

## WHETHER HINDU MARRIAGE IS A CONTRACT OR A SACRAMENT

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### ABSTRACT

*Hindu marriage has been a subject of scholarly debate for many years, with some scholars arguing that it is primarily a contract, while others maintain that it is a sacrament. This paper explores the nature of Hindu marriage, drawing on an extensive review of the relevant literature, including Hindu texts, legal statutes, and scholarly articles, to analyze the historical and contemporary views on the subject. The paper argues that Hindu marriage contains both contractual and sacramental elements and that a nuanced understanding of the nature of Hindu marriage is essential for developing appropriate legal and social structures.*

### INTRODUCTION

In India, marriages are considered an essential part of anyone's life. Hindu marriage is regarded as an ancient tradition from the Vedic period today. The idea that marriage is a sacrament is also found in the Vedas and Shastras. Hindu marriage traditions and ceremonies must be rigorously followed for the union to be complete. Establishing a relationship between a husband and a wife is called marriage. It is also thought to be indissoluble or an unbreakable bond that continues even after death. Another way to achieve moksha is through marriage.

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In our Hindu Sanatan tradition, sixteen Sanskars are performed during the life of a human being. Of these 16, marriage is considered the essential sanskaras, including seven steps and vows made before a fire Sapta Padi. It is not only sacred but is also frequently viewed as a holy marriage. Under Hinduism, It is the fact that a Man is incomplete without his wife. It is a wife who completes him. The Brahmana proclaimed, "The wife is verily the half of the husband." "Half of the husband that is the wife." Lord Shiva is also known as ardhnanarishwar which means that half part is a man and half part is a woman.

A wife is not just patni but dharmapatni—a partner performing spiritual and secular duties. A man cannot perform most of the yagya (sacrifices) with her. The wife is also known as Sahadharmini.

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## MARRIAGE

**According to Raghunandan**, Marriage is "the acceptance of the bride as his wife by the bridegroom as a gift by the bride's parents."

As per the Rigveda, the girl is the property of the god of fire, who has charged the father with the responsibility of raising her and giving her as a gift to a righteous person by calling upon the fire god to witness the act of giving the father or her guardian has been forced to perform the religious duty of giving away the girl in marriage by way of the gift while he is away. The girl's consent is essentially meaningless because the girl's father or legal guardian has practically complete control over the marriage arrangement.

According to **Smritikars**, Marriage is all about a holy union of husband and wife who cannot break this relationship even after death.

## HISTORICAL AND CULTURAL CONTEXT

The concept of marriage in Hinduism can be traced back to the Vedic period, which began around 1500 BCE. During this period, marriage was primarily viewed as a contractual relationship between families, with the bride's family providing a dowry to the groom's family in exchange for his agreement to marry her. However, over time, the concept of marriage evolved, and it came to be seen as a sacrament, a divine union between two individuals that were blessed by the gods.

## LEGAL AND SOCIAL STRUCTURES

The debate over the nature of Hindu marriage has important implications for the legal and social structures that govern it. In India, for example, the Hindu Marriage Act of 1955 is based on the assumption that Hindu marriage is a sacrament, and as such, it is governed by religious and cultural norms, rather than legal ones. However, this approach has been criticized for perpetuating patriarchal norms and limiting the rights of women. Some scholars argue that a more contractual approach to Hindu marriage could provide greater legal protections for women, particularly in cases of divorce or domestic violence.

## FORMS OF HINDU MARRIAGE

There are eight forms of marriage recognised by ancient Hindu law. But four were approved, and another four still need to be approved. When we have approved conditions, the wife enjoys the concept of dharmapatni and their rights. On the other hand, In unapproved forms, the wife doesn't have any such rights.

### APPROVED FORMS

**Brahma:** Under this, the girl's father invites the bridegroom concerning his home, worships him, and offers to take the girl as his wife and present her with elegant clothes, jewellery, etc. If, in case, the father refuses to accept anything in exchange for the bride and does not choose the bridegroom to advance his career, etc. In this type of marriage, a widow could not get married again.

**Daiva:** A beautifully dressed bride is presented to the priest, who conducts religious rites and ceremonies for the groom's father's spiritual well-being.

**Arsha:** The bride is offered to a person from whom the father has accepted a pair of cows or bulls for religious rituals only.

**Prajapatya:** The bride's father dresses her in brightly coloured clothing, worships her, and then presents the bride to the bridegroom while reciting a blessing for the couple's continued religious behaviour, prosperity, and happiness. Unlike the Brahma type of marriage, this marriage does not require the groom to be a bachelor.

**Asura:** This type of marriage involves the bridegroom taking the girl voluntarily as his wife, clearly with her father's approval, after giving wealth to the father, paternal relative, or the damsel herself in the amount that fits within his resources. As the girl's father or guardian has previously received money and consented to the marriage instead of the money obtained, this type of marriage resembles a kind of bride buy. According to some, the girl is allegedly sold out in this kind of marriage. "The payment that the bride's father receives in exchange for presenting the bride is his reward. This form of marriage is primarily practiced in South India.

**Gandharva:** With mutual consent and driven by their shared love and sexual urges, the bride and groom are united in this type of marriage. Without going through any religious rites or rituals, the bride and groom establish a physical union because they are so enamoured with

one another. The well-known love story of Dushyant and Shakuntala contains one of the best examples of this kind of union. This kind of union was rather typical among Kshatriyas. Nonetheless, despite the Madras High Court's recent observation that it has not yet become obsolete, it is now scarce.

**Rakshasa:** In this type of marriage, a girl is kidnapped forcibly and wedded to a man who wants to marry her, but her father won't let it. When the bride's guardians are attacked and either killed or wounded, the people by the groom's side whisk the girl away while she wails, cries for aid, breaks open the door, or secures forced entry into the home. This union is still common among the Barrar and Betul of Gonda castes.

**Paishach:** This is the last form of marriage. Under this, a male seduces women and engages in sexual activity with them while the woman is either sleeping, intoxicated, or mentally unstable, typically at night. Because of the embarrassment of such behaviour, the girl's parents must consent to the girl's marriage to the man. The term "paishacha" refers to nighttime nocturnal goblins. It is comparable to an act of rape, which is the most heinous crime that can be committed today and is penalised under section 376 of the IPC. Rape offenders must serve a minimum of seven years in jail, with the possibility of a lifelong sentence and a fine.

## **HINDU MARRIAGE AS A SACRAMENT**

One of the most significant sacraments in Hinduism is marriage. It was one of the fundamental sanskaras and was regarded as a sacramental union in the patriarchal society of the Rig Vedic Hindus, which persisted throughout the entire time. The bride and groom's marriage is a sacred and religious one. Hence religious rites and ceremonies must be performed for a union of them. So, some of the rituals, panigraha, and Saptapadi, must be completed by them in the presence of Agni Deva.

During the earlier time, the wife considered their husband his "Pati Parmeshwar," which simply means they treated their husband as God. The wife is also known as grihalaxmi. Once married, one knew that marriage would continue till the end of life. It was realised that the man had to treat his future wife beautifully after getting married. When he wed, he was liberated from caring for his Companion however he chose (being aware that marriage could not be broken). We have an important case that shows that marriage is a sacrament. In the

case of *Tikait vs Basant*, the court held that marriage was a sacrament, an indissoluble union of flesh and blood that continues even after death.

### **HINDU MARRIAGE HAS CONTRACTUAL NATURE**

The industrial revolution and its lofty ideals of liberty and equality led to the current understanding of marriage as a contract. The highest human and social relationship that man has ever experienced, i.e., marriage, must also be firmly grounded on the free volition of individuals if human and social interactions do not grow out of “status” and are instead based on that of individuals. As a result, marriage started to be regarded as contractual in nature.

Laws in India require three elements before a Hindu marriage may begin: capacity, consent, and rites. The ability considers the engaged pair's ages and mental capabilities. On the other hand, the union is compelled by the necessity of free consent. Consent must not have been obtained through trickery, coercion, undue influence, or error to be deemed accessible. It's important to note that The Indian Contract Act of 1872 also mentions these foundational elements. The components of free consent and the parties' capability must be present for an agreement or contract to be valid. Another thing to remember is that if the fundamental requirements are not met, the parties to marriage always have the option of ending it.

Contrarily, the Hindu marriage has ceased to be an unbreakable and immortal connection. Widow weddings are permitted. Furthermore, it allowed divorce. Although a sacred ceremony is required, it is nevertheless possible to refer to the union as holy or sacred. As a result, Hindu marriage still has elements of both ceremonial union and contract. Now we can justify it by going through a case that shows that Hindu marriage is a contract. In the case of *Bhagwati Saran Singh v. Parmeshwari Nandar Singh*, the court held that a Hindu Marriage is not only a sacrament but also a contract. Having another case law, *Anjona Dasi v. Ghose*, the court held that the marriage, if it is a sacrament, is undoubtedly a contract entered which is for the consideration of correlative rights and duties.

### **CONCLUSION**

Both viewpoints have been analysed, whether marriage is a sacrament or a contract. In earlier times, specific rites must have been performed for marriages with sacramental characteristics, and according to the Vedas and Shashtra, marriage is considered a sacred union. Now, the whole society has transformed and some elements of the contract were added to the marriage

as well. Hindu marriage law has provisions that imply that marriage is also a legal contract. When permission is significant for marriage, how does it resemble the contract? It reaches a sacrament since most weddings still require a sacred ceremony.

Hence, Hindu Marriage is neither a pure contract nor a pure sacrament but a mixture of both contract and sacrament. In conclusion, this paper argues that Hindu marriage is a complex institution that contains both contractual and sacramental elements. A nuanced understanding of the nature of Hindu marriage is essential for developing appropriate legal and social structures that can protect the rights of all individuals involved. Further research is needed to explore the implications of these findings for policy and practice.

### REFERENCES

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[2] 12 DR. U.P.D KESARI, MODERN HINDU LAW 38 (2020).

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[4] Tikait vs Basant, ILR 28 Cal. 758.

[5] 23 DR. PARAS DIWAN, MODERN HINDU LAW 66 (2016).

[6] Bhagwati Saran Singh v. Parmeshwari Nandar Singh, 1942 I.L.R All 518.

[7] Anjona Dasi v. Ghose, 6 Bengal Law Reporter, 243.