

*Marriage as an Institution:  
Its Social and Ethical Implication*

**A Thesis submitted for the award of Doctorate of Philosophy in  
Arts under the Department of Philosophy**

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**Marriage as an Institution: Its Social and Ethical Implication**

submitted by me for the award of the Degree of Doctor of Philosophy in Arts at Jadavpur University is based upon my work carried out under the Supervision of Professor Indrani Sanyal, Retired Professor, Department of Philosophy, Jadavpur University, Kolkata and that neither this thesis nor any part of it has been submitted before for any degree or diploma anywhere/elsewhere.

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## *Acknowledgment*

When I first started my research attempt with the most discussed, most known, and most debatable topic like Marriage, the first thing that came to my mind as to what and how shall I be able to deal with this from a philosophical angle. Marriage in itself is not an easy thing to deal with, thereby making research attempt on marriage a very hard nut to crack. I owe entirely and whole heartedly to my supervisor Professor Indrani Sanyal for being a true guiding light to me with her immense knowledge, inspiring attitude and ever present helpful smile. Without her guidance and support, the dissertation would not have come through. At every step, at every thought process she guided me with her immense acumen, pointing out as to where I might be going wrong or where I should take my direction of thought to. She has been not only a supervisor but also a comfort zone where I could go with all my woes and sorrows. As a teacher and as a senior colleague, I could not have asked for more.

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## ***Introduction***

Marriage as a very significant social institution, lays down the nucleus of society. It is one of the most important social institutions which evolved and developed with the socio-economic progress of mankind. Though practiced in different forms in diverse cultures, its one common feature is the conjugal union of a man and a woman where the association of men and women is believed to be formed for mutual satisfaction of needs like, biological, psychological, social and economic. Not only so, marriage is an institution, recognised as having the legal and moral authority too. The continuity of human race and its development along with the realization of values of life in human society is considered to be possible due to the institution of marriage. Sociologists feel that marriage offers a suitable framework upon which personal and group relations having to do with industry, property government, religion etc. are developed. It is a social institution which transforms a male and female into a family and brings along with it certain rights, duties and creates definite relationships.

The Cambridge Advanced Learner's dictionary defines marriage as, "a legally accepted relationship between a woman and a man in which they live as husband and wife, or the official ceremony which results in this."<sup>1</sup> In Stanford Encyclopaedia of Philosophy, marriage means. "The institution regulating sex, reproduction and family life".<sup>2</sup> Encyclopaedia of Social Sciences describes marriage as, "Those unequivocally sanctioned unions which persist beyond sensual satisfaction and thus come to underlie family life."<sup>3</sup> Anthropologists like Edward Westermarck define marriage as, "a more or less durable connection between men and women, lasting beyond the mere act of propagation till after the birth of offspring".<sup>4</sup>

Thus marriage can be formulated as a relation between men and women fulfilling their physical, psychical, economic, legal and social needs. If marriage was merely perceived as a mating relation, the definition of marriage would become too restrictive and narrow, as mere physical aspect which embraces mating can involve beings like animals or birds which results in mere reproduction of life. Clearly there is a biological base for marriage but several other factors have formed a unique universally accepted meaning of marriage which can be summed up by the definition provided by eminent anthropologist George Peter Murdoch who says, 'It is a universal institution that involves a man and a woman living together, engaging in sexual activity, and cooperating economically.'<sup>5</sup> The point here to consider is that whether these definitions which almost give a universal character to the definition of marriage,

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<sup>1</sup>Cambridge, p.764

<sup>2</sup><http://plato.stanford.edu/entries/marriage/> 02.03.2017 at 7:43 a.m.

<sup>3</sup>Seligman, p.9

<sup>4</sup>Westermarck, p.70

<sup>5</sup>Coontz, p.27

necessarily cover the diversity related to the institution of marriage as practised in different cultures, societies and time frames.

Similarly definition of marriage in the usual sense is about a relation between one man and one woman, sanctioned by law, religion and customs and having certain social ends. But the concept is not so simple as it appears, because the diverse communities and cultures of the world perceive marriage in their way, thus forming exceptions to the above definition. For e.g. Marriage does not always involve cohabitation of the spouses. Coontz writes that there are many tribes in Africa where spouse sleep in different house and get together only at meal times.<sup>6</sup> Marriage also does not involve economic cooperation of the spouses. In many tribes the couple do not share the responsibility of the child. The child is supported by either of the parent's lineage.<sup>7</sup> Coontz also refers to many societies where marriage does not always involve a man and a woman. She writes, "There are West African societies in which a woman may be married to another woman as a 'female husband'. In these cultures, if the wife brings children with her to the marriage or subsequently bears children by a lover, those children are counted as the descendants and heirs of the 'female husband' and her extended family. Numerous African and North American tribes recognize male-male marriage."<sup>8</sup>

In some societies like that of Muslim and of ancient India, marriage has not been 'one man-one woman' relation. Marriages in these societies had been polygamous. Marriage may not always be resulting in reproduction and rearing of children. Among *Shi'a* Muslims *mut'a* marriages were practised

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<sup>6</sup>Coontz p.26

<sup>7</sup>Ibid p.26

<sup>8</sup>Ibid p.27

where the sole purpose had been sexual pleasure, thus avoiding fornication.<sup>9</sup> There are also many married couples around the world who are incapable of producing children or do not intend to do so. Marriage is also not necessarily bound by legal or societal sanctions. In ancient Rome and Egypt marriage was considered as a private contract drawn by the involved families. In poorer families, merely setting up a household together was considered as marriage. In medieval Europe, two people could get married by mutual consent and occasional blessings of parents. It was only in sixteenth century Europe that governments and churches enforced laws and formalities validating marriage. In spite of all these variations in the meaning of marriage, history and society has always approved of marriages where there have been a sexual relation between a man and a woman, resulting in children and family, sanctioned by law and customs, having an economic purpose and serving certain moral ends.

Marriage can be studied from an anthropological, biological, legal, economic, sociological, psychological perspective. The question is why then, as a philosopher should one proceed to deal with such a subject? Marriage deals with a very vital aspect termed as morality. Every marital relation in society follows a particular moral code of conduct, which provides the guideline regarding the behaviour of the partners involved, which affects them as well as society. I do not mean to say here that there is a single code followed by all cultures at all periods of time. What I mean is that these norms are more or less followed in this relation so that its authenticity can be maintained in society. Ethical study as a part of philosophy tries to focus on this aspect. As

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<sup>9</sup>ibid p.29

Foucault remarks that ethical practice stands on four pillars- the subject, how he relates to the norms, his ethical activity and the aim which he wants to fulfil. Similarly in marriage one needs to find out the nature of the subject involved, the conditions which formulate him, his reason and his way of relating to norms and the activity which he undertakes. An ethical study focuses not upon the various customs and rituals pertaining to marriage throughout the world, but the reason behind man's formulation of these customs and its effect on society. The question is does marriage have a *suigeneris* moral status or a transformative moral power. Also whether the legal and moral status accorded to marriage is a privilege to those oriented towards monogamous relationships or harm to those who are not.

In this thesis, we will look into the ethical and social implications of the institution of marriage as practised in Hindu<sup>10</sup> as well as Western culture. As we go along with the study of marriage in Hindu as well as Western Culture we will see that there have been many practices which had been accepted without any question but when we try and analyse them we find several social, economic, political pre-conditions involved in them. The thesis is divided into eight chapters. Chapter I is a study of the institution of marriage in Indian tradition, more specifically the Hindu tradition. The entire study here may appear to be description of rituals and customs of marriage, but the point which is vital in Indian tradition is that marriage here is not about being a civil relation or a political or pragmatic alliance. Marriage in Hindu tradition has a

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<sup>1010</sup>I prefer to use the name 'Hindu' rather than 'Indian' as Indian culture is diverse involving not only Hinduism but also Buddhism, Jainism, Islam, Sikhism, Zoroastrianism, Christianity and tribal cultures. Using the word Indian would require the study of marriage in all these cultures which is a stupendous task and I would fail to do justice to any of them in purview of my limited effort.

sacramental character which marks the journey of a man from one stage of life to another. Thus each and every tradition along with all the customs and paraphernalia of marriage has a significance in Hindu tradition. Moreover the ritualistic nature of Hindu marriage had undergone a change during the colonial era which brought forth a westernised way of thinking and a new outlook regarding the age-old customs where the moral outlook regarding marriage had changed. The first chapter studies the institution of marriage in Hindu Culture where we would come across the importance of marriage in Hindu culture. The norms associated with selection of marriage partners, caste considerations and the sacramental nature of marriage is a vital aspect in Hindu culture. Even in modern times, one may have evolved or become modernised, marriages in Hindu tradition still try to hold onto the age old customs. It becomes all the more important to study the justification behind the acceptability of strict norms of marriage in this culture as it has been subjected time and again to various foreign invasions and influences, specially the Colonial rule which lasted for over 200 years.

The Second chapter is a description of the different forms of marriage which has been practised in Hindu system. In this chapter, we come across the descriptive analysis of the eight forms of marriage roughly followed in the ancient Hindu social system. These forms of marriage may have been practised by different sections of society in the ancient times but was not uniformly followed by all sections. In this chapter, I have tried to find out the position of women in these different forms as well as having any kind of similarity in their practice.

The Third chapter studies the institution of marriage from the colonial angle where we find that the original features of the institution in antiquity had all become influenced by the medieval morality where *kulinism*, dowry, child marriage became the associating compulsions with marriage. Here the man-woman relation was not about being a partner in practice of dharma, but about propagation of family line. In this chapter we will also come across Ambedkar's analysis regarding the connection between caste consideration and marriage, showing how marriage has acted as a vital instrument in aggravating and maintaining the caste scenario in this culture.

In Chapter IV we shift focus from Indian aspect to Western scenario of marriage. Here there search is attempted on the historical account of marriage in western culture from ancient to modern times. This chapter tries to find out whether the marital evolution seen throughout history encompasses a singular norm of morality or there have been factors influencing the various changes in marital norms. The forms, values and arrangements of marriage have indeed changed throughout the entire time span. As one goes through the history of marriage from Greek civilization to modern times, one finds that marriage has sometimes been a practical or pragmatic approach of forming alliances or acquiring new sources of wealth. It has been practiced as a private affair, a public institution, companionate existence filled with love or an individual's choice. This chapter tries to see the utility of marriage as perceived by different time frames of history.

Chapter V begins with its focus on the most vital aspect of marriage, i.e. sexuality. Sexuality is not merely about physical satisfaction in case of marriage. Because, if it was so, there would have been no need for developing

such an elaborate system of marriage in all cultures and all time frames. It is also not merely about propagation as one can have children even without marriage. The question is what is it about the institution of marriage that makes it the only moral and legitimate outlet for practising sexuality. In other words why and how is sexual morality and marital morality interlinked. The fifth chapter centres on the basic presupposition of marital morality, i.e. sexual morality. Marriage always implies the right to sexual intercourse, where the intercourse is allowed between a husband and wife, and also, regards it as a duty to gratify the other partner's desire. The sexual instinct is a primary instinct and has always been a focus of moral norms in society. The study is on the nature of sexual instinct and the need felt by society to formulate a strict morality of sex, which is best developed under the umbrella of marital morality.

The sixth chapter revolves around Foucault's elucidating work entitled *History of Sexuality* where the focus is on the phenomenon of sexuality which is not merely about reproduction or physical need, but is a discourse which determines our individual and social behaviour. Foucault's main stress is on the Victorian period which he identifies as the period of repression of sexuality. This repression, according to him, plays a pivotal role in giving shape to how sexuality may be understood, what may be understood about it and the interplay of society, politics, religion and economics in it. It is extremely vital to understand the Victorian period and the sexual morality therein because this period has had a profound influence in shaping up the sexual thinking of the modern times both in east and west. In order to better understand it Foucault also compares it with the sexual and marital morality of

antiquity to show how and why society has always felt the need of having an ethics of sexual conduct.

Chapter VII is about the recent trends centering the institution of marriage; on the growing need that has been felt for broadening the horizon of marriage from heterosexuality to homosexuality. In some quarters, marriage has been considered to be an oppressive phenomena for women. The current individualistic trend, provokes the question as to whether marriage has any future or is it on the way to extinction? The seventh chapter explores the fact that if marriage is a pre-requisite for forming a family, then one can explore this possibility too that families can be formed without one getting married. In this modern world where science as well as law permits a man or a woman to adopt a child and rear it single-handedly, or to fulfil the physical as well as mental needs through a live-in relationship, then where is the utility of marriage? Marriage has a special moral privilege and a legal status too. However with the changing scenario in moral norms and legal provisions enacted for live-in relationships, one can say that live-in relations are much better than marital relations. However, one needs to find out whether a live-in relation is really a better option than marriage or whether marriage has an edge over everything when it comes to a sexual relation between man and woman.

The eighth chapter studies the recent development in the area of marriage, where legal consensus has been given to the same-sex marriage. The major portion of my work has been focused on heterosexual relations, but the study would be incomplete without touching upon the issue of homosexual relation. However the ethical implications of homosexual relation is a much more debated one which requires separate attention. The justification and need of

homosexual relation since ancient times till modern has been briefly studied here.

Through this attempt to study the institution of marriage, several questions may spring up. Marriage considered as the only morally permissible sexual relation between man and woman, brings forth the doubt that whether the moral aspect is naturally given or socially constructed? Is marriage a practical convenience or a natural necessity? To what extent the subordination of individual desires for the sake of duty and common good of society help in the good of the individual? Is there any future for the institution of marriage? We can now try to embark on giving answers to these questions.

# **CHAPTER I**

## **Marriage as an Institution in Hindu<sup>1</sup> Culture**

In Hindu system, marriage is considered as not only a social institution, but also a religious institution. It also forms the base of nurturing and preserving Hindu moral beliefs in several ways. The expression “Hindu” is supposed to be a very dubious one where there are several doubts arising as to whether the term “Hindu” can be appropriately used for those who believed in Vedic culture. Prof. Sanyal writes, “ It is supposed that the term “Hindu” comes from the Persian

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<sup>1</sup>The chapter has been entitled as Marriage as an Institution in Hindu Culture’ for I will be primarily dealing with Hindu culture and not Indian culture. Discussing marriage in the Indian context means covering the institution from not only Hindu perspective but also Islamic, Buddhist, Jaina, Sikhism, Parsee etc. such an attempt will be too ambitious to be covered in one chapter or thesis. Thus I have limited my study to Hindu culture. However I would definitely mention the nature of the institution of marriage in Islamic system.

word “Hind” or the Arabic “Al-Hind” standing for the area of the Indus Valley. It has been presumed also the word “Hindu” is also derived from Indo –Aryan word “Sindhu” meaning ocean or river. No early Sanskrit source for the origin of the word has been traced. The term “Hindu” has been traced much later in the fifteenth century Kashmir when it was employed by the Śaiva historian Śrīvara to distinguish Muslims from non-Muslims.”<sup>2</sup> It is matter of great debate whether the word “Hindu” can be used, but here I would like to use it in the popular sense where it is meant to signify the people who are not Muslims, Sikhs, Christians, Jews or Buddhists. Moreover my intention here supposedly would be to discuss the Vedic and Post Vedic culture under the umbrella term “Hindu”. Marriage affects the personal life of every individual, and also has a great impact on the social well-being. In Hindu system, marriage is not merely an arrangement for a man and a woman to live together or a social contract, it is a sacrament or an indissoluble union which is formed not merely for satisfaction of sexual desires but helps in carrying forward the social customs, religious beliefs, cultures and ethos from generation to generation. The sacrament of marriage is believed to help not only the continuity of existence of society through future progeny, but also is essential for realisation of values in human society. In *Taittiriya Upaniṣad* it is said that a man should enter the household stage and beget children so that all the worldly duties could be fulfilled.<sup>3</sup> Among the Hindus, marriage is generally considered as obligatory for every person. Manu writes, “To be mothers were

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<sup>2</sup>Sanyal, p. 19

<sup>3</sup>Taittiriya Upaniṣad 1/11/1 in Lokesvarānanda, p.354

women created, and to be fathers men; therefore, the Vedas ordain that dharma must be practised by men together with his wife".<sup>4</sup>

Marriage which is essentially a sacrament<sup>5</sup> is considered as a necessary aspect of every individual's life which encompasses his personal, social, religious and moral existence. It helps him to realize the capabilities of his social nature fully and to fulfil the responsibilities which he owes to himself, his ancestors and to the society. Marriage in Hindu system is thus not merely for gratification of sexual pleasure, but is also a duty and a moral obligation. One can very well question here that though it is understood that marriage fulfils the bodily need of sex and personal need of companionship and family, but how can marriage have an important role to play in one's moral existence?

In order to understand this one must first understand the Hindu view of life. The fundamental ideal of a moral life is to lead a life according to dharma as laid down by *śāstras*, so that one can prepare oneself for an elevated life where achievement of *mokṣa* can free oneself from the bonds of chain of births. As in *Vaiśeṣika* system we have learnt that morality is something which gives prosperity (*abhyudaya*) in this life and highest success hereafter (*Niśreyasa*). Leading a life of virtue requires the fulfilment of four ends: duty (*dharma*), fulfilment of worldly purposes (*artha*), happiness (*kāma*) and liberation (*mokṣa*)<sup>6</sup>. The four ends (*puruṣārthas*) guide an individual in attainment of virtuous life for himself. Apart from his individual existence, a man has an

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<sup>4</sup>Manu ix.96

<sup>5</sup>Explanation of the sacramental character of marriage will be given in a later section.

<sup>6</sup>Buch. P.18

existence in connection with society, and the entire creation (animate or inanimate). In light of this consideration, *mokṣa* is not merely an individual goal but it is accompanied with the payment of social debts (*ṛṇa*). The satisfaction of debts requires a proper chalking out of man's life into certain stages, where the transition from one stage to another requires fulfilment of duties, training and preparation for the next stage. Thus Hindu moral ideal divides a man's life into four *āśramas* and prescribes fulfilment of duties pertaining to those *āśramas* (*āśramadharmā*). Apart from this the society is further divided into four *varṇas* or classes for proper organisation of four important elements required to maintain a social structure, viz. intellect, wealth, courage and service. Thus it was believed that the four *varṇas*: *brāhman*, *kṣatriya*, *vaiśya* and *śūdras* were formed to cater to the above four needs, where *brāhman* represented intellect, *kṣatriya*-courage, *vaiśya*-wealth and *śūdra*-service. The four factors were considered to be equally necessary for proper functioning of society. If we closely study the institution of marriage in Hindu system we can surely understand that marriage was the only instrument which helped in fulfilling all the important aspects of Hindu morality as mentioned above. Progressing further along with our discussion we will eventually find out how marriage helped in doing so.

As we understand the importance of marriage in maintaining a moral existence we will also see that it was an indispensable duty for men and women alike. Birth of progeny and continuity of family line were important and held a strong footing. Stories from epics like *Mahābhārata* (200 BCE-200 CE) indicate the importance of marriage through which birth of progeny could help a man in not only

maintaining one's family line, but also in fulfilling the social, religious and moral obligations. In *Salyaparva* we read the incident of *Subhrū*, daughter of *Kunigarga*, who after practising great austerities wanted to go to heaven. She was however forbidden on the ground that she had not performed her worldly duties of marriage and raising of children. So she married *Prāksriṅgvān*, son of *Gālava*, in order to achieve heaven.<sup>7</sup> *Jaratkaru* who was living the life of a celibate was admonished by his ancestors and ordered to marry and procreate.<sup>8</sup>

In *Atharvaveda*, the union of man and woman has been compared to that of the earth and *Dyulok*. The duality between earth and sky gets unified through the vegetation which is the outcome of the union of earth and sky. To explain it clearly, precipitation of earth leads to vapour, through which rain clouds are formed in sky. This rain helps in growing vegetation on earth again. This duality leads to unity. Similarly in case of men and women, the duality is bridged by their uniting together to form an offspring. The union here is physical, mental and spiritual. This unity in duality is resulted through sacrament of marriage.<sup>9</sup> In *BrhadāranyakaUpaniṣad*, it is said that initially the soul was single. When the soul desired a companion, it split itself into two and became related as husband and wife.<sup>10</sup> This traditional ideal is believed to have inspired the Hindu society to evolve the institution of marriage in which men and women after marriage give birth to children and establish families for blissful happiness.

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<sup>7</sup> *Mahābhārata, Salyaparva, p.481*

<sup>8</sup> *Mahābhārata, Adiparva, p.96*

<sup>9</sup> *Atharvaveda 14/2/71*

<sup>10</sup> *Br hadāranyaka Upaniṣad 1/4/1-3*

*R̥gveda*, (2500 BCE-1700 BCE) the oldest literary heritage of Hindu society depicts marriage as a well- established institution and a religious sacrament. The later Vedic literature, the *dharmasāstras* (600 BCE-300 BCE) and the epics too represent the same idea of marriage with added prescriptions of elaborate rituals and customs attached along with it. However if we go through the *Ādiparva*<sup>11</sup> of *Mahābhārata* we find few references to society where there might have been a practice of promiscuity and absence of sexual inhibitions. There it has been stated by *Pāndu* that women were free in early primitive times and they could have sexual relations with anybody they liked, even though they were married. The system of free sex was supposed to have been abolished by *Uddālaka's* son, *Svetaketu*. *Svetaketu* when saw his mother being led away by a *Brāhmin* in front of his father, strongly opposed it and laid down that if a wife or husband were unfaithful to each other a grave sin will be incurred. Thus a marriage was not only for satisfaction of sexual pleasure, but for the attainment of values of life also.

In the further subsections I have tried to explain the role played by marriage in fulfilment of each aspect of one's moral existence whereby one can understand as to why marriage is a sacrament or *saṁskāra* which helps in encompassing its various aspects and how the various prescriptions, customs and the forms of marriage help in maintaining the moral outlook of marriage. We begin with the most vital feature of marriage in Hindu culture where its uniqueness lies in

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<sup>11</sup>*Mahabharata, Ādiparva, p.174*

recognising it as a sacramental union, a purificatory rite which marks the transition from one phase of life to another.<sup>12</sup>

### 1.1 Marriage as a sacrament (*saṁskāra*)

Hindu marriage is considered as a sacrament (*Saṁskāra*) which brings about the union of two personalities into one for the purpose of the continuance of society and for the upliftment of the two by instilling the virtues of self-restraint, self-sacrifice and mutual cooperation. Of all the *Saṁskāras* accepted in the Hindu tradition, marriage occupies an important place. Now the question is, 'what is a *saṁskāra*?' Prof. Kane<sup>13</sup> writes that in *Jaiminisūtra* (III.8.3), *Saṁskāra* generally means a purificatory act in a sacrifice. It is further added that *Saṁskāra* is that which being effected makes a certain thing or person fit for a certain purpose.<sup>14</sup> Kane also refers to *Tantravārtika* (III.8.9) where it is said that *samskāras* are those actions and rites that impart fitness, either by removal of sins or by the generation of fresh qualities. Manu says that in case of *dvijātis*, the sins arising due to the seed and the uterus are wiped off by the *homas* (burnt oblations) performed during pregnancy and by *jātakarma* etc. the human body becomes fit for the attainment of *brahma* by the study of the *Veda*, observance of *vratas*, *homas*, by worship of gods, by generation of sons, by repaying of five debts.<sup>15</sup> Thus one sees that *saṁskāras* are meant for cleansing of one's personality and uplifting of a

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<sup>12</sup>'rite de passage'- a French term innovated by the ethnographer Arnold van Gennep.

<sup>13</sup>Kane p.90

<sup>14</sup>Kane, p.90

<sup>15</sup>Manu II. 27-28

man to another level. It helps in developing a higher personality in man and confers an elevated status with the performance of each *saṁskāra*. Of all the *saṁskāras*, marriage is conceived to be very much significant as it grants a special status to both men and women and confers upon them rights and duties which is essential for maintaining the social and moral progress. Manu says that upon a wife depends the procreation of sons, performance of religious rites, highest pleasure, heaven for oneself and one's ancestors.<sup>16</sup> *Yājñavalkya* says thus that *dharmasampatti*, *prajā* and *rati* are the principal purposes of marriage.<sup>17</sup> Hence the union of husband and wife is indissoluble as upon this union depends the performance of religious rites, upholding of ethical basis and maintaining the social structure.

The sacramental significance of marriage consists in the various matrimonial rites, ceremonies and customs. In primitive tribes marriage might have been a simple affair, but with the progress of civilisation society may have become complex with a lot of formalities stepping in. For this purposes an external sanction in form of various rituals became necessary to make it more socially binding. Marriage as depicted in various *śāstras* thus included various rites and ceremonies, the basis of which was local customs, religious beliefs and regional culture. The most general object of marriage rites, according to Westermarck, was 'to give publicity to the union'<sup>18</sup> The rituals were not merely meant for validating a marriage, but was supposed to also look after stability, love and spirituality in

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<sup>16</sup>Manu IX. 28

<sup>17</sup>*Yājñavalkya* I.78

<sup>18</sup>Westermarck, p.433

the relationship between husband and wife. Marriage is not considered to be complete without the performance of rites. The importance of the rites indicates that if a marriage has been performed with necessary rites, society or *śāstras* cannot declare it to be null or void. In other words marriage attains a legal and social status if the rites are performed properly. Moreover as marriage constitutes the most important transition from one stage of life or *āśrama* (*brahmacarya*) to another stage of life (*gāṛ hasthya*) where for either of the spouses or both, there is a change of family, class, village or residence. This transition or change is marked in all cultures by rites and rituals which symbolise this transition and separation. The complexity of rites vary according to region, religion or class. Marriage has a very vital economic angle for one of the families, specially the girls' family, where they lose one of its productive members. To compensate this loss, rites involving giving gifts and dowry were followed to ensure a free passage to the new life. Settling of bride price<sup>19</sup>, exchange of gifts, festivities thus become a vital part for marking this transition. The regularity and significance of rituals attached to the transitional stages in man's life has also been noted by anthropologist like Andrew van Gennep. Gennep's observation on marriage as a rite brings to focus some generalities that prevailed in marriages across all cultures. He writes, "Some rites of incorporation have a collective significance, either in joining one or the other of the individuals to new groups or in uniting two or more groups"<sup>20</sup> The rites of incorporation like binding of the cord, putting on a ring or bracelet or the

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<sup>19</sup>Here bride price meant the dowry which was given to the bride's family in case of *Arṣa* Or *Āsura* form of marriage. It could also have been given to the groom's family with the transition of time

<sup>20</sup>Gennep, p.132

garland are an indication of being tied to a new family, group or clan. Gennep believes that every marriage is a social disturbance involving not just two individuals but several groups of varying sizes. A marriage modifies a number of elements in their relationships to each other, and these changes, step by step, bring about a disturbance of equilibrium. In many remote places weddings are occasions of stoppage of agricultural production, expenditure of savings and an awakening from usual apathy.<sup>21</sup> Marriage surely brings out a transition in personal and social life of an individual but it is debatable that whether it is same as creating a social disturbance. What Gennep might have meant here is that a marriage in primitive groups must have not been merely confined to the two families but to the entire group members, where everyone's participation meant stoppage of all kinds productivity and expenditure of resources. It also meant adding up of one member to one group and deducting them from the other, which created an imbalance in constitution of the groups. However this 'social disturbance' can be better termed as a positive transition where extended families are formed. Rites and rituals in all tribal clans or religious communities may have varied from each other but have carried on the essence of symbolising this transition.

In History of *Dharmaśāstra*, P.V. Kane has presented a long list of the different rites of marriage, viz, *Vāgdāna* (Settling the marriage), *Kanyādāna* (Gift of the bride), *Agnisthāpana* (Establishing the fire), *Homa* (Offering of ghee into fire), *Pānigrahaṇa* ( Taking hold of the bride's hand) etc. The examination of all the

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<sup>21</sup>ibid,p. 139

rituals require a separate study, but there are certain rituals which need to be mentioned as they symbolise the importance of trust, promise and integrity in marriage. The custom of *Vāgdāna* is the rite of oral promise of giving away the bride. This can be stated as the starting point of marriage. Bride once verbally promised to one man could not be given away to another except if the second one is better than the first one. *Yājñavalkya* states that, “If a person gives to another, a maiden who had been given away in words or mind, meets with the punishment of a thief.”<sup>22</sup>. This ritual is still in practice where guardians of both sides make a moral commitment to each other to continue with the promise of betrothal.

Proper marriage begins with *Kanyādāna* or the gift of the bride. This ritual in fact determines the form of marriage conducted. If the bride is given away in exchange of money then it is *Āsura* form of marriage, If the father gives away the daughter with the understanding that the couple will perform religious duties together then it is *Prājapātya* form and if the bride is exchanged for two pairs of cows then it is *Ārṣa*. This ritual depicts the control of a father or the relatives of the girl who could give her away in exchange of any kind of bride price. In other words, the patriarchal system could regulate the life of a girl and use her as a means without considering her feelings on the matter. After this *Agnisthāpana* and *Homa* are next vital rituals where we see the importance placed to *Agni* or fire. In Indian life there is a great deal of importance attached to fire. *Agni* is considered to be connected with creation. According to *R̥gveda*, *Agni* is supposed to start the

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<sup>22</sup>*Yājñavalkya* 1.64

creation in all beings<sup>23</sup>. All the sacrificial duties prescribed for the householder are performed in the sacred domestic fire called *gṛhyāgni*. This *grhyāgni* is usually set up by the would-be householder and is maintained throughout his life.<sup>24</sup> It is one of the vital duties of the married couple to kindle and worship the nuptial fire daily. Manu says that one who neglects to kindle the sacred fire incurs sin.<sup>25</sup> *Agni* was also believed to drive away evil spirits and protect the household from any bad effect. Moreover we can also mention that so much of importance placed on must have been due to its essentiality in every household. *Vātsyāyana* also attaches great importance to the sacred rite of *Homa*. He says that when the couple decide to marry they should bring fire from the house of a *Brāhmaṇ* and having spread the *Kuśa* grass upon the ground, offer an oblation to the fire and marry her according to the religious law.<sup>26</sup>

After the *Homa*, the next important rite is of *Pānigrahaṇa* or taking hold of the bride's hand. This rite is conducted with the following verses, "I take thy hand for excellent sons and be blessed with fortune"<sup>27</sup> The main rite consists in the act of taking the right hand of the bride along with the above mantra. *Gṛhyasūtra* further mention the different forms of holding hands according to the gender of the child desired. (It is mentioned above). Manu (200 BCE-200 CE) prescribes that *Pānigrahaṇa* contributes to wifehood<sup>28</sup> The next essential part of marriage ceremony in ancient times was *saptapadi*. It was believed that the rite of

<sup>23</sup> Rgveda III.2.10 as in C.K.Chatterjee's The rites and rituals of Hindu Marriage in Ancient India

<sup>24</sup> Chatterjee, p.121-122

<sup>25</sup> Manu XI. 60

<sup>26</sup> *Kāmasūtra* iii 5.11-13

<sup>27</sup> Rgveda I.4.5

<sup>28</sup> Manu VIII 227 *Pānigrahaṇikāmantrāniyatamdāralakṣaṇam*

*saptapadi* completes the ritual of marriage, whereby it is obligatory on the father of the bride to give away his daughter to that particular individual with whom this sacrament is performed and it is also necessary for the groom to keep his promise of taking that girl. C.K.Chatterjee points out that in *Kauṣikasūtra*, we can find mention of ‘*saptamaryāda*’ which denotes seven easterly lines drawn to the north of the nuptial fire and the footsteps taken on those lines. The *Kauṣikasūtra* also mentions the special mantras to be recited at each step. He also states that number seven is considered to be holy among Hindus as we hear of seven oceans, seven ṛṣis, seven tones etc.<sup>29</sup> In *ChāndogyaBrāhmaṇa* the mantras accompanying the steps are mentioned as follows: “ *One step for food, may Viṣṇu escort you; two steps for strength, may Viṣṇu escort you; three steps for vows, may Viṣṇu escort you; four steps for happiness, may Viṣṇu escort you; five steps for cattle, may Viṣṇu escort you; six steps for prosperity of wealth, may Viṣṇu escort you; seven steps for Hotras, may Viṣṇu escort you*”<sup>30</sup> Manu points out that the rite of *saptapadi* gives completeness to the wifedom (*bhāryātva*). From the study of marriage rituals of ancient Hindus it is clear that each rite represents the beginning of a life of domestic, social, religious, economic and spiritual responsibility. These rites are not mere formalities but necessary for the development of moral and spiritual traits of the wedded couple to help them to reach their final goal of life.

Marriage in Hindu system was believed to be an indissoluble union as the marital union enabled a man not only to become a householder but also to perform

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<sup>29</sup>C.K. Chatterjee, p.163

<sup>30</sup>ChandogyaBrahmana I.2.6-12 in C.K.Chatterjee, p.160

religious and social duties. In *AitreyaBrāhmaṇa* the wife was called 'jāya' because the husband was born in the wife as the son.<sup>31</sup> *SatapathaBrāhmaṇa* says that wife is half of a man's self and he completes himself only by securing a wife and a son. As a result in Hindu system there is hardly any scope for divorce.<sup>32</sup>

According to the Vedic culture, marriage was a sacramental and religious institution and was based on spiritual values. Therefore once the marriage ceremony was over, it was irreligious to think of divorce or even separation. According to *ĀpastambaDharmasūtra*, if a man and a woman are bound by the ties of matrimony they cannot be separated and if they try to break the ties then both would go to hell.<sup>33</sup> Manu says that, "Let mutual fidelity continue till death, this may be considered as the summary of the highest dharma of husband and wife."<sup>34</sup> In order to emphasize on the sanctity and indissolubility of marital union, Manu says that *kanyadāna* or giving away the hand of the bride by the father to the groom, can only occur once. Such a norm may have been helpful to preserve the sanctity of the marital union but such a norm had its disadvantage too as it prevented remarriage of any girl who had been engaged but had not been able to get married due to some circumstances, as Manu himself has pointed out that *kanyadāna* did not guarantee wifedom as the groom's family might refuse to accept the girl as wife. The story of *Shakuntalā* and *Dushyant* reflects the importance of the above aspect. King *Dushyant* who had visited the *āśrama* of *Ṛṣi Kānva* had seen his daughter *Shakuntalā* and fell in love with her. Both of

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<sup>31</sup>AitreyaBrahmana 33.1 in Kane, p.428

<sup>32</sup>SatapathaBrahmana V.2.1.10 in Kane, p.429

<sup>33</sup>ĀpastambaDharmasutra 2/10/27/6 in Kane, p.429

<sup>34</sup>Manu 9/101

them decided to get married by the *gāndharva* rite. After the exchange of vows, they cohabited. After some days *Dushyant* left for his kingdom leaving *Shakuntalā* behind and promising her that he will soon come back to take her. In due course of time, a son was born to her. When the son grew a little old she took him off to meet his father. The King fails to recognize *Shakuntalā* in the beginning and rejects her for the apprehension regarding society's acceptance of a *gāndharva* union. Later when the truth becomes known to all, he officially marries her by taking the seven vows (*saptapadi*) before the sacred fire, thus giving legitimate status to her as well as their son.

The above anecdote thus signifies the importance that was attached to the rituals like *saptapadi* in marriage ceremony during that period, as it provided legitimate status to the woman as well as the offspring resulting from that union. Here the question may arise as to whether marriage in Hindu system was only about fulfilment of obligations and virtue. It is a mistake to think that sexual relation accompanied by the duty of producing a male progeny, made marriage in ancient India a mechanical relation, devoid of the finer emotions of love and romance. Epic stories indicate the stronghold of love in marital as well as non-marital relations. King *Sāntanu* was romantically involved with both his wives, *Gangā* and *Satyavati*. In both the cases, he was so much besotted with the beauty of both his wives, that he was willing to fulfil all their conditions. *Gangā*, before marriage had laid the condition that she would destroy all her male children, and if *Sāntanu* ever asked him the reason of her doing so, she will leave him. *Sāntanu* was so much blind in love that he never dared to ask *Ganga* any question. Similarly,

*Sāntanu's* love for *Satyavati* made him fulfil the promises made to *Satyavati's* father.

Not only men, but women were also romantically involved in several cases. The instances of *Sakunatalā*, *Subhadrā*, *Uttarā*, *Satyavati* indicate female infatuation and the attempts to win love. The idea of romantic love was associated with the divine too in our ancient culture. The famous instance is of *Kṛṣṇā* who had sixteen thousand wives and romantic relationship with *gopis* also. Lord Shiva or *Mahāvira* had married *Sati* and then *Pārvati* by falling in love with them. Matilal recounts how in *Kumārasambhava* we find the depiction of *Pārvati* and *Shiva's* attraction for each other. *Kāmadeva* or Lord of Love was working behind this encounter. *Mahādeva* on getting to know this became so infuriated that he destroyed *Kāmadeva* to ashes. This made *Pārvati* to go through a different path of persuasion of *Shiva*. Matilal says that in Indian culture romantic love was never an end in themselves, it developed into a mature love which the partners could share and enjoy.<sup>35</sup> *R̥gveda* also recounts the story of marriage between *Soma* and *Sūryā*, a hymn comprised of the blossoming love between the two, which is uttered in every Vedic ritual of marriage indicating the society's attitude towards love union being a vital part of marital relation. Kane writes that the hymns of the *R̥gveda* concerning marriage are very important as it points towards the highest ideal of marriage and conjugal felicity.<sup>36</sup> These hymns consist of relevant metaphors as all metaphors are related to the physical life of man. This hymn refers to the mythical marriage of *Sūryā*, Daughter of *Sāvitr*, with *Soma* or the

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<sup>35</sup>Ganeri, p.151

<sup>36</sup>Kane, p.526

moon. It is stated that : Both the *Aṣvins* went to ask for *Sūryā* as a bride for *Soma* ; *Sāvitr* agreed to give her , the bridegroom was treated with honour, presents were made to him and cows were killed for him.<sup>37</sup> After the presentation of gifts, *Soma* took hold of *Sūryā*'s hand and uttered the following verse:

“*Gr̥bhañāmitesaubhagyatavāyahastāṁmayāpatyāyardashtiyarthāsaḥ |*  
*bhagoaryamāsavitāpurandhimarhamtvādurgāhpatayāydevāḥ*”<sup>38</sup>

“I take thy hand for prosperity so that you may grow to old age with me thy husband; the gods, *Bhāga*, *Aryamān*, *Sāvitr*, the wise *Pusān* have given thee to me for performing the duties of householder”

The vitality of marriage as an inseparable union has always been felt in Hindu culture, as marriage is the only way by which one can pay off one's *ṛṇa* and enjoy *dharma*, *artha* and *kāma*, thus carrying forward oneself towards *mokṣa*. The *Smṛtikāras* like *Manu* clearly state that a woman can never abandon her husband, even if he is intoxicated, mad, outcaste or characterless. For men too it is stated that a man's foremost duty is to protect his parents, wife and children.<sup>39</sup> *Yājñavalkya* adds that if a man abandoned a wife who was obedient, diligent, the mother of a son, and agreeable in speech, he was to be made to give her one-thirds of his property, but if he had no property he had to maintain her.<sup>40</sup> Thus fidelity was an important feature of Hindu marriage. The question here is in what sense fidelity was an important feature of marriage? Fidelity could be a

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<sup>37</sup> *R̥gveda* 10/85/7635-36

<sup>38</sup> *R̥gveda* 10/85/36

<sup>39</sup> *Manu* VIII, 389

<sup>40</sup> *Yājñavalkya* I. 76

major requirement if one wants to maintain a strict sexual morality in society. Hindu system since Vedic age cannot be considered as maintaining a strict sexual morality like Christianity, because here we can see instances of premarital sex like that of *Shakuntalā* or *Satyavati*, instances of polyandry, customs like *niyoga* etc. Thus fidelity was probably a duty to mark the sanctity of marriage. As marriage was a duty taken up for fulfilling the requirements of individual and social morality, it was necessary for both men and women to be dedicated to each other so that both of them could participate in the fulfilment of the duty. Mutual dedication was required for a permanent relationship where both men and women had to work hand in hand to achieve material and spiritual fulfilment. The Hindu philosophy of marriage with its aim of successful married life focused on the complementary role of husband and wife, where both could work together to make a complete whole.

## **1.2 Marriage as a basis to achieve *Purusārtha***

As mentioned earlier, the four ends of a human life recognised in Hindu system are *dharma*, *artha*, *kāma* and *mokṣa*. In *sanātanadharmā*, as mentioned earlier too, the aim of life was *abhyudaya* and *niśreyasa*, where *abhyudaya* was fulfilment of desires(*kāma*), that which was refined by wealth(*artha*) and regulated by law(*dharma*). This was the path of *pravṛtti* which was followed by majority whereby the aim was achievement of a better life. The path of *nivṛtti* or renunciation was the last aspiration set for one's spiritual fulfilment. A balanced

pursuit of *trivargas* (*dharma*, *artha* and *kāma*) was essential for individual and social development, and marriage and *gāṛ hasthyaāśrama* was the best avenue of this pursuit.

The very first *purusārtha* of *kāma* denoted gratification of internal and external desires along with human well-being. *Kāma* as a value includes all sorts of pleasure derived from any sensual experience; it is natural for it to include sexual pleasure as well. It denotes all sorts of pleasures experienced by an individual as a result of emotional, passionate, mental and physical interaction, the consummation of which is effected in sexual union.<sup>41</sup> The recognition of the moral value of sexual activity by Indian ethics is further enhanced by considering it as a duty or obligation of householder to produce an heir, by the woman he has married in a socially approved manner. Thus marriage helps in giving value to the sexual desire of a person by accompanying it with duty of procreation. The Hindu view of marriage thus tries to channelize and regulate the sexual union of any form, through socially approved customs. In the eight different forms of marriage discussed later on we find that socially accepted forms like *gāndharva*, *rākṣasa* and *paiśāca* try to give a social sanction to love unions, forceful abductions, rape respectively.

It is true that classical Indian outlook of fulfilment of *kāmapurusārtha* is male biased. The tradition which accepted polygamy as common and polyandry(not so common) also as a way for fulfilling the requirement of male heir, was definitely more concerned about male desires rather a woman's. A man can have several

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<sup>41</sup>Chattopadhyay p. 254

sexual relations through his wives or through other women, but a woman is expected to be chaste and be the epitome of fidelity. In this regard one can very well say that an individual's sexual desire( which is natural desire) was not meant to be appeased in a self-centred way, but was meant to be channelized to an altruistic motive of maintaining a good society with good citizens. *Artha* as a *purusārtha* stands for all the material conditions which must be fulfilled in order to enable an individual to pursue any other value. By material conditions is meant healthy body, sharp mind, loyal son, beautiful wife, good house, ruler ship etc.<sup>42</sup>*Vātsyayana* is more explicit about the list, where he adds knowledge, land, gold, cattle, cereals, utensils, friends etc.<sup>43</sup>*Artha* as a *purusārtha* has value when it is obtained through valid means. Marriage can be regarded as one of the means by which *artha* like land, cattle, good relations, beautiful wife, children and maybe rulership could be gained. If we look into marriage forms like *āsura*, *ārṣa*, *brāhma*, *daiva*, we find a certain amount of exchange of material benefit occurring there. In *brahma* form the bride is given ornaments, land and cattle as a gift by her family to start her new home. These possessions actually belong to her future household. And if we go by the patriarchal outlook, the husband is the lord of the household to whom all material and non-material possessions belong. Similarly in *āsuravivāha*, the condition itself is to provide wealth in exchange of a bride (just as in *ārṣa* it is exchange of cattle). In all approved forms of marriage the greatest *artha* received is a good extended family which enriches a man more than any other wealth.

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<sup>42</sup>Prasad, p.233

<sup>43</sup> Ibid p.233

The *purusārtha* of *dharma* is the value which is constituted by living a morally good life which is appropriate to his existence as a member of society and as a participant of interpersonal interactions. *Dharma* as a value is something which sustains or upholds the society or the world. In Indian tradition, *dharma* is classified into *sāmānya* and *viśesadharmā*. *Sāmānyadharmas* are common virtues which are not caste-bound, rather they are common in the sense that everyone is advised to practice them to live a moral life. These generally accepted virtues are benevolence, hospitality, patience, forgiveness, charity, truthfulness, control over senses, cleanliness, non-stealing, absence of anger etc. *Asāmānyadharmā* needs to be practised by everyone, whether they be a student, householder or a celibate. However if we perceive family as centre of cultivation, sustainment, and carrier of all values, then we can say that marriage plays a vital role in this sphere. Marriage in Hindu tradition is not merely a relation restricted to two individuals, but it is a promoter of conjoinment of two families, formation of a wide spectrum of relations, where a sound maintenance of everything requires and also helps in cultivation of these *dharmas*. Apart from the *sāmānyadharmas*, marriage also preserves the *varṇa*-based *dharma* and *āśrama* based *dharma* too. The importance of marriage in *varṇadharmā* will be discussed in the later part where we focus on the importance of caste requirement in Hindu marriages. In the next section, we will see how marriage is an essential requirement of *gāṛ hasthyāśramas*.

### 1.3 Marriage as an essential requirement of *gāṛ hasthya āśrama*

The *āśramadharmā*, pertaining to the four stages of a man's life, namely, *brahmacārya*, *gāṛhasthya*, *vānaprastha* and *sanyāsa* covered the entire span of a man's life. In *R̥gveda*, we find mention of a man's desire for a hundred years life.<sup>44</sup> This span of life was equally divided into the above mentioned stages. Prabhu writes that the word '*āśrama*' is originally derived from the Sanskrit word '*śrama*' which means 'to exert oneself'. Therefore *āśramas* are stages where exertions are performed. To put it clearly *āśrama* is a stage of life in which the individual has to train himself for a certain period, and exert himself within that stage in order to qualify for the next.<sup>45</sup> The four stages are: *brahmacarya* (stage of studentship), *gāṛ hasthya* (stage of householder), *vānaprastha* (Preparatory stage of renunciation) and *sanyāsa* (stage of complete renunciation). Every stage of man's life contained certain duties (*dharma*), the proper fulfilment of which leads him onto the next stage and ultimately helps him in attaining liberation. Of these *āśramas*, the *gāṛ hasthya āśrama* was considered as the sustainer of all the *āśramas*. The household stage was considered to be important for fulfilling *dharma*, accumulating *artha* and reasonable satisfaction of *kāma*. Since marriage was believed to be indispensable for the household stage, *śāstrakāras* like *Gautama* and *Baudhāyana* have categorically stated it to be the most praiseworthy stage. In this context, marriage was essentially a ritual through which an individual went through to start his life in the *gāṛhasthyāśrama*. The *Vasiṣṭha* and *Viṣṇu Dharmasūtra* also considered the household stage as the

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<sup>44</sup> *R̥gveda* 10/161/4

<sup>45</sup> Prabhu p.83

centre of the social structure, as a household is not merely a dwelling place of the living members, but also is the sustainer of family values, social customs, social relations, religious rituals, religious beliefs, economic growth, human values etc.

Manu points out, just as the life of all living beings is sustained by air so also all living beings draw their sustenance from the household stage.<sup>46</sup> Just as big and small rivers become quiescent in the ocean so also the remaining three stages obtain their stability through the second stage.<sup>47</sup> All *smṛ tiśāstras* thus consider the household stage to be the best and superior most. In *Shāntiparva* too it has been said that just as a mother provides subsistence to all living creatures so also the household stage provides all the means of subsistence to the remaining three stages. According to *Gautama Dharmasūtra* the household stage is the procreator stage.<sup>48</sup> It is mentioned in the *Viṣ ṇu Purāna*, that going through the household stage along with wedded wife brings in great rewards.<sup>49</sup>

The most vital obligation of a *gṛ ihi* (householder) is performance of *pañcamahāyajñās* (five great sacrifices). The five sacrifices are *BrahmaYajña*, *Pitṛ Yajña*, *DevaYajña*, *BhūtaYajña* and *Nṛ iYajña*. The sacrifices are performed to pay off the five debts incurred by every individual. *BrahmaYajña* is performed to pay off the debt of sages and learned men, *Pitṛ Yajña* are oblations offered to one's ancestors, *DevaYajña* is paying off the debt of gods, *Bhuta Yajña* is for nature and *Nṛ iYajña* is performed as hospitable offerings of food and shelter to

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<sup>46</sup>Manu3/77

<sup>47</sup>Ibid 6/10

<sup>48</sup>Gautama Dharmasūtra 3/3 in Olivelle, p.51

<sup>49</sup>Viṣ ṇu Purana 3/10/26

fellow humans. Since a householder's home is the dwelling place of family members, ancestors, shelter of guests, deities etc., it is like a trustee of ancestors as well as future members. A home is a symbol of continuity of all the members- members who are no more, members who are living and the future members. *Gāṛ hasthyaāśrama* is thus the sustainer of human continuity and protector of traditions.

The purpose of marriage thus is to enable man to become a householder, fulfill the duties and obligations of his *gāṛ hasthyaāśrama*, procreate sons, attain the *purusārthas* and maintain a moral existence. The *SatapathaBrāhmana* (V.2.1.10) says that wife is half of a man's self; A man as long as does not acquire a wife, does not secure a progeny and till then is not complete. *ĀpastambaDharmasūtra* forbids taking a second wife if the first one is endowed with progeny and if she is capable of performing religious rites.<sup>50</sup> As the institution of marriage is considered as the accepted moral way of forming a family and procreating children, it is extremely vital to properly match the marital relationships so that one can produce able and proper future generation who can carry forward the genetic and hereditary positive traits. For this purpose the institution in Hindu system set forward an elaborate methodology to select a proper match. In the next sub-section, we will go through the various requirements of a proper matrimonial alliance where factors like age, family, physical appearance, and education and most importantly, the race and caste were strictly followed.

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<sup>50</sup>*ĀpastambaDharmasūtra* II.5.11.12 in Kane, p.428-429

A vast body of literature like *Dharmasūtras*, *Gr̥hyasūtras*, epic literature, *sm̐itiśāstras* focussed and laid down norms relating to marriage like fixing the right time of marriage, selection of appropriate bride and groom, testing the qualities of a girl to find out whether she was appropriate for continuing the family lineage. This indicates that it was extremely important for a society, to make provisions for the formation of proper families. Marriage became all the more important for achieving this objective. If marriage had been solely for the sexual fulfilment of two beings then society would not have felt the need to give so much emphasis on its rules and regulations. As marriage was associated with furtherance of personal, familial, social, economic and religious needs, the formalisation got prominence. One can say that the institution of marriage whether in Vedic society or epics indicate an attempt of religion as well as societal norms to formalize the sexual union of man and woman in a systematic way, so that family, which is the basis of human society, could be formed and maintained.

### **1.3.1 Age of the couple**

In Indian tradition the age at which one married was considered to be extremely vital. As marriages were fixed by the head of the family, most young couples did not have any say regarding it. For boys, the sexual drive was meant to be controlled in the years of studentship where a life of celibacy and discipline was propagated for them. This sexual drive at a proper age was meant to be channelized only for productive purpose. In case of girls, absence of education

and independence, meant marriage at early age. Patriarchy's concern with legitimacy of one's progeny being vital, it was essential to have a strict control over women's sexual freedom and that too from a very early age. This can be seen from the prescription of scriptures regarding the age of marriage. Since marriage was a matter of indissoluble companionship and foreground of fulfilment of duties, it was absolutely necessary to train the young minds from the very beginning before they start feeling the emotional impulses of youth. A much disciplined life requires early training, in whichever form it is projected. A person who wants or is required to be dedicated to any kind of service, whether it be sports, martial arts, monkhood (to name a few) must be groomed and nurtured from a very young age where the mind is like a sponge ready to obey rules and take responsibilities without any apprehension. Similarly if marriage is seen as a way of service to society with a utilitarian framework, then it also requires early initiation. In Hindu marriage system, as studied so far, marriage has a utilitarian purpose for which it is necessary to focus on the proper age at which boys and girls could be married off.

Regarding the age of brides, it is mentioned in the Vedic mantras that a girl could be married when she was developed both physically and mentally or had attained full womanhood. In *Rgveda* it is mentioned that a girl used to grow fine looking in her father's household and sought her companion herself. The Vedic rituals indicate that married pairs were grown up enough to be lovers, man and wife and parents of a child.<sup>51</sup> One hymn also mentions that only girls who were not too

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<sup>51</sup>Rgveda 10/183/2

young were to be married<sup>52</sup>. However some contradictory instances are also found where some girls were married in childhood. For example Lord *Indra* gave to an old man *Kākṣivan* a child bride called *Vrichayā*<sup>53</sup>. In *Atharvaveda* it is said that bride and groom, eligible for marriage, must be adults<sup>54</sup>. As the marriage was required to be consummated on the fourth day of marriage it indicates that the girls were not married before they had attained puberty. However, as we come across the ancient *Gṛhya* and *Dharmasūtras* we find mention of girls getting married before and immediately after puberty. In *Vasiṣṭha* and *VyāsaSaṁhitā* it is instructed that the girl should be married off before she starts menstruating because if she remains in her father's house after attaining puberty then the father or guardian of such a girl is guilty of aborting her chances to produce a child. In *GautamaDharmasūtra* it is mentioned that a girl should be given in marriage before she attains the age of puberty and also before she starts wearing clothes<sup>55</sup>. This indicates that girls were married off at a very tender age during this age. In this *Sūtra* it is also mentioned that a girl should wait for three years for her marriage by her parents. After that she can select her own groom and give herself away. *ViṣṇuSaṁhitā* also echoes the same view.<sup>56</sup> It is further added that an unmarried girl who menstruates while living in her father's house should be

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<sup>52</sup>R̥gveda 3/55/16

<sup>53</sup>R̥gveda 1/51/13

<sup>54</sup>Atharvaveda 14/1/1-2

<sup>55</sup>Gautama Dharmasutra 18.20-23 in Olivelle, p.75

<sup>56</sup>ViṣṇuPurāna 14.40

regarded as a degraded woman, and no sin will be committed if anyone carries her away.<sup>57</sup>

Manu prescribed the age of males to be thirty or twenty four. He remarks that a man of thirty or twenty four can marry a girl of twelve years or eight years respectively. According to Manu, the ratio of age difference was to be 1:3.<sup>58</sup> *Viṣṇu Purāna*<sup>59</sup> also approved of this same ratio thereby indicating that there was a huge age difference between married pairs during those times. In *Vanaparva* of the epic *Mahābhārata*, it is said that grooms should be middle aged. It is also stated that a girl does not like to get married to a man who is sixty years old.

In the marriage rituals described in the *Gṛ hyasūtras* we get the information that marriageable age was considered to be after puberty. The consummation of marriage could take place after the nuptial ceremonies. According to *PāraskaraGṛ hyasūtra* the married couple could not partake saline food for three days, should sleep on the ground, and should not have intercourse for a year, twelve nights, six nights or three nights<sup>60</sup>. This injunction presupposes that girls must have been very near puberty or past puberty at the time of marriage. *Baudhāyana* contemplates the possibility of the bride to be in her monthly courses at the time of marriage which proves that marriages used to take place past puberty.<sup>61</sup> *Gṛ hyasūtras* also talk about *caturthikarma*, a rite on the fourth day of

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<sup>57</sup> Ibid 14.41

<sup>58</sup> Manu IX.94

<sup>59</sup> Viṣṇu Purāna 3/10/16

<sup>60</sup> PāraskaraGṛ hyasutra I.8 in Kane, p.441

<sup>61</sup> BaudhayanaGrhyasutra 4.1.11-4 in Olivelle p.75

marriage. This rite was associated with the concept of *garbhadāna* or co-habitation indicating the grown-up age of marriage.

In *Mahābhārata*, girls used to get married at a grown-up age. In *Anuśāsanaparva* it is described that a girl who bathes after her menses is pure, such a girl can be given away in marriage. It is also mentioned that a girl should wait for three years after attaining puberty and then find a husband for herself. The girls were ready for intercourse and reproduction before they got married. For example, *Kūnti* gave birth to *Karṇa* before she got married. After the *Sūtra* period, we find contradictory views in the marriageable age during the *Smṛti* age too. In *Manusmṛti*,<sup>62</sup> it is said that a girl should wait for three years after her first period and then choose a husband for herself. At another place he mentions the age of bride to be eight or twelve<sup>63</sup>. Further since marriage came to be identified with the *Upanayana* in case of women, naturally the age for *Upanayana* i.e. 8<sup>th</sup> year came to be regarded as the age of marriage. From this, it is clear that Manu approves of marriage at a young age. At the same time he also lays particular stress on the appropriateness of the groom in the absence of which the girl can stay life-long at her father's place. This indicates a leniency towards the custom of compulsory marriage for girls. In *Yājñavalkya* too we find mention of pre puberty marriage. In *Baudhāyana Dharmasūtra* it is mentioned that a girl must be married early or may be given to a man who is devoid of qualities<sup>64</sup>. So we see that even if the

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<sup>62</sup> Manu IX 90

<sup>63</sup> Ibid. IX 94

<sup>64</sup> Baudhāyana Dharmasūtra IV.1.12 & 15 in Olivelle, p.75

earlier stages were not so strict regarding the age of marriage but the later period witnessed the insistence on pre puberty marriages. Prof Kane, comments, that the reason behind this reduction in age may be the spread of Buddhism and its encouragement for people to the institution of monks and nuns.<sup>65</sup> This might have been seen as a threat to the Hindu system whereby society must have felt the need to bind the young boys and girls to the household stage as quickly as possible, so that the sexual drive could be channelized into a productive purpose it was proper for them to get married so that they can continue with their most important function of producing progeny.

Early marriage of girls brought forward a heap of unfortunate consequences where brides who were quite young were deprived of their childhood by forcing upon the duties and obligations of a marital life, They were deprived of education, free movement, wealth and burdened them with premature sexual relation , child bearing and household responsibilities. This age-old custom of child marriage continued for a long period of time in Indian history, until in the mid –nineteenth century reformist like Ishwar Chandra Vidyasagar pointed out the evils of child marriage. The moral implication of early marriage on society has been discussed from the reformist point of view in a later chapter.

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<sup>65</sup>Kane, p.443

### 1.3.2 Examination of Family

The essential part of the social implication of marriage in patriarchal Indian system was continuity of family line and the birth of superior progeny. Hence it was a vital part of marriage norms for the guardians of the family to decide upon the fit companion for their children, so that the productive purpose was fulfilled. Therefore familial selection was vital in Indian scenario. The higher purpose of producing fit future citizens of the society for materialistic progression, upholding of culture and spiritual beneficence was given more emphasis rather than individualistic preferences based on love or infatuation. A companion selected was for life and it was necessary that both of them were equal in all respects. The qualifications for a groom were equally important as that of a bride. According to *Rgveda* the qualifications of an ideal bridegroom was strict adherence to celibacy and devotion to the efforts to obtain knowledge. In *Atharvaveda*<sup>66</sup> we find a long list of incompetent bridegrooms who were considered inappropriate for girls. The mothers of the bride were advised against a man who was non-vegetarian, was violent by nature, was cunning like a fox or an owl, was a thief with a sinful nature, was old and has grey hair, dandy and toppish, suffering from an infectious disease, had a weak sight, an evil-doer, characterless, has long hair, uncivilized and ugly. Some of the above characteristics clearly indicate certain external features which were unacceptable, like ugliness, grey hair, weak sight, long hair. Good physical features ensured that the next progeny born will possess the same good features, thus producing pleasant looking future citizens. Apart from

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<sup>66</sup>Atharvaveda8/6/4

that cunningness, sinfulness, violent nature, dandiness and infectious diseases were also avoided. It must have been thought by the law makers that since many qualities are genetically transferred from a parent to a child, therefore one must be very careful in selecting a proper and worthy parent of a proper and worthy progeny.

In *Sūtra* literature we also find that preference is given to intelligence and good family. *AsvalāyanaGṛ hyasūtra* says, ‘one should give a maiden in marriage to a man endowed with intelligence’<sup>67</sup>. The *ĀpastambaGṛ hyasūtra* remarks that the accomplishments of a bridegroom are that he must be endowed with good family, a good character, auspicious characteristics, learning and good health<sup>68</sup>. *BaudhāyanaDharmasūtra*<sup>69</sup> states that a maiden should be given in marriage to one who is endowed with good qualities and one who is a celibate. In *GautamaDharmasūtra*<sup>70</sup> it is stressed that a girl should be wedded to a learned man with good character and gentle manners. In *Vātsayana’s* opinion a person who has completed his studies should enter the household stage and only an educated youth has the right to marry. *Yājñavalkya*<sup>71</sup> states that a bridegroom should be of the same caste and social standing, well read in the Vedas, carefully examined about his manly power, youthful, intelligent and agreeable to all the people. In *Mahābhārata*, we can find mention of the rule that friendship and marriage should take place between those who are equal in respect of wealth and

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<sup>67</sup> Asvalāyana Gṛ hyasūtra I.5.2 in Kane, p.429

<sup>68</sup> Āpastamba Gṛ hyasūtra 3.20 in Kane, p.429

<sup>69</sup> Baudhāyana Dharmasūtra IV.1.12 in Kane, p.429

<sup>70</sup> Gautama Dharmasūtra 10.6 in Kane, p.429

<sup>71</sup> Yājñavalkya 1.55

learning. In *Udyogaparva* it is stated that marriage between opulent and poverty stricken is doomed to fail.

According to Manu, a celibate should enter the household stage after studying the Vedas and after performing the *SnānaSamskāra*. It is mentioned in all ancient literature that a wise man should consider the family, character, physique, age, learning, wealth and resourcefulness of a man before giving his daughter in marriage. Manu gives prime importance to a family, where he forbids matrimonial alliance with the following ten kinds of families:

1. In which no sacraments are held
2. In which no sons are born
3. In which Vedas are not studied
4. In which the members have too much hair on their bodies
5. In which the members suffer from piles
6. In which there is tuberculosis
7. In which members suffer from indigestion
8. In which there is hysteria
9. In which there is a history of leprosy
10. In which there is dry leprosy

The restrictions on diseased families were probably to avoid unhealthy children and relatives. Studying of Vedas indicated a cultured and learned family where good values were practised and nurtured. Similarly absence of sacraments also indicated such families where the social and moral ideals of *śāstras* were not

followed. Any kind of absence of culture and morality was strictly avoided in then society. Avoidance of families where no sons were born was to avoid the custom of *putrikā* where the child born to the wife was adopted by the maternal side and that child became the son of the family to offer *piṅḍadāna* to the maternal ancestors. In patriarchal set-up such a custom was difficult to follow as the patriarchal system did not allow the supremacy of maternal side over the future of its own progeny.

.Rules for the selection of the bride were far more elaborate than those for selecting a bridegroom though in some respects like, necessity of good family and absence of diseases, they are same. According to *Rgveda* a girl was to be chaste, virtuous, beautiful and from a good family. Manu gives a long list of characteristics which are to be avoided in selecting a bride. A bride should be avoided who has faulty limbs, extra limbs, less hair, yellow eyes, one who is too talkative and one who does not have a brother. A girl should be soft spoken, have fine hair and teeth and have the gait like a swan or a crocodile. *AsvalāyanaGṛhyasūtra*<sup>72</sup> mentions that a bride is good who is intelligent, beautiful, of good character and is free from diseases. Therefore we see that importance was given to bodily characteristics as well as internal qualities.

Manu is quite elaborate regarding the external qualities of a girl. According to him, a bride should be avoided having red hair, extra limbed, stays sick, hairless or very hairy, too talkative or has yellow eyes<sup>73</sup>. A bride should have faultless

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<sup>72</sup> Asvalāyana Gṛhyasūtra I.5.3 in Kane, p.432

<sup>73</sup> Manu III.8

limbs, has a sweet name, has a gait like swan or an elephant, has medium sized body, hair and teeth and has delicate features<sup>74</sup>. *ĀpastambaGṛhyasūtra*<sup>75</sup> points out too that one should avoid one who has been given (to another), and who is guarded (by her relations), and one who looks wicked , or who is a most excellent, a hunch-back, a girl of monstrous appearance, a bald-headed girl, a girl whose skin is like a frog's, a girl who has gone over to another family, a girl given to sensual pleasures ,one who has too many friends, or who has a fine younger sister, or one whose age is too near to that of the bridegroom.

*Vātsāyana* states that a girl of the same caste, virgin, belonging to a good family and three years younger than the groom should be selected. Such a union is believed to bring about *dharma*, *artha*, offspring, affinity and increase of friends. It can be noted that unlike Manu, *Vātsāyana* does not prescribe a huge age difference between the bride and groom. He however stresses on the external qualities of beauty, good bodily form, possession of wealth, good connections as the desirable requirements. *Āpastamba* states a common sense rule for selecting a bride. It says that if one's eyes and mind are riveted to a particular girl then one should select her only as that very person will bring happiness in one's life<sup>76</sup>. However this rule is only observed in *Āpastamba* because all other literatures are much stricter and elaborate in selection of a bride. Mere visual fascination can be regarded as a drawback because it may not necessarily provide with the proper companion.

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<sup>74</sup> Manu III.10

<sup>75</sup> *Āpastamba Gṛhyasūtra* III.10-11 in Kane, p.433

<sup>76</sup> *Āpastamba Gṛhyasūtra* III.21 in Kane, p.433-434

Some of the *Gṛhyasūtra* propose a peculiar method of selecting the bride. In *AsvalāyanaGṛhyasūtra*<sup>77</sup> it is prescribed that eight lumps of earth from eight different places like a cow stable, field that yields two crops a year, a bedī, a pool of water that does not dry up, from a gambling place, from a place where four roads meet, from a barren spot and from a burial ground are to be collected and placed before the girl and she is asked to choose. According to her choice, it becomes decided as to what kind of destiny her husband will have. If someone chooses the earth of burial ground then it is believed that her husband will die after marriage. Such a girl was rejected. *ĀpastambaGṛhyasūtra*<sup>78</sup> prescribes a somewhat different method. Instead of eight lumps, there it is mentioned that five lumps of earth like earth mixed with several seeds, from altar, ploughed field, and lump having cow dung and a lump from cemetery. The first four lumps are signs of prosperity but the last is objectionable. Just as a groom's handsomeness, intelligence and good family were important similarly a girl being the producer of future generation, had to be perfect from all aspects. In *PāraskāraGṛhyasūtra*<sup>79</sup> it has been said that women are created for offsprings; a woman is a field and a man is the possessor of seed; the field should be given to one who possesses the seed. However one can notice that the requirements of the bride were more elaborate and strict rather than that of grooms.

Such elaborate requirements regarding the examination of family of the marital couples indicate that the bride and groom were supposed to be equal in all

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<sup>77</sup> *Asvalāyana Gṛhyasūtra* I.5.3 in Kane, p.433-434

<sup>78</sup> *Āpastamba Gṛhyasūtra* III.15-18 in Kane, p.433-434

<sup>79</sup> *Pāraskāra Gṛhyasūtra* I-8 in Kane, p.433-434

respects so that they may produce a good offspring who can further develop into a good citizen of society with all the religious, cultural, moral and spiritual values. When we talk about good citizens, we can say that it must have been applicable to both male and female, because women who were the child bearers were also carriers and teachers of values to their children. A male child, being the future of family and society was all the more important, whereby his nurturing and realisation of his potentiality was all the more important. Thus in various scriptures one can find mention of sacrifices to obtain an heir, and for that marriage becomes necessary to ensure the birth of progeny who can carry forward the family lineage. The underlying thought here was that since a child, especially a son, carried forward the name and tradition of family, ancestors achieved immortality through them. *ĀpastambaDharmasūtra* declares too that immortality consisted of offsprings. “In your offspring you are born again. That, O mortal, is your immortality.”<sup>80</sup> Sons were regarded as the distinct clones of their father, as ones who could perform the prescribed rites and increase the fame and heavenly life of their departed ancestors. *VasiṣṭhaDharmasūtra* also says, “A debt he pays in him and immortality he gains, the father who sees the face of his son born and alive.”<sup>81</sup> “Eternal are the worlds of those men who have sons”<sup>82</sup> since such emphasis was placed on birth of progeny and a male heir, various customs like polygamy, polyandry, *niyoga* were practised to achieve the objective. These customs (being discussed later) may appear to be gross from a modern moral perspective where we think of marriage as a monogamous union, but if we study

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<sup>80</sup> *Āpastamba Dharmasūtra* 2.4.2 in Olivelle, p.92

<sup>81</sup> *Vasiṣṭha Dharmasūtra* 17.1 in Olivelle, p.92

<sup>82</sup> *Ibid* 17.2

the ancient scenario where a major objective of marriage was the importance given to birth of progeny, one can be clear as to why these practices were considered moral. Thus unless one had vowed to celibacy, marriage and procreation were primary duties for anyone entering the *gṛhasthyaāśrama*. Marriage and household life played an important role in acquiring the three values of life, namely, *dharma*, *artha* and *kāma* which in turn was closely linked with the total development of personality. The satisfaction of these values could be properly fulfilled in a marital relation where marriage helped satisfaction of sexual appetite, acquisition and preservation of wealth and progress of all social and religious duties.

The Hindu view of marriage brings out the vital social implication underlying its aim where socially as well as personally both husband and wife are entrusted with duties and obligations for proper nurture of family, tradition and culture. It might seem that the social significance or the obligatory aspect of marriage is highly stressed upon in Hindu view with hardly any emphasis on individual likes and feelings. It can be here argued that though the ‘responsibility and duty’ aspect of marriage was emphasised more, but it was certainly regarded that marriage was not mere sexual fulfilment or biological need of reproduction. The life of man was not for a hedonistic fulfilment of one’s own pleasure, but a good life was one where an altruistic or a utilitarian outlook could be achieved. Any action was seen to be good if it achieved maximum happiness for maximum number of people, thus marriage, was not about self-interest, but was about achieving social and spiritual harmony through self-fulfilment.

### 1.3.3 Fulfilment of *varṇa* criterion

Another vital requirement in a matrimonial alliance in Hindu system was examination of the *varṇa*. Hindu society was primarily divided into four *varṇas*, namely, *Brāhmin*, *Kṣatriya*, *Vaiṣya* and *Śūdra*. The caste holding the highest position was *Brāhmins* and the lowest was *śūdras*. Initially the deciding factor of belonging to a particular caste was the basis of one's capacity and abilities. Later on we see that birth in a particular caste automatically decided the membership. The caste system was evolved to classify the intellectual abilities of members of society and to organize the social order into a well-knit system so that human capabilities could be properly organised for establishing a civil society. Basically one can readily say that there were three accounts of the origin of *varṇa* system-ability account, birth account and *Gītā* account. By the ability account the four social orders were on the basis of the vocational choice based on the psychological tendency of bodily, mental, intellectual or spiritual effort. *Śūdras* being predominantly inclined towards physical labour, *vaiṣyas* towards mental work, *kṣatriyas* towards intellectual and *Brāhmins* towards spiritual formed the body, mind, intellect and soul respectively. The birth account determines the *varṇa* of an individual by his birth or parentage, rather than by his ability. The *Gītā* account talks about creation and organisation, where caste is organised on the basis of *guṇa* and *karma*, and where *Kṛṣṇā* claims to be the creator of different individuals of four *varṇas*, thereby making them belong to the *varṇas* by birth. The *Varṇa* system by the birth account is a hierarchical social order in which one

class is considered higher than the other, and the benefits and burdens are distributed among the members of society on the basis of their belonging to a particular class. The *varṇa* system might have been an open order at some point of society where a member of the *śūdra* class could enjoy the privileges of education or recitation of Vedic verses as the other higher classes. But under the birth account, *varṇa* system becomes a closed order, where being member of a particular *varṇa* meant the responsibility of maintaining the purity of caste, purity of blood and racial quality. It was, therefore, vital to strictly follow the rules of maintaining the purity of caste structure. Thus a means had to be devised to do so. If being a member of a particular *varṇa* was decided by one's birth, then it was necessary to formulate customs to ensure that the birth was pure. By 'pure' here it is meant being born of parents of same *varṇa*, who carry the characteristic traits of that *varṇa* and transfer the traits to their offspring. In Hindu tradition, the rules of *varṇa* system thus prescribe that *savarṇavivāha* or marriage within one's own caste is to be encouraged; and *asavarṇavivāha* or marriage outside one's caste is forbidden.

In Hindu society, *savarṇavivāha* or endogamous marriage was encouraged and *asavarṇavivāha* or exogamy was forbidden. Therefore, all the *smṛtis* enjoin that a twice born should marry a girl of his own caste. In *Atharvaveda* we find mention of the fact that the *Brahmin* was considered to be the best husband for girls of all classes.<sup>83</sup> *Brahmin* males being the highest of all classes could marry girls from all the classes as society allowed the practice of hypergamy but a *Brahmin* girl did

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<sup>83</sup>Atharvaveda v.17.8.9

not have such privilege as hypogamy was not allowed. When we move on to the *dharmasūtra* we find that some of them like *Asvalāyanagṛhyasūtra* is silent about the caste of the bride, but *Āpastambadharmasūtra*<sup>84</sup> requires that one should marry a girl of one's own *varṇa*. In *Gautamadharmasūtra*<sup>85</sup> we see that it is preferred that a man should marry in his own caste but in certain circumstances he can marry a girl from a caste lower than himself. *Gautama* further adds that the children born of such union stand outside the protection of the *śāstras*. *Manu* commands one to marry in his own caste. He says that a twice born should marry first in his own *varṇa*. The other wives were merely taken for fulfilling the carnal lust. It was believed that union of a *dvija* or twice born with a woman of lower rank could never produce religious merit. In actuality, the marriage of higher rank with lower rank could lead to inter mixing of the ranks which hampered the attempt to maintain purity of lineage.

The caste factor was important for propagation of the blood line of one's own *varṇa*, especially for the members of the higher order. Since the characteristic traits and physical features of a child were inherited from its parents, it was important for them to have the same genetic structure so that the genes could be transferred to the child. It was thus vital for society to regulate and control the method by which proper mixing of genes could be maintained. Thus it was vital to consider the caste requirement in the institution of marriage where marriage within the same caste not only maintained the desirable characteristic traits but also preserved the economic or social types. Thus society has always tried to

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<sup>84</sup> *Āpastamba Dharmasūtra* 1.7.33 in Kane, P.448

<sup>85</sup> *Gautama Dharmasūtra* IV. 1, 25-26 in Kane, p.448

preserve the homogeneity by avoiding the danger of losing their identity to the inferior race. However if the two types mixed are of antagonistic nature then there must be a surrender of one to the other, or a blending of the two on an unequal basis.<sup>86</sup> Thus society has always tried to prevent intermarriage where rigid social ideals have acted as a bar to harmonious adjustment in presence of diversity. One can surely ask that in spite of such rigidity, intermarriage or cross breeding could be historically observed through migration, conquest or slavery. One can say that intermarriage is surely a constant practice throughout history of human society where aggressive races have mixed with stationery races, but this intermarriage has not brought acclimatization at all. It has resulted in formation of a new race, like Eurasians or colonies like British West Indies.<sup>87</sup> However, preservation of racial purity has always been more vital for saving of characteristic traits and capacities. The ancient Hindu system though was strict in caste consideration of marriage, yet allowed inter-marriages in exceptional cases. Like *Kautilya* in *Arthaśāstra* allows inter-caste marriage on the condition that the girl has several good qualities. The ban on inter-caste marriage and the prevalence of marriage within a caste though highly essential for preserving racial purity yet an objection can be raised that if *savarṇa* marriage was encouraged in society then marriages occurred in a very closed circle thus blocking out the possibility of inter-mixing of genes. However if we closely study the institution that *savarṇavivāha* itself followed many strict precautionary measures.

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<sup>86</sup> Ibid, p.441

<sup>87</sup> Ibid, p.443

Firstly, a *savarṇavivāha* did not mean that one could marry in one's own gotra. In other words even if *asavarṇa* marriage was allowed, *sagotra* marriage was strictly prohibited. Before moving onto the reason behind such restriction, one needs to clarify the meaning of *sagotra*.<sup>88</sup> The word *gotra* in *R̥gveda* means 'cow-stable' or 'herd of cows'. In *R̥gvedic* society where the main means of livelihood was cattle herding which made livestock breeding and looking after cattle a major activity. Accumulation and increase of herd was the primary source of wealth. Politically a family was considered to be rich and powerful if he had huge stock of herd, grazing land for that herd and capacity to protect not only that herd but also one's clan. One can thus say that this political and social phenomenon gave rise to the importance of some clans or *gotra* who were powerful than the rest in terms of wealth.<sup>89</sup> Descendants of that clan or *gotra* were considered as one family. In *Atharvaveda* however, the word '*gotra*' stands for a group of men connected by blood. Marriage within the *gotra* meant marriage with the family. By 'family' it means having common ancestors. To put it clearly a *gotra* was an assemblage of men who were descendants of a common patriarchal ancestor, As a result these men and their successors were considered to be related to same ancestor. Marital relationship within the *gotra* meant marrying one's own relation. *Sagotra* marriages were forbidden with the fear that it might lead to incestuous relationship. An incestuous relationship means that brothers and sisters, male and

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<sup>88</sup> The word 'gotra' as in *R̥gveda* stands for a herd of cows. It also stands for a group of men or sect who had a common ancestor. From the ancient times the number of sects according to the ancestors were eight, namely, Viswamitra, jamadgni, Bharadvaja, Gautama, Atri, Vasistha, Kasyapa and Agastya. In Hindu marriage the bride and the groom are not allowed to belong to the same gotra. In other words, direct blood relation was a bar in marital relations.

<sup>89</sup>Thapar, p.24-25

female cousins are all husbands and wives of one another. As a matter of fact the practice of sexual intercourse exists among brothers and sisters, and the descendants of such relations are themselves siblings as well as husband and wife. Not only so, an incestuous relation can mean sexual relation between parents and children, having common husband of several sisters or common wife of several brothers. Such a system might have existed at some point of history, like Engels talks about barbaric family or punaluan family where it was convenient to have all the relations within a small circle. However, as civilisation advanced, the idea of having sexual relation with parents and siblings became gross and crude. Scientifically it can be said that the offspring born of such relation is most of the time carrier of certain birth defects as when we mate with the person having major common genes with us there is a high chance of passing on autosomal recessive disorders caused by recessive genes, which however remain dormant if we mate with a different gene. However, this being a modern scientific analysis, is not sufficient enough to answer as to why mankind felt that an incestuous relation was immoral and taboo. One can suppose here that at a certain point of history, continuous inbreeding could have resulted in offsprings having serious birth defect. As healthy offsprings were a requirement of a healthy and growing society, it must have been necessary for resorting to methods to ensure the same. Thus we can say that every civilisation or race or religion must have made certain rules to prevent this incestuous relation. In Hindu system the prohibition of *sagotra* marriage is one of them. The whole idea of prohibiting *sagotra* marriage must also have been desired to provide a sacredness to the parental relation or

sibling relation. Mishra writes, “The Vedic and the post Vedic law-makers knew that man is essentially a biological animal and his affairs are biological affairs and must be carried on according to biological principles. Then in order to avoid inbreeding on one hand and wide outbreeding on the other viz. the rule was ‘inside the caste and outside the family’.”<sup>90</sup> Śāstrakaras like Āpastamba<sup>91</sup>, Viśṇu<sup>92</sup>, Manu<sup>93</sup> or Yājñavalkya<sup>94</sup> unanimously agree that no one should marry a woman of the same *gotra*. A *sagotra* marriage leads to grave sin and must be severely penalised.

Next, *sapiṇḍa* is a very important subject in the Hindu law and has reference to three branches of it, marriage, inheritance and purity of birth and death.<sup>95</sup> The prohibition against marriage with a *sapiṇḍa* girl applies to all *varṇas* including *śūdras*.<sup>96</sup> Two law schools, namely, *Mitākṣara* and *Dāyabhāga* agree on the point that a *sapiṇḍa* marriage cannot be accepted. According to *Mitākṣara*, *sapiṇḍa* means one who has the same *piṇḍa*, i.e. body or particles of body. On the other hand, *dāyabhāga* says that *piṇḍa* stands for a ‘ball of rice’ which is offered as oblation to one’s ancestors. Therefore a *sapiṇḍa* relationship is one where two people are related through oblations to same ancestors or particles of the body. Thus a son has a *sapiṇḍa* relationship with his father, paternal grandfather, mother, mother’s father, or mother’s sister and brother. The main factor in *dāyabhāga* tradition is to see that inheritance of family property remains within

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<sup>90</sup> Mishra p.49

<sup>91</sup> Āpastamba Dharmasūtra II.5.11.15 in Kane, p.448

<sup>92</sup> Viśṇu Dharmasūtra XXIV.10 in Kane, p.448

<sup>93</sup> Manu III.5

<sup>94</sup> Yājñavalkya I. 53

<sup>95</sup> Mishra p.52

<sup>96</sup> Kane p.452

the family, whereby it is important to define who all are to be counted as ‘members’ of a family. In matters of inheritance there has to be a guiding principle where the inheritors are one’s who can confer funeral oblations to the deceased. Manu in this context explains the *sapiṇḍa* relation thus, “To three, libations of water must be given; towards three *piṇḍa* proceeds; the fourth is the giver of these (of water and *piṇḍa*), there is no fifth properly. Whoever is the nearest among *sapiṇḍa*, his becomes wealth of him (who dies).”<sup>97</sup> It means that a man has duty of offering *piṇḍa* upto his three male ancestors. The man who is himself the fourth generation is responsible to pay his respects to the above three ancestors, thereby inheriting from them. When this man dies, his son becomes the fourth in turn, thereby paying respects to the immediate the three ancestors, i.e. father, grandfather and great grandfather. There is no counting of fifth here and this process again continues for the successive generations. The wealth of the family then goes to the fourth generation who is immediately near to the ancestors. To three, libations of water must be given; towards three *piṇḍa* proceeds; the fourth is the giver of these (of water and *piṇḍa*). Whoever is the nearest among *sapiṇḍa*, his becomes wealth of him (who dies).”<sup>98</sup> *Baudhāyana* says that ‘the paternal great grand-father, the paternal grandfather, the father, the man himself, his full brothers, his son, his grandson participate in the same *dāya* and are called *sapiṇḍa*.’<sup>99</sup> Here *dāya* means inheritance. Thus the inheritance has to remain within the nearest family.

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<sup>97</sup>Manu IX. 186-187

<sup>98</sup>Manu IX. 186-187

<sup>99</sup>Baudhāyana Dharmasūtra. I.11.2, 9-10 in Olivelle, p.98

All *śāstrakāras* like *Āpastamba*, *Gautama*, *Vasiṣṭha* etc. prohibit *sapiṇḍa* marriages. Manu also says that a girl who is not a *sapiṇḍa* or *sagotra* is recommended for marriage to twice-born men. Such prohibition can be surely for prevention of incestual relations, because if we think in scientific terms, if near relatives marry, then the defects are transmitted in an aggravated manner to the offspring. Moreover marriage within the circle of one's near relatives is bound to make society a much more closed phenomenon, without giving it scope of expansion economically, socially, culturally and morally. Even if there were restrictions on *savarṇa* marriages in Hindu society, several instances of *asavarṇa* marriage could also be found. The practice of not marrying outside one's *varṇa* was not so rigid in ancient culture. *Asavarṇavivāha* or exogamous marriage was of two types-*anulomavivāha* (hypergamy) i.e. the giving of daughters from lower caste to grooms of higher caste and *pratilomavivāha* (hypogamy) i.e. giving of a daughter of a higher grade to a groom of lower caste. *R̥gveda* gives instances where we see that *Kṣatriyas* had married off their children in the *Brāhmin* family. Śyāvasva who was a Brahmin got married to the daughter of king *Rathviti*.<sup>100</sup> In *Atharvaveda*, a Brahmin was given the honor of marrying girl of any caste. *BaudhāyanaDharmasūtra* and *ViṣṇuDharmasūtra* permitted the marriage of a *Brāhmin* with any caste, a *Kṣatriya* with *Kṣatriya*, *Vaiśya* and *sūdra*, a *vaiśya* with *Vaiśya* and *sūdra*, and a *sūdra* with a girl of his own caste.<sup>101</sup> Out of the twelve kinds of son accepted in Hindu culture (to be discussed in detail in later section), *Parshava* was one who was born of a

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<sup>100</sup>R̥gveda 5/61/17-19

<sup>101</sup>Baudhāyana Dharmasūtra 1/8/2, VDS 24/1/4 in Kane, P.448

Brahmin husband and *sūdra* wife. From this it is clear that hypergamy was prevalent in then society. Even though the children born out of such union were given a low status in society. On the opposite side, *pratilomavivāha* or hypogamy was rarely seen in society where a low caste groom could marry a high caste girl. The offspring of this union was considered worse than that of hypergamy because this kind of inter-caste union defied the over-arching aspect of male domination and female subordination. In a society where the husband was considered to be the head of the household and wife his property, the mere fact that the bride could never be of higher rank than the husband. If a wife was of higher caste, then that meant caste domination will over-rule, the patriarchal domination. We find one instance in *Mahābhārata*, where King *Yayāti* married the daughter (*Devayāni*) of Brahmin sage *Sukracārya*.<sup>102</sup> Several *śāstras* did not tolerate such types of marriage where the marital alliance was merely for fulfilling the physical desire. Such marriages disturbed the social equilibrium and moreover affected the sacramental religious and meritorious element of the marriage as seen in Hindu culture.

In Hindu culture, the institution of marriage portrays an amalgamation of various subordinate elements which covers the social and moral existence of all the members in this culture. The institution through all its norms and rules exhorts two human beings not only to fulfill the biological aspect of reproduction but also to fulfill the social obligations connected with *gāṛ hasthyaāśrama*. The marital relationship regulates social behavior, organization and control. Not only so, the

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<sup>102</sup>*Mahabharata, Ādiparva, p.135*

sacramental character of the institution gives a shape to the moral obligations of couples where they not merely conjoin to fulfill their sex-impulses but also coordinate for the best interests of society. The moral perspective in Hindu marriage may be counted as both teleological and deontological, in my opinion, as marriage is about duties and responsibilities as well as serves all the social, economic and physical purpose of mankind. As we move on to the next chapter we will try to study some more aspects of marriage in Hindu culture which may be a mere portrayal of local customs but they are equally vital in projecting the picture of Hindu marriage.

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## CHAPTER II

# Different Forms of Marriage as practiced in Hindu Culture

As we have already seen marriage as a social institution had a great impact over the sexual relations of men and women through several customary practices and injunctions which were a part of marriage customs and morality. Apparently, there was some disparity between moral norms and actual practice. The prevalent power wielders did not approve of such practices and condemned them. At the same time, they tried to legitimize such unorthodox unions, lest they affect the existing *śāstric*, caste based morality of marriage. Since marriage was not a mere social institution but a legal one too, it was vital to devise norms for making the legalisation full proof. In ancient system, legalisation of marriage meant giving legitimate status to children who not only inherited the property of the father but also were the perpetuator of domestic religion. Legitimation of marriage was essential for fulfilment of *dharma* and religious purposes. Thus the *Dharmaśāstras* and *Smṛtis* put forward eight forms of regulating the union between a man and a woman. In

the *R̥gveda* we find mention of some forms of marriages, which later on found its full recognition in the *gṛ̥hyasūtras, dharmasūtra* and *smṛ̥tis*. The number of different forms of marriages as found in the various ancient *śāstras* is eight, namely, *Brāhma, Daiva, Ār̥ṣ̥a, Prājāpātya, Āsura, Gāndharva, Rāk̥ṣ̥asa* and *Paiśāca*. ). Kane states Manu's classification of the eight forms of marriage<sup>1</sup> thus:

*The gift of a daughter, after decking her (with valuable garments) and honouring her (with jewels etc) to a man learned in the Vedas and of good conduct, whom the father of the girl himself invites is called Brāhma.*

*When the father gives away his daughter after decking her (with ornaments etc) to a priest, who duly officiates at a sacrifice, during the course of its performance, it is the Daiva form.*

*When there is a gift of one's daughter, after taking one pair of cattle ( a cow and a bull) or two pairs only as a matter of fulfilling the law ( and not as a sale of the girl), that is named the Ār̥ṣ̥a form*

*The gift of the daughter, after the father has addressed ( the couple with the words 'may both of you perform your religious duties together') after he has honoured the bride-groom( with Madhuparkaetc), is declared to constitute the Prājāpātya form.*

*When the girl is given away at the father's will after the bridegroom gives as much wealth as he can afford to pay to the relatives of the girl and to the girl herself, that is called the Āsura form.*

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<sup>1</sup> Kane , p.516-517

*The union of a girl and the bride-groom by their mutual consent is known as Gāndharva, which springs from the passion of love and has intercourse as its purpose.*

*The forcible abduction of a maiden from her house, while she weeps and cries aloud, after her kinsmen have been slain ( or beaten), wounded and (their houses or fortresses) are broken open, is called the Rākṣasa form.*

*When a man has intercourse with a girl stealthily while she is asleep or intoxicated or disordered in mind ( or unconscious), that is the Paisāca form.*

Kautilya states that the first four forms belong to the *dharmiya* category and the latter to the *adharmiya* category.<sup>2</sup>In fact the latter form could be regarded as *dharmasangata* (according to *dharma*) if it achieves societal sanction. The different forms of marriage represent the evolution of this institution from the earliest times. It is worth noting that in all forms, except the *Gāndharva* form, the consent of the girl was not asked for. This indicates that in matrimonial affairs, women were definitely controlled by men.

It should be noted that in whichever form the bride was procured even if in the *Brāhma* form (the highest one), marriage was not complete unless it was solemnised by rituals and ceremonies. In *Rākṣasa* form ( where bride is captured through force) and *Gāndharva* form ( when bride selects her partner through mutual love), the maiden attains the status of a wife only when the marriage rites are gone through. *Vasiṣṭha Saṁhitā*, even says that if a

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<sup>2</sup>KautilyaArthaśāstra 3.2.2

maiden is carried by force and not married with mantras, she may be lawfully given to another man.<sup>3</sup>

I will try to discuss the accepted eight forms of marriage, and also some other forms like polygamy, polyandry, niyoga based on societal norms.

## **2.1BRĀHMA FORM**

The most exalted and praised form of marriage was *brāhma* form. Here the sole emphasis lay in the free giving away of the daughter to a groom who was gifted and qualified. The groom was chosen for his learning and good character and in return he was duly honoured before the gift of the bride was made to him. In *Gautama Dharmasāstra*, this form was defined as one where maiden bedecked with clothes and ornaments is gifted to a person versed in *Vedic* studies, having good conduct, demeanour and good kinsmen.<sup>4</sup> *Baudhāyana* in addition to the above qualities desired him to be a celibate and one who requests the hand of the maiden.<sup>5</sup> *Āpastamba* mentioned the qualities of the groom in such form as good family, virtue, learning and possessing good health.

Manu writes that in *Brāhma* form, the father of the girl himself invites a man of suitable behaviour and learning and honours him with clothes and ornaments.<sup>6</sup> The adornments with clothes, according to *Medhātithi*, should be of special type, apt to the occasion, thereby indicating affection and honour

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<sup>3</sup>Dutt, p.800

<sup>4</sup> Gautama Dharmasūtra I.4.4 in Chatterjee Vol. II, P.370

<sup>5</sup> Baudhāyana Dharmasūtra I.II.20.2 in Chatterjee Vol. II , P.370

<sup>6</sup> Manu III. 27

provided.<sup>7</sup>Manu also states the importance of good family in matrimonial alliances and therefore provides a list of families from which bride should not be selected. The main reason behind such strictness in selection lies in the belief that the offspring resulting from a bad union inherit the bad elements of the parents.

All the *śāstrakāras* hold the same opinion that good family and suitable qualities must be seen in the grooms for better offspring. This marriage apart from the rest ensures such control. It is to be noted that in this form the father of the bride gets the opportunity to exercise his control over the selection. The girl has no say in such matters. As there is no mercenary motive in this form the father of the bride out of paternal affection chooses the best groom for his daughter. In the *Anuśāṣ anaparva* of *Mahābhārata*<sup>8</sup>, it has been observed that *Brāhmaṇ* offered their daughter with water to a groom of good qualities and heredity. Evidently this refers to the *Brāhma* form, thus associating the *Brāhmaṇ* with this form. P.V. Kane gives a different interpretation where he says that *Brāhma* stands for holy *Veda* and this form being sanctioned by most ancient texts is thus the holiest and best.<sup>9</sup>

This form of marriage further enhances the status of the girl who is given over in marriage. Because this marriage is completed with all auspicious rites the bride attains the status of a wife who is a co-partner in religious activities. Therefore it is the moral responsibility of the father to seek the best qualified groom for his daughter as this will help her in attaining the rightly dignified status of a wife respected by her husband and other members. *Kautilya* further

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<sup>7</sup>Medhātithi on Manu III.27

<sup>8</sup>*Mahābhārata, Anuśāsanaparva*, 44, p.984

<sup>9</sup>Kane, 518

adds that the wife wed in this fashion becomes competent to inherit the property of her husband as well as retains the right of enjoyment and disposal of her personal property. Again this form being the righteous one saves her from the agony of divorce by her husband in all circumstances.<sup>10</sup>

Modern outlook might feel averse to the notion of bride being an object of gift. Most of the definitions of this form of marriage use the term *dāna* to indicate the nature of exchange. The notion of *dāna* means giving away the ownership of one's right over the object to someone else. The receiver of the gift then becomes entitled to use the gift or *dāna* at his free will. It means that the person receiving the gift gets the full ownership of the object and is free to enjoy or dispose of it. However, gifting of the bride in this form of marriage only means transfer of guardianship from the father to the husband. The girl is removed from the tutelage of the father to that of the husband. The husband becomes her lord or master.

To the Hindus this form was regarded as the best and is still followed in modern marriages. The father here gets the religious merit by marrying off and giving away his daughter to a suitable groom of his choice. The groom to whom the gift is made is a highly gifted person, meaning that the intelligence and brilliance of the groom matters in this form of marriage. The girl, however, is neither expected to be bright or intelligent, nor can she choose the groom with whom her entire life will be spent. The patriarchal status of the father here remains respected and challenged, similarly the authority and respect of the groom is maintained as the guardian of the girl.

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<sup>10</sup>Kautilya *Arthasāstra* III.3,19

## 2.2 DAIVA FORM

Another approved form of marriage which might be called second on the list of forms of marriage is the *Daiva* form. Here the daughter is utilized as an object of gift to a priest, officiating in a sacrifice, which is conducted for yielding spiritual benefits, to the father of the bride. In *Gautama Dharmasūtra* the *Daiva* form is defined as one in which the maiden bedecked, is offered as a gift for marriage to a sacrificial priest, within the precinct of the sacrificial altar.<sup>11</sup> *Baudhāyana* in his *Dharmasūtra* lays stress on the point of offering the bride, while the sacrificial fee is to be paid.<sup>12</sup> *Āpastamba* mentions that this offer to the priest (*ṛtvik*) is made at a sacrifice.<sup>13</sup> *Vasiṣṭha* mentions that the bride is not given to any and every priest, but to one who is actually in activity in sacrifice.<sup>14</sup> *Manu* agrees with all these conditions where he defines it as a form of marriage where the gift of a daughter who is bedecked, is made to a priest in active service in a sacrifice.<sup>15</sup>

The importance, or rather preference of a priest as a groom lies in the fact that sacrifices were an integral part of human struggle for life in those times, where man felt the need of divine assistance in every sphere. The priestly class acted as the instrument or source through which divine favour could be reached. Historians like Romila Thapar mention, that the relation between the *purohita* or priest and the other man especially a king was mutual where the priests required warrior and common people to sustain and protect them, whereas the other class i.e. the ruler and common class depended on the priestly class for

<sup>11</sup> Gautama Dharmasūtra 1.4.7 in ChatterjeeVol.II, P.423

<sup>12</sup> Baudhāyana Dharmasūtra I.II.20,5 in ChatterjeeVol.II, P.424

<sup>13</sup> Āpastamba Dharmasūtra II,5.II.19 in ChatterjeeVol.II, P.424

<sup>14</sup> Vasiṣṭha Dharmasūtra 1,31 in ChatterjeeVol.II, P.424

<sup>15</sup> Manu III.28

divine favour.<sup>16</sup> H.C.Śāstri mentions that even the gods require a *purohita* where he states the example of *Taittiriyaśāhitā*, in which mention is made of *Visvarūpa*, son of *Tvastr*, who was the priest of Gods.<sup>17</sup>

A.S.Altekar mentions an important point here in this connection, “Vedic sacrifices, which were fairly popular down to the 4<sup>th</sup> century B.C. often lasted for weeks. The sacrifice had to invite a large number of priests to perform various duties. During this long period of association, he would often be very favourably impressed by the culture, character and attainments of someone among the priests, and would decide to solve the marriage problem of his grown up daughter by offering her to him.”<sup>18</sup> This would not only solve the problem of finding a groom for his daughter and the daughters too get an opportunity to form an estimate of the grooms.

Commentators like *Medhātithi* trace a motive on the part of the father in such form of marriage. He says that firstly it is an easy method of finding a match for one’s daughter and, secondly, the gift of a daughter acts as an impetus to the priest for performing the sacrifice in an accurate manner.<sup>19</sup> *Medhātithi* further asks whether offer of a girl in this form constitutes sacrificial fees. He points out that nowhere in the list of sacrificial fee, is enumerated that a maiden girl alongwith a cow, horse and mule are the things which can be given as a sacrificial fee. His reply is that gift of a maiden daughter should not be made for the purpose of the sacrifice.<sup>20</sup> In order to give an argument in

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<sup>16</sup>Thapar, p.18

<sup>17</sup>ChatterjeeVol.II, p.420

<sup>18</sup>Altekar, p. 45

<sup>19</sup>Medhātithi on Manu, III,28

<sup>20</sup>Medhātithi on Manu, III,28

favour of this form, one can say, since that, the priests who officiated in sacrifices were not the ordinary priests, but were immensely learned in four Vedas, this form of giving off one's daughter was justified. In other words the father of the bride had a very good intention in selecting a proper, learned and settled match for their daughter.

Further the intention of gifting one's daughter to the officiating priest was a kind of bribe to perform the sacrifice alright. *Medhātithi* finds in such a gift an idea of self-interest of the father, who through such offer of daughter attempts to bring the priest in favour with regard to the accuracy and good result of the sacrifice. Such motive renders this form inferior to the previous one where the gift is unconditioned. The reason for approving and recognizing this form of marriage in society was due to the fact that this was applicable to the Brahman class only, since they were the ones who were learned in Vedas and had their primary occupation as *Yājana* (sacrifice for oneself) and *yojana* (for others) and moreover parental control was followed where the bride's father took the onus of finding a groom for his daughter. The motive of self-interest here makes the ritual of giving away a girl in marriage as a gift, more inferior than the previous one.

The position of the woman is a bit inferior in this form. She is utilised in this set up, to further the interests of her father. Here also her consent or right of selection does not matter. Her privilege being that she gets a good, qualified husband and is allowed the status of an associate in the religious rites with her husband.

### 2.3 *ĀRṢA* FORM

According to Manu, a marriage is to be designated as *Ārṣa*, when the maiden is given away to the groom from whom a pair of cow and bull, or two cows are accepted in accordance with religion.<sup>21</sup> *Medhātithi* explains that the word ‘*dharmataḥ*’ as used by Manu, indicating its consonance with law and depicting it as free from the idea of sale.<sup>22</sup> In *Gautama Dharmasūtra* it is mentioned that one pair of cows is to be offered to the person having authority over the maiden.<sup>23</sup> *Kauṭilya*<sup>24</sup> as well as *Yājñavalkya*<sup>25</sup> define this form in an identical manner. *Baudhāyana*, *Vasiṣṭha* and *Āpastamba* too, explain that the act of giving a cow and a bull to the father of a maiden is a vital part of *Ārṣa* form of marriage. Kane writes that the pair of cattle was not given as a bride price but as a part of the ritual of marriage.

In this form therefore there is no monetary transaction but something nominal and useful is given to the father of the bride for giving his daughter in marriage. H.C. Śāstri— is of the opinion that receiving a pair of cows from the groom is strictly according to the law where the gift of cows can be further utilized for her future provision. The cows can be handed over to the bride for her future utility. In the *Āsura* form there is no limit to the amount of wealth received, but in the *Ārṣa* form what is received from the groom is fixed in amount and the spirit of receiving it is in consonance with law. It is due to this reason the former form is regarded as disapproved whereas the latter as one of the approved forms of marriage.

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<sup>21</sup> Manu III.29

<sup>22</sup> Manu III.29

<sup>23</sup> Gautama Dharmasūtra I.4.6 in Chatterjee, Vol I, P.331

<sup>24</sup> Arthaśāstra III.2,4

<sup>25</sup> Yājñavalkya I.49

The *Ārṣa* form can be said to be a moderate version of *Āsura* form where the act of giving cattle can be interpreted as gesture from the groom towards showing honour to the parents of the bride as well as recognizing the status of women. The *Āsura* form because of its mercenary outlook poses like a transaction of sale or purchase where the bride is like a commodity to be bought through the highest price, but in *Ārṣa* form the meagre affectionate presentation of cattle is a gesture of respect and adoration shown by the groom to the bride's family, where the bride's father feels that his authority over his daughter stands absolute, the bride feels respected and this ultimately can lead to a happy and cordial relationship for the future.

## **2.4PRĀJĀPATYAFORM**

The *Prājāpatya* form is the final or the last one in the list of approved forms of marriage. This type of marriage is totally different, where the father neither accepts anything from the groom nor does he give her off to a priest. Here he finds a suitable candidate for his daughter and demands from him a solemn promise to make the married wife (his own daughter) as an associate in all religious acts. This means that the man cannot take anyone else as his wife or partner in religious acts as long as his wife is alive. He cannot renounce the woman he has married because that girl is his partner in all sacrifices. In Indian system it is believed that marriage is important in the sense that a man should marry and enter the *gāṛ hasthya* for performance of religious functions. In this performance the wife and the husband are partners in all religious acts. This form of marriage can be an attempt to promote monogamy.

The principle of imposition of such condition may prove that in *Prājāpatya*, the father acts with the motive for interest for daughter. In the tenth *Mandala* of *R̥gveda*, in the marriage hymn, the wife is expected to be the mistress of the household and exercise her influence on other members of the household. The idea that the two, the husband and the wife, may live together till old age finds expression in the marriage hymn of *R̥gveda*.<sup>26</sup> Thus we see that there is a reference to a form of inseparableness in a marriage union in ancient times as depicted in *R̥gveda*. In *Gautama Dharmasūtra* this form is characterized as one in which the gift of the bride is accompanied by a “mantra” (special condition): ‘may you perform religious acts together’.<sup>27</sup> *Baudhāyana* in his definition mentions about bedecking and covering the bride with new garments as an additional element.

Manu defines this form as one, where the daughter is gifted in marriage after proper show of honour addressing the couple with the following words-‘may both of you perform religious duties together’.<sup>28</sup> *Medhātithi* further adds that in this form both husband and wife are to be considered as equal partners in religion, wealth and love. *Kauṭilya* too mentions this form of marriage where he points out that the salient feature of this form, being, joint performance of duties distinguishes it from other forms. This form of marriage is specifically different from that of Brahma form because here the inseparableness of husband and wife and monogamous relation is stressed upon. In *Āpastamba Dharmasūtra* it is further added that there is a scope for joint ownership of property too. One can feel that *prājāpatya* form of marriage was

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<sup>26</sup> *R̥gveda*, X.85.36

<sup>27</sup> *Gautama Dharmasūtra* 1,4.5 in Chatterjee, Vol.II, P.463

<sup>28</sup> *Manu* III.30

mainly practiced in some sections for economic and social security. It not only provided a safeguard from separation or possibility of sharing the home front with several wives of one's husband but also claim or ownership to husband's property.

HerambaChatterjeeŚāstri points out that this form of marriage was not applicable to women of *Śūdra* caste, as the mantra used in this type of marriage was *sahadharmamcara*, and *śūdras* were not entitled to recite mantras.<sup>29</sup> Apart from the *śūdras*, the other castes practised this form as it promoted the ideal notion of monogamous relationship and glorified the status of children born from such union. This form of marriage can correspond to any modern form of marriage. Here the girl is neither gives as *dāna* to a priest, nor is she abducted, stolen or bought. The parents of the bride are guided by an honest motive of ensuring the status and security of their daughter.

## 2.5 ĀSURA FORM

This system of marriage was the process of procuring a wife through payment of bride price. The *R̥gveda* speaks of an ardent but undesirable suitor (*vijāmātā*) who had to please the father of the bride through heavy payments.<sup>30</sup>

A.B. Keith refers to the practice of acceptance of gifts from the groom. He describes, "Then the gifts are made: The *ācarya* receives a cow from a *Brāhmaṇa*, a village from royal personage, a horse from a *Vaiśya*. If he has a daughter, he receives a hundred cows and a car, unless as is much more

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<sup>29</sup> Chatterjee, Vol.II p.487

<sup>30</sup> R̥gveda I.109.2

probable, the provision really refers to the old practice of purchasing the wife.”<sup>31</sup> Keith therefore points out that acceptance of gifts from the groom was an acceptable *brāhmaṇical* form. In *Pāraskara Gṛhyasūtra* too we find the mention that the person having a daughter should be given a chariot in addition to hundred cows. The *Śāṅkhāyana Gṛhyasūtra* also echoes the same position where it recommends payments to the person having a daughter.

In *Mahābhārata*<sup>32</sup>, we find that when *Bhishma* went to King *Madra* to ask his daughter’s hand in marriage for *Pāṇḍu*, *Madra* mentioned about this custom prevalent in his family. *Pāṇḍu* got married to *Mādri* through this form where *Bhishma* paid a huge bride price to *Madra*. In the same epic we also find reference being mentioned of the people of the territory *Aṅgaw* who practiced sale of brides. In a quarrelsome conversation between *Karṇa* and *Salya*, the latter condemns *Karṇa* for reigning over a territory adopting such bad practices.<sup>33</sup> In the *Anuśāsanaparva*<sup>34</sup> it is mentioned that a great amount of wealth should be given in the purchase of the maiden and that will act as a sort of allurements for the kinsmen of the bride. The groom, therefore, should utilize his financial resources to win over the father and kinsmen of the bride.

Manu defines the *Āsura* form of marriage as one in which the maiden is accepted as wife, at the father’s will, after the groom gives wealth to the best of his capacity to the father or the guardian of the bride<sup>35</sup>. *Baudhāyana Dharmasūtra* states that the money offered is intended to please the guardian of the bride, but there is no consideration of any price to be paid to the bride as

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<sup>31</sup> Keith p.375

<sup>32</sup> *Mahābhārata, Adiparva*, 113, p.166

<sup>33</sup> *Mahābhārata, Karṇaparva*, p.333-334

<sup>34</sup> *Mahābhārata, Anusasanaparva*, 44, p.985

<sup>35</sup> Manu III.31

*stridhana*.<sup>36</sup> *Āpastamba Dharmasūtra* too mentions the groom should give bride price to the best of his ability and then marry the girl<sup>37</sup>. There is no mention of the person to whom the bride price is to be given. In *Vasiṣṭha Dharmasūtra*, this form of marriage is called *Manusaḥ Vivāha* or Human form of marriage<sup>38</sup>. *Āśvalāyāna* also lays stress on the point of pleasing the father or guardian of the girl.<sup>39</sup>

H.C. Śāstri points out that any transaction of sale or purchase depends upon two factors of –demand and supply. The price to be paid for the bride not only depends upon the financial capability of the groom but also the qualities of the bride too. In other words if the bride is beautiful, lucky or of high pedigree then there is no limit to the price to be paid to the guardians because it is obvious that there will be a strong liking for a maiden endowed with all the desirable qualities. Therefore the transaction is influenced not only by financial resources but also desirable qualities.

The attitude of *dharmasūtras* towards this commercial element in *Āsura* form of marriage should be elucidated a little more. *Āpastamba* is very clear that the custom of donating or selling one's children is not recognized as legitimate. It observes that at the time of marriage the groom should voluntarily give a gift to the bride's father in order to fulfil the law. The presentation of gifts or landed property to the bride is not to counted as a part of *Āsura Vivāha*.<sup>40</sup> In *Manusmṛiti* it has been laid down that father of the bride should not take even the lowest amount of nuptial fees and if he violates the law out of greed

<sup>36</sup> Baudhayana Dharmasutra I,II,20,7 in Chatterjee, Vol.I, p.262

<sup>37</sup> Āpastamba Dharmasūtra 2.12.1 in Chatterjee, Vol.I, p.270

<sup>38</sup> Vasiṣṭha Dharmasūtra 1.35 in Chatterjee, Vol.I, p.266

<sup>39</sup> Asvalāyana Gr̥hyasūtra 1.6 in Chatterjee, Vol I, p.262

<sup>40</sup> Āpastamba Dharmasūtra II.5.12-1 in Chatterjee Vol. I, p,263

then he incurs the sin of selling his daughter.<sup>41</sup> *Baudhāyana* too declares such fathers as most sinful, who commit the most heinous crime and fall into fearful hell. He further adds that such people are born again and again and bring bad name to the family up to seven generations.<sup>42</sup> Manu forbids even the *śūdras* from practicing such custom.<sup>43</sup> It is interesting to note that Manu observes that within his range of knowledge, even in former creations there was not heard of anything as sale of a daughter in exchange of fees.<sup>44</sup> But in other places of his text he seems to suggest a marriage by payment of fees. He observes that if a maiden is shown and if at the time of marriage, one other than that maiden is presented, then by the same price, the groom becomes entitled to marry both.<sup>45</sup> Moreover, if after the payment of nuptial fees the groom dies then she should be given over to the younger brother (paying the fees) provided the bride approves of it.<sup>46</sup> In light of these verses we can interpret that the custom of payment of nuptial fees or bride price was prevalent but condemned by the *śāstrakāras*.

Manu in his text further observes that the maidens through such payment of prices stand honoured.<sup>47</sup> *Medhātithi* in his commentary explains that such custom of bride price arouses in the minds of the bride an idea of self-estimation as more the amount of gifts presented, more fortunate and deserving she feels.<sup>48</sup> A.S. Altekar echoes the same view expressed by *Medhātithi*. He writes, “The idea probably was that it would be disgraceful for

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<sup>41</sup> Manu iii.51

<sup>42</sup> Baudhāyana Dharmasūtra I.II.21.5 in Chatterjee Vol. I, p,272

<sup>43</sup> Manu IX. 98

<sup>44</sup> Manu IX.100

<sup>45</sup> Manu VIII.204

<sup>46</sup> Manu IX.97

<sup>47</sup> Manu III.54

<sup>48</sup> *Medhātithi* on Manu III.54

the girl and her family if she was given in marriage for nothing. It would mean that she was not worth any price and that her family had no status and respectability.”<sup>49</sup> This view may present a very positive picture of the *āsurā* form but one can say that in a patriarchal society where the father had complete dominance over his children and; the children were regarded as his property like slaves, the fathers could claim a certain amount of wealth in exchange for the loss of service rendered by the daughter to his family.

The *Āsura* form of marriage was recommended for the *Vaiśyas* and *Śūdras*. However some instances of Mahabharata as mentioned earlier indicate that it was practiced by the *Kṣatriyas* too. H.C. Śāstri mentions that *Kṣatriyas*, because of their princely status and the *Vaiśyas* for their financial resources could take resort to this form. For *Śūdras* there were no specific rules of marriage. The *Brāhmaṇas* were prohibited from observing this form. The reason for this stricture was that this form was based on economic status of the suitor and therefore was left to the opulent section of the society. As this form was not practiced by the *Brāhmaṇas*, it was also not regarded as the approved form of marriage.

## 2.6 GĀNDHARVA FORM

The *Gāndharva* form represents the individualistic attitude where the groom and the bride swear their reciprocal attachment and their union being solemnized by their conjugal love, independent of parental involvement. In *Kāmasūtra* the *gāndharva* form of union is much accepted than any other

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<sup>49</sup> Altekar p.39

form, wherein it has been stated that prosperity lies in case where a woman can attract the eyes and the mind of the male person. Such a woman has been commended in marriage. Therefore the physical attraction and the passions arising thereon are the only constituents or factors behind any marital union, as per this form.

In *Gautama Dharmasūtra*, the *gāndharva* form of marriage is defined as one in which the groom himself expresses his willingness to form a conjugal relation with the consenting bride.<sup>50</sup> *Baudhāyana* also lays emphasis on the mutual willingness of the parties to be united in marriage, in this form.<sup>51</sup> The union of the male and female out of mutual lustfulness has been stated to be the characteristic of this form by *Āpastamba*.<sup>52</sup> *Vasiṣṭha* seems to suggest that both the parties are willing, yet the male person should select from amongst one, who is of equal status with him.<sup>53</sup> *Manu* defines the *gāndharva* form as a reciprocal amorous association, between a young man and a damsel, with mutual desire born of sexual inclination.<sup>54</sup> Thus we see that sexual attraction is the main factor in this union. The most famous example of this form of marriage is between *Dushmanta* and *Śakuntalā*, where Pūru king *Dushmanta* while after a tiring journey through the forest visited the *āśrama* of *Ṛṣi Kanva*. Here he saw his daughter *Śakuntalā*, who was immensely beautiful and attractive. He immediately fell in love with her, and asked her to

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<sup>50</sup> Gautama Dharmasūtra 1.4.8.in Chatterjee, Vol.II, p.504

<sup>51</sup> Baudhāyana Dharmasūtra 1.11.20.6in Chatterjee, Vol.II, p.504

<sup>52</sup> Āpastamba Dharmasūtra 11,5.11.20in Chatterjee, Vol.II, p.504

<sup>53</sup> Vasiṣṭha Dharmasūtra 1.33in Chatterjee, Vol.II, p.504

<sup>54</sup> Manu III.32

marry him according to the *gāndharva* tradition.<sup>55</sup> *Arjuna's* marriage with *Ulupī* was according to this form.<sup>56</sup>

This form of marriage might have been accepted only on the condition that the union had to be socially sanctified by recitation of mantras and performance of rituals. As Manu opines that wifeness is generated only by recitation of mantras pronounced at the time of marriage ceremonies like *homa* and *saptapadi*, therefore it must have been necessary for society to accept this sort of union only when it was sanctioned by performance of rituals. As we see in the case of *Śakuntalā*, when she visited *Dushmanta*, after a long period of time, the king refused to recognize her and their child born out of that union. It might have been because the society would not have accepted *Śakuntalā* as their King's wife without her having been properly married to him. Mythology tells us that there was a *daivavāni* pronouncing *Śakuntala* as the mother of their child and then only did the king marry her properly and gave her the status of a wife.

As the free play of passions get an upper hand in this form, the *gāndharvavivāha* was not favourably accepted by the orthodox society. Moreover it transgressed the parental authority in deciding for a match for their children. On top of that the brides no longer remained virgin during the ceremonies of marriage. A society which was strict about the virginity of brides, where it is said that mantras can be recited only for girls who had no sexual union, could not accept this form truly. Manu regarded the *gāndharva* form as a non-righteous form of marriage which was mainly practiced by the

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<sup>55</sup> *Mahābhārata, Ādiparva*, p.121

<sup>56</sup> *Mahābhārata, Ādiparva*, p.263

*Kṣatriya* and the *Vaiśya* class. The reason for the *śāstrakāras* acceptance of this form is same as the reason for accepting the *Rākṣasa* form. These two forms being basically practiced by the warrior and the merchant class was recognized to mainly keep these two classes satisfied as the subsistence of the society, especially the *Brāhmins*, was dependant over the appeasement of those two classes.

## **2.7 RĀKṢASA FORM**

In the process of evolution, we can say that there is a possibility of a state of society where human beings relied on physical strength for attainment of what was necessary. Satisfaction of sexual passion was a strong necessity for which the males must have fought with each other. The strongest man must have procured his mate by defeating his foes through force. Since the treatment of women was not highly honourable in those societies, women must have put certain resistance to such forcible capture. HerambaChatterjee quotes sociologists like Herbert Spencer who observes, “Though the manners of the inferior races do not imply much coyness, yet we cannot suppose coyness to be wholly absent. Hence that amount of it which really exists, joined with that further amount stimulated for reputation’s sake, will make resistance and consequently capture, natural phenomena. Moreover, since a savage makes his wife a slave and usually treats her brutally, she has an additional motive for resistance.”<sup>57</sup> Therefore we see that there was not a free exchange of sexual satisfaction among the primitive people. When it became impossible to get a

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<sup>57</sup>Chatterjee, p.192

mate, then only it was natural for them to apply force. Westermarck has pointed out several factors responsible for such practice. He writes, "It seems to me extremely probable that the practice of capturing women for wives is due chiefly to the aversion to close intermarriage existing among endogamous tribes also, together with the difficulty a savage man has in procuring a wife in a friendly manner, without giving compensation for the loss he inflicts on her father. Being something quite different from the wrestling for wives already noticed as the most primitive method of courtship, marriage by capture flourished at that stage of social growth when family ties had become stronger and man lived in small groups of nearly related persons but when the idea of barter had scarcely entered in his mind. From the universality of the horror of incest, and from the fact that the primitive hordes were in a chronic state of warfare with another, the general prevalence of this custom may be easily explained. But as it is impossible to believe that there ever was a time when friendly negotiations between families who could intermarry were altogether unknown, we cannot suppose that capture was at any period the exclusive form of contracting marriage, although it may have been the normal form."<sup>58</sup>

The period which witnessed war, conquest and destruction also saw the system of cross fertilization. Here the women were captured as war prizes and used for strengthening their own numbers. Hence marriage by capture became an accepted system in those times.

In India too we observe the prevalence of the above system in our ancient literature. Manu points out that force is applied for abduction of a maiden who is not a willing party to it and the guardians of the maiden offer strong

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<sup>58</sup> Westermarck p.389

resistance which results in their injury<sup>59</sup>. *Baudhāyana* defines this as simply forcible abduction. Both *Āsvalāyana* and *Āpastamba* also mention about this form wherein it is mentioned that the guardians of the girl are overcome while she is carried away. *Yājñavalkya* uses the term ‘*yuddha*’ to indicate that the aggressor used to wage a war to capture a girl. Dr Altekar points out the necessity of war. In his words, “The fight was necessary either because women offered real resistance on account of ill-treatment which they received from their husbands in primitive society or because parents were unwilling to lose the services of their daughters or because it was regarded as a point of honor for a warrior that he should have for his wife a woman, whom he could point out as a trophy of war.”<sup>60</sup>

This also explains why this form was considered to be the appropriate form for *kṣatriyas*. The application of force and arms was a privilege as well as a necessity for *kṣatriyas*. This prohibited them from accepting anything given in *dāna*. They could not even resort to treachery and deceit for possession of another’s property. The whole concept of the *Rākṣasa* form had a certain militant aspect and to the warrior class it was convenient as well as glorifying to procure its womenfolk by capture. In *Mahābhārata*, we find *Bhishma* resorting to this form when he sought bride for *Vicitravirya*. As he was carrying away the three daughters of king of *Kāsi*, *Ambā*, *Ambikā* and *Ambālikā* he justified his actions by arguing that such a custom was apt for *kṣatriyas* and he was following the dharma.<sup>61</sup> In the same epic we see

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<sup>59</sup> Manu III. 33

<sup>60</sup> Altekar p.37

<sup>61</sup> *Mahābhārata*, *Ādiparva*, p. 156-157

*Kṛ ṣ ṇā* encouraging *Arjuna* to abduct his sister *Subhadrā* and marry her.<sup>62</sup> He points out that forcible abduction for the purpose of marriage was laudable for *kṣatriyas*. He further argues that this form of marriage was better than *Brahma* or *Āsura* form. His point is that in *Brāhma* form the bride is treated as an object of gift, while in *Āsura* form she is sold to one who pays the highest price. Therefore the *rākṣasa* form was righteous and proper. This shows the *kṣatriya* mentality which was not ready to receive any *dāna* or gift, or was not in favour of barter. In *Viṣṇupūrāna*, we can also see that *Kṛ ṣ ṇā* too had married *Rukmini* through *Rākṣasa* form. Both of them were in love with each other and *Kṛ ṣ ṇā* simply carried her away from her family. However, in this instance we do not find any resistance on the part of *Rukmini* as she loved *Kṛ ṣ ṇā*, but the act of abduction for marriage indicates the observance of this form.

This form of marriage being only acceptable for the *kṣatriyas*, was considered *adharmā* or unlawful for members of the other *varṇas*. In fact, punishment was devised in our *dharmasūtra* for those who resorted to abduction of women. *Manu* makes provision for corporal punishment in such cases. *Yājñavalkya* mentions that if the woman belonged to a higher caste than the abductor then corporal punishment was prescribed, while in other cases penalty was in the form of a fine. The basic reason behind such penal measures was to put a check on these primitive practices and maintain an orderly system in society. However the only *varṇa* exempted from these penalties was the *kṣatriyas* whose *svīti* or *dharmā* lied in use of physical prowess and gaining everything on the might of their arm. However this

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<sup>62</sup>*Mahābhārata, Ādiparva, p. 267*

recognition or approval required the stamp of sanctity, such as recital of wedding mantras, performing *homa*, *saptapadi* etc. Forcible abduction was regularized through the performance of rituals without which marriage was not regarded as complete and valid. *Vasiṣṭha Dharmasūtra* points out that in the absence of such ceremonies the girl could be handed over to someone else other than the abductor.<sup>63</sup> The religious sanction given to the act was mainly required to provide a safeguard to the position of women. Kane points out that the rites of *homa* and *saptapadi* were required to give the girl wronged the status of a legally wedded wife. However if the abductor refused to do the rituals then provision was also made to hand her over to another suitor and impose a heavy fine on the abductor.

This form of marriage, however, made the position of women vulnerable. She was not secure enough as there was the threat of possible abduction. On top of that, religious sanctity provided to such an act meant that the girl had to recognize the authority and spend her entire life with someone who she may dislike. The girl therefore had no control over the choice of her partner.

## 2.8 PAIŚĀCA FORM

Another heinous practice of the ancient times where a maiden was taken away or raped by use of stealth, deceit or fraud. This form of marriage may have been recognized as unapproved but the fact remains that society did provide religious sanction to such deceit. Manu defines this form of marriage as one in which a man has intercourse with a maiden stealthily, while she is in a

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<sup>63</sup> *Vasiṣṭha Dharmasūtra* xvii.73

slumberous state or under intoxication or insensibility.<sup>64</sup> According to *ĀsvalāyanaGṛhyasūtra*, carrying off a girl who was either sleepy or intoxicated or unconscious for marriage was called *paśāca*. In *Gautama* and *Viṣṇudharmasūtra* we find the same definition. *Medhātithi* explains as to why the name *paśāca* is used. According to him, such acts are done by devilish beings and are censurable on that account.<sup>65</sup> *Yājñavalkya* stresses on the point of deception in this form.<sup>66</sup> However all the *smṛtikāras* do not accept the *paśāca* form. *Vasiṣṭha* and *Āpastamba* do not recognize this form. They mention only three unapproved forms- *Gāndharva*, *Āsura* and *Rākṣasa*.

The formidable offences in this form of marriage were use of fraud, deceit and stealthily having sexual intercourse before marriage. *Manu* and *Yājñavalkya*, both point out that defilement of women is a heinous crime and is subject to capital punishment. This form of marriage must have been devised out of consideration of the pitiable state of women in such cases. It is a well-known fact, even in our present society, a woman who is raped or molested suffers great humiliation. She, without having any fault of her own, has to suffer a lot of misery at the hands of the so-called decent members of the society. The position of women in ancient times could not have been much better. Therefore this system of marriage must have been approved to give the maiden, the legal status of a wife.

This form has been condemned and considered to be sinful by all the *śāstrakāras*. This might have been because of society's disapproval of the

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<sup>64</sup> Manu III.34

<sup>65</sup> Manu III.34

<sup>66</sup> Yājñavalkya I.61

treachery involved. Manu has specifically forbidden such practice for all the *varṇas* and pointed out that it should not be adopted as the last resort. *Baudhāyana* however prescribes it for *Śūdras*. He argues that *vaiśyas* and *Śūdras* do not observe any set rules in respect of procuring life-mates, because they are engaged in blameworthy professional acts like tilling of soil, business, service etc.<sup>67</sup> Despite of condemning such practices, the *śāstrakāras* stand to sanctify such form has been severely criticized. It can be said that legalizing or sanctifying the deceit done hardly redresses the wrong done to a woman. The girl after marrying her ravisher comes under his power, where she is treated like a slave. The unfortunate girl may prefer to choose another suitor, without being recognized as the wife of her abductor. This form of marriage does not allow such freedom to the girl. Altekar, however, objects on this point. He states that our *smṛtis* preserve the relics of several pre-historic customs. They must have recognized it because it was practiced by backward tribes. The *śāstrakāras* must have wanted to stamp out this practice and thus mentioned it. He further adds that society's insistence on absolute virginity of the brides must have been another reason. Any virgin, who had the misfortune of being raped, had hardly any chance of getting married honorably. The only way to help those girls was by forcing the culprits to marry the girl deceived. Through this the society forced the culprits to take the responsibility of the offence committed by them. The performance of sacred rites like *Homa* and *saptapadi* was also required in this form of marriage. *Medhātithi* also points out that if the ravished maiden harbors no liking for the culprit then she could be handed over to another person. But if the culprit is willing to discard his duties then he

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<sup>67</sup> Baudhāyana Dharmasūtra I.20.114-15 in Chatterjee, Vol.I,P.241  
The above argument is not convincing and acceptable

should marry the girl. *Medhātithi*'s comment is praiseworthy in theory, but the question remains as to whether the above mentioned freedom was actually allowed to the girl.

In addition to these eight forms of marriage where the position of women achieves no significant advancement, there was another form of marriage where the woman might have been able to control her marital future by taking the initiative to select her groom. The *swayaṃvara* form marked an advancement from the *gandharva* form where the bride selected her future husband from a milieu of eligible men who participated in a combat or competition organised by the father of the bride and tried to win it by showing their skills. The mention of this form can be found in our epics like *Ramayana*, where *Sitā* selected *Rāma* or in *Mahabharata*, where we find instances of *Draupadi*'s *swayamvara* or one organised by King of *Kāsi* for his three daughters. In *Ādiparva*<sup>68</sup>, *Bhishma* recognises this form as a most eulogised marital practice among the *Kṣatriyas*, but strangely *smṛiti* writers like *Manu* or *Yājñavalkya* do not recognise this form as one of the approved forms of marriage. One reason behind this might be that, the girls who selected their grooms through *gāndharva* or *swayaṃvara* form might have been past the age of post puberty as they could exercise their choice in selection; and since *śāstrakāras* were of the opinion that a father loses his authority over the daughter if she is not married off pre puberty and the girl could select her groom herself; the *śāstrakāras* were not so keen upon this form as it granted a girl independent status.

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<sup>68</sup>*Mahābhārata, Ādiparva*, p. 156-157

Despite *śāstrakāras* reluctance to grant recognition to *swayamvara* form, such marriages were practiced in some sections as evident in various texts. In *KunālaJātaka*<sup>69</sup>, we hear the story of *Kānha* (*Kṛ ṣ ṇ ā*), who was so enamoured by all the five sons of *Pāṇdu* that she selected them all in her *swayaṃvara*. In *KulāvakaJātaka*<sup>70</sup>, *Sujāta*, daughter of *Vepacittiya*, the king of *Aśuras*, selected her husband from an assemblage of *aśuras*. In *Vanaparva* we find the story of *Damayanti* who advised *Nala* to appear beforehand in her *swayaṃvara* so that she could select him there, leaving no scope for anyone to blame their relation.<sup>71</sup> Such instances of independent choice on part of the women were few and did not reflect the general character of marital practice of those times. Kane also remarks that the choice of the bride was a pseudo-choice, where selection depended on the strength of the aspirants, not upon the will of the bride.<sup>72</sup> Of the nine forms of marriage the *Brāhma* form was regarded as the best as it suited the prescribed ideal provided in *śāstras*. It was basically an exercise of the power of patriarchy over the important institution of marriage, whereby marital morality preserved caste hierarchy, prevented incestuous relations and sexually immoral practices like polyandry, pre-marital sexuality, adultery ; and maintained the societies hold over sexuality.

In all the above forms of marriage, there was a monogamic element prevalent in Vedic society as well as later stages. According to *ĀpastambaGṛ hyasūtra*, a man who had a wife whom he had married through proper rituals and had children from her, should never get another wife. But in exceptional cases where his wife was not able to bear children for him or participate in religious

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<sup>69</sup> Cowell, Jataka Tales Vol V, p.219

<sup>70</sup> Cowell, Jataka Tales Vol I, p.76

<sup>71</sup> *Mahābhārata*, *Vanaparva*, p. 414-416

<sup>72</sup> Kane, P.523

activities, he could have more than one wife.<sup>73</sup> However social practices sometimes show several instances where polygamy or having several wives was practiced. King *Dasratha* had four wives, but *Rāma's* marital life was a glaring example of monogamy. The social ethics strictly prescribed monogamy to keep the marriage indissoluble, but the practice of polygamy was prevalent due to several reasons too.

## 2.9 POLYGAMY AND POLYANDRY

The desire for sons in many patriarchal societies has led to the custom of polygamous union, where a man could have several wives. The existence of this custom presupposes the patriarchal tendency of man to have more wives and children who were his labour hands in maintaining and protecting the lands. In Vedic culture we find several instances of Kings and Gods having several wives. However in *dharmasūtra* it is mentioned that if the first wife bears sons to a man, he must refrain from indulgence in matrimony. The later matrimonial relations in such a case were seen as acts of satisfying carnal pleasures, without any purposive end (the aim of marriage had already been achieved through the first wife). Thus *Āpastamba* gives the impression that generally the ideal man is one who observes monogamy. He writes that if anyone has a wife, who is willing and able to perform her share of duties and who gives birth to sons, then he shall not take any wife.<sup>74</sup> On close analysis of the above statement one finds that polygamy was allowed if the first wife did

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<sup>73</sup> *Āpastamba Gṛhyasūtra* 2/11/2 in Kane, P.551

<sup>74</sup> *Āpastamba Dharmasūtra* 5.11.12 in Kane, P.551

not bear any sons or was incapable of performing religious sacrifices due to some reason.

Men were allowed to take wives from castes below their rank. As it is stated that a *Brāhmin* can have four wives, a *kṣatriya* three, *vaiśya* two and *śūdra* only one.<sup>75</sup> Reference of polygamous union is to be found in *Rāmayana* and *Mahābhārata* too, where *Daśratha* can be seen to have three wives, *Pāṇdu* to have five, *Arjuna* was married to *Draupadi*, *Subhadrā*, *Ulūpi* and *Chitrāngadā*. *Bheem* besides being married to *Draupadi*, was also married to *Hidimbā*. The practice of polygamy was followed among the kings, wealthy and merchant class as they were the ones who could afford the maintenance of several wives and children. For the common masses it could be supposed that marriage was restricted to monogamous union. The question here is whether practice of polygamy in upper classes of society indicates a picture of licentiousness. The purpose of polygamy, in my opinion was more economical than sexual. Sexual pleasures could have been enjoyed by a man through the *ganikās* of the then society. There was no need of marriage and lifelong commitment for it. From the point of view of Hindus, there is an important question to be considered in relation to the number of wives allowed for a man, viz, the continuity of the family line. It takes us back to the ideal of Hindu marriage where continuity of lineage and fulfilment of personal and social duties were given more priority. This continuity depended on the existence of male issues. Therefore the later marriages became necessary, if the first one failed to provide a male offspring.

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<sup>75</sup> Sharma, M.R. , P.112

This takes us to the vital question about the ethical demand of mutual fidelity between husband and wife. A wife in the Hindu system was expected to be chaste and have the virtue of fidelity for her husband, whether he is dead or alive, but the same was not expected from the husband. The desirable state of married life is of course that in which both the husband and his wife are mutually devoted to each other till death. Perhaps the *śāstrakāras* were also concerned with the theoretical sanction of polygamy and thus laid down rules for supersession of wives. Thus according to Manu, a wife who is barren may be superseded in the eighth year of marriage, a wife who bears dead children may be superseded in the tenth year, if she bears only female issues then in the eleventh year, and if she is quarrelsome, may be superseded without any delay.<sup>76</sup> But a wife who ‘is kind to her husband and virtuous in her conduct’ may be superseded only with her consent and must never be disgraced.<sup>77</sup> *Kautilya* also lays down similar rules of supersession of the first wife and also adds that violation of the rules were liable for punishment. The man who violates the above rule will have to give his first wife not only a *śulka* and *stridhana* but also an adequate monetary compensation along with twenty four *paṇas* to the king.

*Vātsāyana* views were slightly different in case of polygamy. He points out that a young girl should choose a poor husband for herself, rather than a rich man. A rich man will be able to afford several wives along with mistresses, making the young girl’s life miserable. But the poor man might not be able to do so. However if a girl happens to have no issue then she should advise her husband to marry again. And when the second wife is married, and brought to

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<sup>76</sup> Manu IX. 81

<sup>77</sup> Ibid IX.82

the house, the first wife should give her a position superior to her own, and look upon her as a sister.<sup>78</sup> It is not surprising that a patriarchal system will be least concerned with the mental state of a woman in case of a polygamous relationship. Also the consideration of polyandry being as immoral and shameful reflects the double standard of society in marital morality. Polyandry or the custom of women having several husbands has been regarded from time immemorial as unacceptable part of any marital relation in many cultures. The Greek word *polyandria* derived from *polyandrous* refers to the condition of a woman 'having many men'.<sup>79</sup> In *History of Human Marriage*, Westermarck listed the principal causes conducive to polyandry supported by concrete evidences from all parts of the world. The first of these causes is the disequilibrium in the ratio of the sexes. There might have been more men than women in a given society, due to female infanticide, resulting in drop in female population and the practice of polyandry. The second cause, according to Westermarck, were the severe living conditions in some terrains which led to small fertile properties. If the several brothers of the family married a different girl and formed different families, fragmentation of property would be required. Fragmentation of a small property would lead to economic perdition. Thus making polyandry a necessity, so that family property remains undivided. Westermarck thinks that through this the family property and influence could remain unimpaired. This appears to be a purely economic reason for practice of polyandry. Apart from this no other social reason appears to me as instrumental in the practice of polyandry. A patriarchal society, cannot be expected to think about sexual freedom and choices of a

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<sup>78</sup>VatsāyanaKāmasūtra IV.2

<sup>79</sup>Sarva Daman Singh, p.27

woman, thus allowing her to practise cohabitation with several men. It must have been the urgent need of certain paternal interests which might have led men to allow this custom in some cultures.

In the Indian perspective, we find certain instances of polyandrous marriage among humans as well as Gods. In *R̥gveda*, we find instances of *Asvins* the twins having a single wife called *Surya*, *Rodāsi* (lightning) being a *sādharani* wife of *Māruts* or storm Gods<sup>80</sup> and also verses indicating that every maiden before marriage had three divine husbands, *Soma*, *Gandharva* and *Agni*.

*Soma obtained her first of all; next the Gandharva was her lord. Agni was thy third husband. Now one born of woman is thy fourth.*<sup>81</sup>

These verses might indicate the practice of polyandry among the Aryans indicating that Gods were the guardian of the girl before marriage. We can say that the sexual mores of pre Vedic society and some non-Aryans might have been not so much restrictive about female sexuality and male-female relation. That is why we find several instances of polyandry as well as severe criticism of this custom not only in the later scriptures but In Vedic literature too. In later Vedic literature we come across opposition to the practice of polyandry which only indicates the upcoming moral picture of the succeeding epoch.

*Taittiriya Saṁhitā* says:

*On one sacrificial post he passes round two girdles, so one man secures two wives; that he does not pass one girdle round two posts, so one wife does not obtain two husbands.*<sup>82</sup>

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<sup>80</sup> *R̥gveda* 1.167.5

<sup>81</sup> *R̥gveda* X.85.40

<sup>82</sup> *Taittiriya Saṁhitā* VI.6.4.3 in Kane, p.550

The voices of opposition against polyandry depicted in later literatures indicate the change in sexual morality of society where male-centric morality was going to dictate the norms of the relation between man and woman. The most famous instance of polyandry at all times has been Draupadi's marriage to five *Pāndavas*. According to *Mahābhārata*, the five *pāndava* brothers were at odds with their cousins, the *Kauravas*. The long drawn enmity between them became more evident when *Kauravas* arranged the burning of *Pāndavas* alive at lac palace. *Pāndavas* in an attempt to flee from *Kauravas* conspiracy went to exile. During their exile they collected alms and shared it along with their mother. One day sage *Vyāsa* came and informed that King of *Pañcāla* had arranged a *swayamvara* for his daughter *Pāñcālī* (*Draupadi*). *Vyāsa* wanted the *Pāndavas* to attend the *swayamvara* and marry *Draupadi*, which will lead to political ties and relations between *Pāndavas* and *pāñcāla*. *Arjuna*, the third of the brothers performed the feat and became the suitor of *Draupadi*. The *Pāndavas* returned with the new bride and merrily asked their mother to open the door and see the pretty alms they had brought. *Kunti* unknowingly asked them to divide the alms among themselves. *Draupadi* thus became the wife of the five brothers.<sup>83</sup>

The epic writer voiced the protest of such a marriage through the words of *Draupadi's* father and brother who denounced it as irreligious, against the Vedas and the usages.<sup>84</sup> Epic writer's criticism of the incident indicates the disapproval of such marital union in Brahminical tradition which was a picture of restrictive patriarchal morality. In the epic we find an attempt from the part

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<sup>83</sup> *Mahābhārata, Ādiparva*, p. 246

<sup>84</sup> *Mahābhārata, Ādiparva*, p. 246

of Vyāsa and Yudhiṣṭhira to justify the incident. Vyāsa narrated how in early life Draupadi had meditated upon Lord Siva and asked him five times to give her a good husband. Siva, therefore promised her five husbands. He also justified it by saying that the five *pandavas* were five *Indras* who had been cursed by Lord Siva for their haughtiness and were made to be born as men. In order to console them he had also sent *Sri* or *Lakshmi* as their wife on earth; and accordingly *Draupadi* was born.

*Yudhiṣṭhira* justified the act by giving the instance of marriage of *Jatilā* with seven *Ṛṣis* and *Varksi* with ten brothers called *Pracetas*. He further justified it by saying that it was his mother's order and thirdly, a part of his family tradition. Regarding the first explanation there is lack of any evidence other than what is given in *Mahābhārata*. Regarding the second one, K.M. Kapadia says that it is highly unconvincing that in a patriarchal society a mother's word would be more important than social usage. Moreover Kunti on realising her mistake had sought *Yudhiṣṭhira's* help to find out a way from such an *adharma*. So one can say that polyandry could not have been the acceptable moral form of marital union.

Lastly, *Yudhiṣṭhira's* third explanation, according to Kapadia seems plausible because, *Pāndavas* themselves may have acquired the traits of non-Aryan culture, as *Pāṇdu* had a matrimonial alliance with *Mādri*, Princess of *Madra* region which was known to be matrilineal and consequently considered as a land of loose sex relations. This indicates that society's attitude and preference towards sexual morality wanted a transfer from the so-called matrilineal sexual laxity towards a more controlling patriarchal standard of restrictive female sexuality.

## 2.10 NIYOGA

Importance of male progeny is to be further projected by the custom of *niyoga* in the Indian system. The custom of *niyoga* was meant for the widows whose husband died without bearing her a son. Such a woman was allowed to bear a son from the younger brother of her late husband, or any *sapiṇḍa* or *sagotra* of the husband.<sup>85</sup> The custom involved strict regulations as the purpose of the union was not satisfaction of sexual desires but the sole purpose of begetting a son for the childless widow. The person who was ‘appointed’ under *Niyoga* was to approach by applying clarified butter on his body, to give one son only and by no means approach the woman again.<sup>86</sup> *Niyoga* was a temporary arrangement and no emotional attachment whatsoever was contemplated between the mating partners. Manu considered the practice as beastly and inhuman, and discouraged men from following the practice. However, the custom was popularly practiced as can be seen by the instances of *pāṇḍavas*, *pāṇḍu*, *dhr̥ṣṭ arāshṭ ra*. The first important occasion of *niyoga* in *Mahābhārata* came when *Vicitravirya* died without begetting a son. Since his elder brother *Chitrāṅgad* was not alive and *Bhishma* had taken the pledge of *Brahmacarya* for his entire life, *Satyavati* appointed *Vyāsa* (*Satyavati*’s son before marriage) for *niyoga* to his two daughter-in-laws; *Ambikā* and

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<sup>85</sup>Yājñavalkya I.68-69, Manu Ix. 59-60

<sup>86</sup>Manu IX. 60

*Ambālikā*. From *niyoga* with *Ambikā* was born *Dhṛṭarāshṭra*, and from *Ambālikā*, *Pāndu*.<sup>87</sup>

Another important example<sup>88</sup> of *niyoga* in *Mahābhārata* was applied not to a widow but one whose husband was alive. As the story goes, *Pāṇḍu* once killed a deer while it was mating. It, in fact, was not a deer but a sage in disguise who out of sheer anguish cursed *Pāṇḍu* that death would prevail upon him as soon as he himself tried to enjoy sexual pleasures. *Pāṇḍu*, though then issueless, renounced all the pleasures of life and took to austerity along with his wives. But in spite of this he could not rid himself of the desire to get a son as he knew that without a successor, all his duties in this life will not be completed and he will not get spiritual fulfillment. He, therefore asked his wife *Kunti* to beget a son from a worthy man. *Kunti*, however, did not welcome the proposal on moral considerations and asserted emphatically that being a virtuous wife she could not imagine being with someone else. To stress her point she narrated the story of King *Vyushitaswas* who died young without raising any issue, on account of which his widow *Bhadra* on being commanded by heavenly voices had sexual relations with the corpse of her husband, and consequently begot seven sons. By the way of this story, *Kunti* tried to exhort *Pāṇḍu* to raise progeny by his will-power and by the powers achieved through Yoga. *Pāṇḍu*, however refused and gave reference to his own birth by *niyoga*. *Kunti* emboldened, disclosed to him as to how in maidenhood sage *Durvāsa* had taught her a mantra through which any

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<sup>87</sup> *Mahābhārata, Ādiparva*, p. 158-159

<sup>88</sup> *Mahābhārata, Ādiparva*, p. 171-177

celestial being could be invoked by her at will to beget a son. Thus by invoking *Dharma*, *Yudhishtir* was born; by *Vāyu*, *Bhima*; by *Indra*, *Arjuna*. *Pāṇḍu* on obtaining three sons was tempted for a fourth one. *Kunti*, however, opposed the idea of *niyoga* for a fourth time as *niyoga* was not allowed for more than two times and if a woman went for it she was regarded as licentious. On *Pāṇḍu*'s further insistence, *Kunti* imparted the mantra to *Mādrī*, the second wife of *Pāṇḍu*, who had till grown restless and envious of *Kunti*'s power. *Mādrī* invoked *AsviniKumars* and was blessed with twins, *Nakul* and *Sahadev*. If we analyse the stories of *niyoga* depicted in *Mahābhārata*, we find that certain rules were a vital part of this system and were followed strictly. Firstly, *niyoga* could only be performed by a family member, especially brother-in-law. In the absence of any family member, a *Brāhmaṇa* was appointed for the task. When *Bhishma* refused for *niyoga*, *Vyāsa* who was a *Brāhmin* was called for. Permission of elders was required for *niyoga*, thus pointing out that sex in Indian system was not meant for bodily pleasure but was always resorted to for a purposive aim.

The different forms of marriage as well as the customs of polygamy, polyandry and *niyoga* depict not only the customary practices but also the impact of marriage on the position of women. A wife though looked upon as the half of the husband, was treated with scorn. The treatment meted out in different forms of marriage as already been shown is that of usage of women as one of the necessary aspects in the institution without a proper allowance of freedom. A woman's role was vital enough in society but they were made dependent over men, were looked down upon and were not given any share in property. When we come across customs like polygamy and *niyoga*, a woman

can be seen only as a carrier of future progeny. On the other hand, polyandry brings out dual attitude where again by marrying off a woman into a family, the propertial aspects and monetary benefits are secured, however the absence of a woman's freedom to choose different partners indicates the restrictive attitude of society towards a woman's right of fulfilling sexuality in her own way.

If we try to summarily analyse the picture of Hindu marriage we find positive as well as negative elements. Hindu marriage till date is enriched with its customs, rituals and its social and spiritual purposes. However it can be charged with serious lapses also as discussed before. Over the time, marriage in Hindu culture has led to generation of several social evils like caste system, kulinism, and social rigidity. If we look into Hindu marriage, the sacramental character and indissolubility aspect prevents room for freedom if the marriage is abusive or incompatible. Here one might ask that if we could remove the above aspect of sacred union from marriage and treat it as a contract then can we get a different perspective of marriage free from social evils. In this context one can look towards the institution of marriage as practised in Islam where it is treated as a civil contract. The next subsection will try to give a brief view of marriage as practised in Muslim culture. As in depth analysis of marriage in Islam requires a separate research work, I will only try to give a overview here.

## 2.11 MARRIAGE IN ISLAM

In Islam a marriage (*nikāh*) is a civil contract between two persons of opposite sex for mutual sexual enjoyment and legalized procreation. Besides being a civil contract, it attaches a notion of sanctity too as every step in its materialization and dissolution is guided by religious dictates.. The definition of marriage given in *Hedaya* is as follows: *Nikāh* in its primitive sense, means carnal conjunction. In the language of law it implies a particular contract used for the purpose of legalizing generation.”<sup>89</sup> The essential features of Muslim law of marriage have been influenced by the customary laws of Arabia. But this is also a fact that Islamic legal system has also imbibed the customs and usages of the people among whom it grew and developed.

Muslim marriages have been greatly under the influence of the patriarchal system, which permits the man greater freedom than a woman. This is clearly seen in case of choosing the appropriate suitor for the bride. The marriage contract as in Arabic system was made between the suitor and the guardian i.e. the father or nearest male relative of the bride, where the consent of the girl is not being regarded as necessary. In *Qur’an* marriage has been regarded as an essential institution because it gives birth to family life and family life guarantees social stability and a dignified existence for both men and women. It is through marriage that rights of women as wives and mothers can be safeguarded.<sup>90</sup> Marriage being essentially a civil contract , it is necessary that the basic custom should be proposal from one party and acceptance by another. When a man who wants to marry, and is sure about his partner makes

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<sup>89</sup> Hedaya,p.25

<sup>90</sup> S. Guha, p.43

a proposal of marriage to the girl or primarily to her parents or guardians. When assent has been given to the proposal of marriage it becomes an engagement. The marriage contract is entered into by mutual consent expressed by the two parties, husband and wife in the presence of witnesses and that is the most essential part of Muslim marriage.

Thus it is seen that in Muslim marriage the proposal and the acceptance must be made in clear terms and in the presence and hearing of two males and two female witnesses who must be sane adult Muslims. Verbal proposal and acceptance in presence of witnesses is sufficient for valid marriage and it requires no other writing or religious ceremony. The usual form given by the *Hedaya* for proposal is 'I have married myself to you' and for acceptance is 'I have consented'. The various juridical schools like, *Hanafi*, *Maliki*, *Shafi* and *Hanabali*, put forward their own views regarding the ceremonial details but the essential character remains the same. According to the *Shafi* school the marriage contract is concluded between the bridegroom and the bride's *wali* (guardian) who must be a free Muslim of age and of good conduct. While the *Hanafis* and *Malikis* dispense with the last quality. The *Hanafis* alone recognize a marriage concluded without *wali* is valid.<sup>91</sup>

Another essential feature of Muslim marriage is the giving of bridal gift (*mehr*) by the husband to the wife. When a man marries he is bound to give the *mehr* to the wife as it is necessary part of the contract. The contracting parties are free to fix the *mehr*, which may consist of any object or service that has value in the eyes of law. Thus one can see that this custom may reflect the

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<sup>91</sup> H.A.R. Gibb and J.H. Kramersed, 'Shorter Encyclopedia of Islam', p.447

earlier custom of paying a price for the bride. One can also perceive it as protection of a woman's economic right after marriage as the *mehr* is the property of the bride after marriage.

The concept of *mehr* is also found in Old Testament where the Hebrew word used is mohar, meaning a sort of a dowry in reverse. This dowry or amount is paid by the father of the groom to the father of the bride. Nothing is laid down as to the required amount to be paid as *mehr*. It is mentioned in *Qur'an* that every man should decide the *mehr* according to his means.. It is also mentioned in *Qur'an* that the amount of *mehr* is usually split into two parts, one is called prompt which is payable on demand and the other deferred which is payable on dissolution of marriage due to death or divorce. The Shia law prefers that the whole amount should be treated as prompt but Sunni Law determines according to custom and circumstances of the case as to which part is prompt and which is deferred. The claim to the full *mehr* occurs only when the marriage is consummated; if the marriage is previously dissolved then the woman can claim only half the *mehr*.

In Islamic law no minimum age for marriage has been mentioned. Here the main concern is marriage as a union between woman and man for procreation and in this case it is not a matter of concern as to what the age of bride or groom should be. In muslim law it is usually the father who decides upon the groom for the bride, no matter she being an adult or a child. However Qur'an also advocates the right of 'option of puberty', whereby the girl who has been given in marriage in childhood has the option of accepting or rejecting the marriage on reaching adulthood. This right, which a Muslim girl possesses, is

known as *Khyar-ul-bulugh* or the 'option of puberty'. When any guardian other than the father or grandfather contracts a marriage of a minor girl, the minor has the right to repudiate it after reaching puberty. However if the marriage has been decided upon by the father or grandfather himself then she has no right to reject it as they are her natural guardians. Thus one aspect stands clear that child marriage is very much possible in Islamic Law. In Muslim marriages too we find various restrictions regarding intermarriage. Persons are prohibited from intermarrying when they are closely related to each other by consanguinity or fosterage. Prohibited relations have been discussed in detail in Qur'an indicating that before the advent of Islam perhaps there had been no restrictions in establishing marital ties and anarchy had prevailed in pre-Islamic world. Prohibitions have been applied in case of woman marrying a man who does not profess Islam but a man on the contrary can contract a valid marriage with the women of the possessors of a sacred scripture. A Jew and a Christian fall into this category, as they believe in scriptures the sacredness of which is acknowledged by the Muslims. Although caste system was not discussed in Islam but in India Muslims could not stay away from the effect of caste system prevalent in the Hindu society. Foreign travelers like Bernier pointed out that no one married outside their caste and profession, both among the Hindus as well as the Muslims.<sup>92</sup> A study of Holy Qur'an gives the idea that marriage is a desirable and necessary aspect of human life. In order to provide sacredness to human life, importance has been given to maintain marital ties with love and kindness.

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<sup>92</sup>Yasin p.23

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## **CHAPTER III**

# **Institution of Marriage from the perspective of Social Reformers**

The colonial period in India witnessed a remarkable change in its social and political ideas. Revolutionary and reformatory practices brought about a wide range of development in the nineteenth century India. In this period there was a conflict of traditions of west and east, where cultures of the modern west challenged the old, traditional and static values of the Indian society and the need was felt to reshape the culture through the colonial experience. However, this reshaping did not negate the consciousness of our own proud heritage despite the awareness that some of the features of the ancient system were an obstacle to modernization. The attempt to bring out the reformation was mainly instigated by that part of the country which was more close to the British. The new social group, the educated urban elite, brought

forward the fresh wave of new ideas and activities. These reforms affected the familial structure of society, thus affecting the relation between man and woman. On one hand education and modernisation provided the impetus of reform, especially to the status of women. Reformers like Raja Rammohun Roy, IshwarchandraVidyasagar brought forward major breakthroughs like education of girls, abolition of sati, widow remarriage etc. On the other hand thinkers like B.R. Ambedkar provided a new insight into how marriage plays a vital role in maintaining the caste structure in Hindu society where the strict rule of *savarnavivāh* promotes the caste structure and the social evils following marriage, where the social evils are a result of society's tremendous effort to promote casteism.

B.R. Ambedkar in explaining the genesis of caste structure points out that marriage was highly responsible for maintaining the caste hierarchy in society. Contrary to the belief that the institution of marriage was controlled by caste considerations, where rules of marriage were formulated on the basis of being members of a particular caste, Ambedkar, on the other hand, points out that the custom of promoting endogamy and strictly forbidding exogamy was a very important factor in formation of castes. In India the various *gotras* have been exogamous and strictly maintained that infringement of the rule of exogamy is strictly prohibited. If exogamy is not prevented there will not be any castes as exogamy means fusion. The superimposition of endogamy over exogamy means the creation of a caste.<sup>1</sup>In India, the various *gotras* have been exogamous and strictly maintained that infringement of the rule of exogamy was to be prohibited.

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<sup>1</sup>Rodrigues, p.246

The institution of caste in Indian system has been attached to the idea of ‘pollution’ as caste indicates hierarchy where the Brahmins consider themselves to be superior to the rest of the castes. Ambedkar points out that the priestly class has always considered themselves to be more refined and pure, and thus have encouraged the formation of caste as a self-enclosed unit which naturally limits social intercourse not only outside the caste, but also within the caste. This strict prohibition was to maintain the exclusiveness of the caste. Ambedkar writes, ” the superimposition of endogamy on exogamy means the creation of caste”<sup>2</sup> History shows that prior to existence of caste, most of the cultures practised endogamy or exogamy for various social, economic and political reasons. An endogamous group was one where marriage used to take place within the group. The royal and noble families used to practice endogamy to encourage inbreeding of royal blood as the intention was to strengthen political alliances within the extended family. Exogamy on the other hand was the system of marrying outside the group. Several theories are being provided by historians or anthropologists regarding the custom of exogamy. Some believe that scarcity of women inside the group led men to look for wives outside the group. Durkheim suggests that the reason for exogamy is religious where the clan was regarded as the family of one totem. Marrying within the clan meant marrying one’s own kin. This was equivalent to incest. Sigmund Freud in ‘Totem and Taboo’ , discussed how exogamy prevented incest not only among the nuclear family but also the extended family. Edward Westermarck too echoes that exogamy arose from strong aversion to incest and inbreeding, where there was high risk of congenital diseases.

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<sup>2</sup>Ibid. p.246

Both endogamy and exogamy has its own advantages and disadvantages. Endogamy may lead to incest or inbreeding, but it also encourages a strong bonding within the group. Especially when minority groups are trying to establish themselves in an alien culture, endogamous marriages helps them to survive along with their traditions, beliefs and customs. Exogamy may lead to diversification of culture but it also prevents the group from maintaining its unique identity. Strict endogamy with a religious and moral base practised in India where its caste system promotes artificial chopping off the followers of same faith into fixed and definite units where each one is prevented from fusing into the other. Thus endogamy creates caste.

According to Ambedkar, marriage is a vital instrument for creating an endogamous group. If an endogamous group is to be created and maintained then strict rules must be implanted to prohibit marriage outside the group. Caste system in India through its marital rules like *savarnavivaha* ensures the continuity of endogamy, but the solution is not so simple. For an endogamous group to subsist and to continue with the custom of marriage within the group, the number of men and women should be evenly distributed. It means that the ratio of one man to one woman must be maintained. Moreover the ratio is to be maintained within the endogamous group only. To provide the conjugal rights within the group it is necessary that the endogamous nature of the group be kept intact. The required parity can be kept intact if both the partners die simultaneously but this is a rare event. Problems arise when a surplus man or woman arises, i.e. if one of the spouse dies then the question arises as to how one can control the sexual needs of the other. The point is that if the sexual needs of the remaining partner is not controlled then they might try to fulfil that

either by fulfilling that within the group or going outside the group. Indian society which strictly prohibits exogamy cannot allow for intermixing between two groups. Thus the option remains to take those measures which will limit the interaction to the group itself.

Now let us see what happens when the husband dies and the woman is left alone. In Hindu society, a widow's fate was most miserable. It was vital to deal with the condition of a widow or else she might intermarry and violate the endogamy of the group. Thus it was vital to limit the interaction within the endogamous group. However if the widow was remarried within the endogamous group, then it might disrupt the one to one ratio in the group. Thus to preserve the endogamy as well as to dispose of a widows fate, two measures could be taken. Firstly, the custom of sati where she could be forcibly burned off in the funeral pyre of her deceased husband or widowhood could be enforced on her for her entire life. Compulsory widowhood was more moral than the gross act of killing a woman. However enforced widowhood deprived the natural right of a woman to get married, which could lead to practising sex and subsistence in an immoral way like prostitution. But this problem was also solved by degrading a woman to such condition that she could not allure or attract any other male. The social evil of sati and the abject misery in which the widows lived was quite rampant in those times.

Next the problem arose also in case of a man whose wife had died. As Manu says that a man could again marry after conducting the funeral duties of his deceased wife, the problem still was that the man neither could be allowed to marry outside

the endogamous group, nor could be allowed to marry within the group and disrupt the ratio. Ambedkar says that since men have always had an upper hand over the women, they could not be treated in a similar manner. Thus sati or enforced widowhood was out of the question. Thus for a man the solution lay in practising self-imposed celibacy. Ambedkar says that imposing celibacy on a male was not in the interests of the caste as males had the capacity of rearing and maintaining the family. Under these circumstances the solution lay in providing a much younger bride to an elder man. In this way a wife in most of the cases was going to outlive a man, thus solving various problems. Ambedkar feels that the only motive in practice of customs like *sati* and child marriage was to maintain the purity of the caste.

Thus all the social evils were part and parcel of the process of maintaining an endogamous group. *Sati*, enforced widowhood and child marriage become a means of promoting casteism where all these customs are honoured and glorified. *Sati*, widowhood and child-marriage were vital for promoting the marital ethics of the Hindu system as through these customs the ideal of devotion of husband and wife is shown as a virtue to be practised. By imposing sati, the society tries to symbolise the perfect unity of body and soul between husband and wife. Even if a woman is not committed to sati, enforced widowhood indicates this unity too. It is believed that a faithful woman or man is one who does not feel affection for another after the death of their spouse. This ideal of chastity is compulsorily expected from a woman than from a man. So a virtuous wife is one who is faithful. It is strengthened more in case of women by ensuring that they do not start feeling any affections of heart before they are married. Thus marrying off a girl at a very tender age ensures that she must

be acquainted and feel love only for the man to whom she is betrothed. For women any kind of sexual consciousness or sexual exploration beyond her husband is considered to be vice. This however does not stand true for a man. Ambedkar however feels that these customs were honoured for practical purpose. In his opinion these customs were needed to create a caste, thus idealisation or eulogisation of the means was extremely vital so that strict endogamy could be observed and caste structure could be maintained.

As we talk about the connection between marriage and caste system, question arises as to who or what is responsible for the growth and spread of caste system. Brahmin or the priestly class could have been highly interested in forming an endogamous group, but how can one account for the spread of casteism among non-Brahmins too. Ambedkar is of the opinion that the Brahmin class could not have been so powerful as to formulate a system and impose it so strictly on the non-Brahmin population. Ambedkar also believes that Manu is not responsible for the system as it existed long before Manu. In fact *śāstric* preaching could also not be considered to be solely responsible as mere preaching cannot promote such a rigid system. Ambedkar's opinion is that different classes existed according to their occupation. When one class, especially Brahmin class started practising the closed door system of endogamy, they not only closed themselves in, they also closed others out. When we create a group in society named 'Hindu' we automatically create groups collectively termed as 'non-Hindu'. Ambedkar says that when Brahmin class started practising the closed door system of endogamy, it automatically closed the other classes out. The other classes imitated the Brahmin style. Infact, Ambedkar calls this 'infection

of imitation' which led to sowing the seeds of differentiation and discrimination; and turned classes into castes which were water tight. Max Muller also has had a similar opinion, saying that caste as a social formation was little different from the racial, ethnic, religious and class differences and prejudices that were accepted as natural in most arenas of European social life. He believed that Brahman priests had grafted religious principles onto social prejudice, thus sanctifying forms of caste exclusion in ways that made questions of intervention sensitive at best. Muller proposed that caste in many of its aspects be viewed as a social etiquette that circumscribed marriage, dining and other forms of sociality in ways that could easily be recognised through appropriate social translation.<sup>3</sup>

As seen above the social evils were due to the influence of caste consideration, another factor working was social customs where girls were deprived of education and given no scope to have any economic independence. As a result they had to depend on the male member of the family for sustenance. Their main education and occupation thus was to concentrate all their energies, talents and capabilities in the domestic sphere. For this a girl was married off at early age, say nine to twelve years, so that socialization could begin early. As Manu says, that marriage is the only *sam̐skāra* for girls which gives them the status of a *sadācari* or respectable person. To preclude the possibility of performing the *upanayana* of girls without the Vedic mantras, Manu ordained that the ritual of marriage was the only Vedic sacrament or rite of initiation for girls. The text further added that serving of husband is their

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<sup>3</sup>Muller, Max, "Caste, 1858" in Muller Chips from a German Workshop, London, Longmans, Green 1867

residence with teacher; their household duties are equivalent to tending of fire<sup>4</sup>. *Medhātithi* too echoed the same view in his *bhāṣya* where he says that marriage is the only rite of initiation for girls<sup>5</sup>.

Similarly in the colonial period too, child marriage was felt as a proper way of moulding the life of the girl under the tutelage of her in-laws. T.R. Chaudhuri writes, “A young girl was given in marriage to a family rather than an individual. Felicity for the large family unit rather than the individuals who got married was evidently the primary purpose of marriage.” Thus it was felt that if a girl got married at a young age she could learn all the aspects of housework and get adjusted to her future family and husband. He further adds, “fear of feminine sexuality and anxiety to control it were of course conscious motives behind the institution of child-marriage.”

Early marriage in case of girls affected their vision of sexual pleasure and love. When a child bride of nine- ten years was made to live conjugally with a husband who was in his forties or more, one can imagine the trauma experienced. It resulted in an outlook of shame and disgust towards sex. Western society may have tried to repress sex by constantly harping on its sinful nature, thus subverting the natural bodily tendencies; Indian society, on the contrary, pushed sex at a very tender age, thus killing the natural inclination which could have been more fruitful if was allowed to grow at the proper age.

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<sup>4</sup> Manu 2/67

<sup>5</sup> Medhātithi (Manu 2/67)

Child marriage along with maintaining the caste hierarchy was a vital aspect of marital practice in Hindu system. On top of that *kulinism* was a vital part of marital practice in nineteenth century Bengal. The three upper castes- *Brāhmin*, *Baidya* and *Kāyasthas* had their *Kulins*, i.e. the families accorded the highest ritual status. *Kulinism* was a vital part of marriage where *Kulin* grooms were most sought after. A *kulin* girl had to marry a suitable *kulin* boy, in the absence of which she was either married off to a much younger or an older *kulin* man. A *kulin* boy, on the other hand, gained from this custom by making marriage a profession where he married several girls, left them at their ancestral homes, visited for a few days each year for monetary stipend, conjugal pleasure and enjoyment of the reverence of a son-in-law (*jamaidador*). Since a *kulin* girl could not remain unmarried for her entire life<sup>6</sup>, she was bound to marry any *kulin* man even if he was dying.

Family in India was not a nuclear set-up but an extended one and which was the basic unit of social organization. The values which sustain the family was dominating in all social mores. So if male progeny was a value sustaining the family, it affected and dominated the man-woman relationship, the status of women and the institution of marriage and family. An ideal woman was one who would beget male progeny. Such a woman was respected, looked upon and sought in marriage. Men remarried (sometimes older men married young girls) several women to beget male issues. Female issues thus became a curse and cause of anxiety, resulting in the father's search for a groom for his daughter at an early age. When poet Michael Madhusudan Dutta gave up his ancestral faith, his father remarried so that he could

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<sup>6</sup> It was a prime duty of the father of the girl to get her married, so that he could prevent himself from being considered an outcaste and save his ancestors from the torment of hell.

have another son who would ensure his salvation. The nationalist leader Bipin Chandra Pal's father also declared to do the same when his only son became a *Brahmo*.<sup>7</sup> Thus we can see the fear and anticipation of the older generation towards the upcoming trend of forgoing the value system of our culture.

Nineteenth century memoirs of Bengali men and women point out the marital and familial scenario of those times where we find the dual scene of a repressive and regressive familial surrounding, where marriage has a single utility, and on the other hand we also find a growing awareness among the newly educated youth of the country regarding the evils surrounding the family system. The sexual relation between a man and a woman projected the picture of male domination and female submission. The socially sanctioned role of an ideal couple was where the husband was peripheral in a wife's life, controlled her sexual, productive and reproductive capabilities; and the wife was dedicated, loyal, committed in discharging her duties and the enormous responsibility of motherhood. In Sarat Chandra Chatopadhyay's novel we find mention of many such female characters who got married at an early age and assumed the responsibility of entire household. All the above factors determining the man-woman relationship rigidly controlled the sexuality of females, exploited them and subverted the norms of marriage. In the Indian system, institutions of marriage and family were not only controlled by *dharmasāstric* injunctions but also interpreted and used by *deśācāra* or practice followed by a caste-community for their own benefit. The ideal sexual conduct and conjugal morality was determined by the above.

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<sup>7</sup>Chaudhuri, p.66

The marital relation between a man and a woman revolved around the extended family where the couple had hardly any time for each other, except at night. It was also considered immodest on a couple's part to show any sign of attachment to each other. The wife's sole aim in life was to show care and concern for the members of the household, however, a husband could not show any concern for his wife and her parents. The ancient conception of marriage as revolving around, religious duties, procreation and conjugal love was vitiated in the nineteenth century. The young couple were totally under the familial norms of modesty and had to control their behaviour privately and publicly. They would never speak to each other before the elders. The wife never ate in the presence of her husband. If by any chance the husband happened to appear while she was eating, she had to stop eating immediately, and he had no other option than to move out of sight.<sup>8</sup> After marriage both husband and wife are expected to make each other happy, but the strict morality and *lokajja* prevented the couple from doing so.

However child marriages did not preclude romantic attachment and the taboos inhibiting free communication stimulated the yearning for love rather than stifling it. If we look into the Bengali literature of that period, viz Rabindranath Tagore<sup>9</sup>(1861-1941), Sarat Chandra Chattopadhyay<sup>10</sup>(1876-1938) or Bankim Chandra's(1838-1894)<sup>11</sup> stories and novels, we see romantic love as a preceding factor of marriage.

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<sup>8</sup>Basu. P. 4

<sup>9</sup>*GhareBaire*(1916)

<sup>10</sup>*Parineeta*(1914), *Datta*(1918)

<sup>11</sup>*Durgeshnondini* (1865), *Mrinalini*(1869)

Some of the early rebels like Michael Madhusudan Dutta(1824-1873), Gyanendramohan Tagore(1826-1890) courted the ladies whom they eventually married.<sup>12</sup>

There was a dramatic change in the family atmosphere where new job opportunities in colonial government made many young men leave their ancestral house and reside in the city. The family members though reluctant to send the bride at husband's abode, had to relent under the inducement of the men. In such a scenario, conjugal relations, free from traditional taboos got a new dimension. This developed a feeling of passion and companionship in the marital relationship, thus forming a new standard of an ideal relationship. The Brahmo enthusiasts, with their English ideas preached that wives should be true companions and supporters of their husband's in times of trial. This required educating the wives and mould them in English lifestyle. Manuals were written to help husbands with the task of educating the wives so that they could be fit companions for their educated husbands. However, a debate arose as to the proper form of education appropriate for a wife. While the conservatives demanded that education that would make women better wives and mothers along with certain elementary education, on the other hand the egalitarians like Romesh Chandra Dutt(1848-1909) demanded free and equal opportunities for women in every field like medicine, science, law etc.

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<sup>12</sup>Chaudhuri p.85

Apart from education, nineteenth century morality brought the private into the public domain by trying to remove purdah and the seclusion of women. It should be mentioned here that Purdah or seclusion of women was not an ancient Indian custom. Rather, purdah concept was derived from the Muslim legacy which had ruled India in the middle period. A change in the social norms of purdah affected the relation of man to woman. Satyendranath Tagore (1842-1923) created a sensation in his times by taking his wife out in an open carriage. Jñānadānandini Debi (1850-1941), wife of Satyendranath Tagore went with her husband to Bombay, thus creating a new stir and acted as a guiding light for others to follow. Mrs Satyen Tagore introduced the Parsee style of wearing sarees along with bodice so that women could freely come out of their homes. This free mixing changed the definition and criteria of 'chaste wife' and transformed the quality of the relations of men and women.

Another factor working behind the qualitative reform of conjugal relation was consensual marriage. The ongoing scenario of child marriage, where the family members decided the choice of partners, there were hardly any scope of consent asked from the couple. This custom was regarded as barbaric by the western notions where the couples themselves decided upon the matter. *Brahmos* affected by the western criticism, introduced the custom of marriage by consent. In many cases the would-be-husband was introduced to the girl, allowed to talk for a while and then decide whether they will get married or not. The engaged couple went through a period of courtship with or without any chaperone. The opportunity of this free mixing helped in overcoming many inhibitions and fears of future life to be spent together. One can say that if the earlier form of child marriage was like pushing a

person into a dark well, the new consensual form was jumping into the well wearing a headlight. The headlight showed one the depth and the condition of the well, by which one could decide not to jump as well. However, consensual marriage was a part of *Brahmo* customs only. The Hindu households still followed the old tradition of searching the suitable partner.

The marital ethics of nineteenth century filled with liberal ideas of doing away with sati, child marriage, enforced widowhood along with romanticism can be considered as the dawn of new age and egalitarian conception of man-woman relation and breaking away from the shackles of patriarchy. But the picture had another side to it too. The new sensibility towards sex and marriage was also overpowered by the Christian asceticism, concept of sin, patriotism and gaining secularism through *Brahmoplasthi*. Chaudhuri writes that *Brahmos* influenced by Christian concept of sin started maintaining purity in matters of sex.<sup>13</sup>

Couples took vows of celibacy, promising not to touch each other, stopping all communication and eventually rejoicing the triumph of spiritual love over physical love. Patriotic sentiments too created a conflict of physical love and love for motherland where the two were realized as irreconcilable. The protagonists in this type of transformation were Vivekananda and Ramakrishna. Vivekananda called upon the young men and women to serve the nation as ascetics. Whereas his preceptor Ramakrishna sought that realization of spirituality could not be achieved if

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<sup>13</sup>Chaudhuri, p.87

one was involved in pleasures of the flesh. This was again seen as a new and reformed mores of man-woman relation, where a reconstructed individual with a celibate outlook was the perfect individual for national reconstruction. This, however, can be regarded as a picture of handful of reformists, revolutionists and spiritualists. The general scenario of people belonging to the middle class and the lower strata of society, was still under the hold of medieval morality.

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## **CHAPTER IV**

# **The Institution of Marriage in Western Culture**

The study of marriage whether in eastern or western culture requires a thorough historical analysis as any historical account brings out the actual portrayal of the practice of the institution along with the changing factors influencing the divergent practice. In all civilizations, distinctive cultural practices have evolved and developed. In all of them throughout all times, importance of marriage and family has been felt by humankind. In all civilizations, one can see a continuous effort of men and society to develop a proper and ethical way of practicing sexuality. And this effort has always found a solution at the institution of

marriage, whereby it has been felt that marriage is the only mechanism through which an ethical and legitimate outlet can be provided to a man's sexual needs. Also marriage is the only way through which legitimacy of children and family structure could be properly maintained.

As we go through the historical account of marriage in western culture our objective would be to find out whether there has been a singular norm of morality or multiple norms of morality influencing the various changes in the marital evolution. The forms, values and arrangements of marriage have indeed changed throughout the entire time span. As one goes through the history of marriage from Greek civilization to modern times, one finds that marriage has sometimes been a practical or pragmatic approach of forming alliances or acquiring new sources of wealth. It has been practiced as a private affair, a public institution, companionate existence filled with love or an individual's choice. In all the different forms, the moral criteria may have been different but there has been a need felt by every strata of society regarding the utility of marriage.

Marital morality in every society has focused on the singular factor of maintaining the sexual morality. The question which arises here is: Why does society need to intervene into the domain of sexual morality? What is the role played by marriage in protecting the sexual morality in society? Marriage in all civilizations or societies has been considered as the only mechanism by which the need for forming a companionship, family, division of labour and fulfillment of physical need could be maintained. For thousands of years, men are having a social existence. From pre-historic times nearly all human societies comprised of small

bands where social interactions have been vital for sharing and pooling of resources as well as security and safety of one's lives. A proper division of labour was vital for smooth functioning of the human society thus making it important for determining this division and ensuring that the division is properly maintained. So wherever humans organized themselves into bands, males took upon the roles of hunters and women, keeping their children near, were more likely to specialize in gathering, processing and storing. This gender specialization led to greater inter-dependence between males and females, whereby it became vital to maintain this gender-division of labour within a mated pair as this gender specialization had to be taught to children too. As teaching and training was time consuming and required patience, it was important for couples to stay together for long stretches of time and ensure the proper survival and growth. Thus a permanent and continued relation was vital for human survival.

However such an analysis is a subject matter of sociologists or anthropologists. As a philosophical analysis, one can try to search for answers to the question as to why the institution of marriage came to be regarded as the only moral way for maintaining this continued relation. As we will continue with our study of marriage through an historical account we will observe that there have been several approaches adopted by those who supported the institution of marriage. The pragmatic reason played a dominant role behind the formation of marriage as an institution. Sometimes some other reasons as well got associated. One thing needs to be clarified that when we speak of pragmatic reason the question which arises here is whether this practical reason stands for a homogenized idea which

could be applied in all contexts uniformly, or does these reasons vary from context to context? As we go along with the historical analysis we will find that several factors have affected the moral nature of sexuality and marriage with changing times. The question is whether the factors are contrary to each other or do all the factors contribute to the formulation of one idea i.e pragmatic reason, leading to the present idea of marriage. As we will continue with our subsequent discussion we will try to find answers to the above queries.

As we begin with understanding the marital and sexual ideologies of primitive man, we can begin with the study of matrilineal societies which are believed to be the first form of human societies. Russell had shown how sexual morality in matrilineal societies where lineage of a child is decided from the mother's side is different from a matriarchal society where mothers or the females are at the head of the power structure. Some sociologists, however, are skeptical about the existence of any matriarchal society whatsoever, though have conceded to the existence of societies of matrilineal descent, the underlying argument is that the power always lay in the hands of a male relation.

As it is unclear whether all the primitive societies could be called matrilineal, we can refer to them as the pre-patriarchal societies where the simple hunting and gathering activities were conducted through mutual cooperation. In studying the sexual mores in a matrilineal system, Russell points out that the most vital determining point of sexual and marital morality in such societies was the belief that human intercourse does not produce children. It was generally believed that ancestral spirits were reincarnated in the mother's womb. Maternity or

Motherhood was seen as a protector and nourisher of the reincarnated spirit and a carrier of life. Thus motherhood in matrilineal societies was perceived as a value more vital than that of fidelity or chastity. Feminists point out that a mother was given higher status as opposed to it being treated in a derogatory and unimportant function in modern society, as, human reproduction being considered as an accidental phenomenon, was revered and worshipped in matrilineal societies.

As pregnancy and human intercourse were separate and unrelated phenomenon, a very different attitude was also adopted towards sexual ethics outside the institution of marriage. Russell points out that a girl could have free sexual relations with boys before marriage, and when the weariness arose out of the variety, she could get married. Thus a very liberal attitude towards sexual behavior of women could be noticed. The question here is that if procreation was not believed to be a result of human intercourse, and there was the concept of free sexual relations; was there any sexual ethics or mores, and if they were, what role did they play? It would be wrong to assume that such societies lacked any sexual morality and code of conduct. Those societies had a strong familial relation, where natural instinct as well as community customs helped in maintaining a proper family. In matrilineal society, mother being the pivotal relation was considered as the primary factor in a family. Russell says that as mothers were believed to be closest to their children in terms of bodily connection with the child, motherhood was a natural and primary relation. The connection of father-child and father-mother was formulated by tribal customs which enforced upon

the father the duty of providing protection, security, care and affection towards the child.

If we look into the history of marital behavior, we find the institution of marriage and the norms associated with it developed with the settling down of nomads to agricultural and pastoral land. Beauvoir explains that in settling down in a territory, men acquired that territory and established ownership over it. The ownership further required one to provide a future generation so that the ownership could be retained and continued. Thus maternity became a sacred function.<sup>1</sup> Women were respected for their power of giving birth, which was also considered at par with the Nature's power to wield crops. The agricultural as well as female fertility, being a mysterious entity was considered to be highly respectable. Russell too supports this point by pointing out that in those times fruitfulness, whether of crops, flocks or women was a very vital factor.<sup>2</sup> Religion came to the forefront to promote this fertility through worshipping women and sex as it was observed that every time crops did not yield fruits or every intercourse did not produce children. Russell provides us with the various instances of fertility worship, like in ancient Egypt, a cowry shell which was of the shape of female genitalia was worshipped and used as currency.

The pragmatic consideration behind the institution of marriage in matrilineal societies thus could be formulated as the requirement of providing protection and support to women during their pregnancy and after child birth because the female

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<sup>1</sup>Beauvoir, *p.98*

<sup>2</sup> Russell, *p.20*

fertility and protection of future life of the clan was a highly respectable virtue. The influence of matrilineal ideologies over sexual morality was confined to the clans following them. To put it clearly, there was no huge impact of its moral ideologies in an universal or long-lasting manner. Whereas, patriarchy along with its moral ideologies had a permanent effect over the sexual morality irrespective of civilizations and periods of time. The present sexual mores can be understood to a large extent on the basis of how emergence of patriarchy changed the face of human society and consequently the impact over marital institution.

#### **4.1 Impact of the emergence of patriarchy**

Patriarchy is the social system where father or paternal power holds the highest authority, and the lineage is being determined from the father's side. The paternal feeling may not be a natural feeling like a maternal one, but Russell says that if a man stays with his wife during her pregnancy and childbirth, he may develop an instinctive tendency of protection towards the child. Russell calls this the basis of paternal sentiment, which instigates men to be in proximity of the child and its mother. This aspect could be prominently noticed in the present laws regarding paternity leave provided to fathers where leave upto twelve weeks is provided to the fathers both in case of natural birth or adoption. In 2004, California was the first state to offer paid family leave. Feminist would point out that paternal leave is essential for shared involvement and equal division of labour of both parents in bringing up a newborn.

Westermarck, here adds further, that apart from man and man- like apes in most of the species the number of young ones born is proportionate to the number lost, which means that without paternal or maternal care after a certain period of time, the species is preserved nonetheless. In case of man or apes, two factors work behind the need of parental care and association- Firstly, the small number of young produced, say one or two; Secondly, long period of infancy, where the young require a longer time to become independent in matters of food and security. As a result an association of family is required, where mothers can care for the young and fathers can look after the mother and child.<sup>3</sup> Russell points out that the need of forming a proximate relation on the part of the father, may come naturally or may be enforced by social ethics. Paternity takes a new form when the feeling towards the child is reinforced by two factors: the love for power and desire to survive death.<sup>4</sup> Let us now see as to what this power is and why man desires immortality. We can refer here to Engels<sup>5</sup>, who points out that with the emergence of surplus wealth and private property, human labour power was in constant demand. As wealth became private possession, it was necessary to keep it within the family. Due to division of labour, men were recognized as earners of wealth and maintainers of instruments of labour. Women on the other hand got reduced to the position of a mere birth giver without any right over the child as the child's descent was decided from the male line rather than the female line.

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<sup>3</sup> Westermarck, p.36

<sup>4</sup> Russell, p.15

<sup>5</sup> Engels, p.83-86

Russell pointed out how with the establishment of patriarchy, the system of inheritance changed too. In matrilineal societies inheritance was determined according to mother's lineage, but in patriarchy the descent was determined from the father's lineage.<sup>6</sup> In patriarchal system, ensuring the legitimacy of lineage was immensely important for men. The reason being that every male wanted to ensure that his wealth, name or any possession got transferred only to his own children and not to any child borne by his woman and belonging to another man. When we notice the word 'his' in patriarchal sentiment, one feels that women, children and property was a kind of possession for the man. This possession being entirely personal it was vital for ensuring the legitimacy of such possession. This factor played a vital role in determining the sexual ethics. As the social ethos here played an important role in ensuring that the children descending from the father's lineage really belong to him, the system of pre-marital sex and extra-marital sex, especially of women, was forbidden. Thus sexual ethics in patriarchy begins with placing of strict restrictions on female sexuality and harping on the concepts of female virtue and chastity. Russell here focuses on the instinct of jealousy in men of a patriarchal setup, where they are not willing to care or love children not belonging to their own blood. As a result there is lack of tolerance regarding the sexual freedom of women. Sex thus becomes an instrument of gaining descendants, legitimately belonging to oneself. The physical need for sex, becomes focused on the purpose of gaining legitimacy, thus leading to death of love and affection between the relation of men and women. Such a sexual ethics demanded the support of an institution which could ensure this legitimacy.

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<sup>6</sup> Russell, p.17

Marriage thus became the vital need of society for the above purpose. Realisation of paternal power also led men throughout history to exploit it at its utmost. It led to practice of customs like polygamy, prevalence of ancestor worship, and phallic worship. Rise of patriarchal power became an over-arching phenomenon in deciding upon the new sexual ethos in all times whether ancient, medieval or modern, where the moral agent, specifically male of the species, acts for the establishment of a utilitarian good of others. The other or the fellow being is always a group of men; women being a part of the property possessed and exchanged by the group. This attitude, Russell points out, existed in all societies of antiquity.

#### **4.2 Ancient civilizations**

In early hunting and gathering societies marriage was primarily a way to extend cooperative relations among people and circulate resources beyond the local group. When people married into new groups it turned strangers into relatives and enemies into allies. As the societies developed and became more populous, the kin groups started asserting rights over property, amassing wealth and power. Thus the wealthier families lost interest in sharing resources or pooling labour. Instead marriage became a way for consolidating resources with strict guarding of wealth with restricted access to family only. Marital alliances in early kingdoms of Greece, Egypt or China were political in nature where many families offered their daughters to the pharaohs or emperors with the aim of gaining a useful

connection. An upper class bride would bring forth a huge amount of dowry so that she could gain prime importance and her son could inherit the husband's estate, whereas a lower class bride might bring forth her charm with the hope of winning over her husband and supplanting the primary wife. New Kings tried to validate their claim to throne by marrying the widow or daughter of the previous ruler. Also a lowly person could gain higher status if he was successful in marrying a highborn bride. There were lots of political interests and intrigues working behind the formation of marital alliance. Thus marriage was a way of promoting the political aspirations and financial gains. By taking more than one wife, kings were able to establish a network of alliances with other rulers. Political conspiracy and aspiration for power ruled the formation of marital alliances. In such a milieu the marital decisions were less based on feelings of love and desire. Marital jealousy, however existed, not because it was love-based, but due to the most important need of producing legitimate children, who could perpetuate family property and name. Thus the affluent or leaders of those civilizations were particular about maintaining their blood lines, whether claiming it from the Gods or earlier Kings through this institution. Marriage alliance was vital for governance throughout the world.

For commoners too, marriage was vital in the sense that it along with formation of family converted strangers into relatives and extended cooperative social relations. As Coontz writes,

*Marriage was the surest way for people lower down the social scale to acquire new sources of wealth, add workers to family enterprise, recruit business partners, and preserve and pass on what they already had.*<sup>7</sup>

The pragmatic approach here guided the marital factors but those considerations were determined by political and social factors. It was also vital for producing legitimate descendants who not only preserved the cultural, social and family values; but also helped in carrying it forward. Marriage in most cases had a practical purpose rather than an arrangement of personal happiness. It was a political affair of forming strong alliances, an economic transaction involving transfer or consolidation of land and wealth, and a way of establishing a social network. There was hardly any room for values like companionship or love. Here the value which gained primacy was power alliances, cooperative relations and purity of lineage. Marital practices like polygamy and marriage among cousins were prevalent for the above purpose. The love affair between Julius Caesar and Cleopatra, Marc Antony and Cleopatra was more influenced by their respective participation in struggle for political power. Even for people with little or no political power or property, marriage was a way of organizing labour, where farming and herding households could organize manpower for cultivating, gathering and other affairs.

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<sup>7</sup>Coontz p.54

### **4.3 Impact of Greco Roman civilization**

The picture of the institution of marriage changed in Greco-Roman civilization where aristocratic power was slowly getting replaced by a new social class who made their living through manufacturing, trade or administration. With the emergence of democracy, power shifted from small aristocratic families to the bourgeoisie class. This resulted in collapse of small powers confined to city states and formation of powerful regimes at a centralized level. Emergence of this new phenomena led to change in political sentiments where feelings of loyalty, justice and community developed. Emergence of professional army led to centralization of power whereby universal rules were demanded to curb the exercise of private power. With the curbing of private power and developments of feeling of loyalty to community, the political power was not confined to merely kin and marital connections. Broader interests for state were given priority over family advantage. Moreover, the collapse of small powers confined in city-states and formation of powerful regimes led to centralization of power at a higher level. The local powers were now not authorities in forming of laws. The higher powers which were otherwise not concerned with what happened locally used those local powers for collecting revenue and collecting men for armies. In such a scenario where power was centralized, individuals participated in the power play by forming and recognizing oneself as the subject of one's actions, seeking an adequate relationship with oneself. Importance was given to the soul which was residing in one's body and efforts were made to take care of it. It was believed that a person who was able to rule over oneself could rule over others too.

In aristocracy, feelings of loyalty were confined to family ties, marital alliances and personal oaths of friendship. Thus marriage was purely a personal affair with its private rules, obligations and interests. Even inheritance of children was based on blood descent where children born to wives or concubines could lay claim to inheritance, thus using methods of revenge for fulfilling the claim. In this scenario, sexual morality was primarily decided by family benefits and personal power plays. In such a power play, sex and marriage was a device or furthering of interests and gaining social status. As we move on to the democratic set up of Greco- Roman civilization we find a change from the private setup of marriage to marriage being a public affair. As the city states grew, the interests of all citizens came under state jurisdiction, rather than extended family control. In order to decide the legitimacy of descendants, a state sanctioned marriage of the parents was now required. Michel Foucault too points out that in Roman and Hellenistic world the institutionalization of marriage in the public domain increased over the previously held private celebrations. The private affair of marriage was publicly sanctioned through religious ceremonies. Marriage got its sanction from a priest or an official. This period of transformation also witnessed certain other changes like freedom of women to choose their partners, to remain married or not, and marital relation implying sharing of life, mutual aid and moral support rather than an economic transaction.

Foucault in Volume II of *History of Sexuality* shows that change in the marital scenario brought forward changes in sexual morality too. Marriage was seen as a way to learn to govern oneself, take care of oneself so that one could govern others. Marriage was seen as a duty where all pleasures including sexual pleasure could be fulfilled with one's spouse. The husband and wife were an important aspect in the management of the household, which in turn was a vital economic unit of the state. The notion of fidelity became important in this sexual morality where fidelity was seen as a mark of respect for law, one's honor and stability of state. Sex was not seen merely as a pleasurable entity, but as something which needed to be mastered otherwise unlimited pleasure could lead to wastage of bodily energy and depletion of life force. The detailed discussion of sexual ethics followed in Greco-Roman times is provided in next chapter.

Foucault points out that documents belonging to the 4<sup>th</sup> century B.C depict a change in the marital obligation on the part of both husband and wife. Earlier wife had to follow far greater obligations than her husband but later on husband also had to maintain fidelity and honesty in their relationships. The duties and obligations on part of both husband and wife was based on mutual sharing where it was required that both of them would practice fidelity. Foucault stresses that fidelity was a mark of respect for law and one's honor and also indicated the legitimate lineage of a child which was vital for the honor of the state. Thus marriages during this time demanded public or state sanction. Marriage was a stronger force in binding conjugal partners and an effective one for isolating the

couple in a field of other social relations, as marital partners along with their children became a unit contributing to the respect of law.

Thus a marked change could be noticed in the institution of marriage where it became a symbol of sharing, fidelity, personal bond and self-control. Marriage in the aristocratic system or prior to the new wave of democratization was about pooling of resources or forming alliances, where a wife was praised for her ability to bring in dowry and protecting the household property. Even people with less property took a calculated approach to marriage. As Coontz writes, ‘ Marriage was one of the ways farmers and peasants organized the growing workload...Intensive agriculture or herding made a sexual division of labour within the household necessary for survival.’<sup>8</sup> In such a scenario both upper and lower classes followed the practical approach to selection of their mates rather than the impractical approach of love and personal sentiment. However later in Greco-Roman times where emphasis was placed on the care of one’s self, the relational virtue of marriage was presented in a positive light.

In this changing phase of the institution of marriage in the new democratic set-up where it became vital for public sanctification of marriage; one can say that the pragmatic factor working must have been the requirement of legal sanction and protection. As Foucault says that the private affair of marriage got a public face in the new scenario, question obviously arises: was marriage a purely private concern in pre democratic set-up where each and every family had its own set of

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<sup>8</sup>Coontz p.66

rules for managing the institution. The answer will be in negative because even though legal sanctification might be lacking, social sanctification and a set of norms must have been existent to maintain a harmony in the marital rules and conduct. This harmonization provided value to the institution which otherwise would have lost its importance. Also legal sanctification though may have made the control of this institution a public affair, but individuality and privacy of the relation did not lose its value. The legal sanctification of marriage added a further value to the institution providing legal security in case of inheritance and permanency to the union.

#### **4.4 Impact of Christianity**

Christianity, which began as a movement within Judaism, was one of many popular religions that flourished in the waning days of the Roman Republic. Before going into the impact of Christianity over marriage, it is important to look into the Judaist influence over marriage. In Hebrew Bible (Christian Old Testament) we find that men and women were created by the Lord to bring forth descendants and multiply the race. In Genesis, First Book of Moses it is written, *“when god created man he said it is not good that man should be alone. A helper has to be created for him who is fit for him. He took out one of the ribs of men and from that rib he created a woman.”*<sup>9</sup> Thus it was required that woman being a part of man should reunite with him to complete the process of creation. In Genesis it

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<sup>9</sup> Genesis 2.18,22

is mentioned that it was a duty of man to leave his father and mother and unite with his wife to fulfill his obligation.<sup>10</sup> Thus in the period of Old Testament, sexual relations between men and women focused on the primary aim of procreation. The obligation of man to produce children who could be legitimate descendants of the new land reflects the patriarchal sentiments, where the new land of Hebrews required a lot of descendants who could inherit and carry forward the power of a new land and religion. The power was actually the power of inheritance given by the Lord to its descendants. In Christianity Lord was also regarded as the Father, thus conveying the patriarchal sentiments. We can very well say that the ethics followed in Old Testament was about paternal power and negligence of maternal contribution.

As we come to the stage of New Testament the situation changes. In Biblical times marriage was viewed as a contractual bond commanded by God in which a man and a woman come together to create a relationship in which God is directly involved.<sup>11</sup> Marital relation was expected to fulfil the commandment to have children. It was believed that marriage provided legitimacy to children as no illegitimate child was allowed to enter the assembly of the Lord.<sup>12</sup> Thus stress was on proper social sanctification of male-female relation. Marriage in Christianity follows the biblical injunction of a “man to leave his father and mother and cleave to his wife, and the two shall become one.”<sup>13</sup> and also stressed on it being a sacrament, contract or covenant. The foundations of the Western tradition of

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<sup>10</sup> Genesis 2.24

<sup>11</sup> Deutonomy 24.1

<sup>12</sup> Deutonomy 23.2

<sup>13</sup> Genesis 2.24

Christian marriages have been the teachings of Jesus Christ and Apostle Paul. The Roman Catholic tradition of the 12<sup>th</sup> and 13<sup>th</sup> centuries defined marriage as a sacrament ordained by God, signifying the mystical marriage of Christ to the Church. “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament.”<sup>14</sup>

Marriage was also seen as a way to prevent people from committing sin. The concept of sin was extremely vital in Christianity. It was believed that evil surrounds men and women alike and threatens them with discord, infidelity, jealousy and conflicts leading to hatred and separation. This disorder can be rectified only by bringing a sanctified union of men and women with the help of God. Catholic faith believes that the first sin committed by Adam and Eve is the cause of the subsequent pains and the only way to purge the sin is by following the faith. The main force behind the propagation of the view of sin in matters of sex was primarily given by St. Paul<sup>15</sup> If we look into the Book of Cornithians we find a very strict outlook towards sex, where it was considered good for a man not

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<sup>14</sup>Catechism of the Catholic Church, Second Edition, Article Seven, para 1601”.  
Vatican.va.<http://www.vatican.va/archive/catechism/p2s2c3a7.htm#l>. Retrieved 12.01.2014

<sup>15</sup>St Paul was an apostle who taught the gospel of Christ to the first-century world. He is generally considered one of the most important figures of the Apostolic Age. Fourteen of the twenty-seven books in the New Testament have traditionally been attributed to Paul, and approximately half of the Acts of the Apostles deals with Paul's life and works. Today, his epistles continue to be vital roots of the theology, worship, and pastoral life in the Roman and Protestant traditions of the West, as well as the Orthodox traditions of the East.

to touch any woman except his own wife and vice versa. The only purpose of sex was the fulfillment of the duty of procreation and marriage was the only way of fulfilling that duty. Adultery was condemned and the preventive method was marriage. Russell in presenting the novel view of marriage held by St Paul who in First Epistle to the Cornithians says, “ *...that it existed not primarily for the procreation of children, but to prevent the sin of fornication*”<sup>16</sup>, holds that this perspective of sex, changes the attitude towards a man- woman relation. The concept of an open sexual relation which might have been practiced in primitive society is replaced by a closed and binding relation. This religious morality formulates new concepts like promiscuity, adultery, fornication to label the sexual relations outside the institution of marriage. As a result marriage becomes the sign of morality and legitimacy. Christian attitude towards marriage and sexuality stood in sharp contrast with those of most ancient religions. Hindus believed marriage to be a sacrament, a duty, whereby a man was considered incomplete and ineligible to participate in religious ceremonies if he was unmarried. Jewish religion believed that marriage was a commandment of God given for perpetuation. All these religions can be said to celebrate or enjoy sexuality within the bounds of the institution of marriage.

But Christianity accepted marriage as a better alternative than lust. For them marriage itself was not blameworthy, it was the carnal union which led to pleasure that was to be blamed. As St. Paul says , “It is better to marry than to burn”<sup>17</sup> Sexual union in marriage could only be tolerated for producing children,

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<sup>16</sup> Russell, 1929,op.cit., p.27

<sup>17</sup> 1Cornithians 7:9

otherwise, all sexual acts were sinful. Even in marriage any sexual act apart from procreation was sinful. This attitude towards sex led to more strict rules in marriage related to polygamous union, adultery, premarital sex and divorce. The ideal marriage was monogamous union whereby the any sexual relation outside marriage and to multiple partners was restricted. Divorce in Christianity was also strictly prohibited. As time grew by, the political role and economic power of Church, which propagated Christianity, made it more deeply involved in the affairs controlling marriage and family life in many western nations.

#### **4.5 Impact of Middle Ages**

The Middle Ages characterized by fall of Roman Empire, emergence of Germanic warrior tribes led to a change in political sphere, where small fragmented kingdoms formed and fell apart. This affected the marital scenario where marriage again became the method of forming alliances and peace treatise. The patriarchal outlook of marriage still remained where the male of the household held supreme authority. Procreation was the only legitimate reason for sexual union and people from higher or lower classes contracted marriage for this sole purpose. Divorce and remarriage was encouraged on the grounds of childlessness. Thus the practical consideration of marriage in Middle Ages was the revival of utilizing marriage for political and economic advantages. One can say that moral outlook regarding the utility of marriage became more stringent with Church enforcing stricter control over proper religious sanction of marriage and strict norms over

divorce and re-marriage. Earlier marriages were held privately by mutual exchange of vows. This marriage which held no public sanction, could be dissolved at will for petty reasons. The Church with its new policy of not allowing rampant divorces felt that strict public control was required in case of the institution of marriage. They established three norms for validating a marriage. The bride had to have a dowry, which effectively undercut the independence of a young woman from her parents, a pre-nuptial marriage contract had to be drawn out and published beforehand. This contract included all the details of property transactions like how much dowry was brought, groom's marriage gift to her, what arrangements to be made if the wife was widowed and how property was to be distributed to descendants, and lastly the marriage had to take place in a Church. Marriage bond was now an unbreakable contract, where separation was allowed only in case of adultery, heresy and extreme cruelty (however it was required to prove that cruelty was genuinely extreme. Any cruelty which was not extreme could be allowed in marriage). The indissoluble nature of marriage was advantageous in one sense that it not only prevented petty infidelities but also put forward the marital relation as a strong relation next to blood relation, where the bond was based on promise, trust, understanding and love.

Another distinctive feature of medieval marriage was the independence of individuals to choose their marriage partners freely and after marriage the freedom to set up their own household without any familial interference. This shows that the role of parental control in medieval society gradually waned. In

ancient societies family interference was prominent in case of proper selection of marital partners, settling of marital problems or regulation of divorce, as we have already seen that marriage was one of the vital tools for fulfilling certain practical purposes. In medieval society this parental control was taken over by state, where easy divorce or infidelity was not possible, thus putting more effort on mutual love and free choice of partners. As the practical purpose of marriage changed along with changing times, the methodology used for fulfillment of that purpose also changed. When marriage was a private affair with certain private ends, parental authority and familial morality was sufficient, but when this private affair became a benefit for democratic state, a greater moral outlook took over the personal morality. As easy divorce and infidelity was not possible, it became apt to choose one's partner on the basis of emotional bonding rather than economic benefits.

The doctrine of independent choice did enhance the outlook of this institution, but one cannot say that a taste of freedom could immediately change the face of the institution. Parents did exercise powerful ways of controlling their child's marital decisions by controlling their right to dowry or inheritance. Medieval marriages were a confusing mix where freedom went hand in hand with societal pressure, where celibacy was encouraged along with the propagation of positive good of marriage. Also marriage being based on mutual love and harmony, still held the authoritarian outlook where wife was subordinate to her husband. Coontz points out that wives failure to submit to their husband's will led to use of force for obedience. A 'henpecked' husband was ridiculed and ridden backward on a mule

for his inversion of marital hierarchy.<sup>18</sup> One can say that the pace of change in marital relationships was slowly gaining ground, with some alterations in marital norms and gender roles.

#### **4.6 Impact of Enlightenment**

The change which was slowly setting in the marital sphere got a full realization in early 1700's and 1800's. Distinctive features of marriage were slowly gaining ground where partners could choose or refuse, could establish a separate household, marry at a later age and concubinage was declared to be illegal. This era better known as the Enlightenment era brought profound changes and progressive outlook. Around the 1700's, people started to question things with reason, due to notion of scientific rationalism. Society started questioning the strict beliefs on sex and gender, where they wanted to know the rational basis of the age-old beliefs regarding the above issues.<sup>19</sup> Sex apart from procreation was encouraged, but was still confined to bounds of marriage. Marriage was no longer seen as a political and economic alliance, but was a private relationship between two individuals that ought not to be regulated too closely by Church or State.<sup>20</sup>

Marriage came to be seen as a love-based, intimate union, rather than a miniature monarchy. As a result society began to focus on mutual obligations required in marriage. Rejecting the absolute control of husband and complete submission of

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<sup>18</sup>Coontz p.121

<sup>19</sup> Historyofsexuality:umwblogs.org/pre-20<sup>th</sup> century p.1

<sup>20</sup>Coontz p. 146

women, marriage in the new era focused on mutual love, harmony and trust. Feminist thinkers like Mary Wollstonecraft in this era went so far as to demand equality of sexes within marriage. However the patriarchal sentiments of society were so pre-dominant that the group of thinkers who demanded equality could be classified as the minority class. Coontz refers to thinkers like Rousseau and Fichte who argued that women could be free and independent only to the extent as allowed by man.<sup>21</sup>

The French revolution of 1789 produced radical changes in the traditional marriages. Divorce was made most accessible, legal penalties on homosexuality was abolished; equal rights for both men and women were demanded. However such unleashing of 'equality' was seen as a chaos too. Society did not on the one hand, want to appear as an autocrat in subjugating women, and also could not, on the other hand, give encouragement to female infiltration in what was believed to be a man's sphere. This attitude got reflected in the marital relation too. In this era the concept of wage-earning led to division of labor between men and women. Men were the wage-earners and women were the householders. A separation of sphere was formed where the public world divorced from domesticity was created for men, and a private world divorced and protected from competitive economy was created for women. In the earlier times, where women's household work was seen as a contribution to family's economic survival, presently it lost its status of an economic activity. This new outlook also affected the relation between men and women where man was seen as a protector, provider of family and wife as the

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<sup>21</sup> Ibid. p.149

care-giver, the nurturer. Idealization of women as care-givers changed the perception of women from sexually active beings to asexual beings. Women were seen as epitome of purity, the ideal mother who could not indulge in any kind of 'sexually immoral' acts. The older view that women's sexuality could not be controlled and had to be regulated by imposing the injunction of virginity and chastity, now focused on the aspect that women did not have any sexual feelings and had innate sexual purity.<sup>22</sup> This de-sexualization of women led to formation of the idea of 'good' girls who could be married and formed family with. This virtue of female purity was set as an example to be followed in control of sexual impulses and which in turn affected the marital relation where the practical consideration of marriage was its role in fulfillment of familial and social duties, nurturing and caring of children and protection of familial values. Sexual feelings and appetites were to be controlled and subdued for fulfillment of other obligations. This ideal affected the marital relation and the norms of marriage not only in this era but the later era of Victorian times.

#### **4.7 Impact of the Victorian Era.**

After Christianity, another major influence on marriage and its ethics was formed by the Victorian era. The Victorian Era which stretched over the reign of Queen Victoria(1837-1901) which extended beyond this period till World War I. This era which was prevalent in the 19<sup>th</sup> century Europe and its colonies, favored sexual

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<sup>22</sup> Ibid. p.159

repression, low tolerance of crime and high social ethic. Before moving on to the Progressive era, it is necessary to focus on the age prior to it. The pre progressive times, better known as the Victorian age had a profound influence on the ethical design of marriage and sexuality. This design had such a strong influence on fixing the polarized gender roles in society. The different roles and functions assigned to men and women created separate social spheres for them making the relation between men and women distant and aloof. This in turn had its effect on the sexual morals of society making it more rigoristic.

The Victorian age (1837-1901) stretched over the reign of Queen Victoria, under whose rule a strict moral climate engulfed Great Britain and many parts of Europe. Queen's attitude about sexual morality evolved out of the knowledge of lack of morality of previous monarchs and its effect on the public opinion towards the crown. Sexual scandals of previous monarchs demanded a reformulation of high moral code for society. Two basic points in Victorian morality were prudishness and repression. This attitude was most strongly directed towards women. They were not allowed to be aware sexually and the only role appropriate for them was to service their husband and provide an heir. Having sexual desire was identified with men and women of lower classes, like prostitutes. A woman who had sexual desires was believed to be either diseased or a prostitute. The wisest sexual and marital ethics for women was practice of passionless sexual union, brief sexual encounters with keeping in mind the prime aim of procreation and aloofness from her partner. The majority of women did not have the option to remain unmarried. As women were denied any independence, socially or

financially, there was no other option for them. Next, as a potential life, their qualification was not only virginity, but also innocence in matters of sexuality.

On the other hand, men were allowed pre-marital and extra marital sexual relationships which were carried on with women of low repute. Biased attitude of society towards male and female sexuality, made marriage harsh and brutal, devoid of any passions and affections. Such attitude towards a man-woman relation affected the moral outlook of all relations, be it husband –wife or parents-children. Family being a central figure in Victorian age was large, comprising of five to six children and patriarchal. Wives were the passionless reproductive creatures. Children were the future bearers of family morality and thus were trained to grow up in that manner. Husbands were the authoritarian figures maintaining the strict morality. In this age, women were ruled by men and laws were designed to benefit men over women. Motherhood was not honored and respected, rather a strict demand of purity and sexlessness was expected from the mothers. This can be seen as a contrast to the different set of morality was developed for man and women, where men were permitted to engage in adulterous acts, but women were kept pure and chaste.

Thus the Victorian era of sexuality could be considered as puritan and rigoristic. However Foucault prefers to disagree. He points out that by trying to repress sexuality; Victorians did the contrary by talking about sexuality with increasing intensity and authority. They developed a multitude of sexual species like

prostitute, masturbator, homosexual or the pervert. The masturbator and prostitute disrupted the institution of family. Prostitution and masturbation directed sexuality to non-reproductive ends. Sexuality of women and children required to be controlled otherwise they might express threat to male rationality.

The traditional male rationality and gender roles received a transformation with World War I. As most of the men went out for war, women assumed the role of financial providers of family by going outside to work. Men who got recruited to war either died, or when they returned found it difficult to adjust to normal life. Women on other hand, got broader social life by working out, making friends and developing their own identities. The change in the traditional roles of men and women brought forward a change in views towards sex too. The most notable event was emergence of feminist movement demanding social and political rights of women. Feminists' criticized the idea of traditional sexual morality and began a movement in favor of a 'sexual revolution'. This revolution included the right to divorce, acceptance of pre-marital sex, multiple partners, use of contraception and dating.

Invention of contraception gave women freedom to fulfill their sexual desires without any fear of the burden of pregnancy and forced marriage. Consequently the old moral order of rigid sexuality which forcibly made women ignorant of sexuality was demanded to be erased. Russell points out that World War I was responsible for breaking the barriers of old morality. Feminists did not demand the curtailment of men's freedom of sexuality, rather they demanded that equal privileges should be granted to both sexes in matters of sex. Russell states that

demand for a liberal sexual ethics accompanies a demand for a liberal view on marriage. The novel view of marriage needed reforms like freedom of not marrying, allowing women the privilege of sexual intercourse prior to and post marriage, abolition of fatherhood and patriarchal power.

#### **4.8 Impact of the Modern Era**

Twentieth century witnessed drastic changes in society's approach towards sexuality and marriage. 1920's was the era of growing trend of women's liberation where women were getting opportunities of exploring their sexuality in their own way. For many women this was an exhilarating experience. Women were getting educated and were gaining economic freedom by getting opportunity to work outside. This individual freedom, especially on part of women, influenced the trend of marriage where the focus was on individual fulfillment, sexual satisfaction and close comradeship. Marital commitment was put up before family ties, need for love in a relationship was demanded more than economic and political benefits. This resulted in more divorces also where the relations got estranged if the ideals were not fulfilled.

Various factors, both social and political, from 1920 onwards transformed the look of marriage. Twentieth century witnessed transformation in sexuality, gender relations and youth culture. Coontz says that love and marriage became vital for people's sense of personal identity.<sup>23</sup> Marriage and family gained priority in

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<sup>23</sup>Coontz p.214

individual's life. During World War II when most men were out in the war, women took the responsibility of earning for the family. This highlighted their sense of independence and at the same time created a dilemma as to whether she should dedicate herself to her household or to work outside the home.

Post war when men returned back, women gladly accepted reverting back towards the role of housewife. However, some women regretted the loss of independence. This in turn created tensions in marital relations. As a result divorce rates increased tremendously. Even when the divorce rates increased, this period also witnessed a sharp rise in marriage. This institution was seen as a stepping stone towards a new phase of life which led to formation of a family which could be called one's own and which was the last destination of life's journey. Coontz writes *Marriage in the long decade of 1950's was simply the be-all and end-all of life.*<sup>24</sup>

By 1960's and 1970's the picture changed again. Marriage lost its importance as the ultimate end of life. People married late, divorce rates soared and pre-marital sex became the norm. Radicalistic attitude, liberal thoughts led to a different attitude towards love, sex and marriage. Disillusionment set in when men and women found out that their colored perception of marriage being the epitome of sex did not fulfill all the expectations at the realistic level. Thus marriage for many became unsatisfactory. Similarly with the rise of contraceptives, pre-marital sex became acceptable. Sex also got attached with the notion of love. Thus any sexual relation before marriage sought its culmination and fulfillment in

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<sup>24</sup> Ibid. p.214

marriage. This was the era of emergence of feminist movement which brought a new wave of thinking towards the age old institution of marriage, where we find the study from the perspective of women whose experiences and opinions had till now been unheard of.

Feminists have most of the time criticized the institution of marriage. Philosophers like John Stuart Mill in *The Subjection of Women* and Simone De Beauvoir in *The Second Sex* have perceived this social institution as an instrument of women's oppression, with married women being subjected to gender discrimination, and taking the major share of domestic and caring work, and moreover not getting any recognition for their contribution to family. Symbolically, if we look at the wedding ceremony, be it Western or Indian, feminists point out that marriage projects that a woman's ultimate dream is to get married. The patriarchal outlook is so evident in all marriage ceremonies. In western marriages a girl wears white which is the symbol of purity and virginity, thus emphasizing on these two aspects, the vows to obey the husband, the surrendering of the surname of the bride to that of groom's, the application of vermilion marking a woman as married whereas no such mark is given for men. Feminists majorly criticize the sexist aspect in marriage and wanted a reformulation in this.

Despite decades of feminist criticism of the institution of marriage, the institution of marriage endures- however with some changes. To present the feminist argument against marriage, we can see two distinct perspectives. The first states that traditional marriage is bad because it oppresses women. This implies that

traditional marriage should be abolished as it worsens the position of women. The second critique is that marriage only promotes heterosexuality and does not allow same- sex marriage. The implication of this is that, marriage provides certain benefits to heterosexual couples, which are unjustly denied to homosexuals. However there appears a contradiction in feminist arguments. If marriage oppresses at least some of its participants, why would homosexuals want to be a part of such institution. On the other hand, if marriage ought to be extended to homosexuals because it confers privileges, why would feminist want to abolish this institution. In *Feminism and Psychology* the articles on marriage indicate, “the struggles that married feminists undergo in choosing to participate in an institution that is both the heart of heterosexual privilege and the heart of heterosexual women’s, lesbians’ and gay men’s oppression.”<sup>25</sup>

The prime and first feminist critique regarding marriage is that it oppresses women and tends to reinforce gendered division of labour, making women dependent on their husbands economically as well as mentally. Women either contribute their entire labour to their homes, without getting paid or even if they work outside, they do most of the household work which saps their energy. Moreover marriage symbolises the concept of husband ownership which affects the dignity of women. The institution of marriage in its traditional form left very little or no rights for women, their possessions or their lives. Modern marriages, though reformed, yet hold on to the traditional outlook of wife submission and husband domination. Claudia Card writes, “The progress embodied in the

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<sup>25</sup> Finlay & Clarke, p.417-418

criminalization of marital rape and violence, has been mostly on paper. Wives continue to die at a dizzying rate.”<sup>26</sup>

Card is very much sceptical about marriage. On her analysis, the very idea of marriage as a state-awarded license gives claim of one person over another person’s property and personhood. It exposes the individual to life-long submission in terms of sex, property, society and family, by putting legal and mental barriers to separation. She feels that marriage inevitably leaves its participants vulnerable to abuse. As Card writes, “For all that has been said about the privacy that marriage protects, what astonishes me is how much privacy one gives up in marrying...Anyone who in fact cohabits with another may seem to give up similar privacy. Yet, without marriage, it is possible to take one’s life back without encountering the law as an obstacle.”<sup>27</sup>

Secondly, it can be said that marriage harms the position of women as whole by casting them inferior to men. Women are deprived of their desires, wishes or ambitions as they sacrifice them for a married life. Marriage becomes the only option for women for fulfilling her sexual needs and upgrading her social status. Susan Moller Okin argues that, “marriage has earlier and far greater impact on the lives and life choices of women than on those of men”<sup>28</sup>Girls, as a result, do not aspire for prestigious occupations or feel able to contemplate happily independent. The symbolic aspects of marriage exert a grip on women who feel compelled not only to marry but also to comply with all the norms and morals of

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<sup>26</sup> Card, p.14

<sup>27</sup> Ibid, p.13

<sup>28</sup> Okin, p. 142

marriage. Such compliance according to feminists like Anne Kingston, is a violence not on inflicted on bodies but on the thoughts of women, where a woman feels herself to be inferior or worthless if she is not married or conforms to mores of marriage. In all societies, marriage enacts on women this pressure that a girl is flawed and failing if they are unmarried. This perception is encouraged by pressure from peers, family, and media. Many women see singlehood as a temporary phase preceding marriage, any prolonged singlehood is sad, shameful and the fault on part of women. Every marital relation has certain unwritten set of rules or guidelines which are meant to be followed, especially by women. For e.g. not mixing with other men, not describing their sexual desires, not minding when husbands are angry and serving their husbands wholeheartedly. Feminists criticize this institution for enacting such a symbolic violence on women. Society when enforces such pressure on women to get married, marriage becomes the norm, as a result of which single women lack self-esteem.

Women feel the pressure to enter into the institution of marriage and it disadvantages them practically too. Marriage has always been a sexist institution which always particularly harms women. Feminists think that even if these historical institutional oppressions are reformed, such that women are given equal status with men in marital matters and mores, marriage will still be rooted in oppression of women, if not physically or mentally, but symbolically. It will still represent the patriarchal domination of women. Marriage has not only a practical, legal or financial benefit, it also has symbolic significance. Whereby, the couple marrying not only acquire practical benefits, but make a statement to society

showing a close knit bond in which their domain becomes the private and the rest of the world becomes public. Thus however hard one tries to reform the institution, its traditional status stands as it is.

The other aspect of feminist critique is that marriage privileges heterosexuality and discriminates against homosexuality. Feminists in this context thus believe that marriage has certain privileges which should also be extended to same sex couples. But the question here is: if marriage oppresses then why would homosexuals want to enter into it. Feminists argue that if the institution of marriage is reformed, by making it more egalitarian, and extending it to same-sex couples. Such a transformation would transform the institution for the better. In a symbolic way, a marriage stands for a relation between the husband and wife, where traditionally, the husband is considered the head of the family and wife the follower. This kind of relation symbolises a superior-subordinate set up, which in a patriarchal society occurs between a man and a woman. But if the relation is between a man and man, woman and woman, the setup of superiority and subordination will be erased away.

Emergence of feminist movement along with the change and social scenario of 20<sup>th</sup> century and 21<sup>st</sup> century witnessed many changes in marital relation, or rather sexual relation, like live-in relations, single motherhood, adulterous relationships and divorces. The situation of marriage throughout history has always remained in a flux with many new aspects as well as reverting back to old norms. Coontz sums up the sketch of marriage in the following way, *'Marriage has been the gateway to adulthood and respectability and the best way for people to maximise their*

*resources and pool labour. Marriage still allows two people to merge resources, divide tasks, and accumulate more capital than they could as singles.*<sup>29</sup>

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<sup>29</sup>Coontz p. 276-277

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## **CHAPTER V**

### **Sexuality:**

#### **A Moral Presupposition Working Behind the Social Institution of Marriage**

Marital morality presupposes some sort of sexual ethics which may not be always whatsoever explicit in any culture, but mostly implicitly practiced. Marriage as a social institution and mostly preserved as a sacramental institution in all cultures has been bestowed with the greatest recognition and honour, as this institution forms the social mores around the instinctive drive of sex. Marriage always implies the right to sexual intercourse, where the only relation where sex is considered moral and legal is that of between husband and wife. Not only so, it is also regarded as a duty on behalf of both the partners to gratify the other partner's sexual needs. Westermarck believes that

from primitive times, it has been a habit of a man and a woman (or several women) to live together, to have sexual relations with one another, rear offsprings, form a family where the man assumes the role of protector and provider; and the woman, the role of care-giver.<sup>1</sup> This habit has been gradually sanctioned by custom and law, thus making it a social institution. This habit can be better termed as instinct which impels the members of the opposite sex, whether animals or human, to approach and attract each other so that they are ready for propagation. Thus sex can be generally understood as an instinct. It is thus important here to understand the meaning of the term sexual instinct.

### **5.1 What is sexual instinct?**

Any human behaviour is generally guided by two main factors- those that exist within the individual and those that constitute his surroundings. The environment comprises of psychical, social or cultural factors. Behind the stimulus response activity of a normal human being, certain innate forces are presumed to operate which can be regarded as the essential spring or motive of all thought and action. These primary motives may vary among the individuals of different races but they are common to the men of every race and age. These motives can be termed as instincts which are the forces behind every activity of all organisms. Instincts can, therefore be regarded as the forces which impel us to action. These actions can be projected in reflex activities which are automatic responses to stimulation and

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<sup>1</sup> Westermarck p.28

sometimes conscious responses developed through intelligence. Several physiologists and specially psychologists have tried to define instinct, but a definite and a concise definition is hard to arrive at. From the biological standpoint instinct can be defined as, “*a special pre-adaptation of the nervous system congenitally determined so as to give rise to special bodily actions in response to appropriate stimuli.*”<sup>2</sup>This definition appears to be too mechanical as it merely projects instinct as a purely reflex action. This view has largely been advocated by psychologists like G.F.Stout, Herbert Spencer.

The theory of instincts as put forth by endocrinologists like L. Berman is as follows, “*translated into endocrine terms, what happens may be pictured as a series of chemical events. When the activity of a gland rises above a certain minimum, its hormones in the blood sensitize, as a photographic plate is sensitized, a group of brain cells, to respond to a message from the outside world, with a definite line of conduct. There is a registration by the brain cells of the presence of the specific stimulus. Then there is communication by them with the endocrine organs. As a result, some of them are moved to further secretion, and others are paralyzed or weakened. In consequence of changes of concentration in the blood of the various internal secretions, tensions, movements and tumescences, as well as relaxations, inhibitions and detumescences, occur throughout the vegetative system—the blood-vessels, the viscera, the nerves and the muscles. Each wires to the brain news of the change in it. In addition, the*

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<sup>2</sup>J.Drever, *Instinct in man* cited in ch 4 of *Instinct: A study in social psychology* by Luther Lee Bernard p.1

*brain cells themselves are excited or depressed by the new hormones bathing them. In their final fusion, the co-mingling vegetative sensations constitute the emotion evolved in the functioning of the instinct. To lower the new tensions throughout the vegetative system to the normal range, the instinctive action is carried out. This superficially is regarded as the essence of the instinct. As a matter of fact, it is only the endpoint of the process, the resultant of a drive to restore equilibrium within the organism . . . . The play of an instinct may therefore be analyzed into four processes. They succeed one another as sensation—endocrine stimulation—tension within the vegetative system—conduct to relieve tension . . . . The most interesting factor in the instinct equation is the endocrine, because that is the one that is most purely chemical.”<sup>3</sup>*

These definitions of instinct project it as purely a chemical or mechanical activity. Most physiologists and psychologists support the mechanistic interpretation of instinct as stated above. Psychologists like William James write that instincts are the faculty of acting in such a way as to produce certain ends, without foresight of the ends, and without previous education in the performance. This definition implies that instincts do not involve any consciousness of process and end and that instincts are hereditary. However some psychologists prefer to disagree where they point out that every instinctive activity involves intelligent consciousness. An instinctive activity when exercised for the first time by any creature is prior to experience without any knowledge of the end to be achieved, but when these actions are repeated year after year the performance shows

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<sup>3</sup> Ibid p.2

considerable improvement. This does not mean that by experience they cease to be instinctive. For e.g. in the case of a beast that has followed the trail of its prey many times, we may regard the action as instinctive but we can hardly doubt that after many kills, the creature shows improvement.

If we now turn to the definition of instinct as given by psychologists we can quote social psychologist William McDougall. He defines instinct as, “an inherited or innate psycho-physical disposition which determines its possessor to perceive, and to pay attention to objects of a certain class, to experience an emotional excitement of a particular quality upon perceiving such an object, and to act in regard to it in a particular manner, or at least, to experience an impulse to such action.”<sup>4</sup> When we study the above definition we observe certain key features which are:

1. Instincts are inherited or innate dispositions
2. They are neither totally physical nor purely psychological
3. They help us to perceive or attend a situation or object
4. They incite or arouse an emotional excitement, and lastly
5. They lead to an activity.

When instincts are termed as ‘innate’ it may mean to be tendencies which are inborn. McDougall however, by ‘innateness’ means those tendencies that may have been common to all members of the species which may have evolved in the process of adaptation of species to their environment. These tendencies must have become a fixed feature of the mental constitution that it appeared as inborn. It is believed that instinctive

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<sup>4</sup> McDougall p.29

actions are displayed in the purest form in animals as well as human infants where the behaviour is unmodified by intelligence and experience.

But instincts are more than mere innate tendencies. They cannot be purely mechanical. According to McDougall, instincts involve a mental process where its three aspects, namely, cognitive, affective and conative work too; that is to say that every instance of instinctive behaviour involves a knowing of some object, a feeling with regard to it and striving towards or away from that object. For instance, if we take the instinct of flight or fear from danger we find that all species whether animals or humans have an innate tendency to flee from danger. This instinct is a very strong tendency found especially in animals as it is vital for their survival. Here the behaviour is instigated by various sense stimuli like sound of gunshot or a scent of enemy, where the common reflex action observed is flight or defence. But it is not merely a physical action. The three aspects of mental process too work here. The cognitive aspect involves the reception and interpretation of various stimuli from different impressions of sight, smell and hearing all of which evolves the emotional excitement where one experiences fear. The emotional excitement is then projected in the prime action of flight followed by the tendency to hide. For e.g. when we hear a loud thunderstorm we try to flee away and seek refuge by covering our ears. The emotion of fear whether projected in flight or concealment is characterized by the fact that its excitement tends to bring to end all other mental activity where one extremely concentrates or focuses its attention to that one object to the exclusion of all others. This psychological aspect is the greatest force operating behind every action.

A somewhat similar interpretation of instinct has also been given by the famous psycho-analyst Sigmund Freud. Freud believed that any human action was a combination of both our bodily organs as well as acts of consciousness. Any action is governed by three basic principles namely – id, ego and super ego. The power of the id expresses the true purpose of a man's life as it consists of the satisfaction of our basic needs. Ego being the reality principle guides our choice regarding the satisfaction of the needs and super-ego acts as the morality principle. Id is that part of human psyche which constantly demands satisfaction and the forces which we assume to exist behind the tensions caused by the needs of the Id are called 'instincts'.<sup>5</sup> Freud believes that there are numerous instincts out of which two can be considered as primary- *Eros* (life instinct) and *Tanatos* (death instinct). *Eros* or the life instinct are those that deal with self-preservation and preservation of the species. On the other hand the death instinct is one which is responsible for destruction of what has been formed. Freud says that in a biological function two instincts work together. Like the act of eating is a destruction of the food which when enters the body satisfies the need for food and helps in self-sustainment. The two opposing instincts gives rise to the whole variation of the phenomena of life.

From the angle of physiology, we can say that instinctive action is like a stimulus-response system, but Freud points out that instinctual stimulus are different from the physiological stimulus. For e.g. when a strong light falls on the eye we shut our eyes. The light is a physical stimulus to which we respond by shutting the eyes. But instinctual stimulus does not arise from outside but

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<sup>5</sup> Freud, p. 5

from within the organism like the instinct of flight when one feels the emotion of fear. Freud says that a better way to indicate an instinctual stimulus is by the use of the word 'need' and a need always demands satisfaction. Thus we see that it is not possible to give a conclusive definition of instinct. One can say that purely instinctive behaviour can be seen only in animals. In humans this is being influenced a lot by intelligence and experience. The only complex instinctive mechanisms which remain intact in man are those which are connected with vegetative, reproductive or excretory processes. Like the other instincts, sexual instinct can also be regarded as a complex innately organized psycho-physical disposition consisting of three parts of a mental process- cognitive, affective and conative. In all species there is an innate capacity to recognize and distinguish the member of the opposite sex. Therefore there is an innate disposition to perceive or discriminate the opposite sex. In the next stage of this instinct comes the affective side when one feels attraction towards the members of the opposite sex. In some species it is a single or repeated reaction and in some it is a chain or series of reactions, each step bringing forward a new emotion. The perception of a suitable individual of the opposite sex evokes the impulse of approach and at the same time tends to bring about an emotional excitement.

This emotional excitement tends to bring about the state of tumescence or turgescence of the sex organs, especially of males which is a necessary requirement for developing the emotion of 'lust'. McDougall points out that lust is a basic requirement for developing a mental and bodily energy for sex. When sex is habitually directed towards one person, it leads to sex love. Sex love being a complex sentiment is a combination of physical need as well as

protective impulse and tender emotion of parental instinct. Ch Letourneau too supports McDougall's view and says that among the primary needs the most basic one is sexual need and its satisfaction. He writes, "there is no more primordial function than procreation, since on it depends the duration of the species; and for this reason the need of reproduction or the rut breaks out in many animals like a kind of madness"<sup>6</sup> This strong feeling leads to the supreme aim of reproduction. The craving for sexual fulfilment and reproduction is the most vital force which acts as a far greater motive behind all activity.

Sexual instinct principally can be called a psycho-physical energy that not only leads us to act in a particular manner to satisfy that energy but also to invigorate all activities which act as a means towards the attainment of the end of that instinct. For e.g. a youth totally inexperienced in sexual relation may feel very strongly attracted to a member of the opposite sex, follow her and find immense satisfaction by looking at her or talking to her. This impulse may carry him further to his wooing her, getting sexually intimate with her and so on. Thus sexual impulse is not only instrumental in fulfilment of physical need and reproduction but also determines our forms of social behaviour, moral sentiments, law or customs.

Thus the question still looms before us as to what is the need of a permanent relation between two people in order to gratify the sexual as well as parental instincts. The answer can be looked in the human psyche where we see that humans are basically social. Darwin points out that the social trait in humans

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<sup>6</sup> Ch. Letourneau. p.8

is reflected in their tendency to remain in a group. They have an united feeling which is projected in their tendency to remain in mutual company where they feel safe. This tendency gives rise to the emotion of love, attachment, sympathy, obedience and fidelity. One can say that humans in the process of fulfilment of sexual needs must have felt the pangs of emotional attachment to the partner who had fulfilled the sexual impulse.

Westermarck<sup>7</sup> echoes the same view, that in case of the union of male and female the tendency to feel attachment to the being which had generated sexual pleasure could be a strong base for the instinct to stay and take care. Moreover in the struggle for existence man must have realized the importance of companionship. Miller in his paper, titled, “The Primate Basis of Human Sexual Behavior”<sup>8</sup> writes that man has a very strong tendency to form long association with a certain partner as it becomes conditioned to it. Miller calls this feeling ‘tender passion’ or ‘sex love’<sup>9</sup>. Thus we can say that the long sexual association of man with a particular partner must have generated the strong feeling of love. This feeling is so strong that it helps in continuation of the relation or association even when the sexual factor fades away.

In the Indian system too, it is believed that a man’s life should be guided by four ends (*purusārthas*), viz. *dharma* (duty), *artha* (material well being), *kāma* (appetitive well-being) and *mokṣa* (salvation). Each of the ends has a definite value. *Kāma* or appetitive well-being is considered as a necessary *purusārtha* for fulfilment of one’s desires with proper regulation so that one can aspire towards the end goal of spirituality. The noted work on *kāma* in

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<sup>7</sup> Westermarck, p.70-71

<sup>8</sup> Miller, p.394

<sup>9</sup> Ibid p.394

classical Indian tradition is the *Kāmasūtra* written by *Vātsāyana*. Here he explains *kāma* as the enjoyment of appropriate objects by the five senses of seeing, hearing, feeling, tasting and smelling assisted by the mind together with the soul. The ingredient in this is a peculiar contact between the organ of the sense and its subject and the consciousness of pleasure which arises from that contact.<sup>10</sup> *Vātsāyana* also mentions that pleasures are necessary for the existence and well-being of the body as food is. The same opinion is held in *Bṛhadāranyaka Upaniṣad*, where *Kāma* is explained as the motivating force or appetitive desire or moving agency for knowledge of self and attainment of liberation.<sup>11</sup> Thus we see that *kāmapurusārtha* denotes that human well-being and feeling of happiness resulting out of the gratification of a desire for an object, external or internal. Desire here not only stands for physical want but also the emotional gratification. In other words it also indicates the enjoyment or happiness arising out of such gratification. This enjoyment or happiness in turn acts as a motivating force behind every action. Indian thinkers admit that a desire or will to do anything enables a man to seek any object. In *Mahābhārata* the following passage asserts the above point, “*one without desire never wishes for wealth. One without desire never wishes for virtue.... Everything is pervaded by the principle of desire. Both virtue and profit presuppose the operation of desire.*”<sup>12</sup>

Manu also points out that no action of whatever type, worldly, religious, ritualistic, ethical is possible without its doer having a desire to do it.<sup>13</sup> He

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<sup>10</sup> *Kāmasūtra* p.15

<sup>11</sup> *The Bṛ hadāranyaka Upaniṣad* with the commentary of *Śankrācārya*, trans by Swami Mādhavānanda pp. 131-132

<sup>12</sup> *Mahābhārata ,Sāntiparva*, p.657

<sup>13</sup> Manu 2.4

also mentions that it is not desirable to be completely desire less. Desire being the prime mover, attaches a moral regulation to the behaviour of the person. No moral regulation can be attached to the behaviour of the person or, in other words, no action can be considered as obligatory without the person's wanting to do it. Our tendency to follow a moral rule is proof enough of being motivated by desire.

Since *kāma* as a value indicates all sorts of sensual pleasures it naturally includes sexual pleasures too. From the above discussion we can say that sexual pleasure in Indian system is not merely about gratification of bodily appetite, it also denotes an emotional state arising out of such gratification. It is a pleasure experienced by two individuals of opposite sex as a result of emotional as well as physical interaction between them. The importance of *kāma* as sexual pleasure in Indian system is also testified by the fact that an entire treatise named *Kāmasūtra* had been written several centuries ago, where the basic objective was to help a man lead a happy, successful sexual life in a morally desirable and balanced manner.<sup>14</sup> As *Vātsāyayna* states that *kāma* or desire needs to be fulfilled in a responsible manner where it is concordant with *artha* and *dharma*, the need for the institution of marriage is clear. In Indian system the instinct of sex is given a moral character where it is considered as a moral duty of householder or the person entering the *gāṛ hasthyaāśrama* to get married so that he can produce progeny in a socially approved manner. Marriage as an institution gives a social, legal and moral look to avoid the possibility of fulfilment of the basic instinct in a reckless manner.

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<sup>14</sup> Prasad p.255

In *lokāyata* tradition too, *kāma* gets importance as not merely a sexual fulfilment but as an aid to *artha*. Here *artha* stands for material wealth measured in terms of cattle (*paṣu*). It was believed that reproduction resulted in offsprings which were a man's asset in terms of manpower in rearing and raising cattle and managing the fields. Sexual union was conceived in terms of reproduction which in turn was linked with production. Chattopadhyay writes that hymns like *VāmadevyaSaman* of *ChāndogyaUpaniṣad* states, 'He who knows thus this *VāmadevyaSaman* as woven upon copulation comes to copulation, procreates himself from every copulation, reaches a full length of life, lives long, becomes great in offspring and in cattle, great in frame. One should never abstain from any woman. That is his rule.'<sup>15</sup>

Chattopadhyay writes that Vedic people imagined that the sexual union would increase their material wealth which was conceived primarily in terms of cattle. Thus Vedic ideas were predominantly those of pastoral people. In *Tantrism* the same belief about human copulation was in terms of agricultural products which were the symbol of human prosperity. These were the ideas of an agricultural society.<sup>16</sup>In *Lokāyata* and *Tāntric* cosmogony, it is believed that creation of new life occurs only through the union of *puruṣa* (male) with *prakṛiti* (female). The life force which exists in the universe is manifested in human beings in the form of erotic urge (*kāma*) which causes *puruṣa* and *prakṛiti* to come together and create new forms. Thus *kāma* is the life force which brings on human reproduction and fulfils the purpose of one's existence.

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<sup>15</sup>Chattopadhyay, p.66

<sup>16</sup>Chattopadhyay, p.72

Sexual energy being the vital energy related to human perpetuation, it is considered necessary to administer the fulfilment of sexual needs in a proper way. Infact society has always stressed on the formulation of a proper sexual morals. These sexual morals have helped shape up the marital moral norms practised in every culture. Before doing any analysis on the marital moral norms, one needs to understand the role of sexual morality in society, why does society need to check the formulation of sexual ethics? What is the role played by marriage in protecting the sexual morality in society? We can begin our analysis by trying to search for the answers to the above questions.

## **5.2 Need for Ethics of Sexuality**

As fulfilment of sexual needs in a proper way is necessary, society has always stressed on the formulation of a proper sexual morals. Russell says that sexual morals of all communities have been determined from the point of view of general good and well-being. In delineating ethics of sexuality, role of law, public opinion and individual discretion should not be overlooked.<sup>17</sup> He further explains that the sexual morals of a community may be difficult to decide as the ethics of sexuality may vary in different communities at different periods of time.

Russell was of the opinion that determination of a proper sexual ethics was important as it produced vital effects at the personal, conjugal, familial, national and international level. In his opinion, determination of proper code of sexual behaviour is immensely important for personal well-being where

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<sup>17</sup> Russell P.2

one can prevent non adults as well as adults from unnecessary sexual abuse. At the conjugal level also a sex relation is considered to be better and more valuable when both of the parties involved enter into a permanent and stable relation and where the physical act of sex is also coated with affection and care. At the familial level too, society always values the monogamic patriarchal family where the father is the head of the household and he is a constant factor in the rearing of the offspring. Sexual ethics helps in protecting females and non-adults from assault, prevents venereal disease, controls population, helps in controlling the health of mother and child, promotes economic stability and maintains peace in society. Russell thus feels that all these factors have always, and will work towards the formulation of sexual ethics in most ages and most places. In this perspective we can say as sexual morality is so vital for society, society itself feels the need to check the formulation and effects of sexual morality, and for this purpose, it is necessary to bring about a system which protects the sexual morality in society. Marriage is seen as a protector and preserver of the sexual morality.

In case of sexual and marital morality, we have already discussed the sexual mores and its effect of the pre-patriarchal societies in the previous chapter. The major factor in formulation of the till date sexual moral attitude has been the emergence of patriarchal power. Patriarchy with its emphasis on legitimacy of descent as well as love for power gave a new direction to the formulation of sexual ethos. Rise of patriarchy, for Russell is a great revolution in forming a new sexual ethos where the moral agent, specifically male of the species, acts for the establishment of a utilitarian good of others. The other or the fellow being is always a group of men; women being a part

of the property possessed and exchanged by the group. This attitude, Russell points out, existed in all societies of antiquity.

Let us see how Christianity influenced the sexual ethos of society. Pre-Christian thoughts regarding sex revolved around the mysteriousness about fertility, and thus focussed on enhancing fertility through phallic or genital worship. Christianity's attitude towards sex involved the notions of impurity and it being an obstacle to the path of salvation. Ascetic religions like Christianity focused on the celibate life of men where the sole purpose was unity with the Lord, through subduing of passions. Russell attempted to chalk out some probable arguments which may be provided in support of advocating rigidity in sexual ethics. He opines that rigidity in sexual ethics is responsible for establishment of norms of marriage like, stress on female virginity, non-allowance of divorce, lack of feelings of love and companionship in marital relation, and ultimately in making marriage a sacrament. This entire attitude towards sex and marriage engulfs the whole of western culture for many years. Christian sexual ethics not only affected the marital relationship but did a great deal to degrade the position of women. Russell points out that Christianity being a patriarchal religion affected the status of women. Women were regarded as the object of temptation who could deviate men from the path of salvation. As women were regarded with contempt and considered the source of all evils, the concept of shame, virtue and chastity were more strongly tagged with her. Respectable women were restricted in matters of sex and women who could not be restricted were treated as sinners. In Christianity, anything beautiful or tempting was considered bad for the sole aim of salvation, thus leading to regard beauty in women, emotion of

passionate love in humans as sinful. This attitude made sex a mechanical procedure and marriage merely an obligation.

Christianity developed the moral outlook of marriage in a strict manner, where it was morally binding, indissoluble and permanent till death. Thus a virtuous marriage was one which followed the above norms. In its early stages, Christianity made the sexual relations between men and women harsh, by condemning sexual intercourse as sinful. The general feeling developed in this period revolved round the need to curb the uncontrollable physical desire which could be an obstacle to the path of salvation. Ethics of sexuality focused on the above factor and made those sexual relations virtuous which aimed at producing children. As a result, homosexuality and masturbation were labeled as vices in those times. Not only so, the sexual relation leading to reproduction was virtuous only when it achieved the said aim. The impact of this ethos on marriage was harsh and brutal where sexual relation between husband and wife was goal-oriented, mechanical and devoid of love and affection.

Michel Foucault also echoes the same view when he tries to study the relation between power and sexual morality in his *History of Sexuality*. He believes that there is a game of power working behind the formulation of sexual ethics. However for Foucault power is not a negative phenomenon which refuses, dominates, or suppresses sex. He, unlike the general opinion regarding power, regards it as a determinant of relations between: men and women, parents and children, administration and people, religion and common man. Sexual morality which has been a medium of exercising the power in formulating and determining human relations has been vital in all stages of society. Both

Russell and Foucault have brought out this importance to sexual morality in their respective views. Just as Russell analyses the evolution of sexual ethics from the different turning points in history of human society like Patriarchy, Christianity and so forth, Foucault too brings out an elaborate historical analyses of the scope and nature of sexual ethics in different stages like Ancient Greek period, Roman period and Victorian period. The next chapter attempts to study Foucault's observation on evolution of sexual morality, trying to show how this morality affects the very art of existence of human beings.

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## **CHAPTER VI**

# **Ethics of Sexuality: Some Observations from Foucault**

Marriage and sexuality has always been considered to be interlinked, where marriage is regarded as the only instrument through which one's sexual needs can be fulfilled. It is as if there is no essence of sexuality outside the institution of marriage, and the sole purpose of one getting married is to have the license to have sexual intercourse. The question here is whether the connection between sexuality and marriage, is a natural fact or can we label it as a social construction? The answer to this question may be attempted through the study of Michel Foucault's elucidating work, *History of Sexuality*.

Here he attempts to understand the phenomenon of sexual pleasure from classical antiquity to the Victorian period, and point out that sexuality has always been associated not merely with biological factor of reproduction but has been a determinant of individual and social behaviour, establisher of a set of rules by religion, judiciary, medicine and culture. Like Foucault, Russell too gives us the descriptive account of the historical evolution of sexuality in different periods where he primarily tries to focus on the relation between sexuality and marriage from the modern perspective. Foucault, on the other hand, is more analytic in understanding the relation between the two where there is interplay of society, politics, economics and religion in framing up of the 'so-called sexual morality'. Foucault questions, "Why is sexual conduct, why are the activities and pleasures that attach to it, an object of moral solicitude?"<sup>1</sup> In spite of the different forms of ethics dealing with several aspects exist in different cultures, the vital question is why has there been a persistent need in society to develop an ethics of sexual conduct. This persistent need of man has led him to develop an 'arts of existence'<sup>2</sup>, a discourse, especially found in Greek and Greco-Roman culture. It has been supposed that discourse on sexuality is confined to marriage. Foucault tries to trace historically the basis of believing such confinement of sexuality to marriage. It is also his objective to find out whether it is actually so. He takes his journey from Victorian era and goes back to the Greek period to study the phenomenon.

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<sup>1</sup> Foucault Vol 2 p.10

<sup>2</sup> Ibid. p10

## **6.1 VICTORIAN ERA: The Period of Repression (1837-1915)**

Foucault begins his study from the Victorian era where the picture of morality stands for a set of values along with strong and high moral standards that supported sexual repression and low tolerance of crime. Due to enormous impact of British Empire, many of these values were spread across the world. Prudery and repression were the extreme features of the Victorian era. The Victorian period was an era of contradictions. There was a lot of advancement, improvement of public morals, economic boom, but on the other hand it was a period representing prudishness, repression and strict moral life. If we look into the history of pre Victorian era, the rule of Puritan Republican Movement had overthrown the British Monarchy. As soon as the monarchy was restored, a period of loose living and debauchery had followed to rebel against the years of repression. King George IV was perceived as a pleasure seeking playboy. When Victoria took the throne, her perception of sexual morality evolved out of the knowledge of morally lacking life of previous monarchs and its impact on the public attitude towards the crown. Therefore her attitude reflected a high moral code to restore the cultural morals of the British culture. As a result, homosexuality, explicit sexual behaviour came to be regarded as gross and meant to be repressed. In this scenario, one important factor which influenced the belief system a lot, was impact of Christianity. Let us see how Christianity influenced the sexual ethos of society. Pre-Christian thoughts regarding sex revolved around the mysteriousness about fertility, and thus focussed on enhancing fertility

through phallic or genital worship. Christianity's attitude towards sex involved the notions of impurity whereby sex was also regarded as an obstacle to the path of salvation. Ascetic religions like Christianity focused on the celibate life of men where the sole purpose was unity with the Lord, through subduing of passions. In such a case it was prudent to put a check on sexual desires by firstly limiting it to the marital life and that too for procreative purpose only. Since sexual pleasure was supposed to be sinful, it is probable that many people only engaged in sex for this specific purpose. This led to practice of rigidity in sexuality which was responsible for establishment of norms of marriage like, stress on female virginity, non-allowance of divorce, lack of feelings of love and companionship in marital relation, and ultimately in making marriage a sacrament. This entire attitude towards sex and marriage engulfs the whole of western culture for many years. According to Russell, Christian sexual ethics not only affected the marital relationship but did a great deal to degrade the position of women. Russell points out that Christianity being a patriarchal religion affected the status of women. Women were regarded as the object of temptation who could deviate men from the path of salvation. As women were regarded with contempt and considered the source of all evils, the concept of shame, virtue and chastity were more strongly tagged with her. Respectable women were restricted in matters of sex and women who could not be restricted were treated as sinners. In Christianity, anything beautiful or tempting was considered bad for the sole aim of salvation, thus leading to regard beauty in women, emotion of passionate love in humans as

sinful. This attitude made sex a mechanical procedure and marriage merely an obligation.

In the Christian tradition the moral outlook of marriage was viewed in a strict manner, where it was morally binding, indissoluble and permanent till death. Thus a virtuous marriage was one which was the ideal of fidelity, was indissoluble and permanent till death. By fidelity meant having sexual fidelity, where sexual intercourse was restricted to a marital couple only and any other sexual relation outside marriage and sans the purpose of procreation was considered as sinful. The general feeling developed in this period revolved around the need to curb the uncontrollable physical desire which could be an obstacle to the path of salvation. Ethics of sexuality focused on the above factor and made those sexual relations virtuous which were between a married pair and which aimed at producing children. As a result, homosexuality and masturbation were labeled as vices in those times. However, it needs to be further added that though sexual fidelity was the accepted norm, a man could have sexual relations outside marriage, provided that the woman was not the wife of another. The same scope was not allowed in case of women. The object of Christianity was to attract men to a life of virginity, thus making marriage an inferior state for ordinary men. Marriage was only meant for fornication and reproduction. The impact of this ethos on marriage was harsh and brutal where sexual relation between husband and wife was goal-oriented, mechanical and devoid of love and affection.

Another important factor which was significant in Victorian life was –family. Victorian families were patriarchal in set up which encouraged deference and respect to the father figure. Families further encouraged respectability, hard work, social deference and religious conformity. The father being the most strict figure in a household was respected by everyone. In fact, he was addressed as ‘Lord’ or ‘Sir’. Children were taught the difference between right and wrong to make them into a moral thoughtful adult. A part of this training involved creating polarized gender roles. Men were supposed to be rational, active, aggressive and independent. Women were supposed to be emotional, passive, submissive and dependent. Since men were governed by reason their sexuality was more controlled and rational. Women being governed solely by emotion and their reproductive function were irrational and meant to be dominated by social norms. This factor influenced the social institution of marriage, motherhood, and conventional sexual values. As already discussed in a previous chapter, Victorian sexual morals highly influenced the marital morals of those times and of subsequent periods.

As we proceed through Foucault’s study we find the use of adjectives like ‘indecent’, ‘secret’, ‘restrained’, ‘mute’ etc. being used in case of depicting the sexual feelings, attitudes and practices. The pre- Victorian phase showed an open –minded and frank attitude towards sex where there was no undue concealment of sexual gestures, even from children. Foucault very elaborately discusses the Victorian regime where from “The Repressive Hypothesis” was derived and which has been held responsible for changing the entire outlook

towards sexuality. This hypothesis rests on the supposition that any expenditure of energy for pleasurable activities needs to be discouraged. Especially anything related to sex needs to be prohibited, repressed, silenced, punished, made to non-exist. It was as if there was nothing to be talked and discussed about sex. All sexual act or speech was silenced and pushed into the background, thus giving the appearance that normal people neither have any sexual desires nor indulge in any sexual activity. The only single locus where sexuality could be practised was marital relation where sex was to be treated as a private affair between husband and wife. A married couple preserved the sole right of knowing and talking about sex, and any other domain of practising sexuality was considered illicit. Foucault in analysing the reason behind this sudden repressive tendency, points out towards the rise of the bourgeoisie period. During this time economic growth depended on the labor capacity of the state, where healthy and organised labor or manpower was the source of wealth. It was highly important to balance the growth of population and the resources they utilised. Foucault writes, ‘At a time when labor capacity was being systematically exploited, how this capacity could be allowed to dissipate itself in pleasurable pursuits, except in those reduced to a minimum – that enabled it to reproduce itself.’<sup>3</sup> Thus sexual energy needed to be controlled in such way that it could only serve the utilitarian purpose of reproduction of healthy and productive labor force. Any undue expenditure of sexual energy was considered to be a wastage or over-indulgence which needed to be checked and discouraged. Sexual energy was meant for proper utilisation through which fertility of the population, its productivity and consequently its health was to be

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<sup>3</sup> Foucault Vol 1 p. 6

monitored. That is why it was necessary to first confine the sexual need to an institutional relation through which state could control the birth rate, age of marriage, legitimate and illegitimate births, different ways by which the population could be made fertile or sterile as required, and the prohibitions which could be imposed on the unmarried lot. Foucault points out that it was essential for the state to know how its citizens were utilising their sexual energy and whether they were capable of controlling the energy and putting it to better use.

He further adds that sexuality during the repressive period took the form of a 'discourse' rather than that of a discussion. When we discuss something we talk about what has been said. But when the same thing is turned into a discourse we also talk about who is saying, in what context, in reaction to what and how it affects us. Language and knowledge are closely linked to power. It is not merely about what is said, but about who decides what is to be said. This in turn decides what can be known and talked about. It in turn affects our way of thinking and of perceiving ourselves. The point is that in repressive hypothesis, power was not about suppressing sexuality but determining all the above points about sexuality. Since marriage became the exclusive domain of establishing the discourse of sexuality, it had complete power over what was to be said and what was not to be said about sexuality. Since bourgeoisie period was about hard labour and stern ethics, they determined that any frivolous pursuit of sexual energy was not allowed. Thus any sexuality outside marriage and sans reproduction was determined to be immoral.

According to Foucault, thus any boisterous attitude towards sex was discouraged for all social classes. Since repression was so evident in sexuality, this made it only confined to marriage. The fall out of this hypothesis was that any kind of sexual activity like pre-marital sex, extra marital sex was discouraged. However it was not possible to fully control and transport the sexual urges merely for an institutional use. The improper feelings towards sexuality were given two outlets during this period – Prostitution and Psychiatry. The non-conjugal, non-monogamous sex was practised through prostitution which existed rampantly but was not given recognition rather it became a despised and hidden institution of society. Russell too explains the justification of practice of prostitution by pointing out that since it was not expected of unmarried men or men away from their wives, to be sexually abstinent, and that society could not allow ‘virtuous women’ to be available for them, it was felt that a certain class should be set apart for satisfaction of masculine needs. Prostitutes had the advantage of being available anytime, anywhere and be discreet too. Since prostitutes were not recognised as respectable women, there was no necessity of marrying them. A man could easily go back to his wife, his family with his unimpaired dignity. Thus prostitution became the domain of improper, illegitimate and immoral sexuality. Though this outlet of venting out of immoral feelings was available for men, the option was closed for the virtuous Victorian women. The virtuous woman of society had the sole role of being a wife and a mother.

Foucault focuses more on the psychiatric outlet of sexuality which made sexual feelings and desires a subject matter of analytical discourse where anything related to sexuality; feelings, thoughts, speech, actions, dreams etc. was a matter of examination where it became imperative not to repress sexual feelings but to confess and analyse each and every desire so that one could purge oneself from the unnecessary expenditure of energy. Foucault shows how emergence of Christianity brought along with it the custom of Confession where it became imperative for every good Christian to confess everything about sex to a religious authority and seek guidance for self-examination and improvement. It was felt that every bad habit developed from childhood, any malady at any age, any degeneration was caused by sexual urges. If attempt was made to interpret all the hidden unconscious feelings through analysis of sex then proper treatment could be provided for purging oneself of all impure feelings. Thus it was important to confess with greatest precision all thoughts, desires, illnesses, troubles so that solution in case of justice, medicine, family relationships, everyday affairs, could be provided. Sexuality in any domain, be it within marriage or outside marriage was considered wastage unless it helped in reproduction. Proper reproduction meant proper working population who are beneficial in terms of advantages and resources they provide to the state through their labours. Foucault writes, "One of the great innovations in the techniques of power in the eighteenth century was the emergence of 'population' as an economic and political problem: population as wealth, population as manpower or labor capacity, population balanced between its

own growth and the resources it commanded.”<sup>4</sup> Thus human beings became a ‘population’ whose birth rate and death rate, fertility, health, pattern of diet and style of living was a matter of political, social and economic concern as a state progressed only through the labour capacity and outcome of the labour of its population. Thus it was ensured that through sex one could have a population that reproduced labor capacity and also maintain a web of legitimate social relations. The main focus was on determining the legitimate and illegitimate sex, thus narrowing all attention on matrimonial relation. Foucault speaks about the areas where the control was exercised- “the marital obligation, the ability to fulfil it, the manner in which one complied with it, the requirements and violence that accompanied it, the moments when it was demanded, the moments when it was forbidden and the frequency too.”<sup>5</sup> In short the sexual relations between husband and wife was set by rules and recommendations. As this relation was the centre of all constraints and analysis, a full-proof arrangement had to be made to formulate the marital ethos which accordingly determined the sexual ethos. Legitimate sexuality was associated with heterosexual monogamy thus ruling out polygamy, homosexuality, sexuality of children and unmarried, sexuality outside marriage etc. it was highly important to monitor the sexual relation of husband and wife more than any relation as marital meant legitimate. Marital obligation thus meant sexual obligation, the ability to fulfil it, the manner in which it was complied with, its requirements and its violations, punishments in case of violations. In short a detailed account

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<sup>4</sup>Ibid.Vol 1 p. 25

<sup>5</sup>Ibid.Vol 1 p.37

of sexual morality was under complete surveillance as it was necessary to find out whether marital relation was normal or not. Prohibitions on sex were juridical in nature, where any violation of sexual sanctity within marriage( adultery, rape, carnal incest, sodomy, homosexuality, infidelity, caress and marriage without parental consent)<sup>6</sup> was unlawful.

Apart from juridical and religious intervention to repress sexual offenses and control conjugal sexuality, another factor which played a vital role was medicine. As mentioned earlier psychiatry provided a mechanism of operating all unproductive sexuality, as a result a close scrutiny was launched upon sexuality of children, mad people and criminals. Any digression from normal heterosexual monogamous sexual behaviour was perceived as manias, mental diseases, obsessions and most importantly, a matter of psychological and medical investigation. Foucault calls it *scientia sexualis* where sex became a scientific discourse through which human behaviour could be studied and analysed. Religious confession provided the outlet for bringing out all the hidden and suppressed feelings of sexuality with an aim of purifying oneself from immoral thoughts. Science on the other hand classified the confessed information to categorise human behaviour into moral and immoral, normal and abnormal. Foucault writes, ‘ From the bad habits of children to the *pthises* of adults, the apoplexies of old people, nervous maladies, and the degeneration of the race, the medicine of that era wove an entire network of sexual causality to explain them.’<sup>7</sup> Thus sex became the cause of anything and everything. Sex was thus believed to

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<sup>6</sup>Ibid.Vol1 p. 38

<sup>7</sup>Ibid.Vol1 p.65

be a storehouse of deep secrets and truths untold which pervaded our existence and essence. Thus it became essential in medical and psychiatric domain to bring out the primitive energy of sex and channelizing it in the proper domain of socially useful and appropriate behaviour. In simple words, if the entire 'population' was not purged of its sexual and animal instincts then unbridled use of sexual energy might jeopardize the productivity of the 'population'.

In this scenario, we find the emergence of psychoanalysis as a science. As a therapy, psychoanalysis is based on the concept that individuals are unaware of the many factors that cause their behaviour and emotions. These unconscious factors have the potential to produce unhappiness, which in turn is expressed through a score of distinguishable symptoms, including disturbing personality traits, difficulty in relating to others, or disturbances in self-esteem or general disposition<sup>8</sup>. Sigmund Freud was the first psychoanalyst and a pioneer in this field. By 1925 psychoanalysis had flourished as a full grown science where the two basic instincts *Eros* (life instinct) and *Tanatos* (death instinct) was regarded as the cause of all human behaviour. Freud designed an elaborate system of the three levels of mind- conscious, preconscious and unconscious and the three stages of a man's life- id, ego and super ego as the major factors in a his psychical development. According to him the pleasure seeking aspect in humans triggers their different kinds of behaviour, and the by the method of 'free association' one can talk out all the hidden unconscious desires regarding sexual feelings, sexual frustrations and cure oneself of 'abnormal behaviour'. Sigmund Freud became

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<sup>8</sup>[www.apsa.org/content/about-psychoanalysis](http://www.apsa.org/content/about-psychoanalysis)

best known for sexual attribution towards the explanation of human behaviour. Thus psychiatry as an outlet of improper sexual feelings got a new dimension from Freud through which sexual repression and its outlook was changed. Moral sexual behaviour meant a normal personality and immoral sexual behaviour meant a deranged or abnormal personality. Sexuality became the benchmark of behaviour. Freud's theories have a wide dimension which needs a separate study. A mere mention of his psychoanalytic theory does not do justification of any kind but it was important here to point out how sexual morality in the Victorian and post Victorian period was formulated, because that period had a profound influence over our thinking regarding sex and morals for a long period of time. However if we study the picture of antiquity we come across a different approach to sexual morality which was mistakenly thought to be quite lenient but as one studies it, one can find many points of similarity.

## **6.2 GREEK SEXUAL MORALITY: The period of self-mastery (500 B.C.E- 404 B.C.E)**

Foucault here points out that one might think that there was a vast difference in Christian morality regarding sex and sexual mores in the ancient western world. Christianity might have insisted on the virtuosity of having one legitimate partner, virtue of monogamous marriage with procreative end and heterosexuality, but ancient Greek culture is believed to have allowed sexual leniencies. Foucault feels that we presume that Christian morality unlike pagan morality was stricter on

monogamous fidelity, chastity, virginity and homosexual relation. But as we come across Foucault's understanding of the historical period, we find that he believes sexual morality in antiquity as well as Christianity to be associated with the concept of evil, procreation, monogamy, strict fidelity, chastity, prohibition of same sex and glorification of self-restraint.

To the ancient Greek mythologizers, sexuality, love and sex were inextricably connected with the creation of the earth, the heavens and the underworld. Greek myth was a combination of incest, murder, polygamy and intermarriage in which eroticism and fertility were elemental; they were there right from the start, demonstrating woman's essential reproductive role in securing the cosmos, extending the human race and ensuring the fecundity of nature.<sup>9</sup> However this sexual openness was misleading also. Everywhere from paintings to literature there were sexually explicit indications and enticements, yet there were a social or cultural binding to restrict the unrestrained sexual energies. Foucault in the second volume to *History of Sexuality* points out that sexual activity was problematized by philosophers and doctors in Classical Greek culture of 4<sup>th</sup> century B.C.<sup>10</sup> By problematisation it is meant that a proper sexual moral code was required to be devised to formulate a rule of conduct appropriate for practices of the self<sup>11</sup> as a presentation of oneself as a moral individual. It required a strict ethical codification about what was permitted and what was forbidden.

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<sup>9</sup> [www.historyextra.com/ancient-greece/brief-history-sex-and-sexuality](http://www.historyextra.com/ancient-greece/brief-history-sex-and-sexuality): 28.09.2016 at 11:30a.m.

<sup>10</sup> Foucault Vol 2, p.12

<sup>11</sup> Ibid Vol 2, p.30

The main factors working behind formulating this code of sexual ethics were: fear, model of conduct, image of a stigmatized attitude and abstinence-Firstly, any sexual activity or rather over-indulgence had always been associated with fear by earliest practitioners of medicine. They instilled the fear in men that excess of sexual activity leads to gradual exhaustion, death, destruction of offspring and harm to the entire race. Greek physicians were of the opinion that it was better to abstain from sex rather than be destroyed by it. Secondly, sexual restraint was seen as an ideal of conduct, a virtue, manifestation of inner strength and self-mastery. It was believed that sex should be limited to merely marital life that too only for procreation. Adultery was to be avoided. A Greek analogy was shown in the form of elephants that only mate with one chosen female, mates only after three years and for only five days and that too secretly and after the sexual act purifies itself by bathing in the river. Men were encouraged to follow the virtuousness of the elephant in matters of sex. Thirdly, negative reactions were formed of people who are weak to the allures of sex. Social stigmatization of homosexuals and inverters and of those who fall prey to the temptation of sex was in force. They are the ones who behave as a soft dolled-up person who were seen as a negative figure and not appropriate for real men, and, fourthly, a person who turns aside from pleasure was seen as a model of virtue and one who could gain access to wisdom which was a superior element in human nature.

The Christian morality of sex comes closer to Greek thought on the subject. It maintains in a similar vein that anyone aspiring to be a model of virtue and wisdom must abstain from sex; for this purpose the morality of sex was formed

on four pillars- life of body, marriage, relation between men and existence of wisdom. The body question was directed towards health issues and matter of life and death; the marriage aspect dealt with the norms guiding marital union, relations with the opposite sex and the ties the family created; the relation between men defined their respective social rules and the wisdom explained how sex hinders truth. It is to be noted that this morality was not meant for women. Women were generally subjected to strict constraints and this ethics was not meant to address their duties and obligation. It was an ethics of men to give form to their behaviour. Women were only objects to be trained and educated.

It is important to understand the meaning of the word morality. Morality may mean various things- set of values and rules recommended to individual through various institutions, real behaviour of individuals in relation to rules, the behaviour one ought to have or the way in which individual establishes himself to rules. All moral actions involve a relationship with the reality in which it is carried out and a relationship with oneself. When an individual performs a moral action, he determines his relation to the context in which it is performed, monitors himself, improves himself and transforms himself according to the context. To explain simply if certain codes of behaviour are determined by society, we not only determine our reactions or responses to those codes, but it also determines how we do self-monitoring or how we become aware of ourselves as the subject related to the codes. This is about self-awareness, self-formation, self-examination and self-reflection. Moral codes practiced during Greek and Roman times not only taught the codes of sexual ethics, but how a person can prevent

from being carried away by the appetites and pleasures, maintain a mastery and superiority over them, to remain free from internal bondage of passions and how to achieve perfect supremacy over one self. Sexual ethics in eighteenth century may be repressive but it started giving identity to individuals through their sexual preferences. Thus having sexual preference towards same sex became the symbol of someone being homosexual, pervert or abnormal. But when we talk about the Greek or Roman period, same sex choice was not about name-tagging. It was something which came naturally, but which needed to be monitored (just as other sexual desires ought to be) so that one does not become slave to one's passion. To put it simply, it was about gaining self-improvement.

Sexual ethics as Foucault interprets is not about following a set of rules. It's about developing a certain attitude towards sexuality whereby satisfaction of sexual desires is to be decided by three strategies of how much one needs, the proper time of its satisfaction and also the age and status of the individual. The number and frequency of sexual acts, whether it was with a woman for procreative purpose or with same sex depended upon the need of the body. However it was maintained that immorality lied in excess indulgence of pleasure. Foucault writes, 'nature intended that performance of the act be associated with a pleasure and it was this pleasure that gave rise to desire in a movement that was naturally directed towards what gives pleasure'<sup>12</sup>. Sexual act is a dynamic relation constituting all the important factors of how much to indulge, with whom, for what purpose, time and the role played by both in the act. As interpreted by

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<sup>12</sup> Ibid p.43

Foucault, virtue as practised in Greek system was not merely in managing the sexual pleasure but lied in achieving mastery over it. To be virtuous an individual had to construct a relationship with oneself of domination and control. The rational part should control the pleasure part. It must be made clear as to why it was necessary to control the passion and desires of senses. It was believed that freedom was achieved through doing away with indulgence and gaining self-mastery. In Greek thought freedom was not about the city as a whole but it was about all the individuals who were constituents of the city. As written by Aristotle in Politics, "A state is good in virtue of the goodness of the citizens who have a share in the government. In Our state all the citizens have a share in the government. We therefore have to consider how a man can become a good man." Therefore the goodness of all could be achieved only if goodness of individual could be achieved. A perfect individual was one who was free from being the slave of passions and one who forgoes over-indulgence of pleasure and achieves self-control. Over-indulgence in pleasure meant disorderly, selfish behaviour which can affect one's own productivity, make oneself violent and tyrannical. This can in turn be harmful for oneself as well as the collective good of the state. Foucault cites the example of the vicious tyrant who was incapable of mastering his own passions and therefore abused his powers and did violence to his subjects. This led to rebellion of citizens against the ruler and caused disturbances. A true human being, a true leader was one who achieved self-mastery. Greek system encouraged its citizens to become such.

Foucault points out that like all pleasures, sexual pleasures were also advised to be practised in moderation. In Greek society sexual moderation was an exercise of self-mastery which if followed properly led to freedom, but if practised in excess led to many vices. As a result the sexual acts had to be regulated and a style of existence had to be formed so that sexual pleasure did not hamper the physical and mental health of the citizens. Greeks did not believe that sexual activity of any kind was immoral. They accepted and practised sex outside marriage or sex with boys, but advised sexual activity within marriage for good health and avoidance of dangers of uncontrolled sex. It was advised to maintain this regulation through following a proper regime of food, exercise and sex. The regime had to be moderate so that it could lead to proper maintenance of body and soul, and moreover it was useful in the sense that it helped individuals to face different situations. Greek system developed a diet for pleasure where they took into account the climatic changes in the body or effect of foods, thus accordingly determining the season or time of intercourse. This diet helped in bringing about qualitative changes in pleasure according to circumstances. This diet or regime as practised in Greek system was different from the Christian restriction where sexual activity was meant to be restricted only to a purpose; but here the sexual acts were permitted and forbidden keeping in mind the health of the individual. There was, however, no licit and illicit factor in sex. This effort of regulation was like a battle of dominion of self over self. The self-mastery thus produced was an indication of actively free soul and was demanded in all sexual relations including marital relations too.

In case of marital relations the proper moral behavior centred on the same formula of self-control and healthy existence. As different from the Christian society which maintained monogamous marital relation, Greek society was polygamous. Polygamy though accepted in case of men was forbidden in case of women. Since the society was patriarchal, the central aim of marriage was the focus on legitimate descendants who could maintain the legacy of father's name. Since Greek society also focused on healthy and strong citizens, it was necessary to take measures to ensure it from the very beginning. Thus it must have been essential to maintain the proper age of marriage or the family in which the marital relation was formed. Foucault focuses more on the marital obligations and duties of husband and wife towards each other to bring out the ethics of marriage as practiced in those times. The marital obligation between husband and wife was simple. As far as women were concerned they were bound by society and judicial status to be faithful to their husbands and be sexually active only with their husbands. Their sole duty was to provide legitimate heirs and continue the family line. The virtue of women was to maintain the purity of conjugal union which if violated led to private punishment. On the other hand, though a husband was also required to be obligatory towards his wife but he could have sexual relations outside marriage. Thus adultery was not a breach of contract and mutual fidelity was not a duty or commitment of married life and not a guarantee also of a happy one. Depending on one's status and laws which one voluntarily followed it was expected that a virtuous citizen will maintain their respective marital obligations. As women were under the authority of their husbands, they were expected to be

faithful to their spouse who was their lord as well. In case of man, though he could have sexual pleasures outside marriage, it did not mean that he could enjoy his privilege recklessly. As he was a master of his own self, it was his responsibility to maintain that his sexual indulgences did not affect the health or peace of his household or his state.

From the above analysis, one can question the marital status of women in Greek culture. It might be said that by this unequal treatment, a denigrated view of marriage is evident where women become the worst sufferers. Also we may ponder that was marriage in Greek culture merely about producing healthy legitimate descendants? Foucault here shows that our partial understanding of marriage in Greek culture might lead to such questions, but if we try to analyze properly we might find a different answer.

Foucault writes, “ the roles that ought to be played in a man’s life by the courtesan, the concubine, and the wife, has sometimes been read as a tripartition that implies exclusive function: sexual pleasure on one side, everyday life on the other, and for the wife nothing more than maintenance of the line of descent.”<sup>13</sup>

This means that sexual pleasure or everyday care could be provided by the courtesan or concubine but the legitimacy of descendant could only be obtained from the wife. Since the society was aristocratic, where the legality of heir was important to hand over the lineage or property, a full proof mechanism was required to prove the legitimacy. Any enemy could bring forth a litigation to invalidate the legitimate marriage and claim of citizenship of children born of that

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<sup>13</sup>Ibid. Vol II p. 149

marriage. In such a litigation, a wife's birth, her past, her current status were all matters of investigation, where any flaw could jeopardize the legitimacy. Thus it was vital to have legitimate descendants through the legal wife, who had the particular and privileged status of providing marital cohabitation and licit offspring. It was a part of husband's moral to protect this privileged status of his wife even though he may have sexual encounters elsewhere. A woman being under the authority of her husband, had the obligation of maintaining her fidelity so that she does not jeopardize her privileged status. It was also her duty to maintain her marital relation in such a way that, though her husband has extra-marital relations, her status as a wife is not hampered.

For this purpose, Greeks focused also on the set of rules for maintaining the household. As pointed by Foucault, several Greek literature like, *Xenophon's Oeconomicus*, *Socrates's Memorabilia* provide the framework of domestic art of existence. The household was viewed as an economic unit which contributed to the society as a whole. Foucault observes that the anxiety of society to form norms of sexuality was not so much based on the intrinsic value attached to sexual morality, but to the fact that abuse of sexuality in wrong direction could lead to loss of sperm which was detrimental to the life-force of man. This anxiety was not linked with any perception of inherent evil but wasting of bodily resources which could affect procreator's health and his capacity to produce better and useful future citizens of state. Marriage not only reflected mastery but involved a spatial aspect, where home was the inner and private domain and the outer part of the home, the public domain. It was the duty of a man to produce and earn, and

women had the duty of preserving, distributing, maintaining and sharing the earnings. Through this economic transaction the household became a picture of a perfectly maintained economic set up. Marriage was not merely a simple relation between husband and wife, but it was about two individuals contributing towards each other as well as the common purpose of household which being the primary unit of society must be maintained properly.

Husband and wife were co-partners or co-workers in the household. If a mistake was made by the wife in household duties, it was not only her responsibility but also her husbands too. As girls were married at a very young age, their training and guidance was provided by their husbands' who was supposed to establish relations with his wife so that he could form a friend and a confidante in her. Apart from producing descendants, husband and wife were required to overcome age barriers and differences to form a partnership and a dual relationship for the common purpose of maintaining the household and help it grow. The division of household tasks too had its importance in marriage where both the partners performed their respective functions as per their nature. So it was good for women to stay indoors and manage the household; and for men to go outside and manage the public affairs. Moreover since women were born with a caring nature, it made her better suited to look after the children. Feminists in this regard have major objections where they point that gender identification has always been wired into biological identification, where it has been culturally imposed on women that they are suited for childcare or indoor work only. Feminist position regarding marriage has been discussed elsewhere, but here we can only say that though we agree fully

with the feminist point, yet if we try to give the benefit of doubt to Greek culture we can say that they viewed household as a unit where both husband and wife needed to perform their respective functions. As pointed by Foucault, both of them, irrespective of their sex, needed to develop traits like memory, diligence, self-control, dedication etc. to smoothly run the household. A man who could maintain his marriage and act responsibly as the head of the family, could function as the head of government too. A good wife was one who fulfilled her duties obediently and a good husband was one who maintained the privileges which a wife was entitled by marriage (even though he had sexual relations outside). The marital morality or the privilege of this institution thus depended on this mutual reciprocity and self-governance.

As we move on in history, we gradually notice certain efforts made by political power to raise the moral standard in an authoritarian way. As shown by Foucault, the journey through Plato's *Laws* or Aristotle's *Politics* shows a tendency to define marriage not merely as a privileged position but as the only place for morally acceptable sexual relations. Plato focuses on factors like glory, public opinion and honor as tools to persuade people to control their desires, as he feels mere prescription of laws is not enough to control human passions. The political authority in the rule of Augustus tries to establish measures protecting marriage, regulating concubinage or condemning adultery. This development forms the beginning of the long evolution of a regime of controlling sexual freedom through institutions and laws. But during this phase of change we also find an effort urging individuals to recognize themselves as the subject of their own actions,

seeking an adequate relationship with oneself. Importance was given to being a better individual than the common uncultured ones.

### **6.3 ROMAN SEXUAL MORALITY: The Period of cultivating the self (31 BCE to 5<sup>th</sup> century CE)**

Foucault's reading of Roman sense of morality is discussed elaborately in the third volume of *History of Sexuality*. Before we begin the exposition of Foucault's standpoint, let us look into the picture of sexual attitudes in Ancient Rome. Sexuality was not excluded as a concern of traditional social norms that affected public and private life. Modesty was benchmark of proper behavior in case of sexuality. Any transgression or sexual misconduct was liable for punishment. In the chapter entitled 'The Cultivation of the Self', Foucault points out that sex throughout the Greco-Roman world was governed by restraint and the art of managing sexual pleasure. It involved giving attention to oneself so that one could maintain a regime to control the body and mind. As opposed to Greek system where this self-control was expected because one had to maintain one's status in society, the Roman system emphasized on man's rational nature. It pointed out that since man was a rational being, the attitude of self-respect and self-care should come naturally. This self-respect can be developed by monitoring oneself to control one's indulgences and limiting one's sexual urges to marriage and procreation only.

Roman society was patriarchal in nature, where masculinity meant the power to govern oneself and the others who were supposedly lower. Sexual relations were also governed by the patriarchal tendency. Virtue as a masculine ideal meant self-discipline, and the corresponding female ideal was chastity or modesty. Both men and women were considered to be strong in character if they displayed their self-discipline. However this does not mean that sex was a repressive phenomenon, rather Roman religion promoted sexuality as an aspect of prosperity for the state whereby individuals often turned to magic to improve their reproductive health. It was considered natural and normal for men to visit a prostitute or have sexual affiliations with teen-aged youths. However the unwritten code to be followed in sexual matters was self-control. Hypersexuality was condemned morally and medically in both men and women, where women were required to follow more strict moral codes as the society was patriarchal. Marital relations focused on mutual affection, private intimacy and discipline. Controlled sexual behavior within and outside marriage was the ideal and a matter of private concern.

Foucault writes, “ the growth in the Hellenistic and Roman world, alluded of an “individualism” that is said to have accorded more and more importance to the “private” aspects of existence, to the values of personal conduct, and to the interest that people focused on themselves.”<sup>14</sup> Foucault points out that the stress here was not on strengthening of public authority but of private control. The individual self was regarded as the slave of ‘oneself’ as well as master of ‘oneself’. It was as if one belonged to oneself, one was answerable to oneself,

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<sup>14</sup>Foucault Vol III p.41

one exercised the authority over oneself. The ethics developed was thus of control where no external authority but one's internal authority controlled oneself. Sexual ethics was formulated on this background of cultivation of self where the subject controlled his desires so that he does not violate himself and can establish domination over oneself. This ethics of self-control established oneself as the ethical subject where the capacity of testing oneself or controlling oneself decided true nature of oneself. Just as in Victorian period where development of sexuality into discourse guided the analysis of sexual preferences. This analysis further determined one's sexual nature or gave an identification to the sexual nature. Similarly in the ethics developed during the first centuries decided as to what kind of an individual one was depending on one's capability of self-control.

The concept of care of self was practiced in marital relation too. Since 1<sup>st</sup> century B.C. marriage became an art of conducting oneself in relation to one's spouse. Since the concern for self is interlinked with valorization of the other, marriage was not a matter of merely exercising authority or governing the household; rather it was about development of a personal relationship and a mutual bond between husband and wife. The principle of moderate conduct in a married man was placed more on the aspect of reciprocity rather than mastery over others. The art of marriage along with, care of the self, dealt with the issues of sexual relations between spouses, e.g. how to act, to conduct oneself in pleasure relations. The interest in procreation was combined with other values like that of love, affection, understanding and mutual sympathy.

The concept of marriage tie was not merely about setting up specific roles in management of household but also about setting up a personal relation between man and woman. Foucault maintains that the texts of first two centuries focused on three characteristics of marriage i.e. it was a dual relation, an universal relation and a singular relation. Marriage is a dual relation in the sense that it is natural phenomenon due to the fact that male and female conjugality is essential for procreation as well as the permanency of this union is necessary for care of offspring; providing assistance, comforts, pleasures through the obligations and rights associated with it; and lastly forming a family.

Mere procreation cannot justify marriage as that will equate humans with animals who join together for begetting and immediately separate. Humans do not do so as it is important for them to form a community where they take care of each other, compete in attentiveness and kindness. Foucault refers to Musonius<sup>15</sup> who calls both desire for physical existence (*homilia*) and desire for sharing of lives (*koinōnia*) as essential elements of human beings. Marriage, therefore is not mere union of two different beings where only physical desire matters, it is also rooted in a single primitive tendency to form a common progeny and companionship on life.

Foucault points out that nature and reason coincide in the movement that conduces to marriage. Humans live in pairs as well as in multiplicity. The city is

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<sup>15</sup>**Gaius MusoniusRufus**, was a Roman Stoic philosopher of the 1st century AD. He taught philosophy in Rome during the reign of Nero, as consequence of which he was sent into exile in 65 AD, only returning to Rome under Galba. He was allowed to stay in Rome when Vespasian banished all the other philosophers from the city in 71 AD, although he was eventually banished anyway, only returning after Vespasian's death. A collection of extracts from his lectures still survives. He is also remembered for being the teacher of Epictetus.

made up of households where family is the primary unit comprising of the couple. Thus human are social and conjugal beings. Marriage was to be seen as an universal relation as it is followed by every man who is guided by reason to do that which is natural and help others too in this task of reason. Marriage was a singular and fundamental relation too, which defined a whole mode of existence. Married life had been characterized by an allocation of tasks that are complementary where man does those which a wife cannot and wife does those which man cannot. It is like achieving the same goal from different sides. Behind this distribution of duties, one can see a shared life and a common existence. Both of them may be busy in their respective work but there is no question of doing it without each other's commendation. This style of existence points out the art of marriage. Moreover marriage is not merely involvement in duties but also in having dialogue with each other where both share their daily proceedings, thoughts with each other and receive with pleasure each other's daily activities in their respective work.

Foucault points out that the relationship between men and women, when it is organized in an institutional form becomes the most fundamental relation. It gains a natural and ethical privilege at the expense of all other relations, as this relation becomes the focal point of the beginning of further relations. If man is a relational being and this characteristic is vital part of taking care of oneself, then attention or care of oneself can be closely associated with care of conjugal self. Foucault is of the opinion that if relationship with one's spouse is essential to existence and if conjugality implies a shared existence then there is no incompatibility between

establishing relation with oneself and with other. The spouse as a privileged partner must be treated as being identical to oneself and as an element with whom one forms a substantial unity.

With this perspective in mind the ethics of marriage being formulated in 1<sup>st</sup> century focused on a relation which was direct and reciprocal. Marriage was direct as it was felt that the nature of sexual intercourse is such that it is possible only within marriage; and reciprocal, in the sense, that it rules out sexual pleasures found elsewhere, for either of the partners. Thus we can see that two things came to be highlighted from this morality; one, sex outside marriage was not allowed, in other words sex without marriage was forbidden, and second, sexual fidelity became a core requirement of marriage.

The principle behind this being that a person who manages to reserve his pleasure till marriage has managed to master himself well enough. And anyone who manages to attend oneself has paved the path for communion with the divine self which is nothing but one's self. This notion as projected in Roman history is very much similar to that of Indian tradition, where the three *purusārthas* of *dharma*, *artha* and *kāma*, are required to be fulfilled so that one can attain the highest *purusārtha* of *mokṣa*, which is liberation of oneself and realization of the Absolute or the divine self. Sexual fidelity as a virtue is required in marriage not because it helps to restrict unbound sexual relations, but because if anyone indulges in extra marital sex then that act does injustice to their respective spouses as it breaks the bond of trust resulting in diminishing their possibility of having legitimate offspring.

Therefore in ancient texts we find that a reasonable and social being was one who fulfilled his physical desires within matrimonial bond where it may produce legitimate offspring. Foucault says that the sexual act, conjugal tie, offspring, family, city and human community all constitute a series whose elements are interconnected and in which man's existence achieves its rational form.<sup>16</sup>

#### **6.4 MODERN SEXUAL MORALITY**

The main theme of Foucault's ethical analysis has been 'care of self'. For him ethics is not a mere theory, but a practice of a particular style of life. The ethical subject is not merely an entity to be observed and controlled externally but it is a lived form. Self being a lived form, should be taken proper care of, and for that a single universal theory is not the answer. Foucault argues that since Enlightenment, there has been a demand for a universal ethics in all areas, especially sexuality. But this, though leading to formation of several theories, has failed to establish a single, universal theory Foucault writes that, "there could be no moral system in modernity, if by 'moral system' one meant a philosophical anthropology that produced firm foundations concerning the nature of Man, and thereby, a basis for human action."<sup>17</sup>

He says that if one has to formulate an 'ideal' moral system, there are two ways. The first one is based on developing a moral code, where we formulate our

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<sup>16</sup>Foucault Vol III, p.170

<sup>17</sup> Foucault, 1994p.xxvi

conduct and action according to the quasi-juridical form of that code. Secondly, we can develop ethical practices, not subject to a code, but through a system of forming methods and techniques of relating to oneself. In such a system the authority is self-referential rather than authorized from outside. Foucault feels that Greek and Greco-Roman morality followed this method where the individual did not devise his ethical attitude about sexuality and marriage, as subject to certain codes, but the ethics was formed on the basis of what structures or beautifies his self and contributes to a 'mode of living'. In antiquity the socio-politico-economic scenario was such that devising of ethical codes or laws and prescribing them could hardly have had the desired effect. As already seen in Greek system, the emphasis being on healthy strong descendants who could be legitimate citizens of the state, it was felt by the citizens themselves that if one had to maintain the tradition of aristocracy then it was self-imperative to maintain the sexual and marital ethics. In Roman times when the city-states were collapsing and power was being confiscated by a centralized rule, all the city-states which were till now authorities of themselves, got organized by the central power. Before that small states were themselves units and they maintained their own laws depending on the single motivation of maintaining their power, prestige and authority. When centralized administration came, all the states became allies and assistants. It was important here to persuade them that they were not being treated as slaves, rather they were sharing the advantages and authority of the central administration and behaving as if they were living in a single city. Foucault explains that in this scenario the matter of forming and recognizing oneself as the subject of one's

action was needed to be established not through signs of power, but through the system of placing the power over one's own rational self.

Foucault through his historical analysis of sexuality, and how the journey of sexual ethics gets formulated from antiquity to Victorian era, shows that how the formulation of a system of ethics defines who the man is, what he does, how he does, and his relationship with others. Perception of oneself as the ethical self involves the four basic categories of being an ethical substance, mode of subjectivation to codes ethical work done and the telos or purpose.<sup>18</sup> Foucault's purpose was not to prescribe to either Victorian form of ethics or ethics in antiquity as the single universal moral system. Through his historical analysis is to loosen the conception of ourselves as subjects of desire, rather he wants to show that there can be various approaches of understanding the sexual morality. The historical account of sexuality can show that the code of sexual ethics as practiced today was an historical evolution which can further change its nature. To put it simply the "Repressive Hypothesis" of sexuality practiced from Victorian era which believed in silencing sexual feelings and confining it to heterosexual monogamy, may be followed till recent times. But it does not mean that such a code of behavior is the only moral and natural behavior of human kind. Any ethical system was about establishing a style of existence which could be adopted by different sections of society without losing their identity and individuality. It may be pointed out whether Foucault is referring to going back to Greek System of morality. Foucault refuses to do so because he finds the system

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<sup>18</sup>ibid..p.xxvii

of ethics in antiquity to be contradictory where they on one hand were searching for a style of existence, yet on the other, were trying to make it common for everyone. This was erroneous as it was almost like the Victorian or Christian morality where a universal ethics was being imposed based on religious laws.

For Foucault the prime factor of moral conduct is 'will to truth'<sup>19</sup>. The will to truth or a true ideal form of any ethical behavior presupposes a 'will to knowledge'<sup>20</sup> i.e. finding out how science, religion or law can shape up the moral life of a person. However, Foucault categorically refuses that science, religion or law can freely shape up a person's life. He feels that truth of a proper ethics is lost when we try to universalize and rationalize it. It then becomes a kind of imposition over others who do not want to conform to this universalization. To explain, as human beings we can have our individual sexual preferences and desires. By saying that a particular kind of a sexual relation which legitimately fulfills the purpose of procreation is the only normal and moral relation; such that this kind of morality should be accepted by all, then it becomes an imposition for those who do not want to conform. In such a case homosexuals or people who engage in non-procreative sex get perceived as ill or insane.

Foucault does not perceive sex to be a fatality, i.e. as if we are born with a certain sexual preference. He feels that we should invent new modes of relationship and new modes of life. This new form of culture should not be

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<sup>19</sup> Ibid p. xxix

<sup>20</sup> Ibid p. xxix

same for everyone but should help everyone to create new modes of relationship. Sexuality should not be entailing of hedonism but in pleasure seeking it should be open to experimentation and reformulation. Foucault says that any form of sexual ethics should not be formulated in the rigid background of heterosexual monogamy, but should improvise all the social relationships.

However as one goes through the study of sexual morality as a vital constituent of marital morality, one wonders whether marriage merely involves presupposing sexual desire and the mores surrounding it? Does it have no place for emotions like love and care also as a presupposition of marital relation? Is marriage merely about fulfilling sexual needs and does it not fulfill certain emotional needs too? The next section, following Russell, tries to see whether in human society, love has been given any importance in a marital relation.

### **6.5 Concept of love and marital ethics**

Contemporary society believes love to be the main factor behind marital happiness. But for most of history it was inconceivable that people would choose their marriage partners on the basis of love. Historical account shows that partners were selected on the basis of family, societal position or financial standing. Love had never been considered as the deciding factor of marriage. In most cultures and times love was thought to be incompatible with marriage. Plato believed love to be a wonderful emotion that led men to behave honourably but he was not referring to the love shown towards a woman,

because that was an emotion which basest of men felt. Love for Plato was what one man felt for another.<sup>21</sup> Plato might have been referring to homosexual love prevalent in ancient Greek society, but the sexual relation of men and women was only meant for reproduction and important commitments to society or God.

Marriage was more about duties and commitments towards each other, family, society, religion or God. The feeling of love was a trivial emotion which was better suppressed than encouraged. The notion of love was further discouraged in Christianity and Middle Ages. Later Christianity and Middle Ages looked upon human sexuality in a very strict manner. Procreation was the only legitimate reason for intercourse. This made the relation between man and woman mechanical where the union was brought forward for fulfilment of a single aim of reproduction. Russell points out that in such a scenario, no dignified or respectful relation between men and women could be encouraged.

However it would be wrong to point out that Middle Ages did not recognise love at all. Christianity distinguished love from sex, which meant that one could not love anyone with whom there was a legitimate or illegitimate sexual relation. Love being a pure emotion was meant to be platonic and expressible through poetry and ballads. Sex, on the other hand, being impure was believed to tarnish the purity of love. The culmination of love did not, therefore, materialise in a real relation of marriage, but was only a virtual relation which found its fulfilment in poetic expressions. Russell however feels that this suppression of love in a man-

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<sup>21</sup>Coontz p.16

woman relation was a great misfortune to any social system. He feels that in the relation of man and woman, romantic love along with passion and tenderness provides an inestimable value to it. Russell in trying to present a liberal view of marriage and sex in his times felt the need to highlight the seriousness of the important emotion of love and affection in a man-woman relation. However he also cautioned that romantic love can only be an ingredient of a good relation, and not its sole purpose. He emphasized that the kind of love which enables a marriage to remain happy and to fulfil its social purpose should not be merely romantic but something more intimate, affectionate and realistic. He provides the example of American view of marriage where importance given to romanticism in marriage makes it more vulnerable to unhappiness and divorce.

Marriage for Russell is a serious relationship where intimacy, affection and reality count more than passion. A virtuous relation between husband and wife is not one where there is a presence of strong passion but where the personal feelings of husband and wife are overcome by the more important feelings like love for children and duty towards society. Russell does not consider love to be platonic where the notion of sex is considered separate from it. Instead he proposes the view that romantic love should be accompanied by sex. He expresses that love being the most delightful passion should be given highest value in a relation between men and women. Though love cannot be forcefully limited to marriage, yet one should not erase out love from the marital relation. By marriage, Russell understood the relation between a man and a woman where children are present. As soon as children appear, the passionate love should be replaced by love and

interest of children. For a marriage to be successful, physical and mental intimacy are vital. In Russell's perspective we do find these two ingredients but for him one's social duty is more vital than any emotion.

Here one may come across the query: what is vital for Russell, in marriage, love or duty? Russell does not choose between any one of the above options. For him ethics of sexuality and marriage begins with love, affection and intimacy, but in marriage it gets overridden by societal interests when children are born. He also expresses that love should never interfere with mutual freedom and equality on both sides. If there arises any such possibility, then, that relation should end in divorce.

Love may be considered as a vital part of any relation, especially a marital relation. But this finest emotion has its own positive as well as negative side. Human beings are not mere physical brutes who unite for the biological purpose of reproduction without feeling any warmth, affection or passion for its partner. Sexual instinct in man is not merely physical but also mental which makes him a whole being. The emotion of love helps one to overcome brutality, clumsiness and physical reserve in a sexual act. It makes marriage more generous, free and whole hearted. As Russell writes, "Those who have never known the deep intimacy and the intense companionship of happy mutual love have missed the best thing that life has to give."<sup>22</sup>

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<sup>22</sup> Russell p.76

However love also has its own limitations. Russell writes, “Love is an anarchic force which if it is left free will not remain without any bounds set by law or nature.”<sup>23</sup> Any marital relation giving more emphasis to love tries to make the relation autonomous and individualistic where every concern for society and family may be swept aside. Usually people, especially the young generation confuse a mere passion or infatuation for love and enter a relation, but cannot hold on to it after the passion is replaced by responsibilities. This leads to estrangement between couples and loss of faith in the institution of marriage which binds men and women. A proper social ethics thus should be one where compatibility between couples must be established along with the interests of society.

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<sup>23</sup> Ibid p.79

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## CHAPTER VII

### Marriage: To be or Not to be

The idea that marriage has a special moral status and entails certain moral obligations is widespread. Marriage, whether viewed as a legal or social contract, or religious sacrament, or a union prompted by love generally recognises the twin aims of propagating the race by forming a family and the morally appropriate means of fulfilling the erotic needs. Westermarck points out that, *Marriage is not to be identified with sexual appropriation. It is to be regarded rather as an institution based on complex social conditions.*<sup>1</sup> Pre-Patriarchal societies are believed to have lived in great sexual freedom, like having various sexual relationships, practising incest and group sex etc. But these societies too settle down to marry not only to have a partner for sexual association but also for personal attachment, to set up a household with economic advantages and to rear children.

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<sup>1</sup>Westermarck p.22

Russell's view on marriage focuses on this most important and determining factor, i.e. family. His ethical view about marriage centres on the vitality of establishing a marital relationship on the basis of affection and love which one can ultimately form a healthy family. He thinks that marriage is the best and most important relation that can develop between a man and a woman. For Russell marriage is a relation between a man and a woman, where the two unite together to give birth to a child and form a family. Children are "the true purpose of marriage, which should therefore be not regarded as consummated until such time as there is prospect of children."<sup>2</sup> Russell focuses on the importance and need for family as a reason for stable marriage. To say it clearly the point being that when a child enters into the marital setup the marital relationship gets a new level where marriage is not merely about sex but about giving a permanent environment to a child for its proper rearing.

Here the question may arise, whether the institution of marriage is really necessary for upbringing of children. What is meant here is that, whether there might be another option or alternative through which proper rearing of children can be done? In order to answer it better, Russell tries to bring out the effect of family in individual psychology. He points out that parental affection undoubtedly furthers a child's development. The affection of parents, who are themselves happy and emotionally satisfied in their sexual life makes the infant feel safe and makes him vigorous, emotionally stable and competitive. A child is physically and mentally helpless and thus parental protection and care can be beneficial for it.

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<sup>2</sup> Russell(1929), p.166

Russell further adds that in order to decide whether family life on the whole is desirable or redundant, we must consider the other alternatives. The first option being a kind of set up where the child is brought up by a single mother. The mother can have the child biologically or through adoption. She can also have different children from different men. Here the mother will be solely the authority behind the upbringing of children. The question here is: whether this sort of atmosphere will have any effect on the child? One can say that if majority of families are normal i.e. both father and mother are there, then the child belonging to single mother family will feel deprived. But if we think about the possibility of all families becoming a single-mother system family, then no man will ever participate in begetting children as they will lose interest in the child through loss of rights ordinarily conferred through paternity. The second alternative can be to give away the association of family and develop public institutions like orphan asylums where children can be reared by the State. This system is very much like Plato's proposal to separate children from their parents from birth onwards. Russell feels that such an alternative is much more regrettable than the first one as here the child is deprived of the care and affection of both parents, which is necessary for its emotional development.

From the perspective of the mother, Russell feels that every woman requires a man's protection and care during the conception and lactating stage. But here if we say that State is able to provide adequate care to expectant and nursing mothers and to young children then we can very well do away with fatherhood. Russell, however, is against this system as he states, "The chief harm that would be done to women by abolition of the father's place in the

home would be the diminution in the intimacy and seriousness of their relations with the male sex. Human beings are so constructed that each sex has much to learn from the other, but mere sex relations, even when they are passionate, do not suffice for these lessons.”<sup>3</sup>. Russell says that cooperation and companionship are two most essential elements in bringing about an enriching relationship which is otherwise absent in a single parent system. Russell also cautions against the conclusion that his above lines may lead to. He says that though he is in favour of a long term marital relation, but if the marriage is abusive especially for the woman, then it is better for her to quit the father and rear the child single-handedly. However he is not in favour of complete abolition of fatherhood which he feels, not only affects the family system but also incurs certain other drawbacks too. Men if devoid of rights of paternity are bound to lose interest in begetting children, or being free of responsibilities, they would beget recklessly. Russell feels producing children is not only important for women but also for men as it provides scope for privilege of authority and sharing of responsibilities along with it. The child becomes a symbol of man’s capability of producing and nurturing a new breed of human race. Such a feeling is helpful in making men more dynamic, competitive and economically alert so that he can bring forth a new generation in a better way.

Russell concludes by saying that sexual morality is derived from two sources- desire to ascertain the legitimacy of the child and to properly channelize sex into a useful activity which is otherwise considered negatively as a sign of weakness and drain of energy. Proper channelizing of sex through an

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<sup>3</sup> Ibid.,p.122

institutional form leads to legitimate propagation and prevents turning of sex into a trivial matter. Morality whether in West or East has always centered on these factors. Russell is pro-marriage but feels that the conventional concept of morality is very stifling as there is no scope for growth of sex, love and companionship in such morality. Marriage for Russell is not merely about producing children, it is also a legal institution which forces a male to cooperate with the female in rearing of the young. He feels that legalization of marriage is important in case of humans because the sexual instinct is not sufficient enough to produce any virtue in them. An external sanction of economics, religion and law is essentially required. However he also feels that the conventional ethics based upon factors working in ancient society cannot be enforced in our modern society. Modern society is one where women enjoy economic freedom, where orthodox religion with their idea regarding sex and sin have lost its influence, where unwanted pregnancies can be prevented through use of contraception, where there are innumerable scope of social occasions, where both the sexes can interact freely and there is a wide variety of choices regarding one's partner, where one is free to choose one's life partner without parental interference; in such scenario it is better to do away with conventional ethics and establish a new sexual ethics.

Though Russell is in support of a lifelong commitment yet he feels that marriage being a very important relation between two human beings should not be solely based on diktats of law and religion as it makes husbands and wives as each other's policeman<sup>4</sup>. Law and religion binds an unwilling partner into a relation where he is duty bound to love the other one, though he may not

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<sup>4</sup>ibid., p.88

freely and spontaneously feel that emotion. Russell writes that stability of marriage is necessary if there are children involved in it, but if the marriage is troublesome, then it is better to get separated. To prevent unhappy marriages, Russell is in favour of companionate or trial marriage. Trial marriage is a purely private affair where a man and a woman can decide to live together without having children. This living together can help them to know each other better. As sex, for Russell is not instinctive but learned through practice, he prefers to establish sexual compatibility with a partner before life-long commitment. He feels that no marriage should be legally binding before first pregnancy. Through this he is trying to prevent the illusory picture of a union which is usually formed on the basis of mere sexual attraction. He strongly feels that people should come together in marital union only when they are ready to take responsibility and care of each other and the children. From such a perspective marriage appears as vital for sustenance of the institution of family. In that case if society is moving towards the trend of simply cohabiting, without getting married legally or socially, even when they have children, then the institution of family will soon be a thing of the past. In such a scenario, it becomes necessary to find out the importance of family in society as well as in an individual's life.

Almost every person in society starts life in a family of some kind. The kind of family one has influences the kind of person one grows up to be. In families, children get physical, psychological and moral upbringing and support. This shapes them to be prospective future of mankind. Marriage provides the opportunity of procreating and rearing future life. If we hypothesize a situation where a particular generation does not marry and reproduce then the family

line will disintegrate. There will be no further immediate family or near relations who can be called the support system. However, one can say here that family can be formed without marriage too, or one can have and rear children without any legal marriage. To counter such possibility one needs to look into the social and legal advantages one gains by marrying and not by simple cohabiting.

To begin with, let us look into the status of live-in relationships in a country, say, India. When we talk about the Indian scenario and the status of live-in relationships the very first assumption will be that marriage is considered to be a sacrament in India and thus live-in relationships is a taboo aspect which is contrary to the sanctity of marriage. But one must be cautious in making such presumptions on two grounds, Firstly, India is a country where diverse religious beliefs are followed. There are not only Hindus, but also Muslims, Christians, Sikhs, Buddhists, Jains and Parsees who may or may not consider marriage to be a sacrament. Their idea of marriage may differ from one another whereby someone might consider marriage to be a civil contract rather than a sacrament and thus allow such contractual relation between partners. Secondly, in a culturally diverse and secular country like India, there might be several persons who may not hold any particular religious beliefs and thus not be under any religious obligation to consider marriage as the only moral, religious or sacramental institution. The point here is that when we talk about a country like India, which is secular as well as religiously oriented, it is no easy to presume that live-in relationships is strictly taboo.

However if we consider marriage to be a legal institution, one can say that legal provisions that follow, add to the sanctity of marriage. Marriage legally entitles a man and a woman to cohabit; the children being born out of a legal wedlock are considered to be the legitimate children of the couple; the wife is entitled to maintenance during the subsistence of marriage and even after the dissolution of marriage. The benefits of marriage come along with several responsibilities too. Marriage entitles, both men and women a responsible position, where they are legally and morally bound to look after each other, their children and the other members of the immediate and extended family. To avoid these obligations and responsibilities of traditional marriage and to enjoy the pleasure of simple cohabiting, the concept of live-in relationship has gained ground in the present time. Live –in relationships provide a life free of responsibilities and commitments which is an essential part of marriage. Here the question may crop up in one’s mind whether such relationships really provide a life free of responsibilities. Do the couple who cohabit together do not have any obligations of caring, respecting, loving or maintaining a decent form of behavior towards each other? It is really impossible and not apt to say that such obligations do not exist. When two human beings, in any relationship or even as mere acquaintances or as strangers too, come together, they get bound by certain moral, humanly and legal obligations towards each other. For example, if someone meets someone for the first time, a certain apt behavior needs to be maintained or if two people are walking towards each other, it is understood that the one walking in one direction will keep to the left and the other in the opposite direction will keep to the right. The point is that rules, obligations and responsibilities are observed by all in case of any relation to

generate coexistence and equilibrium. But it's also a fact that marital relationships generate many responsibilities towards nearest kith and kin, which we feel bound to follow; but which may not be a hard and fast obligation in live-in relationships. It will then depend upon the goodwill of the couple to observe them.

Live-in relationship focuses on its foundation of individual freedom, where the top priority for person's involved is to enjoy freedom without any commitment or entanglement in typical responsibilities. This form of living together is not recognized by Hindu Marriage Act 1955 or any other statutory law. However acts like Protection of Women from Domestic Violence Act 2005<sup>5</sup> provides for the protection and maintenance thereby granting the right of alimony to an aggrieved live-in partner. It states that an "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. By "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

The definition of live-in relationships being not clear, the status of couples in such relations is also ambiguous. There is no legislation to define the rights and obligations of the parties to a live-in relationships, the status of children born in such relationships. The courts in India have tried to give clarity to the

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<sup>5</sup>[Chdlsa.gov.in/right\\_menu/act/pdf/dom.violence.pdf](http://Chdlsa.gov.in/right_menu/act/pdf/dom.violence.pdf)

concept of live-in by stating that a man and woman staying together for a long term can be treated as husband and wife and presume that they are married unless proved contrary.<sup>6</sup> So it summarizes that live-in relations are regarded as credible by the Courts when they are going on for a long term and the long term relation is then considered under the umbrella of marriage. The question here might arise, as to what is the definition of a long term relation. What can one mean by long term; whether it's for few months or years is one aspect which is very ambiguous. But we can presume that by long term, it surely means a fair amount of living together, say ten or more years.

Several instances of Supreme Court of India verdicts indicate that live-in relations in our society may not have been considered illegal but have been recognized as immoral.

*The first case in which the Supreme Court of India first recognized the live in relationship as a valid marriage was that of Badri Prasad vs. Dy. Director of Consolidation, in which the Court gave legal validity to a 50 year live-in relationship of a couple. In the case of S. Khushboo vs. Kanniammal & Anr., the Supreme Court held that living together is a right to life. Live in relationship may be immoral in the eyes of the conservative Indian society but it is not illegal in the eyes of law. In this case, all the charges against Kushboo, the south Indian actress who endorsed pre-marital sex and live in relationship were dropped. However in one of its judgment Alok Kumar vs. State, the Delhi High Court has held that live in relation is walk in and walk out relationship*

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<sup>6</sup><http://www.helpline.law.com/family-law/SLRI/status-of-live-in-relationships-in-india.html>

*and no strings are attached to it. This kind of relationship does not create any legal bond between the partners. It further held that in case of live in relationships, the partners cannot complain of infidelity or immorality. Again giving recognition to live in relationships, the Supreme Court in the case of D. Velusamy v. D. Patchaiammal has held that, a relationship in the nature of marriage under the 2005 Act must also fulfil some basic criteria. Merely spending weekends together or a one night stand would not make it a domestic relationship. It also held that if a man has an affair with a woman whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, be a relationship in the nature of marriage.*

*The court made it clear that if the man has a live-in arrangement with a woman only for sexual reasons, neither partner can claim benefits of a legal marriage. In order to be eligible for palimony, a relationship must comply with certain conditions. The following conditions were laid down by the apex Court:*

- The couple must hold themselves out to society as being akin to spouses;*
- They must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried;*
- They must have voluntarily cohabited for a significant period of time.*

*Conscious of the fact that the judgment would exclude many women in live-in relationships from the benefit of the Domestic Violence Act, 2005, the apex court said it is not for this court to legislate or amend the law. The parliament*

*has used the expression ~relationship in the nature of marriage and not a live-in relationship. The court cannot change the language of the statute.<sup>7</sup>*

Live-in relationships grant protection to women from domestic violence just as a married woman is, but it has been observed that a divorced wife is treated as wife<sup>8</sup> in the context of Section 125 of CrPC<sup>9</sup> The section states that:

*(1) If any person having sufficient means neglects or refuses to maintain*

*(a) his wife, unable to maintain herself, or*

*(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*

*(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury*

*unable to maintain itself, or*

*(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

*If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him*

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<sup>7</sup>[www.helpinelaw.com/family-law/SLRI/status-of-live-in-relationships-in-india.html](http://www.helpinelaw.com/family-law/SLRI/status-of-live-in-relationships-in-india.html)

<sup>8</sup>Sivaramayya p.22

<sup>9</sup>The code of criminal procedure as mentioned in Sivaramayya, p,20

*(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent*

*(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order*<sup>10</sup>

However the recent court rulings regarding live-in relationships has been in its favour. The court has professed that any man and woman cohabiting for a long term will be presumed as legally married under the law unless proved contrary. The right to maintenance in live in relationship is decided by the court in accordance with the Domestic Violence Act, 2005 and the individual facts of the case. The legislation of Protection of Women from Domestic Violence Act 2005 provides for the protection and maintenance thereby granting the right of alimony to an aggrieved live-in partner. However there is no separate legislation which lays down the provisions of live-in relationships in India. Since the live-in relationship is ‘in the nature of marriage’, the court has tried to improve the conditions of women and children borne out of live-in relationships by defining their status under the Domestic Violence Act. The Hindu marriage Act, 1955 grants the status of legitimacy to every child irrespective of his birth out of a void, voidable or a legal marriage. But there is no specific law that raises any presumption of legitimacy in favour of children of live in partners. The future of children of live in partners becomes very

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<sup>10</sup>[www.icf.indianrailways.gov.in/uploads/files/CrPc.pdf](http://www.icf.indianrailways.gov.in/uploads/files/CrPc.pdf)

insecure in case the partners step out of their relationship. There comes the requirement of a strong provision to safeguard the rights of such children.

If absence of legislation weakens the status of couples in live-in elations, the marriage laws cover the entire aspect of a person's life like his social status, property, sexual rights, maintenance, domestic violence, criminal acts etc. Several laws<sup>11</sup> like Special Marriage Act 1954 (SMA)<sup>12</sup> which covers civil marriage and Cr. PC (The code of criminal procedure, 1973) covers people of all faiths. Section 37 of Special Marriage Act 1954 states,

*(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability [the conduct of the parties and other circumstances of the case], it may seem to the court to be just.*

*(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.*

*(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has re-married or is not leading a chaste life,*

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<sup>11</sup>Sivarammya p.20

<sup>12</sup>[www.indiakanoon.org/doc/4234/](http://www.indiakanoon.org/doc/4234/)

*2[it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.]<sup>13</sup>*

Hindu Marriage Act 1955 (HMA) and Parsee Marriage and Divorce Act 1936 (PMDA)<sup>14</sup> applies that both husband and wife are entitled to get maintenance from the other. Section 40 of PMDA Act states,

*(1) Any Court exercising jurisdiction under this Act may, at the time passing decree or at any time subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.*

*(2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify, or rescind any such order in such manner as the Court may deem just.*

*(3) The Court if it is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual*

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<sup>13</sup> [www.indiakanoon.org/doc/4234/](http://www.indiakanoon.org/doc/4234/)

<sup>14</sup> [www.indiakanoon.org/doc/122564/](http://www.indiakanoon.org/doc/122564/)

*intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.*<sup>15</sup>

Section 37 of Indian Divorce Act 1869 (IDA)<sup>16</sup> applicable to Christians which states, *Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall], to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties. Power to order monthly or weekly payments. —In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable: Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.*

and Muslim Woman Act 1986 (MWA)<sup>17</sup> grants maintenance to wives only.

The point here is that the laws of maintenance are granted by the different acts pertaining to legal recognition of people as husband and wife. These acts are

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<sup>15</sup> [www.indiakanoon.org/doc/122564/](http://www.indiakanoon.org/doc/122564/)

<sup>16</sup> [www.indiakanoon.org/doc/806295/](http://www.indiakanoon.org/doc/806295/)

<sup>17</sup> [www.indiakanoon.org/doc/1933289/](http://www.indiakanoon.org/doc/1933289/)

also conditioned by certain norms of behavior like the wife to whom the maintenance is being granted should live a life of 'chastity' and not be 'living in adultery'.<sup>18</sup> Thus sexual morality becomes a pre-condition to legal and property protection, and the right to such protection remains as long as one does not violate the moral codes asked for. However a widow does not forfeit her right to property by subsequent unchastity or remarriage. The question here is whether sexual morality is only obligatory in case of women and not men? One can simply say that our society being primarily patriarchal, where the economic and social status of majority of women is dependent on their husband, the issue of maintenance and its responsibility lies on men more. It is not merely about the dependency of economic status, but also the moral obligations are more strict for women in patriarchy. As a result sexual morality is primarily demanded from a wife rather than the husband.

A marital law not only provides for economic maintenance but also protects the members of society from grave injustice and provision of human rights. Acts like abolition of Sati, Hindu Widows Remarriage Act 1856<sup>19</sup> or Child Marriage Restraint Act 1929<sup>20</sup> provide for betterment and emancipation of women. Moreover the marriage acts also protects one from being married to, or remain married to a lunatic, or an unemployed person. Thus it becomes clear that society and its laws favor a system of marital union of man and woman for propagating and maintaining the age-old institution of family. Several laws, enactments and its amendments have always, in all societies have focused on the single aim of securing, safeguarding and promoting the

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<sup>18</sup>Sivarammya p.21

<sup>19</sup>[Lawcommissionofindia.nic.in/51-100/report81.pdf](http://Lawcommissionofindia.nic.in/51-100/report81.pdf)

<sup>20</sup>[Chdsla.gov.in/right\\_menu/act/pdf/childmarriage.pdf](http://Chdsla.gov.in/right_menu/act/pdf/childmarriage.pdf)

institution of marriage. If society had wanted to do away with this institution, it would not have taken all the measures to guard individual freedom, capabilities and familial obligations in such an exhaustive manner. The legal reforms are always in a state of continuous appraisal so that the interests of all members of society are safeguarded along with maintaining the traditional norms as well as keeping up with modern reforms.

If marriage had been an outdated and an exploitative institution, many people would have up till now abandoned it. But just as the figures of live-in relations are rising, simultaneously one can notice the growing tendency of resorting to age-old institution. This tendency is not merely limited to heterosexual union, but same-sex couples too are fighting for state and legal recognition of their relation by demanding allowance of same-sex marriage. Despite decades of criticism towards the institution of marriage, the institution resolutely endures-with certain changes. In UK for example, new laws are allowing couples to marry in a wide variety of locations like religious buildings, register offices or any other suitable place. Back home in India , Ahmedabad's ParsiPanchayat is offering homes to young men and women as 'an incentive' to get married and have kids to boost the number of fast-shrinking Parsi community.<sup>21</sup> Because of several legal safeguards marriage remains to be a much more preferred institution than live-in relationships.

Putting aside the constitutional or legal laws, the formal registration of union between couples whether in form of religious and social ceremony or civil unions, serves many useful functions as a basis of family formation. As compared with cohabitation, formal unions are likely to be more stable and

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<sup>21</sup>The Telegraph 21<sup>st</sup> Nov 2014, p.4

enduring and to offer greater protection to dependent family members. A core function of family is to provide care for and look after those family members who are unable to care for themselves. This includes children and adults who due to old age or disease have become infirm. Families who are able to provide this support are less likely to burden society in providing maintenance of the dependents. Moreover families that include two adults are better able to pool resources and share the responsibilities than single adult families. Families formed through marriage are more stable and welfare –enhancing than the non-marital families. Cohabiting individuals express lower levels of commitment than that shown by legally wedded spouses and also are less likely to practice more sexual fidelity towards the other. Finally, spouses are more likely to share assets and income and to mingle their finances than cohabitants. The difference in attitude towards marriage and co-habitation can be attributed to the customs and conventions attached with marriage. These conventions lead to expected behavioral norms which reinforce commitment and enhance the stability of marriage, rather than co-habitation.

However, the other side of the coin is that in the modern perspective, traditional marital relations are losing its importance. Thus the debate is whether in modern times, the institution of marriage is a failure. Marriage, as we understand, is the legal and social regulation of the procreative need of man. The procreative need is instinctual, but marriage as a legal and social institution with moral sanctions attached to it is a definitely a human institution. As a social and legal institution, marriage focuses on three aspects. That is, it should make the husband and wife happy; it should lead to the bearing of a suitable number of healthy children; and it should lead to proper

rearing of the children. Any marriage can be called happy and successful if the above three factors are satisfied.

Now the question, how does modern marriage fare in these three aspects. If we take the very first aspect ; the happiness of the couple themselves. The question is what exactly is being happy in marriage? If it is a state of constant bliss and love, it is a chimera, as no marriages are in a state of persistent happiness throughout a long life. Very often the initial years may be full of love and happiness, but after some years, majority of husbands and wives get immensely irritated by the company of each other and get glad to get an evening free from the other. One can give an analogy here. A person who is fond of eggs, may be given eggs almost every day, but if a law is passed as to having eggs compulsorily for three meals a day, it is going to make a person hate eggs for the rest of his life. The same can happen in case of marriages, the law and society by putting several restrictions on the natural need of companionship and love, makes people hate what they get and yearn for what they do not. A marital relation should not be one where a husband and wife act as each other's policeman so that the other cannot break the law. This, however, does not indicate that the relation between the couple is compatible and charming.

Now coming to the second point in regard to marriage, which is the bearing of children. Marriage, is clearly an institution, which is primarily seen as connected with bearing of children. Even if one says that the primary aim of marriage is to fulfil one's sexual need, it can be replied that sexual need can be fulfilled outside marriage too. Marriage is an institution which provides

legitimacy to the status of children born within. But if we closely observe the institution we find that a marriage can survive even if there are no children. Modern marriages are less bothered about having children. The young couples either have only one child or they do not prefer to have children. The present status of couples indicate that they would rather prefer to buy a grand car or big house, rather than have children. The well-to-do families of most civilised classes prefer to have small families or no children. The generation which refuses to perpetuate further does not also require the hard-bound rules and regulations of marriage. The present generation does not believe in the old system of values where a person was seen as a transmitter of family customs, culture and values which he received from his forefathers and passed onto the next generation. But the present generation which is quite individualistic, is so wrapped in his individual needs as opposed to society's that we have individual based system of value rather than society based system.

Now coming to the third purpose of marriage, which, is rearing of children. Marriage provides a stable family for children, and an abode of domestic bliss, which is considered essential for proper rearing of children. But family does not always mean a place of domestic bliss. There may be families where the husband bullies the wife or vice versa. There may also be families where both husband and wife are indifferent to each other, and there may be families where the couple are divorced. One cannot say that such families are apt for proper rearing of children where they get an education of love, compatibility and care. It is believed that divorce leads to mental harm to children, which upsets their sense of security. But it is also to be noted that constant bickering

also does not provide a comfortable upbringing for children where they are more likely to be more upset than in a divorced environment.

Marriage is a very complicated aspect of one's life because it involves two diverse elements- the relation of the man and the woman to each other, and their relation to children. In an ideal happy marriage husband and wife love each other and their children, and this love is fulfilled not by sex but in co-operation for the benefit of their children. This motive in marriage helps it to survive when mere pleasure loses its intensity. What remains is the satisfaction when parental and sexual instincts cooperate to reinforce each other. Laws and morals bind the bond of such marriages stronger, but if the same laws and morals are enforced on the name of conventional ethics by saying that any two wholly inexperienced individuals should enter into an indissoluble relation and to live harmoniously. Moreover it is absolutely impossible if the persons are inexperienced to distinguish between sexual need and deeper affection. There should, therefore be experience before marriage, both for men and women and a little less stringency in case of rules in relationship. Jealousy in a relationship is fine but any deviation from the conventional sense of morality in marriage if is seen as a sin then the relation becomes stifling. It would be absurd to think that a happy or decent life is possible through self-control. Self-control is required but not at the expense of stifling a relation. Unfaithfulness is not also appreciable, but advocating it as sin is also not desirable.

A good marriage is where there is physical as well as mental compatibility, where the individuality is merged with that of united existence. A good marriage is one where a person breaks down the egoistic thinking and nurtures

his need to be with others, and this feeling of generosity and togetherness leads to free and spontaneous love between couples and thereby the children. The essence of morality of this institution over other relations is such that it provides the scope for developing the above feelings which no non marital relation provides. Marriage provides family which enjoins a purpose to work harder, aim higher and aspire for more in life. Sex alone does not have this merit, but sex in connection with parenthood and family becomes a transcending phenomenon, thus forming a new stream of life from beginning to end. Sexual morality is not merely about putting down the rules of sex but is also about pointing the importance and dignity of marriage and family.

Russell in this context says, “The morality which I should advocate does not consist simply of saying to grown-up people or to adolescents: ‘Follow your impulses and do as you like’. There has to be consistency in life; there has to be continuous effort directed to ends that are not immediately beneficial and not at every moment attractive; there has to be consideration for others; and there should be certain standards of rectitude. I should not, however, regard self-control as an end in itself, and I should wish our institutions and our moral conventions to be such as to make the need for self-control a minimum rather than a maximum.”<sup>22</sup> Self- control is necessary for channelizing the instincts in a proper way. Sexual instinct can be properly guided through a proper sex education rather than by placing taboos and restrictions over it. If this task had been done traditionally in an adequate manner, a man and a woman would have been able to have a healthy relationship rather than one of dominance and submission. On the other hand, if education thwarts our instincts in an

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<sup>22</sup>Russell (1987), p.265

improper manner, the acts to which instinct lead to in later life become harmful and require the need for severe self- control.

Marital morality should not be about preaching self- control in a rigoristic manner, where sex and love in marriage is seen as sin and an emotional wastage. But control in sexual morality should be about abstaining from interference with the freedom of others than to restraining one's own freedom. The essence of a good marriage is respect for each other's personality combined with that deep intimacy, physical, mental and spiritual, which makes serious love between man and woman the most fructifying of all human experiences. Such love in marriage brings within itself its own morality and does not require the external sanction of social taboos.

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## **PERIODICALS**

The Telegraph dated 21<sup>st</sup> November, 2014

## **CHAPTER VIII**

### **Same Sex Marriage**

My study of the institution of marriage has primarily focused on heterosexual marriage generally recognized and accepted in society. The work focuses on the heterosexual union of man and woman which has formed the basis of society and the ethical principles and implications thereon. But this research will not be complete if I do not touch upon the recent phenomenal change in the marriage scenario where after a long period of struggle, same sex marriage have been approved by the Supreme Court of USA making it legal. In this chapter a descriptive account of how same sex marriage has evolved in society will be provided. However it would be difficult to discuss the ethical implications of

same sex marriage in detail as it demands another comprehensive research attempt.

The historical account as seen in the previous chapter depicts that at some periods of time and in some civilizations, the institution of marriage depicted a patriarchal, heterosexual and hierarchal nature which played a vital role in oppression of women, gays and lesbians. Feminists disagree among themselves over marriage reforms. Some feminists like Card and Okin, argue for the abolition of what they see as an essentially unjust institution. While liberals like Nussbaum argue that despite the practical oppressions of marriage, it must not be abolished. A marriage law protects women and recognize the significance of non-contractual, interdependent relationships. Nussbaum writes, “to rule that marriage as such should be illegal on the grounds that it reinforces male dominance would be an excessive intrusion on liberty, even if one should believe marriage irredeemably unequal.”<sup>1</sup> Likewise the theorists of lesbian and gay relationships argue that marriage is essentially hetero-normative, but if same-sex marriage rights are given recognition, it will empower gays and lesbians to counteract social stigma against social taboos.

The US Supreme Court ruled on 26<sup>th</sup> June, 2015 that the US constitution provided the same-sex couples the right to marry, thus bringing forth a historic triumph to the American gayrights movement. With the landmark ruling, gay marriage became legal in all 50 US states. The ruling ended two decades of legal wrangling and addressed one of the running sores of America’s culture wars. The

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<sup>1</sup> Nussbaum,p.295

decision which split the court's conservative and liberal wings, was written by Justice Anthony Kennedy, one of the most powerful jurists in American history. The justification given in this verdict stands thus, "gay people intending to marry are not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law... Without the recognition, stability and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser."<sup>2</sup> The American jurist further added that, "no union is more profound than marriage for it embodies the highest ideals of love, fidelity, devotion, sacrifice and family. In forming a marital union, two people become something greater than once they were."<sup>3</sup> The decision which was the culmination of decades of litigation and activism came against the backdrop of fast-moving changes in public-opinion which approve of this kind of union.

Words like 'dignity', 'recognition' etc are very much important here. Marriage is such an institution which has been given a significant importance throughout history. The lifelong union of a man and a woman always has a promised nobility and dignity to all persons without regard to their status in life. It does not matter whether you are rich or poor, or belonging to upper or lower class/caste, marriage has always given a special dignity or status to men and women and is sacred to those who live by its norms and find fulfillment in its realm. Its dynamicity allows two people to find a life that could not be found alone, for a marriage becomes

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<sup>2</sup> The Telegraph, dated 27/06/2015, p.1

<sup>3</sup> Ibid, p.1

greater than just the two persons. Fulfilling the basic needs, marriage is essential to our most profound hopes and aspirations.

The question of 'justice' in granting right to same-sex marriage raises the issue as to whether it is just or unjust to grant the right to marry for same-sex couples. 'Justice' is a relative concept which changes according to changing situations. The generations or law-makers who wrote or formulated laws regarding marriage in ancient times did not presume the changing nature of society in coming years. They formulated laws as apt for the then social scenario. However the present scenario is believed to have undergone a stupendous change where the boundaries of relationship have broadened its scope and included same sex relationships too.

However it would be wrong to assume that same sex relationship is a novel phenomenon. In fact, the majority of cultures surveyed by anthropologists have accepted same-sex relationships under certain circumstances. In an article written by John Mc Coy in Dallas Morning News, he tells about Egyptologists Greg Reeder's discovery of recorded history of same sex relationships, where he shows that a tomb of two men, who lived about 2400 B.C. in the ancient Egyptian city of Saqqara, named, Niankhkhnum and Khnumhotep (better known as Tomb of Brothers) was discovered, where their names were strung together in a word that could mean 'joined in life and joined in death'. The two men were buried together much like a married couple. Reeder also notes that its often difficult to find the right words to talk about sexuality in ancient times. The word 'gay' or 'homosexual' is too modern a word to be used for same-sex unions which in those times was more or less like a brotherhood ritual of the period. But given the

depiction in the tombs one can infer that relation between same sex was not taboo or prohibited in society.

In ancient Greece, such relationships were regarded as purer and deeper than heterosexual bonds. The Greek philosopher Plato declared that love was a wonderful emotion, leading men to behave in honorable ways. But, he quickly explained, he was referring not to the love of women, "such as the meaner men feel," but to the love of a man for another man. Numerous African and Native American societies have recognized male-male marriages. And many cultures of the past have allowed adult males to take "boy-wives," usually on a temporary basis. But same-sex marriages of the past—like heterosexual marriages of the past—were based upon the idea that marriage required a union between individuals who played very different gender-associated roles, and had different duties, rights, and power. Female husbands in history were almost always women who for one reason or another had taken on the social roles or possessed the economic resources usually associated with men. Thus a woman who had amassed cattle might marry another woman, both to ensure that she could exercise the legal and social authority traditionally granted to husbands and to pass on property to the children born to her wife. She also commanded the loyalty of these children and reaped the benefits of marrying them off.

Similarly, in male same-sex marriages of the past, one of the men was almost invariably expected to do work traditionally assigned to women in that culture, while the partner usually played the traditional male role. And in societies where

men married "boy-wives," their relationships were not based on the kind of equality that is envisioned by most contemporary same-sex couples who seek to marry. The boy-wife performed the social, cultural, and physical roles normally assigned to women. A boy-wife was expected to be passive, both in his social behavior and in the sex act. Sometimes becoming a boy-wife was a temporary stage where a young man learned, by being the recipient, how men were supposed to treat women.

Here the question is not whether same sex marriage is a new phenomenon or was pre-existing. But the most noted issue here is whether same-sex marriages are an alternative to heterosexual marriage, an extension or an exact replica of it, or does it portray a different form of relationship completely different from heterosexual relationships. The contemporary vision of same-sex marriage, which rejects rigid gender roles and power hierarchies, is a revolutionary approach to marriage. But can it be regarded as an extension of a revolution that has occurred in heterosexual marriage. Same-sex relationships have been recorded since the beginning of civilization. In fact, same-sex unions occurred in various forms, from informal, unsanctioned partnerships to ceremonial marriages. The Ancient Roman Empire did not shy away from same-sex unions, and there was widespread acceptance of homosexuality and bisexuality among the Roman citizens. Moreover, many of the early Roman emperors were in homosexual relationships. Nero, an early Roman emperor, was known for his homosexuality, and had been married to two men at different points in time.

One can presume that homosexuality was not a taboo phenomenon in Greece or Roman times, or rather, if one goes through Foucault's *History of Sexuality*, one can find out that sexuality was taken to be a matter of discourse and a scientific approach was taken for proper enjoyment and healthy sexual life in those times. Sex was not merely for procreation, rather it was a celebrated phenomenon where a proper methodology was developed for channelizing of sexual energy. The viewpoint that sex which is procreative is only allowable and that too within boundaries of marriage, while every other expression of sexuality is sinful, can be found, in Christianity. This understanding leads to a concern with the gender of one's partner (which is thus not found in previous Greek or Roman views) and it clearly forbids homosexual acts. Later on with the influence of Christianity several civilizations saw a sinfulness in homosexuality whereby persons who engaged in homosexual sex were to be executed, although, those who were repentant could be spared.

### **8.1 Arguments against homosexuality**

Several arguments and interpretations might have originated regarding the abnormality of homosexual behavior. However, probably the most important domain for discussions of homosexuality was in medicine, including psychology. Psychological study regarded homosexuals as having an entire physical and mental makeup, which was usually portrayed as somehow defective or pathological. This discourse was also joined, in turn, by the considerations of the

state regarding its need for a mentally and physically healthy population, good soldiers, and intact families marked by clearly defined gender roles. Doctors were called in to examine any kind of discrepancy in so-called normal sexual behavior. The basic presumption which worked here was that humans are innately heterosexuals. Those who display homosexual tendencies may be expressing a diseased or pathological mental state, and hence medical intervention for a cure is appropriate. Hence doctors, especially psychiatrists, campaigned for the repeal or reduction of criminal penalties for consensual homosexual sodomy, yet intervened to “rehabilitate” homosexuals. They also sought to develop techniques to prevent children from becoming homosexual, for example by arguing that childhood masturbation caused homosexuality, hence it must be closely guarded against.

Homosexuality may be considered a specific, natural kind rather than a cultural or historical product. Essentialists allow that there are cultural differences in how homosexuality is expressed and interpreted, but they emphasize that this does not prevent it from being a universal category of human sexual expression. A number of researchers, often influenced by philosophers like Michel Foucault, argue that class relations, the human sciences, and other historically constructed forces create sexual categories and the personal identities associated with them. The emphasis on the social creation of sexual experience and expression led to the labeling of the viewpoint as social constructionism, although more recently several of its proponents have preferred the term ‘historicism.’ Thus homosexuality, as a specific sexual construction, is best understood as a solely modern, Western concept and role. Prior to the development of this construction,

persons were not really 'homosexual' even when they were only attracted to persons of the same sex.

Another argument which can be given against homosexuality originates from natural law theory which offers the most intellectual defense for differential treatment of gays and lesbians. Natural law theory as articulated by Plato states that unchanging truths underpin the flux of the material world. Even though there is clearly a great degree of variety in conventions from one culture to another, there is still an unwritten standard, or law, that humans should live under. In the *Laws*, Plato applies the idea of a fixed, natural law to sex. In Book One he writes about how opposite-sex acts cause pleasure by nature, while same-sex sexuality is "unnatural" (636c). In Book Eight, he tries to consider how to have legislation banning homosexual acts, masturbation, and illegitimate procreative sex widely accepted. He then states that this law is according to nature (838-839d). Probably the best way of understanding Plato's discussion here is in the context of his overall concerns with the appetitive part of the soul and how best to control it. Plato clearly sees same-sex passions as especially strong, and hence particularly problematic. Apart from Plato, philosophers like, Aristotle, with his emphasis upon reason as the distinctive human function, and the Stoics, with their emphasis upon human beings as a part of the natural order of the cosmos, both helped to shape the natural law perspective which says that "True law is right reason in agreement with nature,". Aristotle, in his approach, did allow for change to occur according to nature, and therefore the way that natural law is embodied could

itself change with time, which was an idea Aquinas later incorporated into his own natural law theory.

The most influential formulation of natural law theory was made by Thomas Aquinas<sup>4</sup> in the thirteenth century. Integrating an Aristotelian approach with Christian theology, Aquinas emphasized the centrality of certain human goods, including marriage and procreation. While Aquinas did not write much about same-sex sexual relations, he did write at length about various sex acts as sins. For Aquinas, sexuality that was within the bounds of marriage *and* which helped to further what he saw as the distinctive goods of marriage, mainly love, companionship, and legitimate offspring, was permissible, and even good. Aquinas did not argue that procreation was a necessary part of moral or just sex; married couples could enjoy sex without the motive of having children, and sex in marriages where one or both partners is sterile is also potentially just (given a motive of expressing love). Thus Aquinas could very well have accepted same sex marriage, simply seeing the couple as a loving and companionate one even though it may not be of the generative kind.

Aquinas, however, adds that for any given sex act to be moral it must be of a generative kind. The consequence of this addition is to rule out the possibility, that homosexual sex could ever be moral. The question arises as to what is the justification for this important addition? This question is made all the more pressing in that Aquinas does allow that broad moral rules applying to individuals may vary considerably, since the nature of persons also varies to some

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<sup>4</sup> Aquinas, *Ia IIae* 91,2

extent. That is, since Aquinas allows that individual natures vary, one could simply argue that one is, by nature, emotionally and physically attracted to persons of one's own gender, and hence to pursue same-sex relationships is 'natural'. Unfortunately, Aquinas does not spell out a justification for this generative requirement.

Another argument which can be made against homosexuality is that when a person uses his body merely for fulfilling one's own pleasure as in case of masturbation or homosexuality, it frustrates the higher purpose of race generation and preservation. Yet one could easily reply that two persons of the same sex engaging in sexual union does not necessarily imply any sort of 'use' of the other as a mere means to one's own pleasure. Hence, natural law theorists respond that sexual union in the context of the realization of marriage as an important human good is the only permissible expression of sexuality. Yet this argument requires drawing how marriage is an important good in a very particular way, since it puts procreation at the center of marriage as its "natural fulfillment"<sup>5</sup>. Natural law theorists, if they want to support their objection to homosexual sex, have to emphasize procreation. If, for example, they were to place love and mutual support for human flourishing at the center, it is clear that many same-sex couples would meet this standard. Hence their sexual acts would be morally just.

There are, however, several objections that are made against this account of marriage as a central human good. One is that by placing procreation as the 'natural fulfillment' of marriage, sterile marriages are thereby denigrated. Sex in

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<sup>5</sup> George, p.i68

an opposite-sex marriage where the partners know that one or both of them are sterile is not done for procreation. Yet surely it is not wrong. Why, then, is homosexual sex in the same context (a long-term companionate union) wrong? Thus for better understanding one needs to find out whether there are any arguments in support of same sex marriage.

## **8.2 Arguments for same-sex marriage**

Many recent defenses of same sex marriage are based on the claim that it is justified on the grounds of equal rights. Those who defend same sex marriage like Richard Mohr and Cheshire Calhoun point out that if two consenting heterosexual adults could be given legal protection under the roof of traditional marriage norms, then two consenting homosexual adults should also be provided the same. The denial of this right to homosexuals is seen as a discrimination, analogous to discrimination against blacks or women, or different races. However, what this 'equal right' means, needs to be clearly stated. If this right means the right to marry the person of one's choice, then that too is followed by certain conditions. For example, one cannot marry a person who is under age, or one's sibling or a person who is already married. Hence to properly formulate it one needs to understand that the above right of marrying a person of one's own choice accompanied by conditions is already possessed by homosexuals. What the homosexuals further demand is the right to marry a person of their own sex. They demand the equivalent legal protection which the heterosexual population enjoys.

This leads to a further question as to why it is important to have an equivalent legal protection in form of marriage. It is primarily believed that marriage is a stabilizing institution, dedicated to promoting order and steadiness. It can also be regarded as giving sanctity to unbridled physical pleasure, which means that marriage is about legalization of physical or sexual activity. Thus if we accept the normalcy of homosexual activity along with heterosexual activity, it becomes more apt to legalize it rather than keep it unbridled or lawless. Moreover marriage creates various obligation and loyalties such as taking care of one's partner when that person is ill or having a home base and maintaining it. This all becomes a part of settled behavior and generates responsibility, which if granted access to homosexuals too, then it might entail long range commitments and remove the tag of promiscuity generally attached to gays.

Another argument in favor of same sex marriage is that though marriage is considered as an institution dedicated to procreation, there are several instances of heterosexual couples who remain married happily without having any issues. They may either not have the capability of reproduction or may voluntarily choose not to procreate. This might not affect their marital relation. Similarly homosexual couples can also remain happily married without having any children. Moreover with the current population explosion, it is wise to make efforts to taper off the growth rate of human species to a certain limit. Just as a traditional marriage is a safe anchor for lifelong commitment, a foundation for raising children, same sex marriage too can bind gays to same ethics of mutual support and domestic partnership. Our moral debates should not become stale,

fruitless or closed door. Morality should be balanced along with practicality where commitment and sexual orientation must be regarded as a choice and a virtue.

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## CHAPTER IX

### CONCLUSION

As one tries to arrive at a conclusion of the research on a debatable topic, like marriage, one comes across varied emotions and observations regarding it, in the same way as the varied changes which have occurred in this institution through several centuries. As a child and an adolescent, marriage seems to be a fairy tale, a key to being grown up. As an adult, marriage ceases to be a fairy tale and becomes a never ending series of responsibilities and cessation of independence. Still people want to get married and take an active interest in this institution and feel proud in the state of being married. Coontz writes, "The historical transformation in marriage over the ages has created a similar paradox for society as a whole. Marriage has become more joyful, more loving, and more satisfying for many couples than ever before in history. At the same time it has become optional and more brittle."<sup>1</sup> Marriage for many years has been seen as a means of serving various social, economic and family needs, so much so that the individual needs have always taken a secondary place. Marriage has been more of a way of life which helped to nurture social relation, economic ties, benefits, security etc. with love and intimacy being a welcoming part of it.

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<sup>1</sup>Coontz. P.306

As we try to look into the nature and direction of the modern transformation in marriage, we find a tendency towards its extinction and substitution by alternative arrangements, like civil marriages, live-in relationships etc. Moreover the traditional look of marriage being limited only to heterosexual couples, has now forayed into homosexual relationships too, where gay and lesbian marriages are slowly gaining ground.

There can be several reasons behind this trend of extinction of marriage in coming times. The first and foremost reason being: sex. Marriage till now in several societies is considered as the only permissible route to having sex. But with the recent trends of more open perspective about sex and less inhibition about having sex outside marriage, it ceases to be the only available option. Secondly, as we are becoming more evolved and technologically advanced, we are also developing an individualistic attitude where compromising attitude required in case of marriage is becoming more and more difficult to follow. This comes along with economic independence especially in case of women. Till now women being financially dependent had marriage as the only recognised identity. Being unmarried was the most uncomfortable aspect of a woman's life where it indicated her inability and her insecurity about her existence. However, as more and more women are getting self- dependant they are less willing to settle down to a marital status which for them is still a patriarchal institution. The patriarchal structure still recognises the husband to be an authoritative entity in the household and a woman, even though she may be financially independent has to submit to that authority. But in the coming times, a woman need not be so as she can choose to be independent in whatever way she chooses.

Another reason for being married was to have a family where one's children could be reared. However with the current scenario of many avoiding parenthood or having less children, it means lesser need for family and lesser need for marriage. There are more single mothers today where unmarried women may have children out of wedlock, or get pregnant through donor's sperm, or choose to adopt. This factor leads to redundancy of marriage. Moreover homosexuality or even bisexuality slowly coming out in the forefront and getting a social recognition means that one can explore one's sexual preferences in the way they chose to do so. Thus sexuality is not merely restricted to being a heterosexual. The change in the moral outlook towards sex and having a family is one of the major causes of marriage becoming less accepted.

We can now begin with considering the new phase in marriage i.e. treating it as a contract. If we treat marriages as a contract, we have to set up a special kind of contract, "where we have to submit to without having a voice in the framing of its conditions; the only contract, moreover, which lasts for life. It is entirely arbitrary, and nothing could justify it except the certainty that, without this coercion on the part of the State, we should have irresponsible coercion on the part of individuals, problem of the children is generally urged as the plea for forcing parents to remain together against their will."<sup>2</sup>

Thus marriage should be entirely put in the hands of the law making it a civil contract which will also define the terms of divorce if either party wants to disown the contract. The contract should be renewed from time to time. As long as the union is satisfactory, the contract can be prolonged, but when the union becomes unsatisfactory, it is better to declare the contract void. If marriages were really placed on the basis of a contract, not only would that contract be voidable at the will of the two parties concerned, but those parties would at the outset themselves determine the condition of the contract.

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<sup>2</sup>Caird, *The Morality of Marriage*, p.35

But our actual marriages are nothing like a contract. Young couples, dazed by emotion, take the oath to bind themselves together for life, when in several cases they are not mature enough to know the world and in many cases, to know anything about each other. Marriage entails giving up one's rights, especially the freedom of sexual intercourse. Men and women both feel that sexual intercourse with one's partner is implicit duty of marital union, even if one is suffering from venereal disease or lacks sexual prowess. Undoubtedly the modern tendency is against applying compulsion to either husband or wife to yield conjugal rights, but the implicit emotion working in any marital union is to have a successful, good and a recognised way of sexual relations.

Therefore, marriages cannot be regarded as a contract in the true sense. It involves human emotions too. The intimate and essential part of marriage- the physical and emotional connection between couples cannot be ensured through a contractual relation. Sexual intercourse cannot be put into pen and paper, whereby one can write down its terms and conditions, duration, physiological and psychological aspects. To transfer the human need of sex into contractual terms will itself be worse and a farce of this relation. However it is a fact that marriage is the precondition for morally permissible or virtuous sex.<sup>3</sup> The question is why should marriage be considered as the only legitimate outlet for sexual acts; does marriage implicitly contain the virtue of sexual committedness? Marriage is a way of publicly making a commitment that binds the self to assume obligation of sexual exclusivity along with the reciprocal commitment that the partner would do the same. To make this binding full proof the institution is made public, otherwise a private promise can have no binding thus creating a lot of legal, moral economic and social pressures. Marriage itself does not guarantee that spouses will

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<sup>3</sup>Brake. P.65

remain committed, it creates a strong incentive of social pressures, financial benefits and legal barriers, so that one can work on making the commitment work. Marriage is rational for those who believe in creating a set up for furthering social and economic benefits through it. However those who are polyamorous, bisexual, asexual, believe in multiple sexual relations can never be happier in one exclusive relationship. However marriage as an institution shapes our sexual dispositions into chaste or unchaste mode and tries to project that sexuality can be better channelized and fulfilled properly if practised in a heterosexual monogamous institutionalised relationship. But marriage though may to some extent serve instrumental purposes of securing responsibilities and invoking pressures to fulfil commitments but it is doubtful that it can fully transform the couples into pure virtuous agents. What I mean is that marriage cannot force one's psychical disposition into a homogenous framework.

Sexual relations outside marriage are morally impermissible because it affects the sanctity of the relation which has been socially and legally established. Unmarried sex leaves a person in a vulnerable position by exposing them to risks like pregnancy, disease and heartbreak. Marriage also is not safe from such risks but it, at least provides financial protection against abandonment. Thinkers like Kant point out that marriage by instituting juridical rights and responsibilities, morally transforms sexual objectification by creating the conditions necessary for respect. Kant suggests that unmarried sex or sex outside marriage treats another person as a means because sexual desire takes a person as an object to satisfy an appetite. Kant's view is that sexual use extends to possessing the other person, and the only way to treat the sexual objectification as an end is to have equal rights of possession for both the parties. Thus rights make sex compatible with respect. But one can give the argument that just as a lover can ignore a partner's welfare similarly, a spouse can do the same. Marriage isn't sufficient enough

for treating spouse with respect. However if marriage transforms mere physical pleasure to a 'shared life' the point is that this physical pleasure even out of marriage can lead to a shared life if the both the parties view each other with respect.

One can say that another essential fact of marriage is love. Love which is not merely a passing passion but a feeling developed gradually through sharing life with each other, companionship, fulfilling responsibilities and forming familial ties. This love is strong enough to make a relation last for a lifetime. It is believed that marriage helps one to gradually develop and cherish this love where two different personalities unite together to form a family and share responsibilities. However the emotion of love cannot be put into contract. If there is a physical and psychical bond then no contract is required, and where there is lack of such bonding, all contract becomes worthless. This replacing the age-old institution of marriage with a contractual relation becomes absurd. The conception of marriage as a contract is discredited because our personal attitude and commitments should be synced with our social attitudes too. We cannot ignore society's demands and wishes to fulfil our individual commitments. Moreover the idea of entering into a pre-ordained contract regarding a matter which involves feeling and emotions is quite unreal and absurd.

If considering marriage as a contract is absurd then the question is: whether returning to the old notion of marriage being a sacramental union is the solution. To look upon marital union as a sacrament is to accept the ancient Hindu and Catholic view that marriage is indissoluble. The believers in sacramental character of marital union have failed to provide any rational basis of indissoluble matrimony but thinkers from the Protestant side have argued against the indissolubility aspect.

Sexual morality tends to develop with the development of civilisation. A sexual relationship that was fixed in society by social customs was impossible to break. In higher stage of culture, these social customs were replaced by formal laws which were to be fully observed even if the relation was an unhappy one. However, such external bindings become meaningless if the internal feelings are not strong enough to bind one person to another. This can be achieved by relaxing the norms of marital morality which focuses on mere heterosexual union and the ultimate aim of procreation. This modification also demands the transference of control of marriage from state to the individuals. However there are certainly various aspects of marriage which affect the interests of the community like sustenance of the institution of family, sexual morality, that the state is bound to insist on the proper registration and settlement of marriage.

It is believed that removing the formal stringency of marriages would lead to sexual laxity, but one should not overlook the fact that humans have a tendency to break free and act stealthily, whenever they have been bound and kept down. Whenever the external authority of a rigid marriage law will prevail, the extreme excess of laxity will also flourish.

Making marriage an instrument for procreation, family and sexual control also leads to the effort of humans to satisfy the demands of their natural instincts in various different ways. However, it also must be said that loss of freedom from stringency of marital norms is not always manifested in rebellion. The external support of marital norms also helps in maintaining a satisfactory decorum of sexual behaviour in society and provides the appropriate legal, social and economic support to the spouses, children and the extended family. If external norms are not imposed then marriage will become an autonomous and individualistic relation, where the social values of adjustment, understanding and compassion might get hampered. Therefore mere abolition of

external sanctions like moral sanctions in this institution will not be helpful. The historical account of marriage shows various changes incorporated in the institution from ancient to modern times. These changes have always been at par with changes in the social scenario. From becoming a political and economic ties to a religious sacrament, marriage as an institution has been dynamic. Thus it is inevitable that the present face of this institution should also make room for modifications.

It also needs to be pointed out that people from time immemorial have not merely married just because it was a religious or legal tie. It has been also due to the natural tendency of humans to remain together. Affiliation and love would have surely existed between mates if 'marriage' had never been evolved. If, on all a sudden all marriage ties are declared to be null and void and struck off, majority of the couples would like to get remarried as quickly as possible. It is a fact that divorces are becoming rampant in the present times but it is also a fact that divorced couples are willing to get married again.

The present status of marriage, if it conforms to the traditional ideas of morality, then it becomes a failure. The coercive element in marriage which enforces the strict moral norms in marriage utterly affects the position of women and reduces them to a state of helplessness. The traditional stand in marriage sees wives as mere dependents on their husbands, who would lose their dignity, respect and existence if they are not married or are deserted by their husbands. Marriage is seen as a social and economic security for many women still in several parts of the world. A woman is merely a symbol of beauty and attraction, which must be invested in marriage and society in turn will offer protection to her. However the present situation in marriage is not satisfied with this arrangement of marriage as women are now self-reliant and thus increasing number of

women are giving up the aspect of being bound and protected in a marriage tie, rather than enter upon it as a means of sustenance. As this sentiment grows, men and women realise that so long as affection and friendship remain between a married couple, no ritualistic or formal bonds are required to hold them; but when this ceases, the tie becomes unbearable and no law ought to have the power to enforce it. It is becoming a growing demand from women that their right to their soul and body must be fully recognised. Greater respect for the liberty and rights of a person is now being demanded in a monogamic ideal of marriage.

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## **PERIODICALS**

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