NIYOGA

The patriarchal ideology often expresses itself in different customs, practices or customary laws which are shaped, challenged and structured by patriarchy to fit the particular needs of a community, by what a scholar has called an 'accommodative' patriarchy. Niyoga was one such practice devised by the patriarchal society in ancient India to serve the requirements and interest of the patriarchy. Widow was only a means to fulfil certain specific needs of the patriarchy, which hardly had the happiness and welfare of the hapless widow in its consideration while resorting to a practice like Niyoga.

4.1 NATURE OF NIYOGA IN ANCIENT INDIA

As pointed out elsewhere, widows were not required to die with their husbands on the funeral pyres down to c. 300 B.C. There were three courses open for them. They could either pass their remaining life in widowhood, or have some children by the custom of Niyoga, or remarry. The first was of course the most honourable course, but there were many who followed the second or the third alternative.

According to the custom of Niyoga, the wife or widow of a sonless person was allowed to produce progeny through the agency of another person. Thus, under the system of Niyoga, if a woman's husband was dead or incapable of procreating children, she was allowed to have conjugal relations usually with her brother-in-law or some other near relation (a sapinda/sagotra) to beget a son. Manu observes that in cases of 'misfortune', which implied the absence of a child on account of the death or disease of a man, a sapinda/sagotra or a younger brother of the man could be appointed to raise a son on his wife. The son born of this form of union was known as 'ksetraja' son (born of 'ksetra' or field, i.e., wife), derived from the concept of the woman being compared to ksetra (field), her husband to its owner and the 'appointed' person to a seed giver. Such sons had a legal status in the family.

The husband's younger brother, who was called devara or devri, was regarded as the most eligible person for this duty. If the widow was to adopt a stranger for this

1. Manu Smriti, IX. 32-33, 59, 190
purpose, an undesirable person was likely to be introduced as a claimant to the family property; it was apprehended that he may exercise a great influence over the son born from him, and eventually manage to get the child's share in the family virtually transferred to him. Probably such cases had happened in society, for it has been expressly laid down that property considerations should never be a motive for Niyoga.²

Through the practice of Niyoga, it was sought to be ensured that women did not go out of her husband’s family but remain within it with her child, who had been obtained for continuing the family tradition. Of course, the appointment of the brother-in-law must have naturally aroused uneasiness and resentment in the mind of his wife, but her feelings did not count for much at the time we are talking of. It was further regarded as most important that the son by Niyoga should resemble the real son as much as possible; he would have the maximum amount of the blood of the family running in his veins only if the appointment of the widow for Niyoga was made with her husband's brother. If the appointment was made with a stranger, the son would have only half the blood of the family in his veins. To prevent such a situation, it was felt that the brother-in-law should be the preferred person appointed for the purpose of Niyoga.

However, as for the person appointed for Niyoga, the actual practice in several instances, as found in many of the texts, did not necessarily follow the principle laid down by the law-givers. The appointed person according to law-givers was either to be the younger brother-in-law of the woman concerned or sapinda of her husband.³ However, we find that in the Mahabharata, Niyoga is generally performed through the agency of the brahmins, as in the case of Sudeshna, Sardandayini and Madayanti. Most peculiar is the case of Sardandayini who goes to the public square and catches hold of the first brahmin for Niyoga.⁴ We also have a few instances where the Devas were appointed, as in the cases of Kunti and Madri. The appointment of brahmin rishis for Niyoga was apparently due to the faith in the brahmin ability for producing a better progeny, and in the belief that a son born through ascetic energy excelled others in capacity. As for Vyasa, he was, besides being a brahmin, a half-brother of Vichitravirya; Vyasa had thus a claim of kinsman as well as of a brahmin. There is no other example of a sapinda being

² वैशिष्ठ्यदार्थविनिकातितिर्योगः: 1 Vasishtha Dharmasutra. XVII. 65
³ देवसंतानं सपिंदाः 1 Manusmriti. IX. 59
⁴ पुष्पम भवति स्नाता ब्रह्मिनं निर्देश कुलयुक्तसे 1 वर्मिक्यविषयं निर्देशः हृदया पुष्पमेक्षेतान्तः 1 Mahabharata. I. 120. 39
appointed for *Niyoga* in the *Mahabharata*. Thus, we find that in a large numbers of cases, even persons who were neither brother-in-law nor a near relation (a *sapinda/sagotra*) were engaged for performing for this duty.

Formerly three sons were allowed from an appointed wife, whereas Gautama\(^5\) sanctions only two and Manu\(^6\) permits only one. However, even though the Later *Smriti* writers allow only one son to be raised by *Niyoga*, the earlier practice was quite different. At her husband's pressing entreaties, Kunti raised three sons by *Niyoga*. Pandu, however, was not satisfied with that number and pressed his wife to have some more. Kunti protested against the suggestion, pointing out that the custom permitted only three sons by *Niyoga* and no more.\(^7\) In *ksatriya* circles, it was regarded as vital to have a large number of sons. Accordingly, in prehistoric times there seems to have existed practically no limit to the number of sons that could be raised by *Niyoga*. King Vyushitasva had seven such sons and King Bali had as many as 17, six from his crowned queens and eleven from a *sudra* wife.\(^8\) Three was, however, the normal number of sons usually permitted initially. Kunti's sister, Srutasena, had, for instance, got this number of sons by *Niyoga*.\(^9\) However, it is also pertinent to note that a woman would not always have three successive sons; some girls were likely to intervene.

In the period succeeding the *Dharmasutra*-phase, we have very clear data to base our conclusions on. The practice of *Niyoga* is generally recognised as a legal device in the *Mahabharata* to get progeny. The royal families often treated it as common device for raising offspring. Thus Satyavati asks Bhishma to beget offspring on her daughters-in-law, the wives of her son who went to heaven when he was a boy. She pleads Bhishma to do this virtuous act for the perpetuation of their dynasty.\(^10\) Maharshi Vyasa is said to have begotten sons in the wives of Vichitravirya.\(^11\) In the *Mahabharata*, Sudeshna, Kunti, Sardandayini, Madayanti and Madri practiced *Niyoga* in covertures, while Ambika, Ambalika practiced it in the state of widowhood. In most of the above mentioned cases, *Niyoga* was practiced in covertures. Several heroes of the *Mahabharata* and *Puranas* were born of *Niyoga*. Pandu, the father of the five Pandava heroes of the *Mahabharata*

\(^{5}\) Gautama Dharma S. XVIII. 8  
\(^{6}\) Manusmriti. IX. 60  
\(^{7}\) *Mahabharata*. I. 132, 63-4  
\(^{8}\) *Mahabharata*. I. 127, 113  
\(^{9}\) *Mahabharata*. I. 126  
\(^{10}\) *Mahabharata*. I. 163. 103-10, 111  
\(^{11}\) Ibid. 104
himself allows his wife, Kunti to practice Niyoga. In the Mahabharata, the king Bali is mentioned to have appointed Dirghatama Rishi to cohabit with his wife, Sudeshna. It is said in the Mahabharata that in spite of the slaughter by Jamadagnya Parashurama, Kshatriyas were not fully eliminated due to the fact that the practice of Niyoga was resorted to by Kshatriya wives.

The Ramayana, though belonging more or less to the same period as the Mahabharata, gives no account of the custom of Niyoga. Considering its idealistic tone, the omission is natural. However, if the boons of the rishis or brahmins are taken as an indirect reference to the practice of Niyoga, there is no dearth of it in the Mahabharata and the Ramayana. Thus, for instance, Damayanti and her brothers, Sagara, Duryodhana and his brothers, Sanjaya's son were all born through the boons of rishis and may have referred to instances of Niyoga.

4.2 RULES AND INJUNCTIONS LAID DOWN BY THE LAW-GIVERS

The custom of Niyoga was fairly common in early times in India. Not only in the Vedic ages but even in the succeeding ages of the Sutra and Smriti literature, Niyoga was a very common practice. However, rules were laid down to prevent the practice of Niyoga from being too common and therefore too degenerated. Thus, the lawgivers enjoined a number of rules and injunctions to be followed by a woman who wished to get a son by resorting to the practice of Niyoga. A woman, who already had sons was prohibited from having recourse to Niyoga. Niyoga was to be regarded as a duty and not as an occasion for license. To forestall indiscriminate sexual relations, Niyoga was hedged round with many restrictions by the law-givers. It was made clear that the desire for a son and not any craving for carnal pleasures were to be the governing factor. It was mentioned in the case of widows that the appointed person should approach the widow at night after anointing his body with clarified butter, remain silent and beget only one son,
by no means a second one. It was provided that after the birth of a child, the relationship between the man and woman must cease because it was allowed only temporarily. Thus, it was laid down that parties were not to meet after the conception had taken place. The person who was to perform was to be appointed by the elders i.e. husband or his elder brother. In the Mahabharata also, it is described that in respect of Niyoga in covertures, husband appoints the agent. It would appear that sometimes a person would be anxious to raise a son upon a widow in order to get a share in her family's property. So, the Dharmasutra writers warn that economic motives should be excluded from Niyoga. Thus, it has been expressly laid down that property or pecuniary considerations should never be a motive for Niyoga.

If a widow was unwilling, she was not to be compelled to submit to Niyoga. This provision seems to have been laid down to prevent an unscrupulous brother-in-law from forcing himself on an unwilling sister-in-law. However from the description in the Mahabharata, it seems that even unwilling women had to agree for the benefit of the dynasty of the husband. Thus, even when Kunti was unwilling to take recourse to the practice of Niyoga, she was persuaded and so was Ambalika.

The law-giver Yajnavalkya unmistakably acknowledges the existence of Kshatriya sons born in an appointed wife. He calls them also by the name of Dvamushyana, i.e., offspring of two fathers, the real and the provisional. He further entitles such sons to the inheritance of both the fathers and to the right of offering oblations to both.

Gautama devotes a full chapter to the consideration and elaboration of this practice. He says that a woman, who desires offspring when her husband is dead, can bear a son to her brother-in-law. For this, she must obtain permission of her Gurus and should have intercourse during the proper season only. In the absence of a brother-in-law, she

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21. Manusmriti. IX. 60, 64
22. Gautama. Dh. S. Chapter XVIII. 4-14, Vasishtha Dharmasutra. XVIII. 56, 61-65, Manusmriti. IX. 59, Yajnavalkya. I. 68-69
23. Mahabharata. I. 103. 10, I. 120. 38, I. 122. 30-31
24. Vasishtha Dharmasutra. XVII. 57
25. Vasishtha Dharmasutra. II. 2. 4-7
26. Garudapurana. I. 105-42
27. Mahabharata. I. 120-22
28. Mahabharata. I. 105. 50
29. Yajnavalkya. I. 127
30. Gautama. Chapter XVIII
can get offspring by cohabiting with a sapinda or a sagotra relation. Gautama observes that she cannot bear more than two sons. He declares that a child begotten at a living husband’s request belong to the husband. Gautama further states that a wife has to wait for six years, if her husband has disappeared. And in the like manner, if an elder brother has gone to a foreign country, the younger brother must wait for twelve years before he takes his wife and kindles the domestic fire.

Baudhayana enjoins for ensuring that "a barren woman, one who has borne sons, one who is past child-bearing age, one whose children are all dead and one who is unwilling are not allowed to practice Niyoga, as the spirit of this practice will not be fulfilled by them." The law-giver Vasishtha, 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. He enjoins upon her the performance of seven austerities, penances and abstinences before she can procure a son in this manner. Baudhayana says, "A widow shall avoid during a year the use of honey, meat, spirituous liquor and salt and sleep on the ground." The Mahabharata also refers to the performance of mortification and sacrifices before the recourse is taken to the practice of Niyoga. Satyawati, however, does not agree to the life of penance for her daughters-in-law as it would take time.

Significantly, Kautilya has also alluded to a similar custom. From the terms applied to the son born out of it, his parents and lastly to the person commissioned for the purpose, it appears that Kautilya has referred to the same practice. The application and outlines of Niyoga in the Arthasastra are quite specific and clear. While discussing the inheritance of an heir-apparent, Kautilya recommended a ksetraja son along with other candidates. He provided that if the king had a son not worthy enough, he could offer his throne to his grand-sons, or, if the king was too old or diseased to procreate a son himself, anyone from his mother’s side or from his own kula, or a ‘virtuous’ samanta could be appointed “to sow the seed in his field”, implying thereby that such a son inherited the

32. Baudhayana Dharmasutra. II. 2. 4-7
33. Vasishtha Dharmasutra. XVIII. 49
34. Mahabharata. I. 105. 42
35. Mahabharata. I. 120. 39; I. 105. 54
36. Mahabharata. I. 105. 43
37. Arthasastra. III. 7. 40-41
Again, for the socially and physically handicapped people, like the outcastes, lunatics, lepers, etc., Kautilya suggested that their relatives might beget sons for them, who would obviously inherit the property. Another instance of a ksetraja son has been cited in the case of a brahmana having an only child from his sudra wife. In this case, in order to keep the entire property in the family, a ksetraja son had to be raised (evidently on a wife other than the sudra one) who would inherit two-thirds of the property, while one-third of it went to the sudra wife's son.

The Niyoga in the Arthasastra is apparently different from the practice of vedana or to nivesa/gamana stipulated separately by Kautilya. The Niyoga was a temporary union designed solely for the purpose of raising heirs to property, for all the instances of raising ksetraja sons in the Arthasastra were mentioned in connection with the inheritance of patrimony only, and not with the remarriage of women or a permanent relationship between the parties involved. Only those people were asked to secure ksetraja sons for whom the issue of inheritance and concentration of property was of vital importance. Apart from the property consideration, which was obviously the main motive behind obtaining ksetraja sons in the Arthasastra, this custom was also important for the royal families as it further helped to strengthen the economic and political alliances between them. A ksetraja son, in addition to allegiance to his social father, could also maintain relation with his biological father. The procreator was therefore likely to take an active interest in his son and the custom was sometimes very useful, especially among the ruling families.

Among the lawgivers, the viewpoint of Manu as regards the practice of Niyoga is most puzzling and confusing. He permits the custom of Niyoga, though in cases of 'misfortune' only, implying the absence of a child on account of the death or disease of a man. In that case, Manu provides that a sapinda/sagotra or a younger brother of the man could be appointed to raise a son on his wife. He has dwelt at length on the procedure to be adopted in the Niyoga. Thus, even though in certain circumstances, he permits a widow to obtain a ksetraja son, Manu nevertheless comes across as self-contradictory.

38 Arthasastra. I. 17. 89
39 Arthasastra. III. 5. 35
40 Arthasastra. III. 6. 39
41 Arthasastra. III. 7. 40-41
42 Manusmriti. IX. 32-33, 59, 190
43 Manusmriti. IX. 57-63
44 Manusmriti. IX. 67, 68
and far from clear on this issue. He approves of the practice of Niyoga but at the same
time condemns it. He argues that Niyoga is not mentioned in the sacred texts. He
proceeds to condemn it unequivocally with the following observation: "In the sacred texts
which refer to remarriage, the appointment of widows is nowhere mentioned, nor is the
remarriage of widows prescribed in the rules concerning marriage. This practice which is
reprehended by the learned of the twice-born classes, as fit for cattle, is said to have
occurred even among men, while Vena ruled. That chief of royal sages, who formerly
possessed the whole world, caused the confusion of castes, his intellect being destroyed
by lust. Since that time, the virtuous censure that man, who in his folly appoints a woman
whose husband died to bear children to another man."

But the following passage from Manusmriti clearly indicates Manu's approval of the practice "On failure of issue by her
husband, a woman who has been authorised, may obtain in the proper manner prescribed,
the desired offspring by cohabitation with a brother-in-law or with some other sapindas
of the husband.

It is indeed surprising that Manu permitted the practice of Niyoga even though
it is incompatible with the ethical tenor of his code and went contrary to his basic
principle. It is thus puzzling that he let a woman obtain a child from someone other than
her husband, although to him marriage was entirely sacred and sacrosanct. This appears
even more significant when we note that from the very beginning, Manu had taken a
stand regarding this custom in no uncertain terms. It is further intriguing to find him
sanctioning Niyoga for widows, apologetically though, even when it went against his
puritanical doctrine as well as his advocacy of a 'rigorous' life for the widows.

What compelled Manu to sanction Niyoga in spite of his strong criticism of the
custom remains yet to be explained satisfactorily. However, it appears that many a time,
the Manusmriti reproduces the opinions of various other schools of thought, but omits to
mark them as belonging to such authors and schools. This sometimes gives the
impression that some of his ideas are at variance with one another. In this connection, the
commentator Narayana says that Manu at first refers to the views of other sages on the
subject of Niyoga but when he has to give his own opinion he vehemently denounces the
custom. It could also be that notwithstanding his opposition to this custom, Manu had

45. Manusmriti. IX. 64-68
46. Manusmriti. IX. 32-33, 59, 190
47. On Manu. IX. 68
perforce to lay down the rules for *Niyoga* because the practice was so widespread in society that he might have realized that it was difficult and not feasible to completely eradicate it. It is pertinent to note that even some other law-givers who vehemently condemned the custom of *Niyoga*, e.g., Baudhayana, have laid down detailed rules about the *Niyoga* procedure, apparently because they reconciled to the prevalence of this practice in the contemporary society, as they recognized the fact that customs die hard. Indeed, the way Manu treated the entire topic and then carefully codified the practice of this custom leaves an impression that its prevalence was not insignificant, both in the perspective of all the *varnas* in the society and in the frequency of its occurrence.

Manu was also anxious about the possibility of coming into existence a permanent relationship in the course of the practice of *Niyoga*, which was supposed to be only a temporary affair of a very limited scope. Manu not only took particular care to make the operation of the custom as difficult and uncommon as possible but also urged men and women to terminate their relationship after the birth of a child as he condemned those who did not. When Manu was apprehensive of a permanent relationship existing between a woman and the appointed person, he had probably *nivesa* in mind; the possibility of a permanent relationship existing between a woman and the appointed person was implied in *nivesa* in the *Arthasastra*, but not in *Niyoga*. Indeed we get an impression from Manu's observations in this regard that the relationship between the appointed person and the appointee was not always temporary; some form of permanent union between the two parties involved in the practice of *Niyoga* was apparently present in society. Otherwise, why did *Niyoga* of the *Arthasastra*, which was an emergency custom and a social phenomenon of limited scope, assume such importance and engage so much of Manu's attention?

### 4.3 THE REASONS FOR THE ORIGIN OF *NIYOGA*

It is stressed in the Hindu texts that the desire for offspring is innate in every living being from the beginning of the creation. "Even God," says the *Brihadaranyaka Upanishad*, though allegorically, "had a desire for progeny and wanted a wife unto himself for the propagation." One of the reasons for the origin of the practice of *Niyoga*

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48. *Brihadaranyaka Upanishad*. IV

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was the belief that the possession of a son to carry on the family's continuance was a vital necessity for a Hindu. In popular belief, the sonless man goes to hell, and the ancestor's ghosts, in the absence of a descendent, who can feed them with the *pindas* at the rites in their in their honour, are doomed to eternal hunger and misery. It is said in the Mahabharata that because the son rescues his ancestors from the hell called 'put', therefore he is called *putra*. In common belief, a man conquers the world by the birth of a son; he enjoys eternity by having a grandson. The great grandfather enjoys eternal happiness by the birth of grandson's son.\(^{49}\) Similar sentiments are echoed by Manu\(^ {50}\) and Vishnu\(^ {51}\). It is stated in the *Aitareya Brahmana* that a father in begetting a son pays off a debt which he owes to his ancestors and thus becomes entitled to the state of immortality. It declares that all the enjoyments, pleasures and blessings that exist in the universe, fall to the lot of one who is fortunate to see the face of a son.\(^ {52}\) With such ideals before them, it was inevitable that early Aryans should have craved for the birth of a son and devised some mechanism by which the blessing of a son could be acquired even by those who had unfortunately failed to obtain it by natural means. Accordingly, they took recourse to the practice of *Niyoga*, which involved the deputation of the husband's conjugal rights to his brother or a kinsman either after his death or even before it. Thus, this custom might have arisen out of a person's desire, while he was very much alive, for progeny for securing his spiritual and family interests. Such custom might later have been extended to cater to a situation when a person died without leaving any male issue behind.

The reasons for the occurrence of this custom are not difficult to make out if we also try to understand the primitive ideas about women and children. The woman was everywhere regarded as a species of property, which passed into the husband's family on her marriage. Woman was thus considered a piece of her husband's family property. When a person was not able to produce progeny due to his inability or death, it became the sacred duty of his brother and in his default of a nearest kinsman to use his property i.e. wife for the spiritual benefit of the deceased or the incapable, for lack of son was believed to be a great calamity for the spiritual and temporal welfare of a man and his family, more so in cases of kings and their dynasties. So, to act as an agent to produce sons through the custom of *Niyoga* or to appoint someone for this purpose meant helping

\(^{49}\) *Mahabharata*. I. 74-77  
\(^{50}\) *Manusmriti*. IX. 138  
\(^{51}\) *Vishnu*. XV. 44  
\(^{52}\) *Aitareya Brahmana*. VIII. 12
an incapable or deceased person out of spiritual perdition, to ensure him a seat in heaven and to save his family or dynasty from collapse. If this was not done, there was also the danger of the widow marrying a stranger and being lost to the family.

In early societies, a son by levirate was always preferred to a son by adoption. A hymn in the *Rig Veda* declares that an adopted son born of another is no son at all.\(^{53}\) He was an absolute stranger; he had no blood of the family running in his veins. A son by *Niyoga*, on the other hand, had the blood of the mother. He had of course not the blood of his father, but he had at least that of a near relative. A son born of *Niyoga* therefore resembled a real son as nearly as possible. It is not strange, therefore, that in the list of subsidiary sons given in *Dharmasutras*, a son by *Niyoga* usually occupies the second position, coming immediately next after the real or *aurasa* son.

Thus, the custom of the young widow allying herself with the younger brother of husband or a near relation (a *sapinda/sagotra*) for the sake of progeny answered all the purposes for which marriage was necessary. During the Vedic period, a widow could get as many as three sons by *Niyoga*; so the *Niyoga* relationship practically amounted to remarriage. As the custom was sanctioned, no scandal was attached to it and hence there was no need for remarrying widows. It was because of these reasons why the remarriage of widows did not come much into vogue in Rigvedic times. References to regular remarriage of widows in the Vedic literature are indeed few, apparently because *Niyoga* was then more popular than remarriage.

### 4.4 LEVIRATE IN OTHER COUNTRIES IN ANCIENT TIMES

Interestingly, customs akin to the practice of *Niyoga* was quite common in ancient times in several civilizations in various parts of the world. There are several examples of primitive races where husband had no sex jealousy in the modern sense if the wife had relation with another man. He himself could give his wife for pleasure or progeny to others. Even among semi-civilized societies, we find the practice of husband giving his wife to others for getting progeny. Thus, the practice akin to *Niyoga* was prevalent even among ancient Greeks and Romans, though with different ideals and social objectives.

\(^{53}\) *Rig Veda*. XIII. 12. 19
In reference to Sparta, Plutarch records a state of society in which women were lent by their husbands to friends for pleasure or procreation. Plutarch states that men in Sparta allowed their wives to obtain healthy sons from other persons. Describing the life of Lycurgus, the Spartan law-giver, Plutarch writes while referring to him, "He laughed at those who revenge with wars and bloodshed the communications of married woman's favours, and allowed that if a man in years should have a young wife, he might introduce to her some handsome and honest young man, whom she must approve of, and when she had a child of this generous race, bring it up as his own. On the other hand, he allowed that if a man of character should entertain a passion for a married woman on account of her modesty and the beauty of her children, he might request her husband for admission of her company, so that planting in her beauty-bearing soil, he might produce excellent children, the congenial offspring of excellent parents."

Lycurgus justifies the custom of lending wives to others on the ground that children were not so much the property of their parents, as of the state which was interested in seeing that they were begotten by the best men in it. He defends the practice of levirate by arguing that when men took care to improve the breed of dog and cattle, why they should not take the trouble to improve their own race. The privilege of lending and receiving a wife was esteemed a high privilege of the Spartan citizen and its forfeiture was deemed a condign punishment reserved for serious delinquencies. The lending of wives to friends was regarded as a mark of favour in Athens, and Socrates is said to have lent his wife Xantippe to his young disciple and friend, Alcibiades.

In Mesopotamia, a bride whose betrothed widow died before the marriage might be given in marriage by her father-in-law to one of his other sons. The Middle Assyrian Law No. 33 specifies that a young widow who has no sons shall be given either to one of her husband's brothers or to his father. Only in the case where there are no male relatives available to marry her may she go 'whither she wishes'. These laws embody the concept that the marriage exchange is not a transaction involving the rights of male members of one family to female members of another family.

The term 'levirate' comes from the Latin word "levir", which means 'husband's brother'. It is a specialized version of polygamy where a man marries the widow of his

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54. Plutarch’s Lives, Lycurgus, p. 86
55. Conversely, if a man’s bride died, his father-in-law might give him one of his other daughters as a wife.
56. The Middle Assyrian Law No. 30, 31
dead brother. Levirate has been described in the Bible, and the Old Testament declares that if a woman becomes a widow, "her husband's brother shall go unto her and take her to wife, and perform the duties of a husband's brother unto her". This concept of the levirate, as instituted in the Bible, was carried forward in the Jewish tradition. L. M. Epstein explains the principle involved in the Jewish levirate: "The family had paid for her (their son's widow) and the family owned her . . . . family property . . . . was not allowed to lie fallow . . . . This woman . . . . bought and paid for and capable of wifehood and childbearing, could not be allowed to be without a husband . . . . ".57 If the deceased had died without having a son, the widow's remarriage to a family member would provide a son who would be considered the son of her dead husband. Since the status of an unattended woman was precarious, if not impossible, the levirate also provided the childless widow with "protection, care and sustenance and . . . . the social advantage of (continued) membership in the husband's family".58

The practice of levirate was used extensively by the ancient Hebrews. The marriage of Hamlet's mother with Claudius, and of Henry VIII with Katherine indicate an earlier custom of levirate, eventually developing into a regular remarriage with a brother-in-law. Thus among the Jews, a widow would become her husband's brother's wife without any ceremony; if he refused to marry her, she would spit in his face.59 In the Hebrew society, children born from the levirate marriage were considered descendants from the first brother i.e widow's dead husband.

4.5 DECLINE OF THE PRACTICE DUE TO OPPOSITION AND CRITICISM

The custom of Niyoga appears to have continued undisturbed down to circa 300 B.C. After this, we find two schools of thought as regards this custom. One school led by Gautama and Vasishtha was in favour of this custom. The other led by Apasatamba, Baudhayana and Manu was against it. These opponents of the custom of Niyoga felt that such temporary unions were undesirable from several points of view. As such, they

58. Ibid., p.79
opposed this custom tooth and nail. Apastamba protested against the custom of Niyoga\textsuperscript{60} and argued that the son by Niyoga would belong to the begetter and so would be of no spiritual benefit to the woman's husband.\textsuperscript{61} Baudhayana\textsuperscript{62} concurred with him and declared that there is no spiritual welfare for the widow's husband from the Niyoga born sons. Manu condemned the custom as beastly and declared that it was no longer permissible to follow it.\textsuperscript{63} Manu condemns all the secondary sons and says that "sons being begotten by the strangers, belong in reality to him from whose seed they sprang, and not to the other man who takes them."\textsuperscript{64} He further says, "Whatever result a man obtains who tries to cross a sheet of water in an unsafe boat, even he obtains that result who tries to pass the gloom of the next world with the help of the bad substitutes for a real son."\textsuperscript{65} Kulluka observes that "the ksetraja and the rest are incapable of supplying the spiritual needs of the father."\textsuperscript{66} Even in the Mahabharata, notwithstanding various instances of the practice of Niyoga in it, we often come across opinion in it against this custom.\textsuperscript{67} Bhishma opines against the custom of Niyoga.\textsuperscript{68} In the list of foolish persons, enumerated by Vidura, is one who scatters his own seed in another's field.\textsuperscript{69}

Thus, in the wake of the mounting opposition to the practice of Niyoga, it was increasingly considered as an unchaste practice, against the finer sense of marriage ideal and conjugal fidelity, and betrayal of the marriage vows. However, it is pertinent to note that the sense of conjugal fidelity assumed greater prominence only in the case of women and not in the case of men as the polygamous society and the existence of concubines bear witness to the fact. Nevertheless, the school which was opposing Niyoga began to grow stronger and stronger in course of time. They harped upon the ideal of purity, constancy and conjugal fidelity in marriage relation. Accordingly, they asserted that the Niyoga procedure was primitive and beastly, which transgressed the canons of morality. As a result of such tirade against this custom, it was increasingly felt that the practice of Niyoga was against the high Aryan ideas of constancy and devotion, better known as

\textsuperscript{60} Apastamba Dharmasutra. II. 10. 27, 7
\textsuperscript{61} Apastamba Dharmasutra. II. 6. 13. 8
\textsuperscript{62} Baudhayana Dharmasutra. 2. 3. 33
\textsuperscript{63} Manusmriti. IX. 66
\textsuperscript{64} Manusmriti. IX. 180-181
\textsuperscript{65} याभ्रें क्षत्रायाप्रत्यक्षम् कुप्पि: संतोषवल्लम् ।

\textsuperscript{66} अनेक संबंधादिन्तु दुखी: पदस्नातवक्तृ व संपुन्नसत्करङ्कस्मलं न महति ।

\textsuperscript{67} Mahabharata. XIII. 44. 52-53; I. 95. 31
\textsuperscript{68} Mahabharata. XIII. 44. 52
\textsuperscript{69} Mahabharata. V. 37. 5-6
Thus, a major factor which hastened the disappearance of the practice of *Niyoga* was the perceived danger of its possible degeneration into loose morality. It began to be perceived as incongruous and incompatible with the higher ideals of marriage, and detrimental to the canons of morality and peace in family life. At the same time, the 'appointed' brother-in-law's wife would not take kindly to the practice of *Niyoga*; as a result, there would arise interminable disputes between her and the widow which would ruin the peace of the family. This factor also possibly made this custom repugnant.

Besides, there was another important factor operating for the complete elimination of the practice of *Niyoga* in the country. The rule was that a widow's property passed to a son after her death, and in case she had none, then to other male relations. The self-interest of these male relations conflicted with their duty to the deceased to provide him with a son in his widow. Coparceners thus did not like that additional share in the family property should arise in this irregular manner. In the *Dutavakya* of Bhasa, Duryodhana refuses to recognise Pandavas as heirs because they were born of *Niyoga*.\(^70\)

The *Niyoga* custom was thus felt to be more and more undesirable in course of time and the public opinion became increasingly strong against it. It is, however, interesting to note that in spite of their vehement condemnation, the writers and lawgivers who were opposed to it laid down detailed rules about the *Niyoga* procedure, apparently because they realized that it was difficult to altogether oust this system. Thus, even though the law-givers like Apastamba and Manu began a crusade against *Niyoga*, they had had no option but to lay down some rules for it, because they recognized the fact that customs die hard. It is, therefore, clear that the advocacy of the new school was for a long time not very effective. Nevertheless, the practice of *Niyoga* had begun to lose ground after c. 300 B.C. in the face of considerable opposition to it and this custom increasingly fell into disrepute about the commencement of the Christian era, though it continued to linger on for a few more centuries.

However, even if the opponents of the custom of *Niyoga* failed to quickly stamp out the custom, they succeeded at least in restricting its scope. Thus, the practice of *Niyoga* was hedged round with many restrictions so that its practice would be rendered difficult and uncommon. It seems that the critics of the system began by limiting the number of the male progeny as they felt that the constant relationship for producing a

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\(^70\) *Dutavakya*. V. 21
number of sons amounted to nothing but a general licence and was as good as a marriage. Further, Manu laid down the following conditions to discourage the practice of Niyoga and to restrict its scope:\textsuperscript{71}

1. The husband whether living or dead must have no son.
2. The appointed person must be the dead husband's younger brother,
3. The appointment should have been made by the elders of the family,
4. The person appointed and the widow must not be actuated by lust but only by a sense of duty,
5. The person appointed must be anointed with ghee or oil and must not speak with her or kiss her or engage in sportive dalliance with her,
6. Only one son is to be produced,
7. After the birth of the son, the partners in Niyoga are to regard themselves as a father and as a daughter-in-law.

Manu made further attempt thereafter to limit its practice, to the extent he could, by declaring that if any one appointed a person for a \textit{dwija} woman, he violated the eternal law.\textsuperscript{72} Evidently, he left it the \textit{Sudra} women to take recourse to this custom, if they wanted to. He further objected to the custom of Niyoga on the ground that it was not possible to get a desirable child by taking recourse to this practice, as the quality of the offspring depended on the seed-giver and not on the field (i.e., the wife of a person). He further declared that the appointed person also would not gain anything out of it, as the child belonged to the owner of the field unless an agreement had been made by which he belonged to both the fathers – social and biological. Thus, by trying to establish that Niyoga was disadvantageous to both the parties, i.e., the social as well as biological father, Manu tried to discourage the custom. To avoid such sons, Manu makes the following suggestion: "If among brothers sprung from one father, one brother has a son, all the remaining ones are supposed to have male offspring through that son. And if among all the wives of one husband one has a son, all the rest are declared to be mothers.

\textsuperscript{71} Manu\textit{smriti. IX. 143, 147, 173, 144, 60, 62}
\textsuperscript{72} Manu\textit{smriti. IX. 48. 52, 54-56, 64}
of male children through that son." In later times, Narayana also says that in such situation, one should not have recourse to Niyoga.

Manu does not countenance Niyoga as further evident from the fact that he has assigned to the ksetraja son the fourth place in the hierarchy of sons. To further discourage the practice of Niyoga, Manu says, "If the two heirs of a man be a legitimate son of his body and a son begotten on his wife, each to the exclusion of the other shall take the estate of his natural father." He adds that if the ksetraja son happened to be such as had no paternal property at all, the aurasa is required to give him one-sixth or one-fifth of his property, when he choose to separate. It is apparent that this restriction also was intended to make the custom unpopular and undesirable, as the man would not have liked to produce a child on the wife of his brother who might possibly claim a share in his generator's property also. Moreover, a ksetraja son is not entitled to the preferential share to which his father, if the eldest, was entitled. Manu's aforesaid views were meant to emphasize the inferiority of the ksetraja son.

Medhatithi holds that Manu very reluctantly permits the custom of Niyoga. Medhatithi himself is categorically against it. So he observes, "And thus the sphere of application of both being the same, we must take the case as being one of option. So in this case the only effect would be that the man not having recourse to the practice would fail to obtain the benefits that would be conferred by the son; but if he has recourse to the practice with a view to obtaining those benefits, he would be transgressing the prohibition and his act would stand on the same footing as the act of performing the Syena sacrifice."

To cap it all, Medhatithi includes the girl born of Niyoga among those that are not desirable for marriage. He treats them as born unlawfully and observes, "The girl who

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73. Manusmriti. IX. 182-183
74. Narayana on Manu. IX. 183
75. Manusmriti. IX. 145
76. Manusmriti. IX. 162
77. Manusmriti. IX. 164
78. Manusmriti. IX. 120-121
79. On Manu. IX. 64
would be born under that form would not be excluded by the foregoing qualifications, as
the Niyoga has been permitted; hence she is specifically excluded by the term amaithuni
'who is born of unlawful intercourse', which means that one should not voluntarily marry
a girl born of an unlawful intercourse.' stationary

Govinda also holds Niyoga in poor light and discourages its practice. Kulluka,
Raghava and Nandana say that Niyoga was permitted for the people of the earlier ages but
is condemned and undesirable for the Kali age; they quote Brihaspati in their support.
Asahaya, the 8th century commentator on Narada, observes that though sanctioned by
Dharmasutra, Niyoga and remarriage are both tabooed by society. Puranas written soon
after this period, such as the Adityapurana, include Niyoga among the custom prohibited
for the Kali age.

However, the opponents of the custom of Niyoga failed to realise that if this
custom was to be forbidden, regular remarriages ought to be allowed, as an alternative.
This step, however, was not taken and both Niyoga and remarriage were forbidden to
widows at about the same time. This resulted in a great hardship to hapless women,
especially because by this time child marriages had come into vogue, giving rise to a
large class of virgin widows. Mesmerized by the ascetic ideal, which had now become
more popular, leaders of society failed to afford adequate relief to the widow, when they
took up the enterprise of forbidding Niyoga.

Although the practice of Niyoga may appear objectionable to the historians and
sociologists in the modern age, it cannot, however, be gainsaid that Niyoga served a
useful purpose in its own days. It must be remembered that it was a substitute for the
widow remarriage. Hence, especially in the ages before the custom of widow-remarriage
came into existence in a real way, Niyoga was the most approved practice in India for
alleviating and mitigating the miseries of those women who had lost their husbands or
were without children. It thus solved the widow's difficulty to some extent by permitting
the brother-in-law to raise issues on his sister-in-law under certain circumstances. We can

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80. (Niyoga) नियोजन: तत्तत्वात् तस्य यथास्बूतिः पूर्वतिर्हतोहन्तु:; नियोजन:।
अत: प्राप्त नियोजने अत्यन्तमति। ततो नियोजनस्य कर्मजन्तो न नियोजने।
On Manu. III. 5
81. Quoted by Kulluka on Govindaraja's view on Manu. IX. 68
82. On Manu. IX. 68. Cf. Kullaka
also conclude that *Niyoga* served as a half-way house between a formal remarriage and an absolute celibacy, especially in the initial phase of the prevalence of this custom, when three sons were allowed to be raised under it. Of course it indirectly encouraged polyandry, but we should not forget that society was already tolerating it.

Under the circumstances, probably the custom of *Niyoga* was the happiest solution. Objectively, it was a replacement for remarriage of women, fulfilling, at the same time, the urge for and necessity of sons for the continuance of the lineage as well as for the inheritance of family property.

In course of time, *Niyoga* increasingly became a discredited institution and went out of vogue after circa 600 A.D. Although it is recognised by Narada, Yama and Parasara, who flourished at about this time, a majority of writers and law-givers gave their verdict against this practice. The *Niyoga* had apparently run out of steam by now and was consequently rendered as a dead custom by the 7th century A.D.

### 4.6 RELICS OF NIYOGA IN MODERN INDIA

Primarily owing to the operation of the factors which still serve the requirements and interest of the patriarchy, the relics of the *Niyoga* are still found in the form of leviratic alliances in some parts of India. This is borne out by a critical analysis of the practice of leviratic marriages currently in vogue or as practiced in the not too distant past in the Indian society. Thus, we find that in Punjab and Haryana, both agriculturally rich states, the widow's levirate alliance to her younger brother-in-law keeps the land and the worker in the family. As regards the practice of leviratic remarriage in Haryana during the British colonial period, the remarriage of widows through levirate was encouraged as a means of controlling their productive labour as well as their property, as non-married widows could exercise rights over their husbands' property.

On the other hand, in the regions or social groups, where the demand for women's labour or fertility is low, we find that such leviratic marriage alliances are not practiced. Thus, the land-owning Brahmin communities in the region of Haryana, in marked contrast to the Brahmins of Maharashtra, allowed their women to work on family farms and encouraged their widows to enter leviratic remarriages. It is thus obvious that customs or social practices are shaped by patriarchy to fit the particular needs of a
community. As a result of the shaping of the social practices and customary laws as per the requirements of a particular patriarchal community, the social customs not only often show differences across regions and social groups at a particular point in time but also differences within regions and social groups across time.

It is also noteworthy that certain peculiar local factors may also contribute to accord social acceptance and legitimacy to the practice like levirate. Thus, one of the factors that seem to have contributed to reinforce the practice of levirate in certain regions was the large scale migration of men to other parts of the country in search of jobs. For instance, large-scale recruitment of men from Haryana to the British army during the period of British rule may have been responsible for strengthening in Haryana during the British colonial period. The Arya Samaj, a popular reform movement in Haryana and Punjab, gave religious sanction to, and thereby legitimized, levirate.

The aforesaid example of the adoption of the practice of leviratic marriages by the Brahmin communities in Haryana also demonstrates that not all upper castes necessarily prohibit widow remarriage. Indeed the reality is more complicated than the common belief that that all upper castes prohibit and lower castes allows widow remarriage. Thus, we find that levirate is also practiced by the upper castes like the Brahmins and Rajputs in certain regions, e.g. by the Brahmins in Haryana and by some Brahmins and Rajputs in the Garhawal region in the Uttarakhand.

It is also pertinent to mention that the practice of levirate marriages emerges as a complex system, which shows contradictory facets in operation. On the one hand, such levirate alliance underlines a liberal attitude towards women, unlike any such opportunity being offered to widows in most parts of India, in the context of remarriage and sexuality. Such alliance also provides social security to the widow as she has a relationship with another man in the family. Among certain lower castes in Orissa, the father is unwilling to give his daughter in marriage to a bridegroom who has got no younger brother, apprehending perpetual widowhood for her in the event of her husband's death. But if she has a devara, she can easily live with him as his wife, when her husband dies. On the other hand, juxtaposed to the advantages of social security to the widow and the apparent liberal predilection of the society in view of the possibility of such leviratic alliance, a disconcerting aspect of such alliance is that it is often enforced upon a widow evidently with the motive of serving the needs and interest of patriarchy. Thus, the practice of
levirate marriages in its wake restricts a widow's right as to whom she could marry as the management and decisions about the formalization of the alliance are with the male members of her in-laws' family. This is true of a majority of the communities where the practice of levirate is in vogue. Such predicament and complex emotions of a widow has been portrayed in a masterly fashion by Rajinder Singh Bedi in his movie *Ek Chadar Maili Si*. In this movie, Rano, who is widowed and then, according to custom among the Jat Sikhs, married to her young brother-in-law, is absolutely reluctant about such marriage alliance which she feels as outrageous.

However, although the enforcement of the levirate upon the hapless widow, as per the dictates of the patriarchy, has been quite common in respect of most of the communities following this custom, such a pattern is not followed invariably by all the tribes where the custom of levirate is practiced. Thus, among certain tribal communities, widows do get some freedom of choice in this regard. For instance, among the Bhil tribe of Rajasthan and Gaddi tribe of Himachal Pradesh, even though it is considered as desirable that subsequent to the death of her husband, a woman should marry her brother-in-law, the widow has the discretion to choose if she wants to go into such affiliation. On the other hand, owing to the social norms and customs peculiar to a community, no such choice is sometimes available among many tribes to a woman upon the death of her husband. For instance, among the Bodh tribe of Laddakh and the Bhutia tribe of Sikkim, because of the custom of automatic levirate, the wife of the deceased husband remains, because of the polyandrous social structure, the wife of her deceased husband's brother/brothers. Naturally, women would have no choice or discretion in the matter.