



Significance and importance of marriage under family laws in India: A critical study

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Abstract

Marriage is considered as most important institution than any other institution which is recognised in this life because it includes society/others which are affected by the conduct therefore it is not just individual freedom or happiness. It has many unending benefits which are basically ordained for the preservation of society from nasty and immoral acts at one end and also the 'continuation of the chain' of society itself on the opposite end. These natural attributes of marriage are: -

- Closeness, Intimacy
- Companionship,
- Procreation and
- Parenting.
- It is certifiably not a common right rather it is an establishment or institution.
- Which gives social and lawful acknowledgment.
- Unique benefits to child, adults and society.

Therefore, in this paper I tried to analyze landmark cases of Supreme Court and other High Courts to understand its social significance and importance of marriage for living one's life under the garb of family laws to maintain the sanctity and legality of marriage institution.

Keywords: marriage, significance and importance of marriage

Introduction

We all know that before the dawn of civilization our society was a herd-instinct nomadic community. With the passage of time and development in nomadic culture, nomadic human beings keep evolving into an agricultural society which inspire them towards a family and they were very keen to ascertain the right paternity of children. Due to unregulated sex promiscuity, it was only maternity which was known. Paternity could not be established and was very difficult to found. Hence, it is very coherent to acknowledge that, at some phase of human development (HD) the need emerged for separating between the 'proprietaryship and the ownership' of material effects as a characteristic outcome of human conduct in this manner, the human male was interested and seized with the idea of deciding his paternity and it would stay incomprehensible if sex wantonness kept on being the standard of the general public. On the off chance that the sex relationship could be made an elite 'association of one man and one woman' really at that time it was conceivable to decide the correct paternity of youngsters. This need appears to be in man's journey to know the paternity of child set out the seeds of the organization of marriage^[1].

Finnish Philosopher and Sociologist Westermarck's well-known aphorism is 'Marriage is engrained in family rather than the family in marriage'^[2]. Institution of marriage has its deep roots in the ancient histories of almost all cultures and societies. It is the basic, fundamental and universal institution^[3] which organizes social life. Through the development of civilization marriage provides cultural legitimacy to biological reproduction process. Marriage, family^[4], kinship and even the notion of re-marriage are the exponential outcomes of such cultural legitimacy.

Marriage is considered as most important institution than any other institution which is recognised in this life because it includes society/others which are affected by the conduct therefore it is not just individual freedom or happiness. It has many unending benefits which are basically ordained for the preservation of society from nasty and immoral acts at one end and also the 'continuation of the chain' of society itself on the opposite end.

Marriage is world's generally essential and all-inclusive establishment, the establishment on which families are made and society repeats itself. In this way, it isn't just an articulation or festivity of adoration. Social orders endure and faces perilous impacts when reproduction and nurturing is isolated from the meaning of marriage. Marriage is the most assorted relationship known to mankind since it joins the two parts of humankind that is male and female^[5].

Development of Institution of Marriage

The improvement of Institution of marriage involves authentic interest. It began as sporadic associations and material Unions. Marriages by catch was the crude type of marriage, and at last it offered approach to elopement with assent, "a trade off with genuine catch". The organization of marriage by buy slowly grew up, and this thought of procurement of a spouse, as property, prepared for marriage by arrangement, subject to a settlement. Polyandry, Polygamy and even monogamy were ordered by prehistoric traditions, and practices in various pieces of the world. It is hard to teach cognatic or agnatic associations, exogamy or endogamy was favoured by the antiquated individuals. The old tribal framework was useful in guideline the holiness and duration of the marriage tie. The progress from the sacrosanct insolubility of marriage ties. The progress from

the consecrated solvency of union with the treatment of marriage, as a common establishment is present day idea. Marriage is essentially the premise of social association and the establishment of significance lawful rights and commitments. The significance and basic character of the organization of marriage needs no remark.

The Institution of marriage developed as a matter of significant historical interest. It originated in the form of material unions and irregular Unions ^[6]. Marriages by capture was the crude type of marriage, and at last it offered approach to elopement with assent, "a trade-off/compromise with real capture". The organization of marriage by purchase slowly grew up, and this thought of procurement of a spouse/wife, as property, prepared for marriage by agreement, subject to a dowry. Polyandry, Polygamy and even monogamy were a part of prehistoric traditions, and practices in various parts of the world. It is hard to understand cognatic or agnatic associations, exogamy or endogamy was favoured by the ancient people. The old tribal framework was useful in regulating the holiness and duration of the marriage tie. The progress from the sacrosanct insolubility of marriage to the treatment of marriage, as a civil union is the present-day idea. Marriage is essentially the premise of social association and the establishment of significance lawful rights and obligations/commitments. The significance and basic character of the organization of marriage needs no comment ^[7].

The old human society was a nomadic society. There was only just a herd-instinct type of conjugal relationship before the beginning of civilization. With the progression of time, the nomadic human society advanced into a rural society and it was viewed as important to find out the paternity of child. Insofar as the sex relationship stayed unregulated it was maternity alone, which could be known. Paternity couldn't be resolved. It is quite logical to state that at some phase of human advancement the need emerged for separating ownership of material and possession as a characteristic result of human conduct and the male was seized with the notion of knowing his child paternity. This was impossible if the sex promiscuity and illegal sex were a norm for society. Therefore, it was considered necessary that there should be union of one man and one woman then only it would be feasible to judge the paternity of child, this hardcore quest of man of knowing his Paternity led the foundation of institution of marriage ^[8].

Marriage is a Social Necessity

Man is not merely composed of a mass of flesh and a number of bones set together. He has a soul too in his body. But so, do have other living organisms and plants. In this respect man, animals and plants stand at par. What distinguishes man from other species and genera is the type of soul has in his body which others are totally devoid of. A plant has a soul which may be termed Botanical Soul (Ruh-I Nabati) whereas an animal has Ruh-i-Haiwani. But man has been endowed with an additional trait of soul. Besides the two types mentioned above, which is called the Human Soul (Ruh-i-Insani) ^[9].

Botanical Soul is manifested for instance; from the crop of hair man has over the surface of his body. Animal soul, the driving force of life, is strongly visible in the fury of his actions and perverted impulses such as his proneness to fight or inclination to kill, commission of suicide,

expression of anger, pursuit in sexual indulgences and obscenity etc. Human soul on the other hand, is one whose presence in man has made him excel all other beings, plants or animals. It is par excellence in its essence and gives him mastery over everything on earth, rather in this world and in the Hereafter. I got him such epithets as Homo sapiens, the image of God, the beat of His creations or Ashrafal Malkhuqat. All good deeds and noble emotions such as love, sympathy, cooperation desire for happy and peaceful living, acquisition of learning and knowledge, sagacity, wisdom, ratiocination, meaningful articulation, cheerful expression etc emanate from the human soul ^[10]. Therefore, to control inner animal of human being institution of marriage is recognized as a social norm to curtail evil in the society and we can see many ill impacts on the society "fornication" outside wedlock.

Marriage under Hindu Law

According to ancient Hindu Law marriage is the last of the ten sacraments ^[11] and is a tie a sacred tie, a tie which can never be broken. It is a relation established by birth to birth. According to Smritikars even death cannot break this relation of husband and wife which is not only sacred and religious but is a holy union also. Once created this sacred tie cannot be united. It is not a mere contract wherein a consenting mind is indispensable ^[12]. The institution of marriage is a sacrament and not a mere socio-legal contract ^[13]. In the ancient period the primitive men were wanderers from one place to the other for their livelihood. Hunting animals was their primary job and there is no stable home for them. They were living under the trees and they used to participate in sex when they longed for it with any or every member of opposite sex in their social group or other social groups ^[14]. When the time rolled on there was a change in the way the humans lead their life. They started to raise the animals like cows, goat etc., for the support of their livelihood. In the ancient period there was no system of marriage, there was no restriction of sex by any man with any other woman at any point of time. In those circumstances, the social leaders and some other elders established the system of marriage with a view to create a good family and society. After some time, there were marriages between two groups, in which all men would participate in sex with another group of women. In a sense it was a kind of system where there were number of husbands to a woman. The aim of marriage is to procure children legally. Procreation is essential for the survival of all forms of life in this world. For this nature has given sexual-urge to almost all kinds of animals including human beings at the particular slab of the age of their individual lives. The institution of marriage got developed in the human society to preserve the social harmony in this direction. Although it is difficult to define marriage, it can be explained as a union between man and woman where children born through this system are recognized as their legitimate offspring's. As animals, human beings require mutual co-operation of two individuals with different sex structures for procreation acts, human beings also need the same. Urge in living beings in this regard is called sexual urge. To canalize the sexual-urge, the concept of marriage was developed in the society of human beings. Marriage is one of the necessary Samskaras (Sacraments) or religious rites for all Hindus, whatever the caste they hold. Except for those who desire to adopt the life of perpetual Brahmachari or of a sanyasi.

Every Hindu must marry. "To be mother, women were created and to be fathers, men; the Veda ordained that Dharma must be practised by man together with his wife"^[15]. "He only is a perfect man who consists of his wife, himself and his offspring". "Those who have wives can fulfil their due obligations in this world; those who have wives, truly have a family life; those who have wives, can be happy; those who have wives can lead a full life"^[16].

Women and Hindu Marriage

In the present case, position of women was explicitly mentioned as per the sources of Hindu Law *Jyotsnaben Ratilal vs Pravinchandra Tulsidas*^[17]

"According to the *Saptatha Brahmana* 'Wife is also *ardhangini* (half of Man)' it means wife is the half of the husband. It is also said that man is only half, not complete till he marries. The *Taittiriya Samhata* is to the same effect as *Saptatha Brahmana*, "half is she of the husband that is wife". From this notion it is clear that unity of personality of husband and the wife. Mutual fidelity of husband and wife is also implied. *Manu* declared that mutual fidelity between husband and wife is the 'highest dharma'. *Manu* further stated that once a man and woman are united in marriage, they must see that there is no difference between them and that they remain faithful to each other".

Further, the position of wife is explained in this case to understand her worth *Lilabati Baisya v. State of Assam & Others*^[18]

As per the *Hindu Dharmashastras*, the wife is known as 'Jaya' because one's own self is begotten on her. According to the *Mahabharata* 'by cherishing woman' one virtually worships the Goddess of prosperity herself. By officiating her as goddess affixing women as the Goddess of prosperity. A man's half is his wife (*ardhangini*) the wife is her husband's best friend (*sakhi*) the wife is the only source of *Dharma* (righteousness), *Artha* (Prosperity) and *Kama* (pleasure) and she is also the divine source of *Moksha* (Freedom).

Further in the *Ramayana* the wife is said to be the 'very soul' of her husband, she is the *Grihani* (the lady of the house), *Sachiva* (wise counsellor), *Sakhi* (confidence) to her husband and dearest disciple of her husband in the pursuit of art. She is also *Griha-laksmi* (goddess of wealth in the House) and *Ardhangini* also. She is the ultimate *Samarajyi* (Queen) in the household of her husband".

The sacramental aspect of marriage under Hindu law has three characteristics:

1. A 'sacramental union' implies that a marriage once entered cannot be dissolved on any ground whatsoever.
2. It is a sacrament union, which means that marriage is not to gratify one's physical needs; but is primarily meant for the performance of religious as well as spiritual duties.
3. A sacramental union also defines that it is a tri-union of soul, body and mind. It is a union not for this life only but for all lives to come. This union is not only for this world but also for other worlds.

According to *Manu*,

"*Devadattam patirbharyam vindate necchayatmanah Tam sadhvim bibhryannityam devanam priyamakaran*"
Wife is a divine institution given by Gods. One should not think that one has obtained her by choice.

"*Prajanartham striyah srstah santanartham camanavah Tasmad sadharaṇo dharmah srutau patnya sahoditah*"^[19]

Women were created for the purpose of child-bearing, and men for the purpose of procreation. Hence it is that Religious Rites have been ordained in the Veda as common between the man and his wife.

"*Prajanartham mahabhagaḥ pujaḥ gṛhadiptayah Striyah sriyasca geheṣu na viṣeṣo' sti kascana*"^[21]

There is no difference whatever between the goddess of fortune and the women who secure many blessings for the sake of bearing children, who are worthy of worship and who form the glory of their household.

From the different sources it is clear that a woman must be 'honoured' by her father, husband, brother and brother-in-law, whoever desire their welfare. Where women are honoured in their homes then Gods are pleased with them if they are dishonoured then no sacred rites yield any reward to men.

Legal Aspect of Hindu Marriage

The Allahabad High Court observed in the present case^[21] that "under the Hindu law institution of marriage is a sacrament and not a mere betrothal or a simple contract. Its context is religious. It is considered as holy spiritual union corresponding to consortium omnitium vite of Rome (a process by which, the husband and wife become one). It is regarded as part of the life of the soul".

The main purpose of marriage was to perform 'religious rites and sacrifices' and to 'procreate children' who would extend spiritual benefits to their deceased ancestors by offering funeral oblations/offering and by perpetuating the name and lineage of their forefathers. By giving birth to a male child through a legally wedded wife, every Hindu is discharged of the debt to his father which is technically called as *Pitirini*"^[22]. In another case *Shivanandy v. Bhagawanthyamma*^[23], it was further observed that,

"*Marriage is binding for life because the marriage rite is completed by 'saptapadi' (seven steps) before the consecrated fire which creates a religious tie and a religious tie once created cannot be untied. It is not a mere contract in which, a consenting mind is indispensable*".

'*Panigrahana*' enables the male and female to unite in religious ceremonies and to attain the spiritual merits. Therefore, marriage is the basis of social and religious organization and foundation of important legal rights and obligations^[24]. As mentioned in the *Sapatha Brahmana* "The wife is verily the half of the husband (*ardhangini*). Man is only half, not complete until he marries. The *Taittiriya Samhitais* also having the same effect. *Manu* declared that 'mutual fidelity' between husband and wife is the highest *dharma*. According to *Mahabharata* also, by cherishing the woman one virtually we are cherishing the Goddess of prosperity herself. Wife under Hindu law is not just a '*grahpatni*' but also a '*dharma patni*' and '*shadharmi*'. The wife is her husband's best of friends. She is the source *purushastras* (object of human pursuit) of *Dharma*, *Artha*, *Kama*, and *Moksha*. The husband is known as *bharthi* (*Sodier/Protector*). He is also known as *pati* because he is under obligation to support her^[25].

In *Dhanjit Vadra vs. Smt. Beena Vadra*^[26],

"*A Division Bench of the Andhra Pradesh High Court felt that it would be in best interest of the parties to order the dissolution of the marriage, as it was felt that the marriage between the parties had broken irretrievably and there was no reasonable chance for their reunion, as they had been living apart for the last four and a half years. But the*

Division Bench was confronted with the question whether Section 13-B (2) of the Act permits the granting of such a decree. The Division Bench observed that Section 13-B has radically changed the 'old concept' of Hindu marriage from being a sacrament by treating it as an ordinary form of 'contract' which the parties can enter and put an end to like any other contract through mutual consent and this is the liberalizing trend of law in the matter of granting divorce by consent which cannot be lost sight by Courts in interpreting this section. It was further observed that the time specified in sub section (2) of Section 13-B "is the last hope of the Legislature for saving the marriage. The intention of the Legislature is to provide a minimum of six months for rethinking of the parties". In context, the question considered by the Bench was whether the Legislature intended that Section 13-B (2) be treated as mandatory provision of law or merely as a directory provision. In view of the text, context, purpose and design of the said provision, it was held that sub-section (2) of Section 13-B is a part of mere procedure and is, therefore, directory. It has been explained in this judgment that the six months' time fixed by Section 13-B (2) is not a rule relating of the jurisdiction of the Court to entertain a petition for divorce by consent, and that the question of jurisdiction is dealt with by subsection (1) which must be strictly complied with and sub-section (2) of Section 13-B is a part of mere procedure. Further, it has been reiterated that a procedural provision must be interpreted as a handmaid of justice in order to advance and further the interest of justice. Further, it has been explained in this judgment that Section 13-B (2) does not impose any fetter on the powers of the Court to grant instant decree of divorce".

In Muthusami Mudaliar and Anr. vs Masilamani And Ors [27], "It does not follow that a marriage opposed to the usages of. The communities and not recognized by them would be invalid. A marriage whatever else it is, i.e., an institution, a sacrament but undoubtedly it is a contract entered into for consideration with correlative rights and duties. The Civil Courts Act only requires that so far as Hindus are concerned its validity must rest upon Hindu, law i.e., as explained above, the law of the Dharma Shastras as distinguished from caste rules or the caste law. If it is not recognized by the caste or caste rules, the parties may cease to belong to the castes whose usages they have; violated and who would, therefore, expel them. There is nothing to prevent a man from giving up his caste or community. He is bound; by the caste rules only on account of his voluntary submission and, therefore, if the marriage is valid under the ordinary Hindu Law, they will be legally married even if such marriage is opposed to the rules of the caste or community to which they belong".

Bhagwati Saran Singh vs. Parmeshwari Nandan Singh [28], "Suits relating to marriage, must be treated as a civil contract, and civil rights arising out of that contract." We next have Sankaran Nair J. (as he then (sic) as) in Muthusami Mudaliar v. Masilamani, (sic) 3 Mad. 342, where he observes (p. 355):

"... A marriage whatever else it is, i. e., a sacrament, an institution, is undoubtedly a contract entered into for consideration with correlative rights and duties."

I am, therefore, of opinion that there is no war-rant for the proposition that a Hindu marriage is a sacrament only. It is also a civil contract".

"Many of the beliefs, ideals and rules of marriage prescribed in the Hindu shastras have lost their significance in contemporary society. Many legislations have also been formulated which have made several modifications in the Hindu marriage system and have also removed some of the lacunae associated with Hindu marriage. The social reformers have also efforts to bring about desirable changes in the Hindu marriage.

Marriage under Muslim Law

Marriage as per Islam is an important part of building healthy and protective relationships, families then societies. Therefore, for the validation of Islamic marriage, it has to meet certain criteria, which ensures the *health and security* as well as wellbeing of the couple, their families and their communities. In Muslim communities around the whole world, marriage takes on many cultural forms and local customs. Islam allows such cultural diversity as long as the practices do not cause harm specifically, as long as they do not contradict the principles of Islamic law that seeks to protect human beings [29].

"O men! Fear your Lord Who created, 'you' from a single being and out of it created its mate; and out of the two spread many men and women.¹ Fear Allah in whose name you plead for rights, and heed the ties of kinship. Surely, Allah is ever watchful over you" [30].

"Who are prone to pray: "Our Lord? Grant us that our spouses and our offspring be a joy to our eyes,⁹² and do make us the leaders of the God-fearing" [31].

"And one of His Signs is that He (Allah) has created mates for you from your own kind that you may find peace in them and He has set between you love and mercy. Surely there are Signs in this for those who reflect" [32].

Marriage has innumerable functions that helps in building a healthy society as ordained by Allah (SWT) which are Mentioned below.

- Creating tranquillity and harmony.
- The preservation of mankind.
- Promoting mutual love and respect.
- Protecting rights and promoting benefits of marriage.
- Enabling assistance, sharing and caring.
- Providing physical and emotional fulfilment.
- The purpose of marriage is to create a successful union that promotes love, tranquillity and mercy between husband and wife, and contributes to a healthy society.
- An unwanted marriage is unlikely to fulfil this pious purpose [33].

Marriage in Islam is viewed as an important and sacred union between a man and woman that fulfils half of one's religious obligations [34]. Marriage is also viewed as an act of worship to God (Allah). Islam views emotional and sexual expression between a husband and wife as a form of worship. Sexual relations are not solely for procreation but are viewed as a way for a couple to connect, strengthen their relationship, and help relieve everyday stresses [35]. This proposal illustrates the ability of Muslim men and women to marry whomever they choose, and highlights the fact that marriages arranged without the consent or involvement of Muslim women is completely contrary to the Islamic tradition. There is a documented decision by the Prophet Muhammad where a girl approached him stating her father forced her into marriage [36]. The Prophet Muhammad gave

her the choice to either accept the marriage or invalidate it immediately due to the duress involved^[37]. Although Islam provides many rights to women regarding marital issues, cultural traditions can greatly influence the proposal and acceptance process beyond the Islam requirements and, in some cases, directly contradict Islamic practices^[38].

Under the pre-Islamic law of status, the *patria potestas*^[39], women had virtually no rights. The *shari'a* accorded women a number of rights, and thus changed marriage from an institution characterized by unquestioned male superiority to one in which the women were somewhat of an interested partner. For example, the dowry, previously regarded as a bride-price paid to the father, became a nuptial gift retained by the wife as part of her personal property^[40].

The *Shari'a* also changed the nature of marriage from "status" to "contract" in the words of Sir Henry Maine. An offer of marriage by the man, an acceptance by the woman and performance of such conditions as the payment of dowry are all essential elements of the marriage contract. Although an offer to marry is actually made through a woman's father, the woman's consent is considered imperative if the contract is to be binding. Additionally, the offer and acceptance must be made in the presence of at least two witnesses for the marriage contract to be valid. Even though marriage in Islam is often considered a religious function, the *shari'a* does not prescribe any particular form of marriage ceremony. The required marriage contract, whether oral or written in form, may be supplemented by ceremonies of religious or social significance. Marriage under Islamic law may well be regarded as a civil act, as it is in modern law^[41].

"Nikah" amongst Muslims has been considered for the most part pious act. In „Radd-ul-Mukhtar" it has been mentioned as "there is no act of devotion that has remained prescribed for us, since the time of Adam, upon him be peace, up to his moment, and which is to be continued in paradise except Nikah (marriage) and Imaan (faith)"^[42]. The meaning of marriage is wedlock or the mutual relation of husband and wife or the institution whereby a man and a woman are joined in a special kind of social and legal relationship for the purpose of making a family. In Muslim law, Nikah is a contract which legalizes the intercourse as well as procreation of children procreation. Hence, Nikah means union of sexes. There is also some object behind this union, which confers the status of husband and wife on a man and woman to marriage and the status of legitimacy on the children born out of such union^[43]. Marriage is recognized as the basis of society. It is a contract for the legalization of intercourse and procreation of children^[44]. Under Muslim law, marriage is known as "Nikah" Nikah is a contract with a purpose of procreation and legalization of children^[45]. Therefore Muslim marriage is not a sacrament but a civil contract. Like any other religion, Islam also lays stress on the first and foremost righteous act, and therefore it proscribes all kinds of sexual relations outside marriages either pre-marital or extra-marital. The conjugal union between man and woman is not a temporary one rather it is enduring and stable. Prophet Mohammad (PBUH) emphasized the significance of marriage in the following words "It is necessary for you to marry because marriage is the most powerful shield against the allurements of sight and the protection of your parts; if one of you could not afford it, let him fast because fasting weakens the sexual impulse"^[46].

According to Islam, it is believed that marriage is a "Sunnat Muwakkidah". This means that it is an act of such a nature that, if a person does it, he gets religious benefits. If he abstains from doing it, then he commits sin^[47].

Moreover, marriage is a social basis for a society where its recognition is very important and such contract of marriage is also a sacred covenant. Marriage gives birth to an institution which leads to the upliftment of men in every aspect and also a reason for the continuity of human race. The main aim of the institution of marriage is to protect the society from filth and un-chastity. It has also been said that marriage is so holy a sacrament that in this world, it is an act of Ibadat or worship, for it preserves mankind free from contamination^[48].

Legal Status of Muslim Marriage

Justice Mehmood laid following points in Abdul Kadir vs. Salima^[49] while interpreting the meaning of marriage of Islam. In dealing with the first point, "I adopt the language employed in the Tagore Law Lectures (1873) in saying that "marriage among Muhammadans is not purely a Sacrament nor a purely civil contract although Muhammadan law does not positively prescribe any service peculiar to the occasion. Solemnisation of nikah is generally with recitation of certain verses from the Quran. That it is a civil contract is manifest from the various ways and circumstances in and under which marriages are contracted or presumed to have been contracted. And though a civil contract, it is not positively prescribed to be reduced to writing, but the validity and operation of the whole are made to depend upon the declaration or proposal of the one, and the acceptance or consent of the other, of the contracting parties, or of their natural and legal guardians before competent and sufficient witnesses; as also upon the restrictions imposed, and certain of the conditions required to be abided by according to the peculiarity of the case" (p. 291). That this is an accurate summary of the Muhammadan law is shown by the best authorities, and Mr. Baillie, at page i of his Digest, relying upon the texts of the Kanz, the Kifayah, and the Inayah, has well summarized the law: "Marriage is a contract which has for its design or object the right of enjoyment and the procreation of children. But it was also instituted for the solace of life, and is one of the prime or original necessities of man. It is therefore lawful in extreme old age after hope of offspring has ceased, and even in the last or death illness. The pillars of marriage, as of other contracts, are Eejab-o-kubool, or declaration and acceptance the first, speech, from whichever side it may proceed, is the declaration, and the other the acceptance." The Hedaya lays down the same rule as to the constitution of the marriage contract, and Mr. Hamilton has rightly translated the original text (1): "Marriage is contracted--that is to say, is effected and legally confirmed--by means of declaration and consent, both expressed in the preterite". These authorities leave no doubt as to what constitutes marriage in law, and it follows that, the moment the legal contract is established, consequences flow from it naturally and imperatively as provided by the Muhammadan law. I have said enough as to the nature of the contract of marriage, and in describing its necessary legal effects I cannot do better than resort to the original text of the Fatawa-i-Alamgiri which Mr. Baillie has translated, in the form of paraphrase, at page 13 of his Digest, but which I shall translate here literally, adopting Mr. Baillie's

phraseology as far as possible: "The legal effects of marriage are that it legalizes the enjoyment of either of them (husband and wife) with the other in the manner which in this matter is permitted by the law; and it subjects the wife to the power of restraint, that is, she becomes prohibited from going out and appearing in public; it renders her dower, maintenance, and raiment obligatory on him; and establishes on both sides the prohibitions of affinity and the rights of inheritance, and the obligatoriness of justness between the wives and their rights, and on her it imposes submission to him when summoned to the couch; and confers on him the power of correction when she is disobedient or rebellious, and enjoins upon him associating familiarly with her with kindness and courtesy".

In *Saburannessa vs. Sabdu Sheikh & Ors* ^[50], Court held that Muslim marriage is like a contract of sale due to *ejab-o-qubool* which is followed by consideration (*mahr*).

"It has been contended on behalf of the appellant that a dower is not really a consideration for the marriage and it is in the nature of a gift and, therefore the deed did not require registration. It appears clear from the statement which has been quoted that it is not a gift pure and simple, but a Hibabilewaz as understood by the Mahomedan law. It is in reality a sale, and has all the incidents of a contract of sale. The marriage under the Mahomedan law is a civil contract and is like a contract of sale. Sale is a transfer of property for a price. In the contract of marriage, the wife is the property and the dower is the price".

Marriage under Christian Law

God willed to create man in his image, male and female, and he did so. God gave male and female the commission to replenish the earth and subdue it, so that reproduction has a theological and not just a biological and sociological validation (Bromiley 1980, 4). Therefore, the theology of marriage should be understood as the product of the creation. What is marriage? In order to understand marriage, we need to understand that it is a relationship which is instituted by God. Marriage is not only of God, but it belongs to Him as well, not to us. Jesus says, "So they are no longer considered as two but one" ^[51]. That is why, God has joined them together, let man not separate through divorce" (Mark 10:12). However, many people believe that it belongs to them. Also, false understanding of marriage would allow us to abuse it. Therefore, we need to understand the marriage fully to eliminate the abuses. In order to understand what marriage is as designed and ordained by God, it is necessary to look past the opinions and cliches of the world around us. Since the Bible gives us a rich understanding of what God intended in the marriage relationship, it is vital to examine the Bible's teaching on marriage. First, we must realize that the idea of male and female was God's idea (Wheat 1980, 24). The Bible says, "So God created man in his own image, in the image of God he created him; male and female he created them" (Gen. 1: 27). In a loving, amazing, creative act, the Almighty God conceived the wonderful mysteries of male and female, masculinity and femininity, to bring joy into our lives. Second, marriage was designed by God to meet the first need of the human race: loneliness. Adam had the fellowship of God and the company of birds and animals, an interesting job, but he was alone. So, a wise and loving Creator provided the perfect solution: another creature like the man yet wondrously unlike him. God's plan was to

supply a completeness, a person totally suitable for Adam spiritually, intellectually, emotionally, and physically. Third, marriage was planned and decreed to bring happiness, not misery. When the Lord brought the woman to Adam, the man expressed his feelings in words like these: "This is now bone of my bones and flesh of my flesh; she shall be called 'woman,' for she was taken out of man" (Gen. 2:23). Without a doubt marriage was designed for our joy, our happiness. Fourth, marriage begins with a leaving of all other relationships in order to establish a permanent relationship between one man and one woman (Ibid, 27). The Bible says,

"Therefore, shall a man leave his father and his motherland shall cleaved unto his wife: and they shall be one flesh" ^[52].

Christians have focused so closely on marriage as an institution that we seem to have forgotten that it is a living, personal relationship (Gundry 1980, 33). The original creation account in Genesis 1 and the meeting of Adam and Eve in Genesis 2 reflect God's intention that male and female would find their relationship satisfying and pleasurable. Adam immediately recognized the purpose of God's dual creation: "Bone of my bones and flesh of my flesh!" The principal we learn from Genesis 2:24 is that marriage means leaving. Unless you are willing to leave all else, you will never develop the thrilling openness of relationship that God intended for every married couple to enjoy. Fifth, marriage requires an inseparable joining of husband and wife throughout their lifetime ("...and be united to his wife..." Gen. 2:24). God's plan in marriage is an inseparable union that is brought about as we obey His command to cleave to one another. Marriage is a contract between two individuals who agree to a more or less permanent bond regardless of the love content. Sixth, marriage means oneness on the fullest possible sense, including intimate physical union without shame ("...they will become one flesh" Gen. 2:24). The biblical expression for sexual intercourse between husband and wife is to know. Although it goes far deeper than the physical, becoming one flesh involves intimate physical union in sexual intercourse. Thus, in the divine pattern of marriage, sexual intercourse between husband and wife includes both intimate physical knowledge and a tender, intimate, personal knowledge. This makes marriage a very distinct relationship from that of family. Marriage, after all, is not defined as merely the means of procreating, even though this is one outcome of marriage.

"So, God created mankind in his own image, in the image of God, he created them; male and female, he created them" ^[53].

"But for Adam no suitable helper was found" ^[54]. So the Lord God caused the man to fall into a deep sleep; and while he was sleeping, he took one of the man's ribs and then closed up the place with flesh ^[55]. Then the Lord God made a woman from the rib he had taken out of the man, and he brought her to the man ^[56].

The man said,

"This is now bone of my bones and flesh of my flesh; she shall be called 'woman,'

That is why a man leaves his father and mother and is united to his wife, and they become one flesh." ^[57]

According to the teaching of the Catholic Church, the natural contract of marriage has been raised to the dignity of a sacrament by Christ. Since, he committed the care of this as well as of all the other sacraments to His Church, the

Catholic Church claims jurisdiction over the marriages of the baptized. Through baptism, man is incorporated into the Church of Christ and thereby immediately falls under the authority which Christ vested in the Church ^[58]. The three ends of marriage, according to Canon law are: First, the procreation of offspring; second, mutual *consortium*, third, a remedy for concupiscence. The first end is common to man and animal. But, according to catholic doctrine, the sacrament of matrimony gives an added strength to attain these ends. Even, in the natural order, marriage is a bilateral contract between a male and a female, give rise to an ethical relationship, since Christ didn't change the natural aspects of this Contract ^[59].

For determining the sacramental nature of marriage in Christian marriages, Lord Penance's judgement in Hyde v Hyde and Woodmansee ^[60] held that:

"Marriage which is understood in Christendom, may be defined- as the free or voluntary union for this life of one man as well as one woman which excludes others and has become the accepted definition of marriage in this country, and the latter part forms the introduction to the civil marriage ceremony in England".

Conclusion

A right to family unity is inherent in the universal recognition of the family which is fundamental group unit of a society. Therefore, it is entitled to assistance and protection. This right is entrenched in universal and regional human rights instruments and international humanitarian law, and it applies to all human beings, regardless of their status. Therefore, establishing a family is one of the major concerns for every nation and application of choice is one of the constituting factors for every state under National and International laws.

In each religion sanctity of marriage is recognized where women have been treated as a part of women as his soul as his body as his half-life but the social stratum is against women that is why in the name of religion women is devalued. Moreover, women have religious and family laws in her favour.

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3. Note (Institutions are established ways of doing things. It refers to those rules and regulations which in their abstractness focus on the practicality of them by maintaining social interaction and regulated behaviour pattern. It involves discipline and curbing human emotions and behaviour. Recognized usage and procedures are known as institutions of Sociology).
4. Note (Family: is the basic unit of social organization. E.W. Burgess and H.J. Locke, in their book *The Family*, 1953, defined 'family is a group of persons united by the ties of marriage, blood, or adoption; constituting a single household, interacting and intercommunicating with each other in their respective social role of husband and wife, mother and father, brother and sister; creating a common culture'.)
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30. Holy Qur'an IV: 1 Explanation-The details how out of that 'being' its mate was created are not known to us. The explanation which is generally given by the commentators of the Qur'an and which is also found in the Bible is that Eve was, created out of a rib of Adam. (The Talmud is even more detailed in that it states that Eve was created out of Adam's thirteenth rib on the left side.) The Qur'an, however, is silent on the matter and the tradition which is adduced in support of this statement does not mean what it is often thought to be. It is thus better that we leave the matter in the same state of ambiguity in which it was left by God, rather than waste our time trying to determine, in detail, the actual process of the creation of man's mate.
31. Holy Qur'an XV: 74 Explanation-That is, we should excel in piety, righteousness and good works; nay, we should become the leaders of the pious people so that we may lead them in the propagation of virtue and piety

- in the world. Incidentally, this characteristic of the true servants was in great contrast to that of the disbelievers, who strove in competition and rivalry with one another for superiority in worldly power and wealth. But it is a pity that some people in our time have misinterpreted this verse as containing sanction for seeking candidature for political leadership. According to them, the verse means: Our Lord, make us rulers over the pious people.
32. Al Qur'an XXX: 21 Explanation-That is, this system has not come about by chance, but the Creator has brought it about deliberately with the object that the man should find fulfilment of the demands of his nature with the woman, and the woman with the man, and the two should find peace and satisfaction in association and attachment with each other. This is the wise arrangement which the Creator has made the means of the survival of the human race on the one hand, and of bringing the human civilization into existence on the other hand. If the two sexes had been created on different patterns and designs, and the state of agitation which changes into peace and tranquillity only through union and attachment between the two had not been placed in each, the human race might have survived like sheep and goats, but there was no possibility of the birth of a civilization.
 33. Supra note 71
 34. Sahih ul-Jaami Hadith: Anas bin Malik, a companion of the Prophet Muhammad, reported that the Prophet Muhammad said, "Any man whom Allah provides with a virtuous wife has been helped to half his Deen(religion), so he should fear Allah regarding the other half."
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 39. (Latin: "power of a father"), in Roman family law, power that the male head of a family exercised over his children and his more remote descendants in the male line, whatever their age, as well as over those brought into the family by adoption. This power meant originally not only that he had control over the persons of his children, amounting even to a right to inflict capital punishment, but that he alone had any rights in private law. Thus, acquisitions of a child became the property of the father. The father might allow a child (as he might a slave) certain property to treat as his own, but in the eye of the law it continued to belong to the father.
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