Revisiting Hindu Marriage Norms: Unveiling Women's Agency in Ancient India[*]

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Abstract

This article extensively explores marriage norms in ancient India, focusing on women's agency. It begins by dissecting the concept of marriage and its variations in ancient India and sheds light on its significance from women's viewpoints. It scrutinises the roles of women within the institution, including debates surrounding the age of marriage, the qualities sought in brides, and the complexities of partner selection including the prohibited degrees of marriage. The paper delves into her roles in marriage rituals as well as post-marital positions. Contentious issues like divorce and remarriage of women have also been touched. Overall, this article aims to uncover obscure aspects of women's autonomy within marriage, analysing their roles and representations across all facets. By examining evolving Hindu marriage norms throughout the Vedic, Puranic and Smriti periods, it emphasizes the need for a refined understanding of women's agency. The paper seeks to contribute to a comprehensive understanding of marriage in ancient India, particularly from the perspective of women's representations, urging readers to reconsider conventional narratives.

Key words: Hindu marriage, women's agency, ancient India, matrimonial practices, socio-cultural dynamics.

1. Introduction

In Hindu society, the institution of marriage stands as the foundation of cultural, social and legal norms, which are deeply rooted in tradition and historical practice.[1] Yet, because of its perceived permanence, the dynamics of Hindu marriage, especially in the case of women's agency,[2] have often been overlooked or misunderstood.[3] In this article, a scholarly exploration of the multifaceted layers of marriage norms in ancient India is focused, specifically examining the role and agency of women within these norms.

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[1] B.B. Satpathy, "Indian Culture and Heritage", *Culture*, Vol. 2, 2015, p. 44.

[2] Women's agency refers to the ability of women to take action, make their own decisions, and exert influence over their lives and outcomes, despite the constraints and limitations imposed by patriarchal societies.

[3] M. N. Srinivas, "The Changing Position of Indian Women", *Man*, Vol. 2(2), 1977, p. 221.

Marriage in Hinduism goes beyond just the union of two people. It connects families, communities and cultures.[4] Traditionally the institution of marriage carries the weight of social expectations and cultural values of the parties.[5] However, the dynamics of power and autonomy within these unions, especially from the perspective of women, remain the subject of debate and scholarly enquiry.[6] Traditional narratives often portray women as passive actors with limited autonomy and agency when it comes to marriage and family life in ancient India.[7] However, recent scholarship and historical revaluation challenge this simplistic picture. It rather sheds light on the subtle roles and agency used by women within marriage institutions.[8]

This paper aims to challenge the conventional narrative and reveal the hidden details of women's agency within the institution of marriage in ancient India. Through a refined understanding of the rules of Hindu marriage, the goal is to enrich scholarly discussion and contribute to the broader conversation about gender, power, and agency in ancient Indian society. Exploring the roles and experiences of women, the aim is to illuminate the complexities of marital dynamics and develop a deeper understanding of the diverse realities of marital life in ancient India. The article encompasses the evolving idea and dimensions of marriage, including its forms, significance from women's perspectives, the position of women within marriage, debates surrounding marriage age and bride qualities, partner selection criteria, prohibited degrees of marriage, women's roles in marriage rituals, and their post-marital positions. From this article, readers can gain insight into the extent of freedom and autonomy enjoyed by ancient Indian women in their matrimonial affairs and how these freedoms gradually diminished in later periods.

This article adopts a multifaceted approach, combining historical, sociological, and legal methodologies to explore Hindu marriage norms in ancient India and elucidate women's agency within this context. To investigate women's roles, scholarly works,

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[4]   G. R. Mehrotra, "South Asian Women and Marriage: Experiences of a Cultural Script", *Gender Issues*, Vol. 33, 2016, p. 353.

[5]   E.S. Scott, "Social Norms and the Legal Regulation of Marriage", *Virginia Law Review*, Vol. 86(8), 2000, p.1935.

[6]   Ibid. p. 1964

[7]   U. Roy, *Idealizing Motherhood: The Brahmanical Discourse on Women in Ancient India (Circa 500 BCE-300 CE)*, (SOAS1999), p. 182

[8]   See, G. Spivak, 'Can the Subaltern Speak?' C. Nelson and L. Grossberg (eds.), *Urbana Marxism and the Interpretation of Culture*, (University of Illinois Press 1998); P. Parmar, 'Gender, Race and Class: Asian Women in Resistance', Centre for Contemporary Cultural Studies (eds.), *The Empire Strikes Back,* (Routledge, 1982), pp. 235-274; C. T. Mohanty, 'Under Western Eyes Feminist Scholarship and Colonial Discourses', C. T. Mohanty *et al.* (eds.), *Third World Women and the Politics of Feminism*, (Indiana University Press, 1991), pp. 333-358

and historical, and legal documents about Hindu marriage have been examined. Additionally, available primary sources including Vedic, Puranic, and Smriti texts, supplemented by relevant literature, have been scrutinized for historical analysis of the topic. Furthermore, it adopts a sociological perspective to analyse social structures, gender roles, and cultural norms prevalent in ancient India, aiding in contextualizing women's agency within the institution of marriage.

Despite inherent limitations such as limited availability of primary sources, interpretational challenges, difficulties in reconstructing historical context, and variations in Hindu marriage norms across regions and time periods, this article provides valuable insights into the interplay between Hindu marriage norms and women's agency in ancient India.

2. Concept of Marriage in Ancient India

In Indian civilisation, marriage was revered as a holy and divinely ordained union, with the parties bowing in front of the sacred fire to signify their commitment.[9] The evolution of marriage in ancient India witnessed a shift from promiscuity to conventional marriage, underscoring the sanctity and significance of marital bonds.[10] It is said that the great sage Shwetaketu commanded the replacement of promiscuity with regular marriage.[11]

As society progressed, the perception of marriage underwent a transformation. Marriage was considered a religious duty, with both partners deemed essential for reaching heaven.[12] The institution of marriage was sanctified, ritualized, and normalized, emphasizing the union of couples through sacramental wedlock.[13] The importance of marriage for women was highlighted by the significance attached to finding a good husband through fasting, prayers, and rituals.[14]Practices like bride-selling and wife-staking gradually waned, and marriage evolved into a joint ownership between husband and wife.[15] Vedic literature portrays marriage as a holy and divinely ordained institution.[16]

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[9]   A. S. Altekar, *The Position of Women in Hindu Civilization: From Prehistoric Times to the Present Day*, (Benares Hindu University 1938), p. 57
[10] Ibid, p. 34
[11] Ibid, pp. 34-35
[12] Ibid, p. 408
[13] B. S. Upadhya, *Women in the Rigveda*, (Nand Kishore & Bros. 1941), p. 40
[14] L. Dube, *Women and Kinship: Perspectives on Gender in South and South-East Asia*, (UN University Press1997), p. 114
[15] Altekar, supra note 8, at p. 409
[16] Ibid. p. 57

In Vedic India, marriage was sanctified, ritualized, and perceived as a normal and desirable necessity in society. It was believed to be a means of attaining immortality and happiness, with particular emphasis on the birth of sons: "*Giving birth to many children and devoted to the Gods, be thou conducive to our happiness and well-being.*"[17] In early Aryan society, the significance of marriage stemmed from the imperative of ensuring the continuity of progeny and the augmentation of dominance over other races. Each Aryan aspired to contribute at least ten males to the tribe, a goal attainable only through the establishment of a permanent marital union. This aspiration found expression in a Vedic prayer: "*May the husband be the eleventh male member of the family, the rest ten being his sons*."[18] Furthermore, the notion of maintaining blood purity and a preference for monogamous marriages served to fortify the institution of marriage in Indian society. In religious beliefs that mandated the worship of manes, having a male child was deemed essential, particularly upon the demise of the father, symbolizing the transfer of responsibilities.[19] This was viewed as both a social and religious obligation, with the purpose of fulfilling the duty to have children to discharge the debts of the father to their ancestors.

The concept of marriage evolved throughout different historical periods, with various forms of marriage mentioned in ancient texts such as the Grihyasutras, Dharmasutras, and Smritis.[20] The position of widows and the practice of widow remarriage also reflected the complexities and traditions surrounding the concept of marriage in the Indian context. Marriages between close blood relatives were prohibited, although these restrictions were not firmly established during the Vedic era.[21] Since ancient times, almost all Hindu women have been destined for marriage. Historically, it stands out as the most crucial and prevalent institution in Hindu social life. In South Asian culture at large, adulthood is not considered complete until one is married. Men may delay marriage longer than women, as their parents tend to be less concerned about their marital status.[22]

The entire Subcontinent is permeated with arranged marriages. Hindus value negotiated marriage due to virginity, sex segregation, caste endogamy and exogamy (of the gotra, clan, lineage etc.), and class concerns. Since society values female

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[17]   Rigveda X. 85-44.
[18]   Rig Veda, X. 85, 45
[19]   Upadhyaya, supra note 12, at p. 44
[20]   Regarding forms of marriage, the Grhyasutras, Dharmasutras, and Smritis specify eight types: Brahma, Daiva, Arsha, Prajapatya, Asura, Gandharva, Rakshasa, and Paisacha.
[21]   D. N. Mitter, *The Position of Women in Hindu Law*, (Calcutta University 1913), p. 209
[22]   Dube, supra note 13, at p.109

sexuality and requires girls to be virgins, it is the responsibility of the elders to arrange their marriages.[23] Young couples typically seek parental consent before getting married.Widow marriages are traditionally acceptable only in the middle and lower castes, and are still uncommon in the higher castes despite being permitted by law. Hindus believe that marriage sanctifies female sexuality. Since sex is a natural human craving, marriage is seen as an essential component of life, especially for women.[24] Since early times, patrilineal Indian societies considered marriage as the only ethical and respectable means of managing female sexuality. This impacts the marriage and motherhood of women. The marriage of a girl is expected to be a virginal one. Failing to adhere to this expectation is considered a sin and results in a loss of merit. Restriction on widow remarriage in higher castes stems from their firm conviction that Hindu marriage is sacred.[25] Even today, a woman can only be married once with full rites, and subsequent (widow) marriages are not as respected.[26]

Hindus emphasize the significance of marriage for women. Typically, blessings for males focus on requesting a long life, while blessings for females seek a good husband. Girls are expected to observe various vratas, including fasting and prayer rituals, to attract a suitable husband akin to Shiva and Vishnu. Marriage is believed to bring happiness and good fortune. In Hinduism, women with living husbands are referred to as "the fortunate one" or "the auspicious one."[27] On special occasions, enhancing one's luck is associated with feeding a "fortunate" married woman and exchanging items like kumkum (vermilion), glass bangles, a mirror, and a comb.[28]

3. Forms of Marriage Practiced in Ancient India

In the Vedic age, there were various forms of marriage. These included eight forms, with the Brahma and Asura forms being the most prevalent today.[29] Manu and other sages[30] defined eight forms of marriage: (1) Brahma, (2) Daiva, (3) Arsha, (4) Prajapatya, (5) Asura, (6) Gandharva, (7) Rakshasa, and (8) Paishacha. Of these, the Brahma and Asura forms are still practised. While all eight forms were permitted in the Smritis, the first four were considered more suitable and are called approved

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[23] Ibid. pp. 109-110
[24] Ibid.p.109
[25] Ibid. p. 112
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Mitter, supra note 20, at pp. 209-210
[30] Manu describes eight forms of marriage, and Apastamba, Gautama, Vasistha, Baudhayana, Vishnu, and Yajnavalkya, all agree with him.

forms. The last four were looked upon less favourably, known as unapproved forms. While Manu suggests that the Rakshasa form was permissible for Kshatriyas and the Asura form for Vaisyas and Sudras, it does not imply that they were obligatory."[31]It is believed that these diverse marriage customs may have originated from the traditions of different tribal communities, which later merged into a single society.[32]

When the father of the bride personally invites a Vedic scholar, a man of good conduct, and bestows upon him the daughter adorned and honoured with valuable attire, it is called the Brahma marriage.[33] Originally, this form was open to all classes, but later even Sudras, who are not allowed to study the Vedas, were allowed to marry in this way, although strictly speaking, it seemed forbidden for them.[34]

In the Daiva form of marriage, a maiden was given in marriage to a priest officiating at a religious sacrifice.[35] This form was unique to Brahmins because only they could officiate in such ceremonies.[36]

The Arsha form of marriage occurred when a father gave his daughter in marriage after receiving a cow and a bull (or two pairs of cattle) as per the sacred law.[37] These animals were given in fulfilment of the sacred law and were not considered as the price for the bride. This form of marriage couldn't be seen as a sale because the number of cattle given remained constant, unlike a sale where the price might vary based on the bride's attractiveness.[38]

In the Prajapatya form of marriage, the daughter is given away by the father after he has shown respect to the bridegroom and addressed the couple with the phrase, "May both of you perform together your duties."[39]

In the Asura form of marriage, the bridegroom receives a maiden after offering as much wealth as he can afford to the kinsmen and the bride herself, not necessarily following the instructions of sacred laws. This form essentially amounts to the purchase of the bride by the bridegroom, with the primary criterion being the exchange of money. The Asura form of marriage is prevalent among the Sudras in Southern and Western India.[40]

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[31] Mitter, supra note 20, at p. 210-211
[32] Ibid. p. 211
[33] Manu Samhita, III, 27-34
[34] Manu Samhita, III, 27, in Mitter, supra note 20, at pp. 211-212
[35] Ibid. III, 28
[36] Mitter, supra note 20, at p. 212
[37] Manu Samhita, III, 29
[38] Mitter, supra note 20, at p. 212
[39] Manu Samhita, III, 30
[40] Mitter, supra note 20, at p. 214

Manu described the Gandharva form of marriage as the voluntary union of a maiden and her lover, driven by desire and sexual intimacy.[41] This type of marriage was allowed only for the Kshatriya caste.[42] It's important to note that mere cohabitation without a clear intention and mutual agreement to marry is not considered a valid form of this marriage.[43]

In the seventh form of marriage, known as the Rakshasa, Manu described it as the forcible abduction of a maiden from her home while she cries out and weeps, after her relatives have been harmed, and their homes broken into.[44] This type of marriage was permitted for Kshatriyas by tradition.[45]

The eighth form of marriage called the Paisacha or diabolical form, was described by Manu as seducing a girl who is sleeping, intoxicated, or mentally impaired.[46] It is considered the most sinful form of marriage.

In various Puranas, including Agni,[47] Padma,[48] and Garuda,[49] the eight forms of marriage are elucidated. The Garuda Purana categorizes the first four forms as praiseworthy for Brahmanas, the next two as acceptable for Kshatriyas, the Asura form for Vaishyas, and the last one for Shudras.[50] The Skanda Purana expands the recognized forms to ten, namely Prajapatya, Brahma, Daiva, Arsha, Gandharva, Asura, Rakshasa, Paisacha, Pratibha, and Ghatana.[51] It asserts that nothing should be taken in return for the girl. Additionally, it contends that even the Arsha form, where a pair of cow and bull is accepted for the girl, is tantamount to selling her.[52]

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[41] *"The voluntary union of a maiden and her lover, one must know to be the Gandharba Riti which springs from desire and has sexual intercourse for its purpose.", Manu Samhita,* III, 32

[42] Manu Samhita, III, 26

[43] *Chuckrodhaj* vs *Beerchunder* I. W.R. Civ. R. 194.

[44] *"The forcible abduction of a maiden from her home, while she cries out and weeps, after her kinsmen have been slain or wounded and their houses broken open, is called the Rakshasa (rite)."* See, *Manu Samhita,* III, 33

[45] Manu Samhita, III 26.

[46] *"When a man by stealth seduces a girl who is sleeping, intoxicated or disordered in intellect, that is the eighth, the basest and most sinful rite of the Pisachas."* See, *Manu Samhita,* III, 33

[47] Agni Purana., 154. 9-11

[48] Padma Purana., 233. 21-30

[49] Garuda Purana., I. 95.7

[50] Ibid. I. 95.11

[51] Skanda Purana, VI, 241. 35-36 in Roy A., Women in the Purana Tradition, (University of Allahabad 1998), p. 123

[52] Ibid. IV, 38. 17

While the Skanda Purana expands the forms of marriage from eight to ten, whereas the *Brahmanda Purana* reduces them to four unique types and calls them "Udvaha". It denotes four distinct types of wives. The classifications include: (1) 'Kala-krita,' acquired for a specific time; (2) 'Kraya-krita,' obtained through outright purchase; (3) 'Pitridatta,' given by parents; and (4) 'Svayamyuta,' one who unites of her own accord. The text further specifies that the first type is akin to a prostitute, the second to a slave, the Svayamyuta corresponds to a marriage based on the Gandharva tradition, while the Pitridatta is termed 'bharya,' signifying a wife.[53]

After consulting the Vedas, Smritis, and Puranas, Upadhyaya categorized the subsequent forms of marriage into six types: (1) Asura-Brahma, (2) Prajapatya, (3) Svayamvara, (4) Gandharva, (5) Rakshasa, and (6) Contractual.[54]

Upadhyaya jointly called the Brahma and Asura marriages the "Asura-Brahma marriage" due to its dual nature. In Vedic literature, grooms often sought approval from the bride's father through generous gifts, particularly if lacking charm and skills.[55] In some cases, grooms received dowries from the bride's brother, but these marriages were categorized as Asura, where financial contributions were obligatory, distinguishing them from the Brahma style, which prioritized non-monetary considerations.[56]

While the spirit of Svayamvara marriage and Gandharva marriage may seem closely related, Upadhyaya identifies them as distinct types. Svayamvara, originating in the Vedic period, entails the bride actively choosing her husband from a pool of suitors, often involving challenges or conditions set by the bride's family. It follows a formalized process with family involvement and specific goals for the suitors.[57] On the other hand, Gandharva Marriage is inferred from liberated social norms and expressions of affection. Rooted in love, it lacks formal proposals and family intervention, with unions forming based on genuine affection and mutual consent between the individuals.[58] Notable instances, like the story of King Dushyanta and Shakuntala in the Mahabharata, exemplify the essence of Gandharva Marriage,

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[53]   Brahmanda Purana., III, 4. 15. 4-5 in Roy, supra note 50, at p. 124
[54]   Upadhyaya, supra note 12, at pp. 64-65
[55]   Shastri S. R., *Women in the Vedic Age*, (Bharatiya Vidya Bhavan 1954), p. 44
[56]   Upadhyaya, supra note 12, at pp. 66
[57]   In the case of the sun goddess Surya, a Svayamvara was arranged by her father Savita, with the condition that suitors must reach a specified goal. The Asvins won the race, securing the bride. The concept of choice is evident in other verses, such as when a maiden of noble birth chooses her husband as her lord. "*Then she who came for friendship, maid of noble birth, elected you as husbands, you as her lords.*" Rig Veda., 119, 5.
[58]   Upadhyaya, supra note 12, at pp. 70-71

emphasizing the theme of love and consent without adherence to formal rituals or family arrangements.[59]

4. Importance of Marriage from Women's Perspective

In ancient India, marriage was considered a social and religious duty for women, and it was seen as a sacred sacrament.[60] The primary purpose of marriage was to have children, especially sons, who were believed to clear the debts of the parents to their ancestors.[61] Motherhood was highly valued, and a son elevated a woman's status immediately. Additionally, women in Vedic society enjoyed considerable freedom and participated in social functions and interactions with potential suitors.[62] Marriage provided opportunities for young men and maidens to acquaint themselves and form a family.[63] The ideal husband-wife relationship was described as the essence of all kinship, the fulfilment of desires, and a source of solace.[64] Moreover, being a wife was seen as essential for them for the performance of religious rites and the procreation of sons. The wife was expected to bear heirs for the propagation of her husband's lineage, potentially for defending against enemies. Sons were crucial not just for inheritance but also for protecting the family. The Aryans traditionally desired a significant number of male children, often aiming for ten.[65]

In performing her domestic duties, the wife actively managed the household and cared for her family. She was described as an "honourable dame" and a diligent worker.[66] Her primary responsibility was to attend to her husband and oversee the entire household, including family members, domestics, slaves, and animals. The wife was expected to exhibit a benevolent temperament towards all, attending to the needs of in-laws and tending to the overall well-being of the family.[67] The wife, as the mistress of the house, was like a mother to all life, human and animal alike, affectionately caring for their needs. She played a crucial part in starting the day, opening the house like Usha unlocking the eastern gate of the sky to let in sunlight.[68] The Vedic texts emphasize her role in waking up and caring for all life. "*Rousing all life she stirs all creatures that have feet, and makes the birds of air fly up.*"[69]

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[59] Ibid. pp. 70-71
[60] Mitter, supra note 20, at p. 195
[61] Ibid. p. 195; Altekar, supra note 8, at p. 118
[62] Rig Veda., IV. 58, 8; VI. 75, 4; VII. 2, 5; X. 86, 10.
[63] Ibid. IV. 58, 8; VI. 75, 4; VII. 2, 5; X. 86, 10.
[64] Altekar, supra note 8, at p. 117
[65] Upadhyaya, supra note 12, at p. 137
[66] Rig Veda., I, 79, 1
[67] Upadhyaya, supra note 12, at p. 138
[68] Ibid.
[69] Rig Veda., I. 48, 5

The Brahmanas, Sutras and Puranas stressed the significance of a wife's presence in religious observances and highlighted the importance of a wife for the joint performance of religious duties. A passage from Taittiriya Brahmana deems unmarried individuals unholy.[70] The assertion in the Aitareya Brahmana posits that the designation of the wife as "Jaya" emanates from the notion that the husband is born within the wife as a son.[71] The Satapatha Brahmana asserts that a man is incomplete until he acquires a wife and begets a son.[72] The Apastamba Dharmasutra asserts the inseparability of husband and wife for the joint performance of religious duties.[73]

Similar sentiments are found in the Puranas. Vishnu Purana emphasizes that one desiring a household life must marry a woman with similar religious and civil obligations.[74] The Brahmanda Purana contends that a person fit for abhiseka must be accompanied by a suitable wife.[75]Matsya Purana highlights that only a Brahmana with a wife is eligible for alms.[76] The Brahmanda Purana narrates the story of Matanga, who, while performing penances, was accompanied by his wife.[77] In various contexts, the Puranas stress the significance of a wife's presence in religious observances. For instance, the Matsya Purana suggests that the participation of a wife in religious rites is an obligation recommended by tradition.[78] The Brahmanda Purana narrates instances where deities worshipped with their spouses.[79]

Overall, from the perspective of women in Hindu jurisprudence, marriage was seen as a crucial institution for fulfilling social, religious, and familial responsibilities, as well as for personal happiness and fulfilment. Since the Vedic period, marriage has been regarded as the primary means for women to achieve both worldly and otherworldly welfare.

5. Position of Women in Marriage

Hindu law views a man as the one who "marries," while a woman is considered to be "given" or "taken" in marriage. The man is the active participant, while the woman is

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70   Taittiriya Brahmana II, 2, 2.6.
71   Aitareya Brahmana 33. 1.
72   Satapatha Brahmana., Vol. 2, 1.10.
73   Apastamba Dharmasutra., 11, 6. 13. 116-17
74   Vishnu Purana II, 10. 13
75   Brahmanda Purana., V. 14. 15
76   Matsya Purana., 54, 24.
77   Brahmanda Purana., ll. 4. 32, 89-104.
78   Matsya Purana., 58. 21.
79   Brahmanda Purana., IV, 40. 93-97.

regarded as the passive party in the marriage process. For example, when Manu states that "a *twice-born man shall marry a wife of equal caste*," he implies that the man (the doer) is engaging in the act of marriage, and the object of this act is the wife. However, the term "*marriage*" is used to describe the transaction regardless of whether we consider it from the perspective of the bride or groom. As Raghunandan explains, we speak of the "marriage" of a son in the same way as we speak of the "marriage" of a maiden daughter, citing a text of Vishnu to support this concept.[80]

Since the girl is considered the passive party in the marriage, the question arises: what conditions make a girl ineligible for marriage? In the code of Manu, there are instructions to avoid taking a wife from families where no male children are born, where the Vedas are not studied, or from families afflicted by constitutional diseases.[81] It is also advised not to marry a sickly, talkative maiden, or one named after celestial bodies, trees, rivers, mountains, and so on.[82] Furthermore, a man should not marry a maiden who has no brother or whose father's identity is unknown.[83] However, it is evident that these guidelines and similar recommendations were never intended to be mandatory or legally binding. They served as advice and cautionary rules, and it was at the discretion of the groom or their guardian to follow them or not when choosing a bride, whether for themselves or their ward. Kulluka Bhatta, while commenting on these texts, states that the violation of these injunctions does not invalidate the marriage. Raghunandan holds a similar perspective on this matter.[84]

In the realm of marriage in Hindu society, it is essential to understand that a girl or woman with a living husband is entirely unsuitable for remarriage. Even in ancient Vedic times, polyandry was widely condemned, with Draupadi's case being considered exceptional and only justifiable for god-like or superhuman individuals.[85] Widows, according to some scholars, were also absolutely disqualified from remarriage,[86] while other sages allowed it.[87] Notably, the Indian Legislature has endorsed the view that permits widow remarriage, thereby allowing Hindu widows to remarry.[88] This change in legal perspective has been a significant development.

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[80] See, Raghunandan's Udbahatattwa, in Mitter, supra note 20, at p. 219
[81] Manu Samhita, III, 7
[82] Ibid. III, 8-9
[83] Ibid. III, 10
[84] See Raghunandan's Udbahatattwa, in Mitter, supra note 20, at p. 219
[85] Mitter, supra note 20, at p. 219
[86] Manu Samhita, V. 161
[87] Parashara Smriti, Chap. IV; Narada Smriti, XII. 97
[88] The Hindu Widow's Remarriage Act, 1856 (Act XV of 1856)

A critical analysis of the position of girls in different forms of marriage in ancient India reveals that the forms of marriage were hierarchical and varied in terms of the consent, status and rights of the girls involved. The first four forms (Brahma, Daiva, Arsha, and Prajapatya) were considered approved (*prashasta*).[89] They involved the gift of a maiden (*kanyadana*) by her father or other guardian to the groom.[90] The last four forms (Asura, Gandharva, Rakshasa and Paishacha) were considered unapproved (*aparashasta*). Use of force, abduction or deception was involved in these forms of marriage.[91]

The position of girls in the approved forms of marriage was generally subordinate. They were dependent on their fathers or other guardians. The Brahma marriage was the most ideal and supreme form of marriage among all. In this kind of marriage, the girl was given to a learned and virtuous groom after adorning her with jewels and fine clothes. The consent of the maiden was not required, as it was assumed that the father would choose the best match for her.[92] The Daiva marriage was similar to the Brahma marriage. The only exception was that the girl was given to a priest as a fee for performing a sacrifice.[93] The Arsha marriage involved the exchange of a cow and a bull by the groom to the girl's father as a bride price. There is criticism that in this form of marriage, the girl was treated as a commodity.[94] The Prajapatya marriage was where the girl's father gave her to the groom with a blessing to perform their duties as householders. This form of marriage was more respectful than the previous ones.[95] The role of the maiden as a partner in the household was recognized in Arsha marriage.

The position of girls in the unapproved forms of marriage was even more precarious and vulnerable. In the Asura marriage, the groom somehow buys the girl from her father or guardian by paying money or giving valuable gifts. This form of marriage degraded the girl to a mere object of purchase. She was totally deprived of any

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[89] L. K. Pallathadka, H. Pallathadka and M. S. Devi, "A Review of Marriage Rituals in Different Cultures", *Integrated Journal for Research in Arts and Humanities*, Vol. 2(5), 2022, p. 155.

[90] U. Chakravarti, *Of Meta-Narratives and Master Paradigms: Sexuality and the Reification of Women in Early India*, (Centre for Women's Development Studies 2009). p. 36

[91] L. R. Maharajh and N. Amin, "A Gender Critique of the Eight Forms of Hindu Marriages", *Journal of Gender and Religion in Africa*, Vol. 21(2), 2015, pp. 84-86

[92] N. Sengupta, *Evolution of Hindu Marriage with Special Reference to Rituals (C. 1000 BC-AD 500)*, (SOAS 1958), p. 152

[93] L. Sternbach, "A Sociological Study of the Forms of Marriage in Ancient India", *Annals of the Bhandarkar Oriental Research Institute*, Vol. 22(3/4), 1941, p. 216.

[94] Sternbach, supra note 92, at p. 211.

[95] Ibid. p. 216.

dignity or choice in the process.[96] The Gandharva marriage was where the girl and the groom eloped or married secretly without the consent or knowledge of their guardians. This form of marriage was based on mutual attraction and love. But in many cases, the girl was exposed to social stigma and ostracism.[97] The Rakshasa marriage was where the groom abducted or forcibly married the girl against her will or after defeating her relatives in a battle. Maidens were used to be the subject of violence and coercion in this kind of marriage.[98] In the Paishacha form of marriage, the groom used to seduce or rape the girl when she was asleep, intoxicated.[99] This form of marriage was the most reprehensible, heinous and condemned in the society.

6. Debates on Her Age of Marriage

Regarding the age of marriage for girls, the Rigveda lacks explicit statements specifying the precise age at which girls were married. The word "*vivaha*", which means "carrying away" (of the bride), implies a marriage after puberty because the bride moved in with her husband immediately after the ceremony. Rigveda itself mentions that "*when a bride is fine looking and well adorned, she by herself seeks her friend from among men.*"[100] The wedding hymn describes the bride as youthful and aching for a husband. The bride should take over the household immediately from the in-laws. In verses 27-29 and 37, the wedding hymn describes the consummation of the marriage. The final sentence indicates that this event occurred immediately after the wedding. According to Altekar, this could only be done by brides between the ages of 16 and 18. This clearly indicates that girls were mature enough to choose their spouses.[101]

Upadhyaya observed that in the Rik Samhita, the marriageable age kicked in post-puberty, with no mention of child marriages. The maidens were aware of their choices, and the marriage rituals assumed a grown-up bride. Words like "*kanya*" and "*yuvati*" indicated mature women ready for marriage.[102]

The Vedic hymns suggest that brides were grown up and ready for consummation.[103] Terms referring to unmarried maidens conveyed a sense of mature youth. The

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[96]   Sengupta, supra note 91 at pp. 159-61
[97]   Ibid. pp. 161-163
[98]   Sengupta, supra note 91 at pp.158-159
[99]   M. Singh, "Early Indian Society as Reflected in Indica of Megasthenes", *International Journal of Innovative Research and Advanced Studies*, Vol. 2(3), 2015, p. 61
[100] Rigveda X. 27.12
[101] Altekar, supra note 8, at p.58
[102] Upadhyaya, supra note 12, at p. 50
[103] Rig Veda., VII. 55, 8

prevalence of post-puberty marriages is supported by instances of love, festivals, and meetings of lovers.[104] The rite of *Visvavasu* in the Vedas implied that marriages were performed with mature girls only. Visvavasu acted as a witness to the couple's abstinence from union until the first four days post-marriage were over. The husband addressed Visvavasu, signifying the readiness for consummation:

> Rise up from hence, Visvavasu; with reverence we worship thee. Seek thou another willing maid and with her husband leave the bride.[105]

Verses of this kind clearly show that the marriage is consummated right after the wedding ceremony, indicating the bride's maturity. The Vedic rituals indicate that the bride was supposed to be mature with physical signs of puberty and was ready to give birth to children.[106] In this grown-up marriage, the bride, at least sixteen years old, assumes command of her household after marriage. This form of matrimony was widespread, juxtaposed with unions in older ages or the ageing of unmarried women; however, typically, marriages occurred when both partners were in their youth. Some exceptions may exist, like in polygamous cases, as seen with Kakasivan marrying early in his life and later taking Ghosa as his wife when her skin disease was cured.[107]

During the Atharva Veda there was no strict age requirement for marriage as a general rule. References to young people having natural affection for each other before marriage contradict the assumption of child marriage. The foundational elements of two types of marriages that emerged later, the Brahma and the Gandharva, can be found here. The fifth hymn in the fourth book includes an incantation to put the entire household to sleep when a lover visits his beloved. In other places, we come across several references to a young man's love for a maiden and his efforts to win her with charms and incantations.[108]

The Mantra-Brahmana prescribes a marriage ritual specifically designed for adults, evident in the terminology and verses directed at the bride during the ceremony. The purpose of marriage extends beyond lineage continuity to the attainment of complete unity and collaboration between spouses in the religious realm, as emphasized by the vows undertaken by both during the marriage ceremony.[109]

This continued until the fifth century B.C. According to the Grihya Sutra literature of this period, marriage should be consummated on the fourth day. The traditional name

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[104]   Upadhyaya, supra note 12, at pp. 50-51
[105]   Rig Veda., X. 85, 22
[106]   Upadhyaya, supra note 12, at p. 52
[107]   Ibid. p. 54
[108]   Rig Veda, VI, 8, 82
[109]   Shastri, supra note 54, at p. 108

for the marriage consummation ritual is *Chaturthikarma*, or "the event of the fourth day." Some Grihya Sutras permit the bride's menstrual cycle to occur during the ceremony. In some of these works, the bride must be a *nagnika* at the time of marriage. The Mahabharata refers to a 16-year-old bride as a *nagnika*, and the Grihya Sutra stipulates that she must be a virgin on her wedding day. Matridatta defines "nagnika" as a woman who is able to privately welcome her husband after marriage. After child marriages became prevalent, this term came to mean an unclothed girl playing in the dirt.[110] During the period described in the Brahmanas, child wives were exceptional, as the rituals were exclusively designed for grown-up individuals.[111]

During the Gṛihya and Dharma Sutra periods, girls were typically married just before or immediately after reaching puberty. Gautama Dharma Sutra advocates marriage before puberty, emphasizing the neglect of this duty as a sin.[112] The Baudhayana Dharma Sutra recommends early marriage for girls, even to someone devoid of qualities.[113] Thus, from 400 B.C. to 100 A.D., the marriageable age decreased, and girls were married around or before puberty. The Kama Sutra assumes pre- and post-pubescent marriages at its conclusion.[114] The Kathasaritsagara includes both parent-arranged child marriages and self-arranged love marriages in its social narratives (Chapters 24, 124).[115]

The Skanda Purana specifies that the appropriate age for marriage for a girl is twelve.[116] The Brahmavaivarta Purana recounts instances where girls of twelve are portrayed as possessing enduring youthfulness.[117] However, Roy describes that under Puranic tradition, a woman's prime was considered to be between eight and twelve years old.[118] The Smriti texts obligated guardians to ensure that girls were married before puberty. Manu suggested that the "proper age" for marriage could be eight years, but there was also an emphasis on marriage before puberty.

> To a distinguished, handsome suitor of the same class, should a father give his daughter, in accordance with the prescribed rule, though she may have not attained the proper age.[119]

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[110] Altekar, supra note 8, at p. 60-61
[111] Shastri, supra note 54, at p. 83
[112] Gautam Dharmasutra, 18. 20-23
[113] Baudhayana Dharma Sutra., IV. 1, 12, 15
[114] Kama Sutra, III, 2-4
[115] Altekar, supra note 8, at p.65
[116] Roy, supra note 50, at p. 118
[117] Brahmavaivarta Purana, 1, 26, 8
[118] Roy, supra note 50, at p. 118
[119] Manu Samhita, IX, 88

When examining this text, Kulluka, Narayana, and Raghunandana suggest that 'proper age' refers to the age of eight years. In contrast, Medhatithi interprets 'proper age' as the time 'before she is bodily fit for marriage.' Several other sages emphasize the importance of marrying a girl before she reaches puberty.[120] Another important text from Manu states that a marriageable maiden should stay with her father instead of marrying someone without good qualities.

> But the maiden, though marriageable, should rather stop at her father's house until death, than that she should ever be given to a man, destitute of good qualities.[121]

This might suggest that marriages for girls were not compulsory during the time of Manu. However, Raghunandana argues that the true intent of this verse is to discourage bad matches and not to promote a lifelong maidenhood, as was seen in the Vedic age.[122] Manu's next verse allows a girl to wait for three years after reaching puberty. If her father or guardian doesn't find a suitable groom for her during that time, she is allowed to choose one for herself.[123] In practice, though, the selection of a bridegroom is typically done by the girl's guardian, and the opportunity for her to make this choice is quite rare.

By the year 100 A.D., society started favouring prepubescent marriages. To ensure absolute chastity, marriages were always performed before the onset of puberty. Around this time, upanayana for girls ceased,[124] and they were forced to receive no education. Parents likely believed that marrying girls after puberty was optimal because they were no longer focused on school. Around 200 A.D., prepubescent marriages became the norm. Societal preference shifted towards pre-puberty marriages during this period, influenced by the idea that girls should be married before exhibiting distinct signs of femininity.[125] Yajnavalkya, who wrote around this time, advocates marrying girls before puberty in order to prevent the monthly destruction of an embryo by guardians. Another Smriti writer Yama, who arrived 400 years later, says that even if a suitable match is impossible, the girl should be married before she turns 18 to an unsuitable man. How dissimilar the views of Manu and Yama are? The former would permit a woman to remain unmarried until her death if

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[120] Gautama, XVIII 20, 23; Vasistha, XVII, 69-71; Baudhayana IV, I, 11-14; Brihaspati, XXIV, 4; Yajnavalkya, I, 64; Kulluka in his comments on verse 4, chapter IX; Manu fixes the proper age to be before puberty.
[121] Manu Samhita, IX, 88
[122] Mitter, supra note 20, at pp. 244-245
[123] Manu Samhita, IX, 90
[124] It is to be noted that during the Vedic period, upanayana was a common practice for both sons and daughters in the three twice-born classes of society.
[125] Roy, supra note 50, at pp. 117-118

no suitable husband could be found. The later did not object to a girl being bound for life to an unsuitable and undeserving husband if there was even the slightest possibility of her crossing the fatal line of puberty before marriage.[126]

According to Roy, this shift of social preference towards pre-puberty marriages may be attributed to the widespread influence of Buddhism, which encouraged monastic life and the perceived laxity of morals among nuns.[127] Between 500 and 1000 A.D., the authors of different Smritis advocated for prepubescent marriages. They believed that a ten-year-old girl who had reached puberty should be married. Eight-year-old Gauri was the most suitable for marriage.[128] Mitter observed that during the period of the Smriti texts, the age for marriage was shifted to eight years, and it was still obligatory to marry girls before they reached puberty.[129]

Initially, only Brahmanas were expected to marry before puberty, Kshatriyas were not expected to do so. The fighting classes refused to follow the new custom. We can therefore comprehend how Kshatriya heroines in Sanskrit dramas from 300 to 1200 A.D. were grown-up brides, despite universal and terrible condemnation of post-puberty mattresses by the Smritikars.[130] Advocates of prepubescent marriage grew dissatisfied with girls marrying at ages 8 or 9. A vocal minority advocated for further age reduction. The Brahma Purana suggests marrying girls after the age of four. The text of Manu, which allowed a woman to stay single if she couldn't find a suitable husband, was interpreted as highlighting the importance of careful partner selection rather than endorsing marriage after puberty.[131]

In the eighth or ninth century A.D., the expansion of the caste system into hundreds of subcastes and the prohibition of inter-caste marriages exacerbated the problem of child marriage. The introduction of new waterproof subcastes made it more difficult to find a suitable groom. By postponing the wedding, the parents risked losing a suitable groom. Paradoxically, the custom of Sati, which gained popularity at this time, may have aided early marriages.[132]

Using the Upanayana analogy, the marriage age was lowered to this absurd degree. Parents who wanted their sons to excel in school were advised to have them perform

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126 Altekar, supra note 8, at p.67
127 Roy, supra note 50, at p. 117
128 Altekar, supra note 8, at p.68
129 Mitter, supra note 20, at p. 242
130 Altekar, supra note 8, at p.69
131 Ibid. p.70
132 Ibid. p.70-72

their upanayana by the age of five. At the same age, girls could marry.[133] Mitter in his research shows that the directive to marry girls while they are still infants was more of a moral guideline rather than a strict legal requirement. Disobeying this guideline did not invalidate or make a marriage void.[134]However, the influence of foreign invasions, one after another, and the changing social and cultural dynamics led to the perpetuation of child marriages and a decline in the age at which girls were married.[135]

7. Qualities of a Bride

The qualities of a bride in marriage varied during different historical periods in Hindu jurisprudence. It has been observed that the rules governing the selection of brides are considerably more intricate than those for selecting bridegrooms, although in some respects they are similar. In the Vedic Age, qualities, character, and intelligence were emphasized when selecting a bride. They were expected to be mature women capable of bearing strong offspring.[136]

The Satapatha Brahmana articulates the prevailing view that women with broad hips and slender waists are more conducive to procreation.[137] Additionally, the Ashvalayana Grihya Sutra advises marrying a girl possessing intelligence, beauty, good character, and auspicious qualities, emphasizing health.[138] The Sankhyayana Grihya Sutra specifies that the girl should possess auspicious characteristics, categorized as visible (bodily features) and invisible.[139] Manusmriti warns against marrying a girl with excessive hair, abnormal limbs, talkativeness, or yellowish eyes. It further advises marrying a girl with flawless limbs, a graceful gait, slight hair growth on the head and body, small teeth, and a delicate body.[140] Given the difficulty in assessing these qualities of a girl, a test is devised wherein the bride selects a lump of earth representing different attributes. Once the girl passes this test, the marriage is finalized.[141]

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[133] Ibid. at p.70
[134] Mitter, supra note 20, at p. 243
[135] Altekar, supra note 8, at p. 5-6
[136] Mitter, supra note 20, at p. 198
[137] Satapatha Brahmana., 1, 2, 5.16
[138] Asvalayana Grihya Sutra., 1, 53.
[139] Sankhyana Grihya Sutra., 1. 56
[140] Manu Samhita, III, 8, 10
[141] "...*a test is arranged in which the bride has to pick up a lump of earth out of the eight lumps taken from different places, each signifying a different quality or attribute of the bride. Thus the earth taken from a field yielding two crops signified richness in food, that of a cow-shed signified richness in cattle, that of a Vedi, richness in holy lustre, that of a pool (that never dries*

As mentioned earlier, Manusmriti prohibits marrying a girl with names associated with lunar mansions, trees, rivers, mountains, birds, snakes, or with negative connotations such as frightening names.[142] In the code of Manu, there are instructions to avoid taking a wife from families where no male children are born, where the Vedas are not studied, or from families afflicted by contagious diseases.[143] Manu also dictated a man should not marry a maiden who has no brother or whose father's identity is unknown.[144]

Turning to the Puranas, the *Vishnu Purana* offers detailed criteria for selecting a bride, emphasizing moderate hair, complexion, and physical form. It cautions against marrying girls with vices, health issues, improper upbringing, or masculine traits.[145] The Padma Purana adds that the bride should be of average height, have appropriate body hair, normal eyebrows, and a name unrelated to rivers, serpents, mountains, trees, or birds.[146] Skanda Purana advises avoiding girls with goddess or river names. It also suggests that marrying a girl with very short hair or extreme height leads to premature death within six months.[147] In the Puranic period, the fundamental motive for marriage was described as the propagation of progeny, with violation of this purpose seen as a loss of lustre.[148] The Puranas consistently highlight the significance of married life and the distinguished status of the householder.[149] All these texts suggest that the physical appearance and attributes of the bride were considered important in the selection process.

8. Choosing Partner in Marriage

Maidens in Vedic society enjoyed considerable freedom, participating in social functions and interacting with potential suitors.[150] The institution of samanas, where maidens and suitors met, facilitated marriages by spontaneously resolving difficulties. Elders supported this institution, recognizing its role in easing parental concerns about finding suitable matches. Festive gatherings provided frequent

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up) richness in everything, that of a gambling place, a gambling nature, that of the junction of four roads, a restless nature (that wanders in different directions), that of a barren spot, poverty, and that of a burial ground, death of her husband." See, Shastri, supra note 54, at p. 120

[142] Manu Samhita, III, 9.
[143] Ibid. III, 7
[144] Ibid. III, 10
[145] Vishnu Purana., III, 10
[146] Padma Purana, Uttarakanda., 223, 17-22, 45.
[147] Skanda Purana, IV, 135. 6-7.
[148] Vishnu Purana., V, 38.38.
[149] Matsya Purana., 67, 25-29; Agni Purana., 265.3; See, Roy, supra note 50, at p. 113
[150] Rig Veda., IV. 58, 8; VI. 75, 4; VII. 2, 5; X. 86, 10.

opportunities for young men and maidens to acquaint themselves, eventually leading to marriages.[151]

In Vedic society, marriage by free choice was considered normal. Typically, a young maiden had the freedom to choose the man with whom she would unite her destiny. However, this freedom was somewhat constrained by parental advice. The father or, in his absence, the brother, had the responsibility to assist the maiden in securing a worthy husband. The brother even had a degree of control over her social habits and movements.[152] The absence of the brother could potentially lead the sister astray, according to the 'Rigveda,' emphasizing the need for vigilance to prevent unsuitable men from taking advantage of her vulnerability.[153] If both the father and brother were absent, the maiden had to take the initiative and seek out her husband herself.[154] "*She seeketh men, as she who hath no brother mounting her car as't were to gather riches.*"[155]

Despite the apparent freedom, parental sanction, especially if the parents were alive, was almost imperative. It may be challenging to believe in the extraordinary freedom enjoyed by women, but it is established that, in normal circumstances, the father or brother sought a suitable match for the girl.[156] Marriage, according to Vedic Aryans, was not an end in itself but a means to an ideal. It was regarded as a discipline, not an adventure. The father's hand played a role in controlling his daughter's marriage because the Vedic Aryans understood the consequences of allowing inexperienced girls to seek their matches without guidance.[157]

In the Indo-Aryan community, marriages were often stopped if parents objected. The control over a daughter's marriage was often greater for the mother than the father or brother. Despite the guiding hand of parents, the maiden herself played the chief role in the marriage. The Atharva Veda mentions parents entertaining suitors but ultimately allowing the daughter to choose her husband from among them. Parents acted more as intermediaries in the process.[158]

9. Prohibited Degrees of Marriage

For a long time, society was unaware of the current rule prohibiting same-gotra marriages. During the Vedic period, a gotra did not exist as a spiritual or blood-

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[151] Upadhyaya, supra note 12, atp. 45
[152] Ibid. p. 46
[153] Rig Veda, IV. 5, 5.
[154] Rig Veda., I. 124, 7.
[155] Rig Veda., I. 124, 7
[156] Upadhyaya, supra note 12, atp. 47
[157] Ibid. p. 48
[158] Rig Veda., X. 78, 4; 85, 15, 23. In Upadhya, supra note 12, atp. 49

related group. The prohibition on *sagotra* and *sapravara* marriages likely derives from a non-Aryan custom prohibiting marriages between totem worshippers. Later authors of *Smriti* and *Nibandha* took *sagotra* marriages seriously.[159] In the writings of Smritikars, there is a list of forbidden alliances for men, from which we can infer a corresponding list for women. Manu, for instance, states:

> A damsel, who is neither the Sapinda of the father nor of the mother and who is not the Sagotra of the father or the mother, is recommended to the twice-born man for wed-lock and conjugal union.[160]

The key terms in this statement are "Sapinda" and "Sagotra," and there has been some debate regarding their precise meanings, which differ when applied to the mother or the father.[161] This passage from Manu forms the foundation for the rule of prohibited degrees in Hindu Law, and scholars and commentators have extensively examined the exact scope and implications of this rule.[162] In general, it can be said that in Bengal, the interpretation of Raghunandan's views on this matter has been accepted, while other schools have embraced the viewpoint of Kamalakara from the Nirnaya Sindhu.

Therefore, a bride who is from the family of the bridegroom's mother, and whose ancestors and family name can not be traced, is unsuitable for marriage. However, those who do not fall into this category can be considered for marriage. Vyasa's view supports this by stating that one should not desire to marry a girl from the same gotra as his mother, but if the family name is unknown, then she can be married, even if she belongs to the same family as the maternal grandfather of the bridegroom. Medhatithi agreed with Vasistha regarding the prohibition of marrying a girl who belongs to the same gotra as the mother.[163]

The prohibition on marriage in Hindu law not only applies to girls who are closely related to the father and mother but also to those who are connected to the *bandhus* of both parents. This principle is based on a text by Narada, as referred by Raghunandan, which states that:

> Girls descended from the father's or mother's bandhus, are not to be taken in marriage, as far as the seventh and fifth degrees respectively, as well as girls of the same gotra or equal pravaras.[164]

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[159] Altekar, supra note 8, at p. 88
[160] Manu Samhita, III, 5
[161] Mitter, supra note 20, at p. 220-221
[162] Ibid.
[163] Mitter, supra note 20, at p. 222
[164] Narada cited at p. 572 of the Udbahatattwa of Raghunandan

To clarify, the term "*bandhus* of the father and mother" refers to specific relatives. The *bandhus* of the bridegroom's father include his father's sister's son, his mother's sister's son, and his maternal uncle's son. On the other hand, the *bandhus* of the mother consist of her father's sister's son, her mother's sister's son, and her maternal aunt's son.[165] According to Narada, a girl is not considered a suitable match for a man if she is related within the seventh degree to his father's *bandhus* and their six ancestors or within the fifth degree to his mother's *bandhus* and their four ancestors. This regulation restricts marriages between individuals who share close family ties to ensure social and cultural compatibility.[166]

Raghunandan provides insight into the significance of "sagotra" and "pravara." "Sagotra" refers to individuals belonging to the same lineage or clan, and it is considered taboo for a person to marry someone from the same "gotra." For Brahmins, their "gotra" is derived from the name of the principal sage from whom their lineage originates, such as Kasyapa, Sandilya, or Bhardwaja. So, a Brahmin from the Kasyapa "gotra" should not marry someone from another family of the Kasyapa "gotra."[167]

However, Kshatriyas and Vaisyas, who don't trace their lineage to sages, adopted the "gotra" of the Brahman priest who conducted their religious ceremonies. Raghunandan emphasizes that not only should the bride be from a different "gotra," but she should also belong to a different "pravara." In ancient times, those who officiated as "Hota" during rituals were known as "pravaras." It's possible for sages from different "gotras" to share the same "pravaras" since they might have performed these roles during sacrifices.[168]

In the mentioned rules regarding the eligibility of girls for marriage, it appears that girls related as sapindas on both the father's and mother's sides, up to the seventh and fifth degrees, respectively, face significant restrictions when it comes to marriage. This limitation results in a very limited pool of potential marriage partners, making marriage more challenging.[169] To address this issue, commentators have introduced exceptions to soften these strict rules. The primary exception is when a girl being considered for marriage is at least three gotras apart from the groom. In such cases, she becomes eligible for marriage, even if she is a cognate relation within the seventh or fifth degree, as per the texts of Manu and Narada.[170]

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[165] Mitter, supra note 20, at p. 226
[166] Ibid.
[167] Ibid. p. 226-227
[168] Ibid. p. 227
[169] Ibid. p. 228
[170] Ibid.

This exception can be understood by considering that a woman's gotra changes upon marriage. For example, a girl from the Bhardwaja gotra, after marrying a boy from the Biswamitra gotra, adopts the gotra of her husband, and her gotra henceforth is Biswamitra, not Bhardwaja.[171] Yajnavalkya suggests that a man who has completed his Vedic education should marry a woman who is auspicious, has not been defiled by relations with other men, is agreeable, not closely related (non-sapinda), younger, shorter, healthy, born in a different gotra and pravara (lineage), and is beyond the fifth and seventh degrees from the mother and father, respectively.[172]

The Mitakshara, in its commentary on this text, explains that a sapinda relationship arises when two individuals share a common body. Non-sapinda relationships, therefore, occur when individuals do not share a common body. The sapinda relationship is defined as directly or indirectly related through a common body. However, this definition may include relationships that should not be considered sapinda, so it's specified that the sapinda relationship ceases beyond the fifth degree in the mother's line and beyond the seventh degree in the father's line.[173]

The prohibition of marriages between close-blood relatives, which became stringent in later times, was not firmly established during the Vedic era.[174] The Vedas allowed certain marriages between near-blood relatives, such as maternal uncle's daughter or paternal aunt's daughter. There is a reference in the Nirukta that supports this practice.

> Indra, come by easy paths to this sacrifice, accept my offering, the seasoned Vapa (meat) which is thy due as one's maternal uncle's or paternal aunt's daughter is his.[175]

In the Sathapatha Brahmana, it is mentioned that such marriages were permitted up to the third or fourth generation. "*In the third or fourth generation, we unite.*"

There were some legal implications of prohibited degrees in marriage. Violation of the rule of prohibited degrees impacts the legality of a marriage. Kulluka, in his commentary on verse 11, Chapter III from the Code of Manu, discusses the consequences of marrying within certain close relationships:

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[171] Ibid. p. 229

[172] "*Let a man, who has finished his studentship of the Vedas or sacred literature, espouse an auspicious woman who is not defiled by connection with another man, is agreeable, non-sapinda, younger in age, and shorter in stature, and free from disease, is born of a different gotra and pravara, and is beyond the fifth and the seventh degrees from the mother and the father (respectively).*" See, Mitter, supra note 20, at p. 229

[173] Mitter, supra note 20, at pp. 229-230

[174] Ibid. p. 209

[175] Nirukta, 14 A 31.

> In this topic, in connection with marriage with sagotras, desertion has been ordained 'He who inadvertently marries a girl sprung from the same original stock (sagotra) and so forth, must support her, as a mother'; and penance has been ordained by the text 'If a man marries etc.'; consequently, together with her, girls related as mother's sapindas, do not become wives.[176]

According to the text, a man who unknowingly marries a girl from the same gotra must provide for her as he would for his mother. Penance is also prescribed in such cases. Mandlik points out that a woman married within these prohibited degrees cannot be the wife of the groom for any marital or religious purposes. She cannot be married to someone else and should be financially supported by the groom she initially married. Raghunandana cites a similar text from Sumantu to emphasize this point.

> that a person should, after deserting father's sister's daughter, maternal uncle's daughter, a girl of the same gotra as the father and mother and also a girl with the same pravara as himself, whom he may have married, perform penance and maintain the girl.[177]

Certain close family relationships do not appear to be forbidden for marriage in Hindu tradition. For example, marrying your wife's sister, step-mother's sister, wife's sister's daughter, paternal uncle's wife's sister, and paternal uncle's wife's sister's daughter is not prohibited.[178] There are also moral guidelines, such as not marrying a girl with the same name as his mother or a girl older than him.[179]

10. Dowries in the Ancient Indian Marriage System

The concept of dowry in ancient India differed significantly from its contemporary understanding. In prehistoric India, it was the father of the bride who had the authority to demand a dowry, not the groom. The groom, in turn, benefited from the bride's services. Any request for additional money would have been deemed absurd. The early Indian societies were unfamiliar with the dowry system as it is recognized today.[180]

Weddings in ancient India witnessed wealthy and devoted families bestowing gifts upon their sons-in-law. Notably, royal brides mentioned in the Atharvaveda were known to bring substantial gifts, such as 100 cattle.[181] It highlights the tradition of expressing affection through valuable offerings from the bride's family. Draupadi,

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[176] Mitter, supra note 20, at p. 234
[177] See Raghunandan'sUdbahatattwa, inMitter, supra note 20, at p. 235
[178] Mitter, supra note 20, at p. 235
[179] Yajnavalkya Samhita, I. 52.
[180] Altekar, supra note 8, at p. 83
[181] Ibid. pp. 82-83

Subhadra, and Uttara left their parents' home with horses, elephants, and precious stones.[182] In Raghuvamsha, when his sister Indumati marries and departs with her husband, the king of Vidarbha sends lavish gifts along with her.[183] These gifts were bestowed out of love, not as dowries. The dowry, a prenuptial contract between the bride's father and the groom or his guardian, is not mentioned in either the Smritis or any other Sanskrit literature.[184] In medieval Rajputana, the dowry system became an issue. Primarily it was prevalent among royal and noble families. The marriage market value of a blue-blooded[185] Rajput prince soared, making him a sought-after son-in-law.[186] However, this practice was not widespread in average families until the mid-19th century when the dowry system evolved into a scandalous phenomenon.[187]

Each of the eight forms of marriage has its own set of rituals and implications for gifts/ danas.[188] Among the ideal approved forms, the Brahma marriage emphasized parental sacrifice without incorporating dowries as an inherent component.[189] The Prajapatya marriage is closely related to the Brahma form. Traditionally the provision of ornaments and robes for the bride is involved in it, showcasing the high standards set by Vedic Aryans. Despite the degeneration of the system, the ideal is upheld valiantly by Hindu parents. They rarely partake in meals at the bride's expense. It underscores their commitment to preserving the sanctity of marriage.[190]

11. Her Roles in Marriage Rituals

In ancient India, particularly during the Vedic era, women occupied a notable position in marriage rituals. They were actively involved in the process, particularly in selecting their life partners.[191] Love marriages during the Vedic age were not uncommon. As a wife, she enjoyed a level of equality with men in religious matters. Although traditionally they held a subordinate role, women were recognized as joint owners of the household with their husbands.[192] Monogamy was the norm in ancient India, with few exceptions. Widows were not subjected to the practice of *Sati*, and

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[182] Ibid.pp. 83-84
[183] Raghuvamsa, VII, 32.
[184] Altekar, supra note 8, at p. 83-84
[185] The term "blue blooded" refers to a person who has been born into a family belonging to the highest social class, typically associated with nobility or aristocracy.
[186] Ibid. p. 84
[187] Ibid. p. 85
[188] Mitter, supra note 20, at pp. 209-210
[189] Altekar, supra note 8, at p.49-50; Upadhya, supra note 12, atp. 67
[190] Upadhyaya, supra note 12, at pp. 67-68
[191] Altekar, supra note 8, at p. 408
[192] Ibid. p. 408-409

they had the option to remarry if they chose to do so. However, in the later period their proprietary rights became restricted.[193]

As time progressed into the later Samhitas, Brahmanas and Upanisadas, the role of women in marriage rituals became more formalized and restricted. The age of marriage for girls decreased, leading to a decline in their active participation in religious ceremonies. The freedom women enjoyed during the Vedic Age slowly diminished during this period. Remarriage of widows became restricted, and the practice of Sati began to emerge.[194] Love marriages became rare, and girls had limited influence in choosing their life partners. Also, the period saw a declination of education opportunities for women. Many rituals that were once performed by wives were delegated to male substitutes.[195]

In later periods, marriage rituals became more extensive and complex. These additional elements laid the foundation for contemporary marriage ceremonies in Hinduism.[196] Despite these changes, the sacred and unbreakable nature of marriage persisted. Prohibitions against marriages between close blood relatives were not firmly established during this era. Certain unions up to the third or fourth generation were permitted.[197] It became more stringent over time.

Transitioning into the Smriti tradition (500 B.C. to 500 A.D.), the status of women declined significantly. Widow remarriage was prohibited, the Sati tradition reemerged, and polygamy became more prevalent. Smriti writers started directing unfair criticism and judgment at women. Society expected proper care for women but failed to address the challenges they faced.[198]

12. Post-Marital Positions of Women

Status of Wife in Relation to Husband

The Vedic term "*dampati*" etymologically signifies the joint owners of the house, indicating their equal partnership and shared ownership of the household. In Vedic and epic society, wives were treated with utmost courtesy and regard, being considered the ornament of the house.[199] Home management was under the direct

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[193] Ibid. p. 409
[194] Ibid. 411
[195] Ibid. 420-421
[196] Mitter, supra note 20, at p. 208
[197] Ibid.pp. 208, 209-210
[198] Altekar, supra note 8, at p. 437-439
[199] Rigveda, 1, 66. 3

charge of the wife, and her views were to prevail there.[200] The husband and wife were viewed as complements to each other.[201]

The wife had specific duties and obligations, including fidelity in her marriage vows and leading the life of an ideal "*pativrata*." She was expected to strive for her husband's happiness.[202] According to traditional beliefs, neither the father, mother, son, nor friend could provide for a woman what a husband could. The assistance a husband could offer was considered unlimited.[203] The real happiness of a woman was seen as centered in her husband.[204] If separated from her husband, she would desire neither pleasure, prosperity, nor heaven; she would prefer death to separation from him.[205]

In the Puranic tradition, the prescribed conduct for a housewife is explicitly outlined. She is expected to be open-hearted towards her husband, respectful to his siblings, devoted to his mother, affectionate towards her own family, considerate towards servants, amiable even to co-wives, courteous to her husband's friends, and disdainful to his enemies. A wife fulfilling these duties is considered a true *pativrata*, embodying the sanctity of gods, sages, and holy places. Her mere presence sanctifies the world, absolving it of sins.[206]

In the Purana tradition, the relationship between a wife and husband is highly praised. The Brahma Purana emphasizes that a girl is not singularly praised but is regarded as a means to perform religious duties. Offering a well-ornamented chaste girl to a suitable bridegroom is deemed as significant as gifting the entire earth with all its mountains and forests.[207] According to Brahma, Vedic sacrifice could not be accomplished without the wife. He created the wife from half of himself.[208]

Question of Divorce and Remarriage of Women

Hindu law prohibits divorce in general. It has been stated that in no way a wife can be released from her husband: "*neither by sale nor by repudiation is a wife released from her husband*"[209] While a wife can be forsaken due to conjugal infidelity, there is

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200 Atharva Veda, XIV, 1.43.
201 Roy, supra note 50, at p. 187
202 Mahabharata., XII. 144. 20
203 Ramayana, II. 27. 6; II. 40. 3
204 Ramayana, II. 37. 30
205 Mahabharata, III. 297.53 in Altekar, supra note 8, at p. 94
206 Brahmavaivarta Purana, 35. 119, 37
207 Brahma Purana, 165, 9-11
208 Brahma Purana, 161, 33-35
209 Manu Samhita, IX, 46

no formal divorce process. According to Yajnavalkya, desertion does not necessarily imply banishment from the household. Instead, it pertains to the discontinuation of conjugal privileges and religious obligations.[210]

The prohibition of divorce in Hindu law can be attributed to the nature of the marriage relationship, which is seen as permanent during the joint lives of the husband and wife. According to Manu, cited earlier, a wife who is sold or repudiated by her husband can never become the legitimate wife of another, even if another person buys or receives her after she was repudiated.[211]It's important to note that even the apostasy of either party in a Hindu marriage does not automatically dissolve the marriage, and the rights and obligations of the husband and wife remain intact.[212]

However, a careful examination of the earlier dharmashastra literature reveals that divorces were permitted in some well-defined circumstances. Subject to certain conditions, Manu allowed a wife to abandon a husband who is impotent, insane,or suffering from an incurable or contagious disease.[213]The Atharvaveda describes a woman remarrying, presumably during the lifetime of her first husband, and prescribing a ritual to permanently unite her with her second husband in heaven.[214] Inevitable divorce followed her second marriage. According to the Dharmasutra authors (400 B.C. to 100 A.D.), a Brahmana wife should remain patient for five years during her husband's extended absence on a journey. This period is reduced by Kautilya to 10 months (III 4). If he does not return within that time and she is unwilling or unable to join him, she should consider him dead. The Arthashastra of Kautilya allows for second marriages upon court approval. Only regarding the waiting period, which never exceeds eight years, do jurists disagree.[215] Parashara's

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[210]   YajnavalkyaSamhita, I, 72
[211]   Mitter, supra note 20, at p. 343
[212]   Ibid. p. 322
[213]   Manu Samhita, IX, 176
[214]   Atharva Veda, IX, 5, 27-8
[215]   Before marrying, a childless wife, whose husband is "hrasva-pravasin" should wait only for a year, but more than a year, if she is mother of children. She should wait twice as long if she be provided by her husband; if not, she is likely to be maintained by her relatives for 4 to 8 years after which she is allowed to remarry. If the husband is a Brahmana, studying abroad, his childless wife should wait for 10 years and mother of children, 12 years. The wife of a Kshatriya, however, is not allowed to remarry. But if she bears children to a Savarna husband in order to keep her race, she shall not be disgraced or degraded. Again, a Kumari engaged in any of the first four kinds of marriage must wait for 7 months for her husband who has gone abroad, but is heard of, provided his name is not published, otherwise, for one year. But in case the absent husband is not heard of, the wife shall wait for 5 months. The wife who receives the shulka from her absent husband who is not heard of, shall wait for 3 months, but 7 months, if he is heard of. But the wife who has received the whole amount of shulka shall wait for 5 months,

approval for a woman to remarry, in cases where her husband is impotent, a religious recluse, or boycotted, implies a form of divorce:

> *"Naste mrite pravrajite klive ca patite patau*
> *Pancasu apatsu narinam patiranyo vidhiyate."*

In [case of] the disappearance or death or renunciation or impotence or lost caste status of her husband: in these five predicaments, a woman is allowed to take another husband.[216]

Kautilya provides detailed divorce rules for incompatible couples. If a couple loathed one another, Kautilya advised divorce. If a man filed for divorce out of fear of his wife, he was required to return all wedding gifts. If the wife complained, she was required to relinquish her rights to her husband's family. However, divorce was not permitted if the marriage was conducted using one of the four approved forms.[217]

However, only a small number of divorces were recorded, and Buddhist literature indicates that divorce was uncommon in a cultured society. In Kanhadipayana Jataka (No. 444), a woman tells her husband that she never loved him, but she did not remarry because it was against the family tradition. Due to the prevalence of divorce among the lower classes, women from the upper class were hesitant to resort to it.[218]

In the 5th century BCE, asceticism swept Hindu society. It led society to believe a woman could be married only once. Due to marital dissatisfaction, divorce and remarriage became grossly sensual. Thus, society held that a wife could not divorce her husband, even if he was a wreck or mistreated her.[219] Nevertheless, only upper-class Hindus ceased divorcing. Sudrakamalakara of the seventeenth century authorised it for sudras and other lower castes. Midway through the 20th century, Gujarati caste panchayats divorced. Initially, the Bombay High Court acknowledged this right, but it was later declared invalid because it violated Hindu law. However, low-class divorces are straightforward to obtain.[220]

In ancient India, widow remarriage was accepted and prevalent among different classes.[221] However, over time, there was a shift towards resistance, with some texts emphasizing celibacy and discouraging remarriage for women. In the Smriti

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and 10 months, if the husband is heard of. Further, a woman whose husband is dead is also allowed to remarry. See, Das, Sudhirranjan. "The Position of Women in Kautilya's Arthashastra," *Proceedings of the Indian History Congress* 3 (1939), pp. 537–63

[216] Parasara Samhita, IV, 28.
[217] Kautilya, *Arthashastra*, III, Chap. 3.
[218] Altekar, supra note 8, at p. 100-101
[219] Ibid. pp. 101-102
[220] Altekar, supra note 8, at p. 102
[221] Ibid. pp. 151-153

tradition, different categories of 'punarbhus' were delineated, highlighting the changing attitudes towards remarriage.[222] Various texts reflect divergent perspectives on widow remarriage. While some scholars disallowed it, others permitted it under specific circumstances, such as the husband being untraceable, deceased, or unfit for procreation.[223] The changing laws and societal norms led to a significant development in allowing Hindu widows to remarry.

13. Conclusion

In revisiting Hindu marriage norms through the lens of women's agency in ancient India, a rich tapestry of cultural, social, and historical dynamics emerges, shaping matrimonial practices and gender relations. From the conceptualisation of marriage to the post-marital positions of women, each aspect reveals intricate nuances of women's roles, rights and agency within the institution of marriage.

Women's agency within ancient Indian marriage systems fluctuated according to the prevailing time periods and cultural contexts, showcasing significant variations. In prehistoric times, there were traces of promiscuity and marriage was not common.[224] However, over time, marriage became established as a social institution, with women playing an integral role in the process. During the Vedic period, women had relatively more agency in choosing their life partners, and love marriages were not uncommon. They also participated in religious rituals and had equality with men in religious matters.[225] However, as time went on and rituals became more complex, the age of marriage for girls decreased, leading to a decline in their active participation in religious ceremonies.[226]

In the Vedic era, women enjoyed significant autonomy in selecting their husbands.[227] They were able to make independent choices based on personal preferences and charms, regardless of parental influence. This freedom extended to pursuits of love and separation, reflecting liberal attitudes towards relationships.[228] However, social shifts led to a more structured approach to marriage, with later texts advocating for marriages based on seniority, initially met with resistance.[229] Despite evolving norms, inter-caste marriages were common, showcasing the freedom of individuals to form

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[222] Vasishtha Dharmasutra, 17. 19; Vishnu Dharmasutra, 15, 8-9; Manu Samhita IX, 176; Narada Smriti (Stripumsa). V. 45.
[223] Parashar Smriti, Chapter IV; Narada Samhita, XII, 97
[224] Altekar, supra note 8, at p. 34
[225] Ibid. p. 408
[226] Ibid. pp. 418-419
[227] Rigveda, X, 27, 12
[228] Upadhya, supra note 12, at p. 188
[229] Ibid. pp. 54-55

connections across social boundaries.[230] While the tradition of maidens choosing partners with guidance persisted, societal expectations around marriage gradually transformed over time.[231]

The Vedic girls used to receive education similar to boys, could become distinguished poetesses.[232] They enjoyed the freedom to participate actively in society and religious gatherings.[233] Despite their subordinate role, they were recognized as joint owners of the household. Monogamy was the norm, and widows had the option to remarry.[234] The rarity of dowry in antiquity underscores the moral value placed on women and the dignity of marriage. The practice of giving away wealth, including gold, cattle, chariots, and horses, alongside the bride, was common and facilitated the search for a suitable husband.[235] The selling of daughters in the name of marriage was unambiguously denounced in ancient India. Religious figures, legal scholars, and social thinkers, everybody raised their voices against it. They aimed to establish marriage practices grounded in principles of dignity, honour, and adherence to Dharmashastra traditions.

In the Purana tradition, some aspects of women's status improved. While religious and philosophical education became limited, women's strong religious devotion led to the emergence of religious literature. Women played a crucial role in preserving and shaping religious rituals. They also acquired cultural and traditional wisdom through Puranic narratives.[236] However, the period also witnessed the rise of the Purdah (veiling) custom in certain royal families.[237]

Although women were recognised as joint owners of the household with their husbands in terms of family structure, they often held subordinate roles.[238] The notion of wives being their husband's property persisted, but there were exceptions where the husband-wife relationship was viewed as joint ownership of family property.[239] Additionally, some texts challenge the traditional view of women being treated as property and lack of proprietary capacities in early Hindu law, suggesting a different perspective on women's rights.[240]

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[230] Ibid. p. 55-56
[231] Ibid. p. 46
[232] Altekar, supra note 8, at pp. 408-409
[233] Ibid. pp. 406-408
[234] Ibid. p. 409
[235] Upadhya, supra note 12, at p. 67
[236] Altekar, supra note 8, at p. 433-434
[237] Ibid. pp. 434-435
[238] Ibid. p. 409
[239] Ibid. p. 255
[240] Mitter, supra note 20, at p. 57

Critical analysis of women's positions in marriage affairs across different periods reveals a dynamic and evolving landscape. During the Vedic Age, women experienced a relatively better status. They enjoyed equal education and freely participated in social events. They had the freedom to choose their partners. However, as time progressed, especially in the Smriti tradition, their position declined with restrictions.[241] Several interrelated factors can be attributed to the decline in women's participation. Firstly, women were systematically excluded from Vedic education and religious duties, which greatly diminished their active involvement in rituals.[242] Secondly, the absence of sacred initiation ceremonies for girls, coupled with prevalent practices of early marriage and neglect of female education, contributed to a decline in women's active participation.[243] Moreover, shifting social attitudes towards women over time, accompanied by foreign influences and invasions, further marginalized their role.[244] Additionally, cultural changes such as the adoption of purdah (veiling), the prohibition of widow remarriage, the resurgence of the Sati tradition, and the prevalence of polygamy all played a role in diminishing women's involvement.[245] These practices reinforced patriarchal norms that relegated women to subordinate roles. This exclusion served to reinforce social beliefs about women's inferiority and restricted their opportunities for meaningful participation in religious life.

In the context of the ongoing personal law reform debates in Bangladesh, it is crucial to consider whether we can draw upon our past for insights into gender equality and women's active participation in matrimonial affairs. Hopefully, rediscovering our historically gender-friendly past can guide us towards establishing a gender-friendly modern Hindu society in Bangladesh.

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[241] Altekar, supra note 8, at pp. 415-416, 436-437
[242] Ibid. pp. 418-419
[243] Ibid. pp. 420-421
[244] Ibid. pp. 435
[245] Ibid. pp. 437-438