Marriage is an important social institution. It admits man and woman to family life. It is a stable relationship in which a man and a woman are socially permitted to have children. People do not marry because it is their social duty to perpetuate the institution of family or because the scriptures recommend matrimony. It is because of the feeling that being in a family is the only proper way to live in society. Lowie defined marriage as a relatively permanent bond between permissible mates. According to Lundberg, marriage consists of the rules and regulations which define the rights, duties and privileges of husband and wife with respect to each other. According to Horton and Hunt, marriage is the approved social pattern whereby two or more persons establish a family. The institution of marriage has a wide impact on the social organisation of a country.

According to the Hindu view, marriage or vivaha is in essence an obligatory ritual which an individual has to perform to be able to start his life as a householder or grhastha. The Vedas prescribe that dharma must be

practised by a man together with his wife. The ritual of marriage enables a man to have a son and without a son a Hindu cannot hope to get salvation or *mokṣa* which is the ultimate aim of his life. It is therefore, regarded as a sacrament or *sāṃskāra* which purifies the body. Manu declares that marriage is a social institution for the regulation of proper relation between the two sexes. He also says that he is only a perfect man who consists of his wife, himself and his offsprings.

According to *Ṛgveda*, the marriage has two objectives, namely, to enable an individual to perform sacrifices for gods and to have children. The *Aitareya Brāhmaṇa* states that the wife is called a *jāyī* because in her the husband is born in the form of a son. Āpastamba and Jaimini are of the same view that performance of rituals and having sons are the two chief aims of marriage. Manu adds another aim that is the satisfaction of the sex instinct.

**FORMS OF MARRIAGE**

In ancient Hindu law, there were different kinds of marriage. From the times of the *Grhyaśūtras*, *Dharmasūtras* and *Smṛtis* the forms of marriage are said to be eight. The early *Grhyaśūtras* mention only one form of marriage.

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2. "*tasnāt sādhāraṇo dharmaḥ śrutau patnyā sahoditaḥ.*" *Manusmṛti*, IX.96.
4. "*etavāvēya puruṣo yaḥ jāyī śālmā āyetaḥ prajet ha.*" *Manusmṛti*, IX.45.
But they have not given any name to it. *Mānavagṛhyaśūtra* which is a later work mentions two forms, namely, *brāhma* and *saulkya*. The eight different kinds of marriage were described for the first time in the *Āsvalāyanagṛhyaśūtra*. But some scholars assume that this part is an interpolation.

The eight forms of marriage are mentioned by Manu in this manner—

*brāhma*, *daiva*, *ārsa*, *prajāpatya*, *āsura*, *gāndharva*, *rākṣasa* and *paisāca*.

*Āsvalāyanagṛhyaśūtra* arranges the first four differently as *brāhma*, *daiva*, *prajāpatya* and *ārsa*. It also places *paisāca* before *rākṣasa*. Viṣṇu arranges the first four as done by Manu. *Āpastambadharmasūtra* speaks of only six omitting *prajāpatya* and *paisāca* while *Vāsīśṭhadharmaśūtra* expressly says that there are only six forms of marriage namely, *brāhma*, *daiva*, *ārsa*, *gāndharva*, *kṣātra* and *mānuṣa*.

There is a general agreement on the special characteristics of each form and it is sufficient to point out these as given by Manu.

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7. ‘*samjuśāṁ dharmenopayacchet brāhmeṇa saulkeṇa vā.*’

*Mānavagṛhyaśūtra*, 1.7.11


9. ‘*brāhma daivastathaiśvārṣāḥ prajāpatyastathaḥ*’ *surāḥ*:

*Vāsīśṭhadharmaśūtra*, 1.28-29

10. Supra, Note 5, p.516

11. ‘*sadvivahāḥ. brāhma daiva ārṣa gāndharvāḥ kṣātra mānuṣaśceti.*’

*Vāsīśṭhadharmaśūtra*, 1.28-29
Brahma - The brahma is the form of marriage in which the bridegroom, who is of good conduct and well versed in Vedas, is invited by the bride's father. The daughter decked with ornament is given as a gift to the groom by her father.\textsuperscript{12} Vasîsla and Áśvalâyana mention that the gift is made by pouring out a libation of water.\textsuperscript{13} Baudhâyana mentions that in brahma form the bridegroom asks for the hand of the bride.\textsuperscript{14}

The brahma form is one of the approved forms of marriage. The bride plays no part in choosing of her husband which depends entirely on her father or guardian.\textsuperscript{15}

Daiva- In the daiva form of marriage the father gives away his daughter after decking her with ornaments to a priest who duly officiates at a sacrifice during the course of its performance.\textsuperscript{16} Govinda's commentary on Baudhâyanadharmaśûtra says that the recipient has to accept the gift and the

\begin{verbatim}
12. 'acchādyā cārcayitvā ca śrutisīlavate svayam.
   'āhūya dānam kanyāyā brāhma dharmaḥ prakīrtitaḥ.' Manusmṛti, III.27
13. 'īcchata udakapūrvavā yāṁ dadyātasa Brāhmaḥ.'
   Vāsiṣṭhādharmaśûtra, I.30, and also
   Áśvalâyanagṛhyasūtra, I.6.1.
14. 'śrutisīle viṁśaya brāmacāriṇe 'rthine kanyā diyate sa brāhmaḥ.'
   Baudhâyaṇadharmaśûtra, I.11.2.
15. Supra, Note 8, p.89.
16. 'yajñe tu vitate samyagrtyije karma kurvate.
   alāṃkriya sutādānam daivaṁ dharmaṁ praçakṣate.'
   Manusmṛti, III.28.
\end{verbatim}
regular marriage ceremony is performed later. This form is called divine because the bridegroom himself acts as a priest in a sacrifice with some special objectives such as begetting a son.

In the *daiva* form the bride has no choice of her husband. It is made by the father or guardian. The participation of the priest is probably not necessary because the priest is himself the bridegroom in this form of marriage.

*Ārṣa* - In this form of marriage there is a gift of one's daughter after taking one pair or two pairs of cattle as a matter of fulfilling the law. Manu states that the receipt of a pair of cattle does not constitute the sale of the bride as the father gives these to his daughter.

*Prajāpatya* - The *prajāpatya* form of marriage implies the gift of the bride to the bridegroom with the injunction that they should never cease to perform *dharma* together. The aim of this form of marriage is that they

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17. Govinda's commentary on *Baudhayana adharmasūtra*, 1.20.5.
19. Supra, Note 15, p.90.
20. 'ekāṁ gomithunāṁ dve vā varadādāya dharmataḥ.
   kanyāpradānāṁ vidhivadārśo dharmah sa ucyate:' *Manusmṛti*, III.29.
22. 'sahobhau caratāṁ dharmamitī vaca 'nubhāya ca.
   kanyāpradānamabharcya praṇjāpatyo vidhih smṛtāḥ:' *Manusmṛti*, III.30.
might not separate throughout their lives and both jointly discharge their
duties as householders.23

According to the Mitaksara of Haradatta, the commentary on
Gautamadharmaśūtra, though like in the brāhma form, to perform dharma
together is the peculiarity of this form, the commentator adds that he should
not take another wife. This is the difference between brāhma and prajāpatya
forms.24

Brāhma and prajāpatya are synonymous words and it is quite possible
that the brāhma marriage was originally identical with the prajāpatya one.
This conclusion is supported by the fact that two of the early writers, Vasiṣṭha
and Āpastamba do not mention Prajāpatya marriage at all.

Āśura- In the āśura form of marriage 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.25

In this form the bridegroom paid some money and got the bride in
exchange for that money. It may be regarded as the sale of the girl.26

23. Supra, Note 18, p.213.
24. ‘yadyapi brāhmādisvapi saha dharmacaryā bhavati …nāpi
stryantaramupayantavyamiti…. esa brāhmādeḥ prajāpatyasya
viṣeṣah. ’Mitaksara on Gautamādharmaśūtra, I.4.5.
25. ‘jñātibhyo draviṇāṁ datvā kanyāyai caiva saktitāh, kanyāpradānaṁ svācchandyādāsuro dharma ucyate.’ Manusmṛti, III.31
26. Supra, Note 23.
**Gandharva**- The union of a girl and the bridegroom by their mutual consent is known as *gandharva*. It springs from the passion of love and has intercourse as its purpose.  

**Rakṣasa**- *Rakṣasa* is the form of marriage in which the girl is forcibly carried away against her will from her father’s house. The striking element of this form is the forcible abduction.  

Vasiṣṭha calls *rakṣasa* form of marriage as *ksātra*. It suggests that this form may be common among *ksatriyas* who must have found it suitable on certain occasion.  

If the lawgivers would not have recognised this form of marriage the children of such marriage and their mother could not get social security.

**Paisāca**- In this form the bridegroom stealthily outrages the modesty of a girl who is sleeping, is drunk or is mad.

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27. "*icchyayā nyonyasaṃyogah kanyāyāśca varasya ca.*  
   *gāndharvah sa tu vijnīyeyo maithunyāḥ kāmasambhāvahāḥ.*'  
   Manusmṛti, III.32

28. "*hatvā chitvā ca bhītvā ca kroṣantīṁ rudatīṁ grḥat.*  
   prasahya kanyāharanaṁ *rakṣaso* vidhirucyate.' Manusmṛti, III.33

29. Vasiṣṭhadharmasūtra, I.35

30. Supra, Note 18, p.214

31. "*suptāṁ mattāṁ pramattāṁ vā raho yatropagacchati.*  
   *sa pāplṛtho vivāhanāṁ paisācaścāṣṭamo dhamah.*' Manusmṛti, III.34.
The difference between rākṣasa vivāha and paisāca vivāha is not very great. In the former the girl is taken away by force while in the latter she is taken by deception and fraud. This is always considered to be the worst type of marriage. Āpastamba and Vasistha do not mention this form at all.

These eight forms of marriage were classified into two groups. They were approved i.e., dharma and unapproved i.e., adharma. According to the lawgivers the first four forms were the approved forms. The forms of marriage in which the bride and the bridegroom married each other with the consent of their parents without any consideration of wealth or property were considered good i.e., dharma. Those in which marriages took place for money or by force against the wishes of the parents of the bride and the bridegroom were called adharma. This classification affected the law of inheritance. For example, according to Yājñavalkya the strādhana of a woman who was married by an approved form of marriage went to her husband if she had no child. In case she was married by an adharma form of marriage the strādhana went to the family of her father.

32. 'catvāro dharmyaḥ prathamāḥ.' Gautamadharmaśūtra, I.4.12
   'esaṁ tu dharmyaḥcatvāro brāhmādyāḥ samudāhṛtāḥ.'
   Nāradasṛti, IV.12.44, and also
   Baudhāyanadharmaśūtra, I.11.20-11

33. Supra, Note 18, p.215
34. Yājñavalkyasmṛti, II.145
dharmya form of marriage are virtuous, praiseworthy and learned. Again he declares that those children born of adharmya forms of marriage are cruel, liar and not likely to observe the rules of dharma.  

The recognition of the lower forms of marriage might be due to prevalence of rape, seduction and liaison in some sections of society. By giving them recognition the position of a woman and her children was to some extent safeguarded. By the eight different forms of marriage it was meant that those were actually not eight kinds of vivāhas but rather eight ways in which wives might be secured.

Among the eight forms of marriage prevailed in ancient India, only three were valid before 1955. These forms were brāhma, gāndharva and āsura. The Hindu marriage Act, 1955 does not specially provide for any form of marriage. The Act calls marriage solemnised under the Act as Hindu marriage, which may be performed in accordance with the shastric rites and ceremonies or in accordance with the customary ceremonies prevalent in the community.

CEREMONIES

Hindu marriage is a ritual ridden marriage. The marriage under the Hindu law consists of two parts—betrothal or vāgdana and the nuptial rite or

35. Manusmṛti, III. 39,41.
36. Supra, Note 8, p.96.
37. Medhatithi on Manusmṛti, III.34, VIII.366.
ceremony. The former is only a contract. According to Manu, if a girl is promised in marriage to one man, the good men do not give her in marriage to another man.38(i) According to Nārada man who withdraws from his contract without proper cause may be compelled to marry the girl against his will.38(ii)

The nuptial rite or ceremony is that without it a marriage cannot be completed and no status of husband and wife is created. When a marriage is proved, the law presumes that the necessary ceremonies have been performed.

The Grhyasūtras describe the ceremonies usually or commonly observed by Hindus in a marriage. There are three parts in sāmskāra of marriage. There are certain rites which are preliminary, there are then a few rites which are of the essence of the sāmskāra and there are certain rites which are subsequent to the central rite. The essential rites are mentioned by all the sutrakāras, but as to the preceding and subsequent rites, the sequence, in which they take place, differs.

Preliminary marriage ceremony- Under Preliminary marriage ceremony these are included namely- selection of the bride, selecting the auspicious day, negotiation or sending of the wooers to the girl’s house, sacrifice made by the bridegroom, the ritual bath, clothing and anointing the bride, dance of girls,

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38(ii). 'pratigrhya tu yah kanyāmaduṣṭāmutsṛjennarah
sa vineyastvakāmo pi kanyām tāmevacodvahet:'

*Nāradasmṛti*, IV.12.35
arghya reception etc.\textsuperscript{39}

Main marriage ceremonies—the main marriage ceremonies include kanyādāna, vivāhaḥoma, pāṃigranaḥ and saptapadi.\textsuperscript{40}

Kanyādāna— The actual marriage starts from the ceremony of kanyādāna. This ceremony is described in the Mānavagṛhyasūtra. The groom is led into the place where the sampradāna is performed. Either her father or the brother is competent to give the bride away.\textsuperscript{41}

Kanyādāna which is considered to be one of the essential ceremonies of the later period is not mentioned by most of the Gṛhyasūtras. The Vedic references, those in the Gṛhyasūtras show that it was believed that the bridegroom received the bride as a gift from the gods and not from the father. The right of sampradāna evidently became an essential ceremony only in the later period. Its introduction can be connected with the development of different forms of marriage in Hindu society and with the deterioration of the

\begin{equation}
\text{Mānavagṛhyasūtra, I.8.6-8}
\end{equation}

\textsuperscript{39} Supra, Note 8, pp.34-47

\textsuperscript{40} Ibid., p.48

\textsuperscript{41} ‘maṅgalānyuktā dadāmi pratīgrhṇamīti trirbrahmadevā pīṭā bhrātā vā dadyāt...sahiranyānanjanālavatā dhanāya tvetidātā putrebhyaṣveti pṛtiṃgrhīti tasmai pṛtyāvapati. caturvyātiḥṛtya dadāti.’

\textit{Mānavagṛhyasūtra, 1.8.6-8}
position of women who were considered as a kind of property.  

**Vivāha homa** – The putting of wood in the fire is performed with appropriate ceremonies and *ajyabhaga* oblations are offered to the fire. Then the bridegroom leads his bride round the fire. After the circumambulation of the fire the bride and bridegroom sit down to the West of the fire on a mat. The bridegroom takes hold of the hands of the bride while he offers the oblations, with specific verses.

**Pānigrahaṇa** – Pānigrahaṇa is one of the essential ceremonies constituting the marriage. In this ceremony the bridegroom can take hold of the fingers of the bride’s right hand only without the thumb, if he wishes for sons only. If he wishes to procreate children of both sexes he should take hold of her hand and the little hair on the back.

**Saptapadi** – Saptapadi or taking the seven steps together is another essential ceremony. It occurs in different sequences according to different *Grhyasūtras*. In the *Sāṅkhāyana-grhyasūtra* it is found that after the sacrifice with fried grain, the *acārya* makes the couple take seven steps forward in a North-eastern direction.  

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42. Supra, Note 8, p.49  
43. Ibid., pp. 49-50  
44. Ibid., p.53  
45. 'pragudicyāṁ diśi sapta padāṇi prakramayıti.'  

*Sāṅkhāyana-grhyasūtra*, 1.14.5
after the pāṇigrahaṇa but before the sacrifices to the fire, the stepping on the stone and the lājahoma. After the pāṇigrahaṇa the groom makes his bride take seven steps with specific verses.\(^{46}\)

**Ceremonies performed after the main rites** - After the main marriage ceremony these rites are performed – the weeping of the bride, carrying to the husband’s house, looking at the polestar, crossing the threshold, etc.\(^{47}\)

Among the above ceremonies, the main marriage ceremonies are such that they are essential to declare two persons as husband and wife. Among these main ceremonies also that which is the most essential is the saptapadi. With the completion of the seventh step the marriage becomes complete and irrevocable.\(^{48}\)

Section 7(i) of the Hindu Marriage Act, 1955 states that a Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto. Section 7(ii) states that where such rites and ceremonies

\(^{46}\) Supra, Note 8, p.56

\(^{47}\) Ibid., p.59

\(^{48}\) Supra, Note 38(i), p.87
include the *saptapadi*, the marriage becomes complete and binding when the seventh step is taken.

Thus, a Hindu marriage under the Act must be solemnised in accordance with the customary rites and ceremonies of at least one of the two parties. The word ‘solemnise’ means to celebrate the marriage with proper ceremonies and in due form. Unless the marriage is celebrated or performed with proper ceremonies and in due form it cannot be said to be solemnised.

The Act does not prescribe the ceremonies requisite for solemnisation of the marriage. It leaves it to the parties to choose a form of ceremonial marriage which is in accordance with any custom or usage applicable to either party. Where the form adopted includes the *saptapadi* before the sacred fire, the marriage becomes complete.

The rule relating to the essential ceremonies of a Hindu marriage proceeds on the principle that marriage being one of the *samiskaras* for a Hindu male and a female whether being born in twice born castes or a *śūdra*, must be performed with the necessary ceremonies. It also recognises the position that the customary rites and ceremonies vary in different parts of the country and also among different castes and communities.49

The essential rites which may be said as requirement common in all

ceremonial marriages are—invocation before the sacred fire and saptapadi.  

Nowadays, any two persons who are Hindus are competent to solemnise a ceremonial marriage under the Act and all that is insisted upon for the purpose of solemnisation of the marriage is that it must be in accordance with the customary rites and ceremonies of either party to the marriage.  

Though the sastras prescribe different ceremonies for solemnisation of marriage, all those ceremonies are not equally important. If no customary ceremony can be established by the parties then the marriage is to be solemnised under sastric rites and ceremonies which must include saptapadi.  

So, the ceremonies play an important role in ancient Hindu marriage as well as in modern marriage. If proper ceremonies are not performed a Hindu marriage becomes void.

CONDITIONS OF A VALID MARRIAGE

According to the Hindu view, marriage is an obligatory ritual. It is to be performed by an individual to start his life as a householder.  

To make the marriage a valid one, certain conditions must have to be fulfilled by both the bride and the bridegroom. In ancient days as well as in modern times some

50.Ibid  
51. Supra, Note18, p.200
conditions are laid down by the lawgivers which are to be fulfilled at the time of marriage.

In the Śmṛtis, there are certain conditions which are quite insignificant for today's circumstances. Such conditions are completely avoided by the Act of 1955. Some of such conditions as stated by different Śmṛti writers are presented here. Manu has declared ten different kinds of families to be avoided for marriage. Amongst them those which neglect the sacred rites, in which no male children are born, in which Veda is not studied, the members of which have thick hair on their bodies are worth mentioning. Both Manu and Yājñavalkya require that the girl should be possessed of auspicious characteristics. Yājñavalkya is also of the view that the bridegroom must be young, intelligent, a favourite among people and apart from these his virility must be tested. A girl having tawny hair, who is hairless and who is very hairy must not be chosen as a bride. The bride should not be bodily defective as to having an excessive limb or a deficient limb. One who is talkative and having yellowish eyes are also to be avoided. But one can marry a girl whose

52. 'strīsamvandhe daśaitiṇī kulāni parivarjayet:'
    'hīnakriyāṃ niśpuruṣatī niśchando romaśārāśasam. Manusmrī,III.6,7
53. Manusmrī, III.4, Yājñavalkyasmrī, 1.52.
54. 'yatnāt pariśītāh pūṁstve yuvā dhīmān janapriyaḥ: '
    Yājñavalkyasmrī, 1.55
gait is like a swan or an elephant, on whose head or body hair is of slight growth, whose teeth are small and whose body is delicate. These are the opinions of Manu⁵⁵ and Viṣṇu.⁵⁶ Nārada mentions some characteristics of the virile men and enumerates 14 varieties of impotent persons. A girl devoid of limbs, already connected with another man, who is a wicked one, is regarded by Nārada as unsuitable for marriage. ⁵⁷ Gautama⁵⁸ Vasiṣṭha⁵⁹ and also Yājñavalkya⁶⁰ remark that the girl must be younger than the bridegroom. According to Vātsāyana, the bride’s age should be three years less than that of "

55. ‘nodvahetkapilāṁ kanyāṁ nādhikāṁgīṁ na roginīṁ
nalomikāṁ nātilomāṁ na vaśaṭāṁ na pingalāṁ:
avyāṁgāṁgīṁ...........hamśavāraṇaṇāgāminīṁ.
tanulomakesādāsānāṁ mṛḍvaṅgimudvahetstrīyāṁ: Manusmṛti, III.8, 10
56. Jha, Ganganath, Manusmṛti, Notes, Part III, Comparative, University of Calcutta, 1929, p.166
57. Nāradasmṛti, IV.12. 11-13, 36
58. Gautamadharmaśūtra, I.4.1
59. Vasiṣṭhadharmaśūtra, VIII.1
60. ‘aviplutabrahmacaryo lakṣanāyāṁ striyamudvahet. Yājñavalkyaṃsmṛti, I.52
bridegroom. Katyayana is of the view that one guilty of grave sins, devoid of eyesight or hearing is not fit to be chosen both as bridegroom or a bride.

Apart from these, there is another rule in the Smṛtis which is not counted by the modern lawmakers as a condition of valid marriage. According to the Smṛtis the parties to the marriage should not be of the same gotra and pravara. Gotra is well known as family succession or lineage or vaimśa paramparā or line of descent. The originators of gotras are chiefly eight ṛṣis. They are Visvāmitra, Jamadagni, Bharadvāja, Gautama, Atri, Vasishtha, Kāsyapa and Agastya. Their offsprings are considered to be of their gotra. The pravaras are groups of ṛsis differentiating from the ṛsis who are the founders of gotras. According to Baudhāyana, there are millions of gotras. In the Baudhāyanapravarādhāya there are over five hundred names of gotras.

61. '.....trivarsātprabhṛti nyunavayasaṃ.....' Kāmasūtra, III.1.2
63. Ganapati lyer P.R., Hindu Law, A Treatise, p.439
64. Mayne, John D., Hindu Law and Usage, Bharat Law house, New Delhi, 1991, p.134
and pravara sages. The Pravaramañjarī quotes a verse that there are three crores of gotras. The innumerable gotras are placed under groups and distribute them among 49 pravaras. The system of gotra is difficult to comprehend. The rule as to gotra and pravara does not apply to all castes but only to the first three castes.

The ancient lawgivers laid down that the identity of gotra and pravara between the parties to a marriage renders it invalid. Baudhāyana laid down that if a man unwillingly married a woman of the same gotra, he should maintain her like a mother. According to Manu, a man may marry a girl who is not of the same gotra as her father. Gautama declares that marriage should be performed with persons not belonging to the same pravara.

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65. Supra, Note 5, p.489
66(ii). Supra, Note 63.
66.(iii). ‘sagotraṁ cedamatyopacchenmaṭvdvdenāṁ bibhyāt.’ Baudhāyanadharmaśūra, I.14.38
67. ‘...āsagotrā ca yā pituh.’ Manusmṛti, III.5
68. Gautamadharmaśūra, 1.4.2
Vasiṣṭha states in this regard, that a person should marry a girl who has no
common rṣi. Viśnu opines that a person should obtain a wife who is not of
the same gotra as himself nor with the same pravara rṣis. According to
Yājñavalkya the girl who does not belong to the same gotra or the same rṣi is
fit for marriage. The Mitāksarā states that a girl who is a sapinda, sagotra
and samānapravara does not acquire the status of a wife on marriage.

The above-mentioned conditions are quite insignificant in modern era.
These are superfluous for the present society. Therefore, Hindu Marriage Act,
1955 has not included these as the conditions of a valid Hindu marriage and
the violation of any of these rules nowadays cannot affect the validity of
marriage.

The conditions which are provided in the modern Hindu Marriage
Act, 1955 were also required in the days of Smṛtis. However, to cope up the
ancient conditions with the modern circumstances some changes and
modifications have been made. These are discussed below.

Number of spouse

In accordance with the number of spouse a marriage may be of three
types; namely, monogamy, polygamy and polyandry. A peep into the ancient

69. Vasiṣṭhadharmasūtra, VIII.1.2
70. Supra, Note 56, p.162
71. Yājñavalkyasmrī, 1.53
72. Mitāksarā on Yājñavalkyasmrī, 1.52, 53.
days may give the idea whether the society maintained monogamy or polygamy.

It is found that in regard to polygamy the Vedic age was less degraded. In the ancient Rgvedic society monogamy was the general rule. A number of passages found in the Rgveda which use the word jāyā or wife in singular number, indicate that monogamy was a general practice. It is clear from the passage which states—surely men want and gain their wish when the wife clings to her husband.\(^73\)

In the entire hymn of the 10th mandala of the Rgveda there is a discourse on monogamous marriage between Soma and Sūryā, the daughter of Sun-God. The very word dampatī and jāyāpatī occurring in the Vedic Literature prove that the fundamental conception of marriage was monogamous and not polygamous.

However, numerous indications of polygamy also are available in the Rgveda.\(^74\) But all of them generally carry a sense of disapproval. In one passage it is stated that a double wedded man is like a car-horse between two poles, and is pressed closely on both sides.\(^75\) Thus, a man with two wives was supposed to be in a state of endless embarrassment. The plurality of wives was

\(^{73}\) 'arthamīdvā u arthina ā jāyā yuvate patim.' Rgveda, 1.105.2

\(^{74}\) 'patim na patniruṣatiruṣantāṁ sprānti tvā śavaśāvanmanṁśa:'

Rgveda, 1.62.11

\(^{75}\) Indra, Prof., The Status of women in ancient India, Motilal Banarasidass, Banaras, 1955, p.55
never considered as contributing to the happiness of domestic life. An entire hymn is devoted to the loathsome fulminations of a jealous wife, who is enraged with a more favoured rival of hers.  

Thus, polygamy existed in Vedic age with condemnation. However, the practice went on spreading and it became a very common feature of the social system in the later ages.

In the time of the Sūtras, some sages wanted to hold up a high ideal. The Āpastambadharmasūtra declares that when a man has a wife who is endowed with dharmā and progeny, he shall not marry another wife. But if any one of the two i.e. dharmā and progeny is wanting in the case of the wife he may marry another before he has consecrated the sacred ṣrauta fires.

In the ages of Dharmāstras the practice of polygamy was planted very firmly. The position of women had been degraded in these days. The writers of the Smrīs did not treat the person of woman with the same sanctity as they bestowed it on the other sex. She was not regarded as an equal partner.

76. Ibid., p.56
77. Supra, Note 74, p.5
78. Supra, Note 5, p.551
The practice of polygamy was treated as a privilege reserved for the twice born classes. According to Manu a brāhmaṇa was allowed to have as many as four wives. One of them belonged to his own caste and the rest to the remaining three castes. Likewise a kṣatriya could have three wives one being from his own caste and the rest from, two lower castes. Similarly, a vaiśya was entitled to two wives, one belonging to the vaiśya caste and the other to the śūdra caste. A śūdra was allowed one wife only and therefore was to lead a perfectly monogamous life. Yājñavalkya also legalises the practice. He lays down that the first and chief wife should be of the husband’s own rank. But also states as Manu that she may be supplemented by other wives from the lower castes in due succession, so that the śūdra can have only one consort. Vāsiṣṭha declares that in the order of the castes, there are three wives for the brāhmaṇa, two for the kṣatriya, one each for the vaiśya and śūdra. Devala, quoted in the Grhaśtarātānakara, says that the śūdra may have only one wife, a vaiśya two, a kṣatriya three and a brāhmaṇa four, but a king may have as many as he desires. Thus, polygamy appears to have been

80. śūdraiva bhāryā śūdrasya sā ca svā ca viśāḥ smṛte.
   te ca svā caiva rajñāscā tāścā svā cāgraṇjanmanah: ‘Manusmṛti, III.13
81. ‘tisro varṇāmupūrvena dve tathāikā yathākramam.
   brāhmaṇakṣatriyaviśāṁ bhāryāś ca śūdrajanmanah:’
   Yājñavalkyasmṛti, I.57
82. Vāsiṣṭhadharmasūtra, 1.24, 25
83. Supra, Note5, p.552
quite in vogue not only amongst the aristocratic classes but also even amid the common people. But according to the *smrtikāras* a person could not have wives as many as he wished. They laid restriction on it. The *brāhmaṇas* got more opportunity in this regard than the other three classes. But the system of polygamy was not allowed to follow in the case of śūdras. The *Ādiparvan* of *Mahābhārata* remarks that to have many wives is no *adharma* on the part of men.\(^8^4\)

In ancient India the system of polyandry was quite rare and almost unheard of. The custom by which a woman is taken as common wife of a number of men is termed as polyandry. No Vedic passage can be cited that clearly refers to the practice of polyandry. The passages cited in the *Aitareya Brāhmaṇa*\(^8^5\) and *Taūtirīya Saṃhitā*\(^8^6\) that a woman cannot have several husbands at the same time make it clear.

The *Smytis* do not allow a woman to have more than one husband. According to Manu a girl could marry only for one time.\(^8^7\) So, it can be easily said that a girl could have only one husband and in those days there was no


\(^{8^5}\) Supra, Note 5, p. 554

\(^{8^6}\) *Taūtirīya Saṃhitā*, VI.6.4.3

\(^{8^7}\) ‘.......Sakṛt kanyā pradīyate’, *Manusmṛti*, IX.47
trace of polyandry.

The conditions of a valid marriage that are laid down by the modern Hindu lawgivers are placed in Sec.5 of the Hindu Marriage Act, 1955. It has totally abolished the system of polygamy as well as polyandry. Section 5 of the Hindu Marriage Act, 1955 introduces monogamy. It is essentially the voluntary union for life of one man with one woman. Section 5(i) states that neither party has a spouse living at the time of marriage. It means that polygamy and polyandry are completely prohibited under modern law on Hindu Marriage. In the days of Smrtis it is seen that polygamy was firmly planted though some restrictions as to the number of wives were there among different classes of people. The Smrti writers did not treat the woman equally with the male. But it can also be noticed that the mindset of the people till mid of 20th century remained same as that of the people of thousands of years ago.

Physical and mental capacity

It is the desire of all that the marriage to be performed must continue with happiness. Certain diseases, defects and deformities were taken as grounds of disqualification for marriage by the writers of the Smrtis. It is also laid down by the modern lawgivers that a bride or a bridegroom must have physical as well as mental capacity to marry.

Different defects and deformities like blindness, deafness, excess or devoid of some limbs were taken into account in the days of the Smrtis to disqualify one from getting married. Among the ten kinds of people which
Manu had declared to be avoided for marriage, there the mention of those who were suffering from some particular diseases were also present. According to him, one who was suffering from diseases called piles or epilepsy and white or black leprosy should be rejected.\textsuperscript{88}

Kātyāyana also mentions some defects and diseases which are to be avoided in case of both bridegroom and bride. According to him, one who is lunatic, leprous, impotent, devoid of eyesight or hearing, epileptic, he or she should be avoided.\textsuperscript{89} About the bride, Manu\textsuperscript{90} and Viṣṇu\textsuperscript{91} say that one should not marry a girl who is having an excessive limb, such as a sixth finger or a deficient limb. One should marry a girl having limb without any defect, whose head and body is of slight growth, teeth are small and the body is delicate. Nārada mentions about some defects of a girl who suffers from longstanding or disgusting diseases, devoid of a limb are to be avoided.\textsuperscript{92}

\textsuperscript{88} Manusmṛtī, III.7


\textsuperscript{90} Manusmṛtī, III.8-9

\textsuperscript{91} Supra, Note 56, p.166

\textsuperscript{92} Nāradasmṛtī, IV.12.36
However, it cannot be said that marriage with a disqualified lunatic was not performed. Because the ancient lawgivers have laid provision which declares the sons of disqualified persons to be entitled to share and the wives of such disqualified persons to be entitled to maintenance.93

Section 5(ii)94 states about mental and physical capacity to marry. Section 5(ii)(a) provides that at the time of the marriage neither party should be incapable of giving a valid consent to it in consequence of unsoundness of mind. Section 5(ii)(b) declares that a marriage cannot be solemnised if a party at the time of marriage is capable of giving consent to the marriage but has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children. Section 5(ii)(c) states that a marriage is not valid if a party at the time of marriage has been subject to recurrent attacks of insanity.

So, from the above, it is found that in the days of Smṛtis certain diseases, defects and deformities were regarded as grounds which disqualified a person for marriage. However, Smṛtiwriters mentioned some such physical and mental diseases and defects that can be easily ignored in today’s circumstances. It is for the advancement of the medical science and also of the

93. ‘yadyarthītā tu dāraiḥ syākātīvādināṁ kathāśeṣa.
tesāmupannatantūnāṁapathyām dāyamarhati.’
   Manusmṛti, IX.203

94. The Hindu Marriage Act, 1955
mindset of the people of the present day society. The Act of 1955 points out only those diseases and defects for which a person is not in a position to give consent. One who can give consent, but unfit for marriage for suffering from mental disorder should also be disqualified. Some recurrent attacks of insanity are also taken into account for disqualification.

So, those diseases and defects which can hamper the purpose of marriage and do not affect in any other way are taken into account by the modern legislators. Again, for the advancement of medical science, some diseases are no longer incurable in modern age which were causes of disqualification in the days of Smritis.

Age

The age of a bride and a bridegroom has been an important condition to be considered during marriage. But the opinions of the lawgivers in different times regarding the minimum age for boys and girls are different since the Vedic period. However, some early lawgivers suggest that the age of the bride should be less than that of the bridegroom.95

The marriage in the early Vedic India was performed when maidens were generally in mature age. It can be observed from the fact that women had

95. 'ग्रहस्तारः भार्यां विन्देता... यवीयासितं'. Gautamadharmaśūtra, I.4.1., 'यवीयासितं...... भार्यां विन्देता.' Vaśishthadharmaśūtra VIII.1., and also Mānavagṛhyaśūtra, I.7.8
the right of choice of their own husband. There is mention of such girls in the *Rgveda* who married very late and stayed for long in their parents' house. A girl must be fully developed physically and intellectually in her father's home before the marriage could even be thought of. Sūryā, the daughter of Sūrya was given away to Soma in marriage only when she became youthful and yearned for a husband.

Gautama in his *Dharmasūtra* is of the opinion that a girl should be given in marriage before she attains puberty. He goes even further and explicitly says that a girl ought to be married before she wears clothes. Parāśara, who is regarded as the authority of the Kali age, also supports the marriage of infant girls. The greatest lawgiver Manu is in favour of the marriage of girls at a very tender age. According to him a father who does not give his daughter for marriage is reprehensible. Gautama is also of the same view. Manu is again of the opinion that though a girl has not attained proper age she should be given by her father to a distinguished handsome suitor of

96. Supra, Note 75, p. 76
97. *Rgveda* I. 117.7 and X. 39.3
98. *Ibid.* X. 85.21
100. ‘prātinaṁ pṛāgytoḥ’,
   *prāgyāsasah pratipatteḥ...Gautamadharmasūtra*. II.9.21,23
101. Supra, Note 75, p.44.
102. ‘kāle dātā piū vācyo’ *Manusmṛti* IX. 4.
   ‘aprayacchandośī’ *Gautamadharmasūtra*, II.9.22
the same class. In commenting upon this text Kullūka says that proper age means the age of eight years. However, Medhatithi interprets it to mean the age before she is bodily fit for marriage. Yājñavalkya also insists that girls should be married before the age of puberty. Vyāsa, another lawgiver, also declares that he who does not give away a daughter in marriage before she attains puberty becomes degraded. Yama, another authority on social matters, also proceeds in the same strain. Visnu also lays stress on the marriage of a girl before she attains puberty.

Thus, the writers of *Smṛtis* advocated that the marriage of girls was to take place before puberty. But it is also found that no blame is attached to the girl married after puberty. Manu is of the opinion in this regard that a girl having reached the age of puberty should wait for three years. But at the end of that period she herself should choose a husband.

103. 'utkṛṣṭa-yābhirūpāya varāya sadṛśa ya ca. aprāptāmapi tām tasmai kanyāṁ dadyāddyathāvidhi.' *Manusmṛti* IX. 88
104. '......vivahayedastavarsām......,' Kullūka on *Manusmṛti* IX. 88
105. 'aprayacchan samāpnati bhrūnaḥatyāmṛtāvṛttau.' Yājñavalkyasmṛti, 1.64
106. Supra, Note 75, pp.50, 51
107. 'trīṇi varṣānyudikṣeta kumāryāritumati sati. urdhvāṁ tu kālādetaśmādvindeta sadṛśam pațim:' *Manusmṛti*, IX .90
Baudhāyanadharmaśūtra, Vasistha-dharmaśūtra, Yājñavalkya-smṛti, Nāradasmṛti state the same as Manu.  

There are a number of factors for which the lawgivers prescribed a lower age for the marriage of girls in India. The most important factor seems to be their desire to raise the moral standard of the society. It was for this reason that they laid down that girls should be virgin. The non-performance of upanayana ceremony in case of the girls seems to be another factor of lower age of a girl for marriage. The third factor which contributed to the tendency for lowering the age of marriage of girls was the belief in the society that a married girl had to face less risks in life than an unmarried girl.

Regarding the bridegroom there is no special rule as to the age before which a man was obliged to marry. A man was to marry after he finished his Vedic studies. But the period of Vedic study was fluctuating. According to Manu a student takes thirty six years or half of that or quarter of that or only until mastery to finish the study of the three Vedas. Gautama is of the

108. Baudhāyanadharmaśūtra, IV.1.14, Vasistha-dharmaśūtra, XVII.67-68

Yājñavalkya-smṛti 1.64, Nāradasmṛti ,IV.12.25-27


110. 'vedānadhīya vedo vā vedāṁ vā pi yathākramam 
aviplutabrahmacaryo gṛhausthāramamāvaset.' Manusmṛti, III. 2

‘aviplutabrahmacaryo lakṣanyāṁ striyamudvahet.’

Yājñavalkya-smṛti, III.52

111. ‘satrīnādābdikāṁ caryāṁ garau traivedikāṁ vratam.
tadārdhikāṁ pādikāṁ vā grahanāntikameva vā.’ Manusmṛti, III.1
opinion that one should keep up his studentship for twelve years over one Veda or for twelve years in each of the four Vedas or till they have been fully acquired.\footnote{112} Yājñavalkya declares that over each Veda studentship should continue for twelve years or five years or according to some for such time as may suffice for it being got up.\footnote{113} Baudhāyana states that the ancient studentship over the Veda lasts for 48 years or for 24 years or for 12 years over each Veda or for one year over each kāṇḍa or till it has been got up.\footnote{114} Thus, there is no definite duration to finish the Vedic studies. It could be 12, 24, 36 or 48 years or as much time as was necessary to master one Veda or a portion of Veda.

As upanayana took place in the eighth year\footnote{115} for a brahmāṇa and if twelve years was taken for study then a boy would ordinarily be twenty years old or more at the time of marriage. It is found in the text of Manu. Manu says that a man aged 30 years should marry a girl of 12 years of age and a man of

\footnotesize{\begin{itemize}
\item \textit{dvādaśa varśānyekavede brahmacaryam caret: pratidvādaśa vā sarvesu: grahanāntam vā:} \hspace{1em} Gautamadharmaśūtra, 1.2.51-53
\item \textit{prativedam brahmacarya dvādaśābdāni pañca vā:} \hspace{1em} Yājñavalkyasmṛti, 1.36
\item \textit{aṣṭacatvārimśadvarśāṇi paurāṇāṁ vedabrahmacaryam: caturvimsaṁ तिन dīvādaśa vā prativedam: saṁvatsarāvamāṁ vā pratikāṇḍam: grahanāntam vā: jīvitasāstrhāvratvāt:} \hspace{1em} Baudhāyamadharmaśūtra, 1.2.1-4
\item \textbf{Manusmṛti}, II.36, Gautamadharmaśūtra I.7, 8, 13, Vasishthadharmaśūtra XI.44, Yājñavalkyasmṛti, 1.14, Viṣṇusmṛti, XVII.15-17
\end{itemize}}
24 years should marry a girl of 8 years of age.\textsuperscript{116} Here, it is not extended to lay down any hard and fast rule but merely to suggest suitable ages. In a different place Manu states that having dwelt with a teacher during the fourth part of man's life a person should live the second quarter in his house with a wedded wife.\textsuperscript{117} The man's age was generally supposed in the Vedic and post Vedic literature to be 100 years and so, the one fourth of man's age is at 25 years.\textsuperscript{118}

Thus, the Smrti writers though preferred minor girls for marriage, the bridegroom was a matured one. However, the Smrti writers have not given any definite age of a bridegroom. But it is stated clearly that crossing the first stage of life successfully one is fit to enter into second stage and becomes a householder.

At the time when the British rule came to be established in India, the child marriages were very common.\textsuperscript{119} To restrain this, an attempt was made to lay down the minimum age of marriage for both boys and girls in 1929. The Child Marriage Restraint Act, 1929 prescribed 15 as the minimum age for girls and 18 for the boys. But the child marriages were made neither void nor voidable.\textsuperscript{120} It was the impact of the then prevailing social notions. But once

\textsuperscript{116} 'trimśadvarśodvaheתקanyāṁ hraddāṁ dvādāśavānrīkīṁ. tryaṭavarṣo' ṣṭavarsāṁ vā dharma śādai satvaraḥ.' \textit{Manusmṛti}, IX. 94

\textsuperscript{117} 'caturthamāyuṣo bhūgamusitvā' 'dyam gurau dvijah. dvitiyāyuṣo bhūgaṁ kṛtadāra grhe vaset.' \textit{Manusmṛti}, IV.1

\textsuperscript{118} \textit{Ṛgveda}, 1.30.3, cited in Indra, Prof., \textit{The Status of women in ancient India}, Motilal Banarasidass, Banaras, 1955, p. 45

\textsuperscript{119} Supra, Note 38(i), p. 107

\textsuperscript{120} Balasami vs. Balakrishna, AIR 1957 Mad 97
performed they were perfectly valid.\textsuperscript{121} This position was maintained by the Hindu Marriage Act, 1955. After the amendment of the Child Marriage Restraint Act in 1978, nowadays the minimum age of marriage for the girls is eighteen and for the boys is twenty-one. However, marriage performed in violation of this condition is valid.

The Hindu Marriage Act and the Child Marriage Restraint Act, 1929 provide punishment for such marriage. Section 18 of the former Act provides that anyone who procures a marriage for himself or herself in contravention of section 5(iii) may be punished with simple imprisonment which may extend upto 15 days or with a fine which may extend upto Rs., 1000/- or with both. Under the later Act, if a male above 18 years and below 21 years marries a girl below 15 years he is liable to a sentence of simple imprisonment which may extend upto 15 days or fine which may extend up to Rs. 1000/- or with both. A male above the age of 21 marrying a girl below 15 is punishable with simple imprisonment of upto three months and is also liable to fine.

The Hindu Marriage Act affects a great mass in whom child marriages have been performed for centuries. An attempt to prohibit such marriages, at the time of passing of the Act, would have been failed and 80\% to 90\% void marriages could have been found in the countryside.

For the above reason the legislators did not make the child marriage

\textsuperscript{121}Ginden vs. Barclal, AIR 1976 MP 83
void at the time of making the Act. But after fifty years also the same provision remains intact unamended. Child marriages still now are going on in different parts of the country.\textsuperscript{122(i)} So, an immediate amendment of this provision is necessary which can abolish child marriage.

**Sapinda and prohibited degrees of relationship**

At the time of solemnisation of marriage ceremony it is to be considered whether the girl is related to the bridegroom by sapinda and prohibited degrees of relationship. Both the ancient as well as modern lawgivers have laid down this condition which is to be fulfilled during marriage.

Different Smriti writers have laid down that a person is fit to marry a girl if they are not related with sapinda relation. According to Manu a damsel who is neither a sapinda from the mother's nor belongs to a family from the father's side is recommended for wedlock and conjugal union.\textsuperscript{122(ii)} Yajñavalkya also allows one to marry a woman who is asapinda.\textsuperscript{123}

In the ancient Hindu law two theories of sapinda relationship were propounded - oblation theory and the particles of the same body theory.

**Oblation theory** - The Hindus believe in offering to the departed ancestors. One offers one full pinda each to his three immediate paternal

\textsuperscript{122(i).} Krishnakumar Asha and T.K Rajalakshmi, Child brides of India, *Frontline*, July 15,2005, pp.4-11

\textsuperscript{122(ii).} Manusmṛti, III.5

\textsuperscript{123.} '...kāntāmasapindāṁ......' Yajñavalkyasmrī, 1.52
ancestors and one divided pinda each to his three next paternal ancestors. Moreover, he is the giver of the full pindas each to his two immediate maternal ancestors and one divided pinda each to two next maternal ancestors. Thus, he is connected by pindadāna to the six ancestors on the paternal side and the four ancestors on the maternal side and is sapinda to them. When two persons offer pindas to the same ancestors they are also sapindas to each other.

**Particles of the same body theory:** Sapinda as understood by the above theory is discarded by Viṣṇānēsvāra, the writer of Mitākṣara, the commentary on Yajñavalkyasmṛti. He considered that the older meaning of the word “Sapinda” did not cover all the cases.

Vijñānēsvāra propounded the theory called particles of the same body theory. He changed the meaning of pinda from ball to the particles of same body. According to him sapinda relationship arises between two persons on account of their being connected by particles of one body. But such a definition of sapinda is too wide as it may exist upto one hundred or more generations so long as one can trace his descent through a male or female to a common ancestor or ancestress. Realising this Vijñānēsvāra fixed the limit by

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124. Supra, Note 68, p.127
125. Supra, Note 38(i), p. 93
126. Mitākṣara on Yajñavalkyasmṛti, 1.254
saying that it existed up to seventh degree on the father’s side, and up to fifth
degree on the mother’s side. He fixed this limit on the basis of traditional
meaning of *sapinda*.\(^\text{127}\)

The marriage of two persons who were related with *sapinda* relationship was not allowed earlier. The number of degrees of *sapinda* relationship is variously laid down in ancient time. In the *Satapatha brāhmaṇa*, it is found that the prohibition extended only to the third or fourth degree.\(^\text{128}\) In Yājñāvalkya’s opinion the prohibition should be seven degrees on father’s side and five degrees on mother’s side.\(^\text{129}\) Nārada\(^\text{130}\) Gautama\(^\text{131}\) and Vasiṣṭha\(^\text{132}\) are also of the similar view with Yājñāvalkya. Manu states that sapinda-ship ceases with seventh person.\(^\text{133}\) Viśvarūpa and Kullūka apply the seven degrees to relations through mother also. But in elucidating

\(^{127}\) Supra, Note 38(i), p. 94


\(^{129}\) Yājñāvalkyaśrutī, I. 52-53

\(^{130}\) ‘ā saptamat pānīcamāda kandhubhyah pitrmatrthat. ’ Nāradasmṛti, IV.12.7

\(^{131}\) ‘ūrdham saptamatpitrbandhubhyo bijinaścā mātrbandhubhayh pānīcamāt. ’ Gautamadharmasūtra, 1.4.3,

\(^{132}\) ‘[na] pānīcamāṁ mātrbandhubhayḥ saptamīṁ pitrbandhubhayah:’

\(^{133}\) Vasiṣṭhadharmasūtra, VIII. .2

\(^{133}\) ‘sapindatā tu puruṣe saptame vinivartate.’ Manusmṛti, V.60
Yājñavalkya’s text Vijnānesvara relies upon a text of Brhat Manu which confers the seven degrees limit only to *sagotra sapinda*. However, the majority of the above opinions direct to consider five degrees on the mother’s side and seven degrees on the father’s side.

Different lawgivers have shown some specific members of the family and prohibited sex relationship with them. They considered sex relationship with one’s mother, sister, daughter or even with one’s son’s wife as the highest sin.

Section 5 (iv) and 5 (v) of the Hindu Marriage Act, 1955 deal with degrees of prohibited relationship and *sapinda* relationship respectively.

Section 5 (iv) declares that a marriage may be solemnised between any two Hindus if the parties are not within the degrees of prohibited relationship. According to Section 5 (v), the marriage may be solemnised if the parties are not *sapindas* of each other. However, these two conditions are not applicable in those places where the custom or usage governing each of them permits of a marriage between the two.

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134. *Mitāksara* on *Yajñavalkyasmiṃti*, I.53
135. ‘*retahsekaḥ svayoniṣu kumāriṣvanyājaśa ca.*

*sakhīyuh putrasya ca striṣu gurutapasmān viduh.* *Manusmṛti*, XI.59

‘*sakhibhāryakumāriṣu svayoniṣvanyājaśa ca.*

*sagotrāṣu sutastrīṣu gurutapasmān smṛtam:*

*Yajñavalkyasmiṃti*, III.231.
Thus, the consideration of *sapinda* and prohibited degrees of relationship regarding marriage has got equal importance in ancient and modern law. The marriages in which these rules are not observed, considered as illegal. These exogamic taboos are designed for the restriction of free marital relationship. Their psychological origin lies in the horror of incest and the consequent incest taboo which aims at preventing sex relationship between parents and off sprigs and between brothers and sisters.

The number of degrees found in ancient days has been reduced to two degrees each from the father's and mother's side in the present time. So, according to the modern law, number is fixed at five on the father's side and three on the mother's side. Moreover, *sapinda* and prohibited relationship are differently shown in the modern law and thus it becomes very much clear and systematic. But it must be admitted that regarding *sapinda* and prohibited relationship modern laws are based on the laws in the *Smrtis*. However, modification and improvements for the changing circumstances cannot be denied in this regard.

**DIVORCE**

The term 'divorce' which is at present very popular was quite unfamiliar for the ancient people. In the Vedic literature, there is no reference to divorce.\(^{136}\) In Indian marriage, the husband and wife were tied in a bond which was unbreakable because their relations did not come to an end in this world. In the *Smrtis* also marriage is considered to be indispensable and is

\(^{136}\) Supra, Note 8, p.142
regarded as sacrament. In this regard, Manu says that mutual fidelity continues till death and it is considered as the highest dharma of the husband and the wife. He is again of the opinion that neither by sale, nor by abandonment by the husband, the wife's marital tie comes to an end. Apastamba states that there is no division between husband and wife.

The general Hindu law set its face against the dissolution of marriage. But it has not opposed to supersession of the wife by the husband. There were various grounds for which a wife could be superseded. Manu has shown different grounds of supersession. According to him, if a wife drinks intoxicating liquor, is of bad conduct, rebellious, diseased, mischievous or wasteful, she may be superseded at any time and the husband may marry another wife. Some other kinds of wife such as a barren wife, a wife whose all the children die, she who bears only daughters and a quarrelsome

137. Ibid
138. ‘anyonyasyavayabhicari bhavedamaraṇāntikaḥ.
   eṣa dharmaḥ samāsena jñeyāḥ sūpunsayoḥ parah.’ Manusmṛti, IX.101,
   ‘na nisṛkayavisargābhyaṃ bharturbhārya vimucyate.
   evāṁ dharmaṁ vijñāntaḥ prakṛpaṣṭhaṇīrmitam.’ Manusmṛti, IX.46
139. Supra, Note56, p.709
140. ‘madyāpāḥ sādhuvṛttī ca pratikūlaḥ ca yāḥ bhavet.
   vyādhītaḥ vā dhiveṣṭvā yaṃ saṃrūthahṛṇī ca sarvathaḥ.’ Manusmṛti, IX. 80.
wife may be superseded. But he has shown sympathy to a sick wife who is kind and virtuous. Such a wife may be superseded only with her own consent and must never be disgraced. The latter law givers too lay down the husband's right of supersession in similar terms. As Yājnāvalkya declares that one who drinks wine or is diseased and guileful, one who is barren, destructive of wealth, harsh tongued, bears malice to her husband, one who bears only female children shall be superseded.

Vāśiṣṭha is of the opinion that one who is averse to sexual intercourse, or to pilgrimage or to the performance of her duties or who has intercourse with a disciple or an elder, these four kinds of wife should be abandoned. According to Śāṅkha Likhita, one shall supersede a wife who is habitually unpleasant or inimical towards men or disagreeable. Narada is of the opinion that a wife who always shows malice to her husband or makes unkind

141. Manusmṛti, IX. 81, 82
142. ‘surapī vyādhitā dhūrtā vandhyārthaghnāpriyamvadā stripraśupādhi vettavāyā puruṣadvesiṁī tathā:’ Yājnāvalkyaṃśṭi, 1.73
143. Supra, Note 56, p.719
words or eats before her husband shall be expelled from his house. But in cases of supersession also, the husband is to support his wife.

In the modern days the circumstances are such that the dissolution of marriage termed as divorce is permitted by the government. The happiness of the married life depends on the ability of the husband and the wife to adjust themselves. Each must respect the feelings and independence of the other. Where such an adjustment is impossible divorce is the only course open to them. But it should be resorted to only in the circumstances provided by the Hindu Marriage Act, 1955 and not on flimsy grounds.

There are different grounds on which a marriage may be dissolved by a decree of divorce. These are stated in section 13 of the Hindu Marriage Act, 1955. It declares that if the party other than the petitioner has voluntary sexual intercourse with a person other than the spouse, if the petitioner is treated with cruelty, if the other party has deserted the petitioner for a continuous period of two years, if the other party has ceased to be a Hindu and has been incurably of unsound mind then a marriage may be dissolved. Apart from these if the

144. 'ānarthastāṁ satatam tathaivāpriyavādiniṁ. 

purvāsiniṁ ca yā bhartuh kṣipram nirvāsayed grhāti.'

Nārādasmṛti, IV.12.93

145. Yājñavalkyasmrṭi, 1.74
party other than the petitioner has been suffering from a virulent and incurable form of leprosy or has been suffering from venereal disease in a communicable form or has renounced the world by entering any religious order or has not been heard of as being alive for a period of seven years or more, then also a decree of divorce can be given.

In the laws of the Smṛtis it is seen that in those days if a wife was diseased and harsh tongued then she was allowed to abandon. Section 13(iii),(iv) and(v) mention diseases as grounds of divorce. Section 13(i)(a) permits one to divorce if treated with cruelty.

Hindu marriage was a bond which continued as long as husband and wife were alive. Hinduism held that the marriage union was indissoluble.146 Even by sell or abandon the wife’s marital tie and duty did not come to an end.147 Even if the wife committed adultery, the husband had to accept her as his wife when she had expiated for it.148 Thus, the abandonment was not divorce that is dissolution of the marriage tie and it was quite unknown to the Smṛtis.

**REMARIAElAGE OF WIDOWS**

Almost all the legal authorities of old are holding the view that a wife once united with a man is united for good and there can be no separation from

146. Supra, Note 75, p.82
147. ‘na niṣkriyavisargābhīyāṁ bharturbhāryāṁ vimucyate. 
    evāṁ dharmaṁ vijānīnāḥ prākṣapratiparinimtām.’ Manusmṛti, IX.46
148. ‘vipraduṣṭāṁ striyāṁ bhartaṁ niruddhyādekāvesmāni. 
    yatpruṣasah paradāreṣu taccātāṁ cārayed vratam.’ Manusmṛti,XI.176
him. But it may be observed that the custom of levirate or *Niyoga* was quite common in ancient times. Under this system if a woman's husband was dead or incapable of procreating children then she was allowed to have conjugal relations with her brother-in-law or some other relation till she got some children.  

Side by side with *Niyoga* the widow remarriage also prevailed in Vedic society. Some widows in the Vedic age used to marry outside the circle of their late husband’s families. There is a reference to it in the *Atharvaveda*. It states that when a woman has one husband before and gets another; if they present the *pañchaudana* offering, they shall not be separated after the death. A second husband dwells in the same world with his re-wedded wife, if he offers the *ajapapañchaudana*. There is another clear indication of the widow remarriage in the same *Samhita*. There, it is said, ‘I have seen the young maiden taken away from the dead and married.' Thus, there is no ground for doubt that a widow after the death of her husband was allowed to remarry. Here, there is no suggestion to the effect that the widow is to marry only her brother-in-law. However, references to regular remarriages of widows in Vedic literature are few. It might be because *Niyoga* was then more popular.

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149. Supra, Note 109, p.144  
150. ‘yā pūrvam patim vitāthānyaṁ vindate ‘param.  
   *pañchaudanam ca tāvajam dadāto na vi yoṣataḥ;*  
   *samānalo bhavati punarbhuvaparāḥ patih.*  
   *yo 'jam pāñchaudanam daksīnajyotiśam dadāti:* *Atharvaveda, IX.5.27-28*  
151. *Atharvaveda, XVIII.3.3*
than remarriage.\textsuperscript{152}

In the days of Smṛtis the practice of Niyoga was very common. In the Dharmasūtra of Gautama the writer considers and elaborates this practice. According to him a woman who desires offspring when her husband is dead can bear a son to her brother-in-law. The lawgiver Vaśiṣṭha while approving of the practice of Niyoga lays down certain rules for the observance of a woman who is desirous of getting a son by resorting to this expedient.\textsuperscript{153}

The rules of the institution of Niyoga are given in various verses in the Manusmṛti. However, contradictions are found in this regard. He approves of the practice of Niyoga but at the same time in certain verses he disapproves this. It is stated in the Manusmṛti that the appointment of widows is considered as a good blame.\textsuperscript{154} But in another passage it is stated that on failure of issue by her husband a woman who has been authorised, may obtain the desired offspring by cohabitation with a brother-in-law or with some other sapindas of the husband.\textsuperscript{155} The appearance that these ideas are conflicting

\textsuperscript{152} Supra, Note109, p.151
\textsuperscript{153} 'apatirapatyalipsurdevarāt: 'Gautamadharmasūtra, II.9.4.; and also Vaśīsthadharmasūtra, XVII.49, XVII.55-56
\textsuperscript{154} 'tataḥ prabhṛtyo mohātpramātapatikām striyam. niyujaṇayātapāyārthām tām vigarhanti śādhavahāḥ: ' Manusmṛti, IX.68.,
\textsuperscript{155} ' devarādvā sapindādvā striyā samyaṁniyuktāyā. prajepsīdhihānubhyā santānasya pariksayā: ' Manusmṛti, IX.59.
with one another may be for the reason that the Manusmṛti many times reproduces the opinions of ancient schools of thought but omits possibly for metrical reasons to mark them as belonging to different authors and schools.¹⁵⁶ Yājñavalkya declares that if a widow is without a son, her brother-in-law or a sapinda or a sagotra shall approach her for the purpose of obtaining a son for her. In his law of inheritance, he quite unmistakably acknowledges the existence of kṣetraja sons who are born in an appointed wife.¹⁵⁷ Nārada is of the opinion that if the husband of a childless woman dies she should go to her brother-in-law through desire to obtain a son.¹⁵⁸

Thus, a widow was allowed after the death of her husband to approach her brother-in-law. It is only cohabitation, better known by the technical name of Niyoga, and not practice of remarriage.¹⁵⁹ The possession of a son to carry on the household worship was regarded a vital necessity for a Hindu. This caused the origin of the practice.¹⁶⁰

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¹⁵⁶. Supra, Note 75, p.110.
¹⁵⁷. ‘aputrāṁ guruvanyujñāto devaraḥ putrakāmyayā. sapinda vā sagotra vā dhrītābhykta ṛtāviyāt: agarbhasambhavāvāgdacchet patitastvanyathā bhavet. anena vidhinā jātah kṣetrajah sa bhavet sutah:’
Yājñavalkyasṛti, 1.68-69.

¹⁵⁸. ‘anupamaprajāyāstu patiḥ preyadyadi striyāḥ, niyuktāgurubhirgaccheddevaram putrakāmyayā:’
Nāradasṛti, IV. 12.80.

¹⁵⁹. Supra, Note 75, p.105

¹⁶⁰. Ibid., p.106
The *Smṛti* never opine in support of widow remarriage. The *Manusāṁhitā* is most emphatic in this matter which lays down that a wife may emaciate her body by living on pure flowers, roots and fruits. But she must never mention the name of another man after the death of her husband. Manu also wants that she must remain chaste after the death of her husband.\(^{161}\)

The dictum that a girl is given in marriage only once\(^ {162}\) also indicates the firm belief of Manu that there can be no remarriage for women. The testimony to prove the validity of this inference, an unmistakable passage is found in the *Smṛti* which declares that a second husband is nowhere prescribed for virtuous women.\(^ {163}\) It is also stated that a widow should never even think of remarriage.\(^ {164}\) Yājñavalkya also did not support remarriage. He is of the opinion that a maiden’s marriage can take place only once.\(^ {165}\) The Āpastambaḍharmaśūtra condemns remarriage when he says if one has intercourse with a woman who had already another husband or with a woman on whom no marriage *samskara* has taken place or who is of a different *varṇa*, then sin is incurred and the son, born out of such relationship, also is

\(^{161}\) Ibid., p.96  
\(^{162}\) ‘........*sakṣat kanyā pradīyate.*’ *Manusmṛti,* IX.47  
\(^{163}\) ‘*na dvitiyāśca ṣadhvīnāṁ kvacidbhātiopadisyate:*’ *Manusmṛti,* V.162  
\(^{164}\) *Manusmṛti,* V.157  
\(^{165}\) *Yājñavalkyasmṛti,* I.65.
sinful. Visnu recommends celibacy to the widow.\textsuperscript{166} Nārada can think of a girl's marriage only once.\textsuperscript{167}

The actual instances of widow remarriages that can be clearly distinguished from \textit{Niyoga} are few. But they must not have been infrequent in the society. The \textit{Vaśīsthadharmasūtra} allows remarriage even when the death of the husband is only presumed and not proved. He says that even a \textit{brāhmaṇa} lady with living children should wait for 5 years if the husband goes out and does not return. She then may marry a near relative and person outside the family. Here, it cannot be stated as a case of \textit{Niyoga} because he extends permission to her who is having living children.\textsuperscript{168}

Nārada\textsuperscript{169} and Parāśara\textsuperscript{170} have given certain cases in which a woman can obtain another husband. Those are- when the husband is lost, is dead, has become a \textit{sānyāsin}, is impotent or is a \textit{patita}. So, Nārada and Parāśara allow a wife to remarry whose husband is dead. Great controversies raged round on

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\textsuperscript{166} Supra, Note 109,p153
\textsuperscript{167} '..... sakṛt kanyā pradiyate.' \textit{Nāradasmṛti}, XII.28
\textsuperscript{168} \textit{Vaśīsthadharmasūtra}, XVII.69,70
\textsuperscript{169} 'naste mṛte prabrajite klīve ca patite patau.
\textit{paṇcasvāpatsu nārīṇāṃ patiranyo vidhiyate}.' \textit{Nāradasmṛti}, IV,12.97
\textsuperscript{170} 'naste mṛte prabrajite klīve ca patite patau.
\textit{paṇcasvāpatsu nārīṇāṃ patiranyo vidhiyate}.' \textit{Parāśarasamhitā}, IV.30
this opinion. Pandit Iswarchandra Vidyasagara mainly on the text of Parāśara contended that widow remarriage was permissible under Hindu law.\textsuperscript{171} The Ādi Purāṇa shows that the practice must be eschewed in the Kali age.\textsuperscript{172} The Parāśara Mādhaviya gives the same opinion and states that the above principle laid down by Parāśara and Nārada refers to the state of society of another yuga and has no application in Kali age.\textsuperscript{173} The Smṛtyarthasaśra mentions certain views in this regard. It declares that according to some a girl may be married to another if the bridegroom dies before saptapadi. Another opinion is that she may be remarried if the first husband dies before consummating the marriage.\textsuperscript{174} Thus, the interpretations found on the texts of Nārada and Parāśara do not allow remarriage of widows by any means.

Nārada shows seven sorts of wives who have been previously married to another man. Among them the punarbhū is of three kinds and svairinī is of four kinds.\textsuperscript{175} Among the three punarbhūs the third one is that a widow can

\begin{itemize}
\item\textsuperscript{171} Chakravarty, Subodh,(ed.), Vidyasagar Rachanavali, Kamini.
Prakashalay, Calcutta, 1992, p.587
\item\textsuperscript{172} ‘अध्यायः पुनरुद्वाहं ज्येष्ठाः समि गोवधानताः। 
Kalau paśca na kurvita bhirjāyam kumandalum.’ Adipurāṇa cited in
Sen, Priya Nath, General principles of Hindu Jurisprudence, Allahabad
Law Agency,1984, p.279
\item\textsuperscript{173} Supra, Note 5, p.611
\item\textsuperscript{175} ‘punarbhūstrividhā tāsāṁ svairinī tu caturvidhā.’ Nāradasmi, IV:2-45
\end{itemize}
be given by husband’s relatives to a sapinda of the deceased husband or the person of the same caste on failure of brother-in-law. But this is a case of Niyoga and not actual remarriage.

Thus, in the days of Smrtis the system of Niyoga was quite prevalent. Marriage in those days was regarded to be a permanent tie which once tied could not be untied. It was indissoluble. The Smrtikaras opine that a girl can be given in marriage only once. They also declare how a widow should stick to different vows. However, in some of the Smritis a hint of performance of remarriage is also found.

The Hindu Marriage Act, 1955 is very clear in allowing a widow for remarriage. The section 5(i) of the Act provides that the parties to the marriage must be either single or divorced or widow or a widower. Though certain Smriti writers mentioned about remarriage of a woman it may be assumed that under normal circumstances the widow remarriage was not prevalent in the days of Smritis. According to them marriage was an eternal union. At present, this idea regarding marriage has been given up and remarriage of widows has been allowed to perform.

INTER-CASTE MARRIAGE

In the societies of ancient India, there was the recognition of inter-

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176. ʻasatsu devareṣu stri bāndhavairyā pradīyate.

_savarīyāya sapindaẏa sā te śīyā prakārtitā:_' Naradasmṛti, IV.12.48
caste marriages. However, there were some restrictions in this matter. Since
the Vedic times several examples of the inter-caste marriages were available.
In the Rgveda there is the reference of the Brāhmaṇa sage Syavasva marrying
the daughter of king Rathaviti Darbhya. In the Satapatha Brāhmaṇa the story
of the sage Cyavana is found who was a descendant of Bhṛgu, marrying the
daughter of king Saryata. In another verse of Satapatha Brāhmaṇa it is seen
that a king was allowed to marry a vaisya woman but her son would not be
entitled to the Vedic coronation ceremony.\textsuperscript{177}

It is already stated in the discussion of polygamy that in the days of
Smṛtis also, the lawgivers have approved this type of marriage with some
restrictions. However, many conflicting opinions are also there.
Baudhāyanas\textsuperscript{178} says that a brāhmaṇa is allowed to marry one wife from his
own caste and another three from the three lower classes. Similarly, ksatriyas
are allowed to marry three wives—form vaisyas two and sūdras one. While
discussing the inter-caste marriage Manu says that a śudra woman alone can
be the wife of a śudra, she and vaisya woman can be the wives of a vaisya;
ksatriya can have three wives namely ksatriya, vaisya and śudra and a
brāhmaṇa is allowed to marry four wives of all the different castes.\textsuperscript{179}

\textsuperscript{177} Supra, Note, 5, p.447
\textsuperscript{178} ‘tesāṁ varṇāṇupūrवेनa catasro bhārīyā brāhmaṇasya: tisro ṛājanyasya:
dve vaisyasya: eka śudrasya: ’ Baudhāyanadharmasūtra 1.8.16.2-5,
\textsuperscript{179} ‘śudrāiva bhārīyā śudrasya sā ca svā ca viśāḥ smṛteh
tе ca svā caiva rājāḥṣutaśca svā· · cāgrajanmanah· ’ Manusmṛti III.13
However, there is another verse of Manu which contradicts their statement. It states that a *sudra* woman is not mentioned even in any story as the wife of a *brāhmaṇa* or of a *kṣatriya* though they lived in distress.¹⁸⁰ Yajñavalkya allows three wives for the *brāhmaṇa*, two for the *kṣatriya* and *vaiśya* and only one for the *sudra*.¹⁸¹

Though inter-caste marriages were allowed the lawgivers preferred marriages of one’s own caste.¹⁸² The wives of the lower castes did not hold the same dignified position as the wives of the same caste. In case of the inheritance the sons of the wife of the higher caste were entitled more shares than the sons of the wife of the lower caste.¹⁸³ Thus, the son of a *brāhmaṇa* wife takes four shares, the son of a *kṣatriya* wife takes three, the son of a *vaiśya* wife takes two and the son of a *sudra* wife takes one share.¹⁸⁴

¹⁸⁰. *‘na brāhmaṇa-kṣatriyāyorāṇādyapi hi tiṣṭhatoh.*

    *kasminiścidapi vṛtánte śudrā bhāryopaḍiśyate:’ Manusmṛti III.14

¹⁸¹. Yajñavalkyasmrṛti, 1.57

¹⁸². *‘savarnāgre dvijātināṃ prāsastā dārakarmāṇī.’ Manusmṛti III.12,

    *‘sajātiḥ śreyasī bhāryā sajātiscā patih striyāḥ:’ Nāradeśmṛti, IV.12.5

¹⁸³. *‘vibhaktēṣu suto jātāḥ savarṇāḥ-yām vibhāγabhāk:’

    Yajñavalkyasmrṛti, II.125,

    *‘caturō nīśan haredviprastrōṁsāṅksatriyāsutsaḥ.

    vaiśyāputro haredvyaṁsāṁsāṁ sudrāsuto haret:’

    Manusmṛti, IX.152-153

¹⁸⁴. Supra, Note 5, p. 449
Of all the inter-caste marriages the marriage with a śudra wife though allowed, was very much condemned. Even the marriage with a śudra woman was performed without Vedic mantras.185 Āpastamba prescribes the penances for connection with śudra woman. Viśṇu says that a union of a twice born man with śudra wife can never produce religious merit.186 Manu is of the opinion that twice born men who marry śudra wives are responsible for degrading their family and children.187 Yajñāvalkya says that though marriage of a brāhmaṇa with a śudra woman is legal, it is not approved by him because the atman or soul itself is born there in the wife as the son.188

The ancient marriages ungrudgingly recognised marriages between a brāhmaṇa and a ksatriya or a vaiśya girl. But opinion of marriage with a śudra woman by a dvijāti is not unanimous. Such marriages took place but were looked upon with disfavour and often condemned.189

185. 'śūdrāmapyeke mantravarjan tadvat: ' Vasisthadharmasūtra,1.24.
186 Supra, Note 5, p. 448.
187. 'ḥīnajātiṣṭriyāṁ mohādudvahanto dvijātayāḥ.
   kulānyeva nanyāyāśu sasanānāṁ śūdrātāṁ: ' Manusmṛti III.15.
188. 'yaducyate dvijātāṁ śūdrāddāropasamgrahāḥ.
   na tanmama mataṁ yasmāttatratmā jāyate svayam: '
   Yajñāvalkyasmṛti, I.56.
189. Supra, Note 184.
Nowadays inter caste marriages are also valid as Hindu Marriage Act has not laid any prohibition on the basis of caste. After 1955 marriages under Hindu Marriage Act can be solemnised if both the parties are Hindus. In the days of the Smṛtis though inter caste marriages were allowed there was inequality among the castes. The wife belonging to a lower caste did not get the same status as the higher one. After Independence the Democratic Constitution of India has established equality among all its citizens. In part III of the Constitution, it has been clearly stated that irrespective of religion, race and caste all people are entitled to enjoy the fundamental rights.

WHETHER MARRIAGE IS A SACRAMENT OR A CONTRACT

Marriage is regarded as a sacrament by the ancient lawgivers. It is one of the many samskāras prescribed for a dvija and the only one prescribed for a woman who can perform it with mantras. Unlike the English and the Mohammedan systems of law, marriage is not a mere civil contract but a religious ceremony for the Hindus.¹⁹⁰ Probably no other people have endeavoured to idealise the institution of marriage as the Hindus have done.¹⁹¹

¹⁹⁰ Supra, Note 63, p. 387
¹⁹¹ Supra, Note 48, p.63
The effects as regards the permanency and indissolubility of a marriage tie are apparently the result of Hindu law viewing marriage as a religious institution in the sense that it is a sacrament and it is a holy union affected through the law.

The marriage tie is indissoluble. Manu says that mutual fidelity between the husband and wife continues till death, and this may be considered as the highest dharma. He further says that once a man and a woman are united in marriage, they must see that there are no differences between them and that they remain faithful to each other.192

Marriage is one of the essential sāṃskāras for every Hindu. Every Hindu must marry. He only is a perfect man who consists of his wife, himself and his offspring.193 Yājñavalkya states that on the death of her husband, or while he is alive if she never approaches another man, she attains fame in this world and rejoices in the company of Goddess Uma.194(i)

192. 'anyonyasyāvyabhicāri bhavedāmaranāntikah. 
esa dharmaḥ samāsena jñeyah strīpuṃsayoh parah.' Manusmṛti, IX.101, and also IX.102.
193. 'etāvāneva puruṣo yajjayaḥ’ tāmā prayeti ha.’ Manusmṛti, IX.45.
194(i). 'mrte jīvati vā patyau yā rānyamupagacchati. 
seha kīrtimavāpnoti modate comayā saha.’ Yājñavalkyasmṛti, I.75.
Marriage as a sacramental union implies that it is a sacrosanct. Hindus conceived of their marriage as a union primarily meant for performance of religious and spiritual duties. Such a marriage cannot take place without the performance of sacred rites and ceremonies. Secondly, a sacramental union implies that it is a permanent union. Marriage is a tie, which once tied cannot be untied. This implies that marriage cannot be dissolved. Thirdly, the sacramental union means that it is an eternal union; it is valid not merely in this life but even after death in the other world. Its implication has been that widow remarriage as a rule was not recognised in Hindu law. The rule was ‘once a maiden is given in marriage, a true wife must preserve her chastity as much after as before her husband’s death’.

The modern concept of marriage as a contract is an outcome of industrial revolution, of its lofty ideals of liberty and equality. The great contribution of the industrial revolution is emergence of the concept that all human and social relations must be based on the free volition of individuals, the highest human and social relationship that man has known, i.e., the marriage, too, must be squarely based on the free volition of individuals. Thus, marriage came to be considered as contractual union. Today, it is an established notion of the western family law that a marriage in order to be

194(ii). Supra, Note 38(i), pp.64-65.
195. ‘mṛte bhartari sacLhī stī brahmacarye vyavasthiitā.
svargam gacchatyāputrāpi yathā te brahmaçārīnah.’ Manusmṛti, V.160.
effective must be an agreement voluntarily entered into by both parties. The consent of parties thus plays an important part in the formation of marriage contract.

The Hindu Marriage Act, 1955, has reformed the law of marriage. Sections 5, 11 and 12 of the Act are the pertinent provisions. The violation of the requirements of clauses (ii) and (iii) of Section 5 do not render the marriage void. Under Section 12, the violation of the former requirement renders the marriage merely voidable, while the violation of the latter condition does not render the marriage void or voidable; the marriage if performed is a perfectly valid marriage. It is a well-established rule of law of contract that a contract for want of capacity is totally void, it is void ab initio. Thus, it is clear that the Hindu marriage Act does not consider the question of consent as of much importance. It does visualize that persons incapable of giving valid consent or persons suffering from mental disorder or recurrent attacks of insanity should not marry. It does not attach the same consequences which are attached to the violation of such conditions in an ordinary contract. Here a marriage without consent is valid. A consenting mind even now is not a condition precedent to a marriage. This is the inevitable result of the combined reading of Sections 5, 11 and 12 of the Hindu Marriage Act, 1955.

196. Indian Contract Act, 1872, Section 11.
Thus, Hindu marriage has not remained a sacramental union and has also not become a contract, though it has semblance of both. It has a semblance of a contract as consent is of some importance. It has a semblance of a sacrament as in most marriages a sacramental ceremony is necessary.

The ancient outlook on marriage has been changed in many respects in modern times. It is because of the advancement of the modern society. So, different changes and modifications have been done. By this the Hindu Marriage Act gives protection to a woman which she did not get in ancient days. However, many principles of Smrtis are kept intact in modern law.