different ceremony, can it be valid marriage? This question came before the court in *Dr. A. N. Mukerji v. State*,<sup>44</sup> where the court held that the performance of such mock ceremonies of marriage does not constitute a valid solemnization of marriage. The court further stated that, 'not merely the ceremony and rite should not be a mockery, but it is also necessary that the requisite ceremony prevalent and recognized either on the side of the bride or on the side of the bridegroom should be performed.' Thus, neither the innovation of ceremonies is allowed nor can a marriage be performed by any sort of ceremonies. In either case, the marriage will be void

In midst of all, this jumble of customary ceremonies and rites of marriage, where the burden of proof is on the party who alleges the customary ceremonies and rites, the only redeeming feature seems to be the rule of presumption of marriage. Section 144 of the *Indian Evidence Act, 1872*<sup>45</sup> says that where independent evidence of solemnization of marriage is not available, it will be proved to be a valid marriage by continuous cohabitation between the parties unless contrary is proved. It has been held at an early date that the policy of law is to lean in favour of

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<sup>37</sup>The Manu Smriti, VIII, 227.

<sup>38</sup> See in *Kanta Devi v. Sri Ram*, AIR 1963 Punj 235 ; *Venkata v. Tanguturu*, AIR 1968 AP 107.

<sup>39</sup> For ex. among the *lingayats* in Karnataka.

<sup>40</sup> AIR 1923 Rang 202.

<sup>41</sup> *Deviani v. Chindaravam*, AIR 1954 Mad 65.

<sup>42</sup> Mulla, '*Principles of Hindu Law*', N.M. Tripathi Pvt. Ltd. Bombay, 1966, (13<sup>th</sup> ed.) para 437.

<sup>43</sup> The only case which takes this view is *Appibai v. Khimji*, AIR 1936 Bom 138.

<sup>44</sup> *Supra* note 25.

<sup>45</sup> Act No. 1 of 1872.

validity of marriage.<sup>46</sup> It has also been held that continuous and prolonged cohabitation gives rise to a presumption in favour of marriage, and against concubinage.<sup>47</sup> In every case it is necessary to establish that solemnization of marriage took place, once that is proved. It is not necessary to show that each and every ceremony was performed.

To conclude the following summary can be drawn-

1. If two Hindus want to perform a marriage under Hindu law, then it has to be either according to the *shastric* ceremonies or the customary ceremonies.
2. If two Hindus want to perform their marriage by a civil ceremony they can do so under the *Special Marriage Act, 1954*,<sup>48</sup> but then it will not be a Hindu marriage. It will be a marriage which will be governed not by Hindu law but the *Special Marriage Act, 1954* and the person opting for marriage under this law has to forego his personal law.

## VI. Suggestions

In view of the above controversy regarding ceremonies' of marriage among the Hindus, the writer humbly submits following suggestions to be inserted in *Hindu Marriage Act*-

1. Cases of bigamy are rising due to non uniformity of ceremonies of marriage among the Hindus. Hence a simple uniform mode or ceremony must be prescribed in the law so as to remove the difficulty in addressing the validity of marriage.
2. The performance of either of ceremonies (*kanyadhan* or *saptapadi*) should be made mandatory to recognize that requisite ceremony for a valid marriage has been fulfilled.
3. Above all marriage should be made compulsorily registered like the birth and death; if they are not registered they should not be any legal sanctity to it.
4. All the marriages registered should be available in website stating the name, address, parents or guardians name, date and place of marriage and occupation of the parties. This suggestion is due to increase use of technology in rural as well as urban areas in India.

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<sup>46</sup> *Chettiar v. Michael*, AIR 1963 SC 933.

<sup>47</sup> *Kastoori v. Chiranjilal*, AIR 1960 All 446.

<sup>48</sup> Act No. 43 of 1954.