

## MARRIAGE THROUGH THE AGES AND SHADOWED TODAY

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### INTRODUCTION

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The advent of society is a gradual process that is still on. These changes were a mirror of every developing bond of a human with a human, one such bond being the MARRIAGE. As famously quoted by Westermarck - "The institution of marriage is complete by itself" portrays the high and divine level the marriage holds in society. Marriage not only says the will of the person but also helps in the development of the feeling of authority and control over oneself. But in contemporary society, the sacrament of marriage is not what the original thought of marriage was, but what the reasons for the documentation of the institution are, let's look at the project.

Marriage is an inalienable task of an individual towards society and eventually to mankind. But the concept of marriage is not uniform all around the globe; it changes with the change of society. This project is an attempt to find the varied types of marriages practiced all around the globe with special reference to the historical background of the Hindu marriages practiced all over the world.

This paper aims to study the various forms of marriage mentioned in the Vedic texts, navigate through the various unique kinds of marriages practiced in the world and to summarize the law against love jihad. And for which majorly the secondary sources that submit the views of some renowned authors. It also is an attempt to closely analyze the ordinance against the love jihad by the government of Uttar Pradesh. Lastly, the research also provides an insight into some of the unique in its kind form of marriages practiced all around the globe.

### SOCIETY: THE CONCEPT AND EVOLUTION

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Theories are saying the evolution of society like the divine theory and the evolutionary theory, but both regard humans as the basic elements of the universe. Be it in the past, present, or the future it is the idea of people which derives society the power to operate. The choice of the first humans was more for the protection and division of labour, which is

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eventually modified and not stands one of the important for the person. For the formation and the development of the society the marriage institution played a key role, as it is the marriage that first proposed the idea of birth, it made the realization for the early man the warmth of affection, the need for the partner, sorry state of the death and essentially the importance of life.

The evolutionary theory of society portrays the growing nature of society rather than the making nature of society. .it says that society is the result of a gradual unending process. What initiated the society were the Kinship and the family.

*“Kinship creates society”- Maclver*

The patriarchal form of society was the outcome of kinship. After the man gave up the wandering habits and settled the concept of villages shot up, they settled in villages, towns, cities, took up agriculture and later the trading practice, soon the population began to multiply, the concept of wealth accumulation started. All these further were supplemented with the concept of the property. All these resulted in the advancement of economic life which served as the major cause of the formation of the social organization as the nation-state.

The society today we live in is the result of these gradual changes and a way to prove it is illuminated in the historical records discovered to date. When we refer to the Indian concept the story opens up with the very first record of the civilization, the Indus valley civilization, the Harappan civilization, etc. Then the ancient Indian scriptures include the accounts of various authors like the Manusmriti, the Yajanavalka smriti, the Narad Smriti, the account on the administration in the Mauryan dynasty by Kautilya, etc provide an exhaustive account of the development of the society at the time demanded .then the written accounts by the various writers and poets like the Bana Bhatta, Abul Fazal, Gulbadan Begum, etc provides the view to medieval India. This is furthered by the modern Indian writers in numerous some being, Jawaharlal Nehru, Rabindranath Tagore provides the account for unified India. All these in a way are the mirror through which the concept of society flourished.

### **MARRIAGE: THE INSTITUTION OBSERVED ALL AROUND**

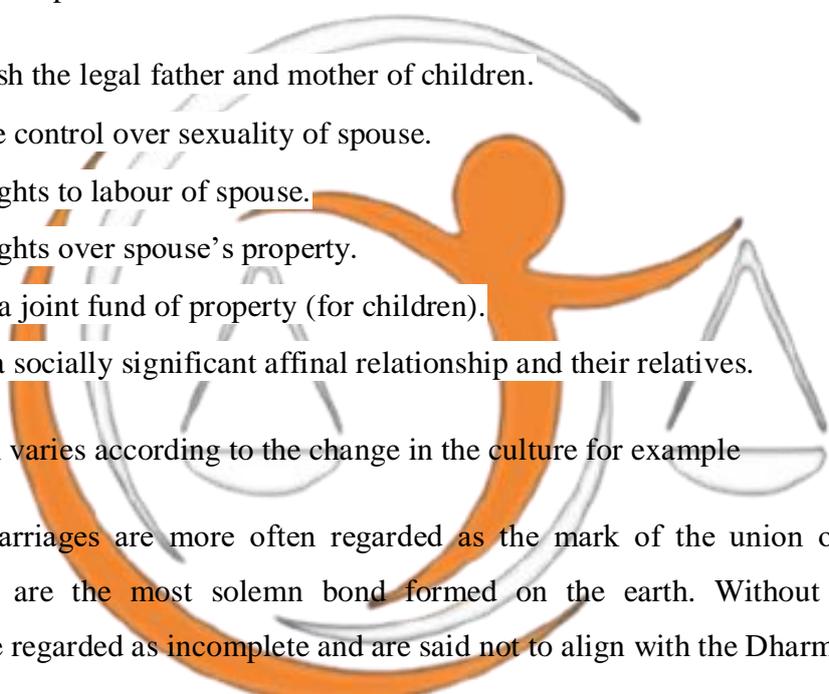
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Marriage is, as generally presumed, the union of a man and a woman who commit to making a permanent and exclusive commitment to each other which is to consummate when the

bearing and rearing of the child takes place. Showcasing the society with all the ornaments on, the marriage is that bond depicting the major source of society.

Marriage consists of aspects like the money involved in the marriage, the consent of the couple, the societal norm of selecting a bride/groom, a proper marriage ceremony, purpose of marriage, and many more such riders are what looked into when the decision of marriage is taken. The marriages or the marriage-like relationship fulfill the responsibility of society and biology.

British anthropologist Edmund Leach (1955) observed that marriage may accomplish the following depending on the society. Leach described these rights of marriage as possibilities for either or both spouses: <sup>1</sup>

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- Establish the legal father and mother of children.
  - Provide control over sexuality of spouse.
  - Give rights to labour of spouse.
  - Give rights over spouse's property.
  - Create a joint fund of property (for children).
  - Begin a socially significant affinal relationship and their relatives.

The institution varies according to the change in the culture for example

The Hindu marriages are more often regarded as the mark of the union of “shiva” and “Shakti” and are the most solemn bond formed on the earth. Without marriage, the individuals are regarded as incomplete and are said not to align with the Dharma.

In Islam, like religion, marriage is the contract between the consenting parties, and the “Meher” is paid by the groom as the consideration of the wife. And many others.

### **TYPES OF MARRIAGES: IN THE SMRITIS**

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There are eight types of marriages mentioned in the smritis <sup>2</sup>

**1. BHRAMA** - A marriage of an adult-dowered girl to a man of the same class by the ceremony. According to the author, this is considered to be the best form of marriage where

<sup>1</sup> <https://www.iresearchnet.com/research-paper-examples/marriage-research-paper/>

<sup>2</sup> History of India by H.V sreenivasa Murthy part 1

the consent of both the parties is present and the father or the guardian does not receive or take any form of consideration. It could also show that history also regards it as the best form of marriage as the name of “Bhrama” is given to them, which is also the name of one of the trideva who created the universe.

**2. DAIVA** - marriage involving a gift of the daughter to the sacrificial priest as a part of his fee. According to the author, this marriage is more of a buying and selling of a girl, showing the inherently patriarchal nature of the society and how the practice of trade (barter system) was present at that time this also portrays the high price of the brahmins in that age that the people had nothing to match the cost of brahmana rather than their self.

**3. ARSA** - Where the bridegroom paid a token bride price of a cow and a bull. According to the author, the concept of barter is visible here. Also to view the positive notion the payment of one of the worshipped animal in the religion in exchange shows the high pedestal the wife had before the later Vedic period

**4. PRAJAPATYA** - Where there is no dowry and bride price. Here according to the author, this is the ideal kind of marriage which the society should practice. It depicts the flexible nature of marriage in the Hindu culture which has the future perspective of marriage also involved in it.

**5. ASURA** - this marriage is by purchase. This does not have approval from society. According to the author, this again shows women as a tradeable and shows that people have the authority to decide the fate of the girl, not the girl.

**6. GANDHARVA** - The marriage involves the voluntary union of a maiden and her lover. This does not have approval from society. This is more of the love marriage that happens in the current times. This also struggles today to get the approval of society

**7. RAKSHASA** - It is a marriage by the capture of the bride. This does not have approval from society. This does not have approval from society. It in a way depicted what is now termed as the rape where the consent of the wife is immaterial?

**8. PISACHA** - In this marriage the man seduces a girl who is sleeping, intoxicated, or mentally deranged. This does not have approval from society. This marriage is the very violation of human nature showing the wild desires of the man who may not even care about

anything except him himself.

## **THE NEW TOLL ON MARRIAGE INSTITUTION: LOVE JIHAD**

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Marriage as an institution is a solemn bond, which is now getting repeated hurt by the factors like extramarital relationships, marital rape, bigamy, one such being a recent popped up term Love jihad. Let us now look into the big picture of love Jihad.

### **WHAT IS LOVE JIHAD?**

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Etymological division of the word suggests the act of crime against love. Generally, the notion of forced conversion of Hindu girls by falsifying the religion by Muslim boys is known as Love Jihad.

The issue was revived after a 21-year-old student was shot dead outside her college in Haryana's Ballabgarh town. The girl's family alleged that the accused had been pressuring her to convert and marry him.

Recently the state governments of the Madhya Pradesh cabinet passed a bill and Haryana started to muse over the concept, while Uttar Pradesh governments have passed an ordinance. All these contemporary involvement

Besides, two other BJP states — Haryana and Karnataka — are also mulling laws designed to prevent “forcible conversions” through marriage. Odisha was the first state that enacted an anti-conversion law — the Orissa Freedom of Religion Act 1967, passed in 1968. Gujarat passed its version of the law in 2003, prohibiting conversions from one religion to another by the use of “force, allurement, or fraudulent means”. In 2006, Rajasthan passed a similar Bill but the Governor did not give assent to it because of complaints from minority communities. In the same year, the Jayalalitha-led government in Tamil Nadu repealed the anti-conversion legislation passed in 2002 due to protests by Christian minorities.

### **THE COINING OF THE TERM**

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The love jihad as a term was not heard. The terms like the Romeo jihad were present. Then it changed to love jihad. According to some media reports in the year 2009, the word was first used. Retd. Justice K.T. Shankaran acknowledged the fact that in Kerala and Mangalore some clues were there of the proselytization, then he recommended the Kerala government to

stop such activities. Court also said that in the call of love, betrayal and forced conversion shouldn't be allowed. All this led to the coining of the term love jihad.<sup>3</sup>

### **THE ORDINANCE BY UTTAR PRADESH GOVERNMENT<sup>4</sup>**

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The Uttar Pradesh Prohibition of Unlawful Religious Conversion Law, 2020 is a law enacted by the Government of Uttar Pradesh, India. The Ordinance was cleared by the Uttar Pradesh State Cabinet on 24 November 2020 and received UP's Governor Assent on 28 November 2020 thereby becoming law.

The aim is to provide for the prohibition of unlawful conversion from one religion to another by misinterpretation, force, undue influence, coercion, allurement, or by any fraudulent means or by marriage. Uttar Pradesh Vidhi Virudh Dharma Samparivartan Pratishedh Adhyadesh, 2020. The aim is to provide for the prohibition of unlawful conversion from one religion to another by Misinterpretation, force, undue influence, coercion, allurement, or by any fraudulent means or by marriage.

Whosoever contravenes this law will face at least one-year imprisonment which may be extended to five years. Marriage for the sole purpose of unlawful conversion or vice-versa will be declared void. The offence committed is Cognizable and non-bailable. Any person who wishes to convert to another religion shall declare (in the form prescribed in Schedule-I at least sixty days in advance) that the conversion is with his/her free consent and without any force, coercion, undue influence, or allurement.

The burden of proof as to whether a religious conversion was effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the person who has caused the conversion and, where such conversion has been facilitated by any person, on such other person.

### **THE POSSIBLE WAYS OF ABUSE OF THE LAW BY U.P. GOVERNMENT**

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Some Points which could act as the abusers' playfield are mentioned as follows:-

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<sup>3</sup><https://economictimes.indiatimes.com/news/politics-and-nation/kerala-hc-asks-govt-to-frame-laws-to-stop-love-jihad/articleshow/5320856.cms>

<sup>4</sup><https://www.jagranjosh.com/general-knowledge/the-uttar-pradesh-prohibition-of-unlawful-religious-conversion-law-2020-1607087652-1onversion-law-2020-1607087652-1>

1. No law in the country even defines what is love jihad, it creates a gap on the part of the legislation as to what constitutes as love jihad, and also if in every case the era in which the law is operating defines what is love jihad it may cost the judiciary to give the judgments as the interpretation of love jihad in that time frame may be used, and hence the rule of precedents may become ineffective. Also, the ordinance finds no mention of the term love jihad, why is it not your stated goal to eradicate the love jihad mentioned in the ordinance?
2. Using the ordinance making power is given to the government in Article 213, which was given for an emergency situation and the legislative assembly is not in session so to deal with that emergency an ordinance could be made. Why was there any such emergency? The answer lies in the comment of the MoS Home G. Kishan Reddy in the house “No such cases were reported by the government yet” which shows that no such emergency prevailed when the ordinance was issued.<sup>5</sup>
3. A missing element of reconversion is again a loophole of the ordinance. Which could be used by the abusers to direct the decision of the court.
4. A privacy violation may be found when the issuance of the sixty days for the conversion may act as a deterrent for the person who willfully converts to another religion to bear the brunt of the family and society on such a step. This argument also lists its backing by the recent judgement of Allahabad High court.<sup>6</sup>
5. A wide definition of allurement and coercion again contradicts the narrowest possible definition as the base of the criminal justice system, why is the ordinance deviating from it. Also, this may place the will of the individual on a lower pedestal to the family’s will, if it is against the marriage, to prove that the case is of allurement or coercion?

## THE LAW NOT JUST

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The women in the Indian custom follow the way of the choice of husband to the women in the “swayamvara” to choose her husband, these principles are getting blatantly violated. Why so? Are they trying to prevent the pollution of race, the nazi concept? But are they forgetting

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<sup>5</sup><https://www.newindianexpress.com/nation/2020/feb/05/love-jihad-not-defined-under-existing-laws-no-cas e-reported-yet-government-in-parliament-2099277.html#:~:text=No%20such%20case%20of%20E2%80%98love%20jihad%20E2%80%99%20has%20been,religion%20subject%20to%20public%20order%2C%20morality%20and%20health.>

<sup>6</sup><https://indianexpress.com/article/opinion/editorials/special-marriage-act-interfatith-couples-anti-conversion-law-7146632/>

the decision of the Supreme Court<sup>7</sup>, which said that inter-faith marriages are a boon to the society where the caste system is a bane? Interfaith marriages are very rare, and the goal of the government should be to promote them so that a unity society could be imagined in the future.

Some of the couples also find themselves secure when they both voluntarily convert into one religion, to prevent retaliation from the people which may result in the killing of one/ both spouses in the name of honor. So this law again tries to reinforce the mindset of pure - impure blood.

### **WHAT COULD BE LOVE JIHAD (TODAY), AND IT'S SOLUTION?**

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The love Jihad, as understood in the present context, frames that:

- A. a marriage by the way of misrepresentation of the religion by the man and hence marrying the girl, or
- B. Proselytization of the girl to Islam and then marriage.

But if we observe closely the issue A and B tend to portray the weak and amenable nature of the girl that she may fail to recognize what is happening to her and raise her voice. But the things have started to change, and the following could be the ways to catalyst

The proposed solutions are possible if a sustained effort is adopted -

1. The awareness among the people so that the moral fabric of the society could embrace the thought of inter-faith marriage. This could be catalyzed by the way of positive legislation and its proper implementation.
2. The initiative by the NALSA, SALSA, and other such authorities could serve as the institutions for information dissociation on the ground level about the fundamental rights of the individual.

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<sup>7</sup> <http://archive.indianexpress.com/news/intercaste-marriages-in-national-interest-sc/778458/>