

Chapter One

General Introduction

1. Historical Development of Marriage

Marriage is one of the most important institutional expressions of sex in mankind. It is indeed true to say that the sex-instinct in man is a powerful biological impulse that has played a dominant role in the evolution of human culture in the matrix of society. Several psycho phenomena, ethical values, and spiritual Ideals are interlaced with it. The configuration of sex life, which brings about a union of two minds, touches the deep spring of the varied aspects of personality and social life. It endows the life of impulses with ethical values and meanings to lead it to the higher reaches of social experience. Sex and love are two important components of marriage and they consummated themselves in the matrimonial and familial institution. There are linked with several other basic desires and interests and through diversely ramified, social expressions are finally sublimated into aesthetics and spiritual experience. The changing variety of matrimonial institutions through the ages can only be explained by the fact that sex is integrally connected with other interests and impulses. They act and react and change their directions in response to the needs, traditions, and mores of society. The conventional history of marriage in India is marked with some of the traits and such traits of the milieu of which Hindus have striven for continued adoption. However, both men and women play a variety of roles in human situations over time. The mutual adjustment of attitudes has shaped and modulated their relative position. Accordingly, there have been ever-changing affiliations of sex with other human interests. Marriage as an institution, therefore, represents a rich and variegated pattern of feelings, emotions, and attitudes that have been slowly woven into the course of history.

The age-old culture of the Hindu views marriage as a religious sacrament. It is unlikely in the West. At the age of civilization, the Western concept of marriage has been reshaped under the purview of agreement based on law. It is unlikely in the case of an Indian marriage. The sacramental and religious aspects of marriage are still a dominating force in Indian marriage even though Indian marriage laws have been formulated long back. Thus, through marriage, it opens up a new vista of the carrier where the emotional integrity of two individuals is harnessed for the refinement and orientation of their activities following the ethos of the race. The Rig-Veda describes marriage as a replica of the great sacrament of creation. Marriage to the Hindu symbols is **cosmic dharma**. The sacramental conception of marriage is deeply involved with the spiritual impart of parenthood and the social solidarity of the patriarchal family, transmitting faith and culture across the generations. The marital bond unites the partners of marriage in an indissoluble tie. It affords opportunities for the married spouses to discern goals and values in love, reproductions, economic collaboration, rearing of children to the standard of the race-ethos to which they belong. The social and religious values have thus bring brought to bear the process of sex-maturation to reach the acme of sex-sublimation. The philosophical and mystical aspects of human love in India, purified of its dross, are assimilated to the metaphysical relishing of the *rasa* (bliss) of Brahman. However, such an association of sex life with a myriad of interests and ideas has to tell the tale of a long history, the curse of which is dubious and devious.

Thus it seems to me that marriage is an integral part of human life. Men's appearance in the world is made possible because of marriage. Without marriage, we cannot see the world. Therefore the appearance of humans is made possible because of marriage. What then is marriage? *Marriage is a contract, social, legal, or ritual*, depends on various cultures shared by different communities. Thus there are different types of marriage based on different types of arrangements, rules, and principles, cultural, social, religious, and legal. Putting everything into perspective, we can say that there is something common in marriage and it is the association of

bride and grooms. Marriage is also called matrimony or wedlock, a culturally recognized union between people called spouses, which establishes rights and obligations between them as well as between them and their children and between them and their in-laws. However, the definition of marriage varies around the world not only between cultures and religions but also throughout the history of any given culture and religion. Marriage is recognized typically as an institution in which interpersonal relationships, usually sexual relationships, are acknowledged or sanctioned. In some cultures, marriage is recognized or considered to be compulsory before pursuing any sexual activity. In Indian tradition and culture, sexual activity is completely prohibited in the Sastras before pursuing marriage. The same is equally true in many other parts of the world. Thus in a sense marriage is *an agreement between the bridges and grooms* through which they have to do some **social obligations and social responsibilities**. *This is where the relevance of the philosophy of marriage actually hinges.* Our future generation in a legal way will come into the world through marriage, through the union between the bride and groom. It is also reflected emphatically in our Shastras. Shastras tells that development of good and honest progeny is the root cause of marriage. According to Hindu Sastras, the progenies will determine the fate of the family, the society, the community, and also the county. Therefore, the richness of the progeny will play a key role in the reconstruction of a good society. In the border, sense marriage is also considered a cultural universal marriage ceremony known as a wedding. There are various reasons for which individuals do engage in marriage. These are legal, social, libidinal, emotional, financial, spiritual, and religious purposes. Marriage has also influenced any gender, socially determined rules of caste, *varna*, *gotra* perspective marriage rules parental choice, and individual desire. In the Indian Hindu religion, the concept of *varna* and *gotra*, or in the most popular term the concept of caste plays important role in marriage. But in Western culture and other European countries, the concept of caste and *varna* is not so important as in India. In western societies marriage is primarily an agreement based on formulated legal laws. It is legal. In contrast to

Western society, in Indian society marriage has two implications. It is both legal and spiritual. As the influence of spiritualism is hidden in the Indian marriage system, the tie between bride and grooms is made possible in most general cases based on *varna* and *gotra* as prescribed in the Shastras.

1.2: The Philosophical Purpose and objective of Marriage

The main contention of this section is to analyze and examine the relationship between **marriage and philosophy**. Alternatively, it can be said wherein lies the relevance of philosophy in marriage? Why does marriage would regard as a contentious issue of philosophy? Why does marriage matter to philosophy? This is the main contention of the thesis. In this regard, we propose to make an East-West comparative study *of the philosophy of marriage*. Elizabeth Brake in his book *Minimizing: Marriage, Morality, and Law* outline the *relevance of marriage and philosophy*. According to the moral philosopher, *marriage raises key issues of the possibilities of interpersonal moral obligations and their bounds* – not to mention the question of good human life. Secular moralists often assume that marriage morally transforms a relationship. However, contemporary philosophers have paid little attention to the question of how such a transformation could be affected. For the political philosopher, the question of how or whether society and the state should organize sex, love, and intimacy is urgent, but recent attention has focused mainly on a set of narrow questions surrounding marriage law. A greater variety of reconfigurations of marriage should be contemplated. However, we cannot overlook the history of philosophical debate over marriage. The philosophical perception of marriage was reflected in **Plato, Bentham, Nietzsche, and Russell**. Plato in his *Republic* talked in favor of **marriage between brother and sister**. In his *Republic*, Plato outlined the marriage laws. According to Plato, we must remember that the communism of wives and children in the Republic connected only the guardian class and the whole of the class. Only the legitimate children of the fittest people are to be reared. The others are to be done away with. Plato also suggests that no one under or over the

age fixed for will not allow to have children. The marriageable age is fixed at **twenty to forty for a woman and twenty-five to forty-five** for a man. In Indian tradition, Manu in *Manusmritie* equally suggests the marginal age of both males and females. Plato strictly suggests that no man or woman within this age limit is to have any unions apart from the official ones. These official unions will take place at special festivals with sacrifices and songs. The number of these marriages that take place in any particular festival is controlled by the archons so that they may regulate the number of births and vary it according to the needs of the state. Finally, to ensure the health of the coming generation, the archons are also to decide what particular people are to be united on each occasion. This is to be secured by a faked ballot so that those who are chosen will blame chance, not the rulers.

What then is the purpose of marriage? In what sense the purpose of marriage is treated as philosophical? The purpose of marriage is the attainment of **superior becoming and procreating of the good progeny of good offspring**. By the term superior becoming, we mean to advance towards all-around progress. Thus the main objective of marriage is to consider how marriage can lead to superior becoming. In this regard, we should think about how the male acquires fitness for marriage, because marriage, without acquiring proper fitness, may bring about deterioration instead of improvement. In Indian ethics, the first stage of life is called *Brahmachāryashram*. It means Ideal centric student life. After that, there comes the stage where a man adopts the life of a shareholder (householder) known as *Grihastha Ashram*. Without concentrating on the Ideal and devoting to culture, nobody is qualified for marriage according to Indian Shastras. In this regard, Sri Thakur said, “If a man marriage without having an Ideal, his marriage kindles a flame of a devastating fire.” Thus according to Indian Shastras, before marriage, a man should have adherence to the Ideal and self-adjustment. If a male is too incline to female, it indicates that he **is not fit to marry**. Females can never be regarded as the male who

has unhealthy sex learning. At this stage, marriage can never be the source of becoming. Thus the very purpose of marriage cannot be fulfilled without concentrating on the *Ideal and culture*. If a man is devoted to the Ideal and if his marriage is compatible, then in such a case he can advance towards *all-round becoming*.

There are various concepts of marriage, such as arranged marriage, child marriage, polygamy, and forced marriage based on cultural tradition. In the past, there was no specific marriage rule. But at present, there are specific marriage rules formulated by respective countries. However, in India marriage is determined by the rules of *shastras* and legal arrangement is a matter of formalities in most general cases. As divorce is recognized by marriage rules, marriage should be legalized. The question of rights is also involved as soon as a particular marriage between a bride and groom is held. In developed democratic countries, there has been a general trend towards ensuring equal rights within marriage for women and also legally recognizing the marriage of interfaith, interracial, and a same-sex couple. This trend coincides with the border human rights movements. It is also important to note here that marriage can be recognized by a state, an organization, a religious authority, a tribal group, a local community. It is often viewed as a contract. When marriage is carried out by a government institution following the marriage laws of the jurisdiction, without religion, it is a civil marriage. Civil marriage recognizes and creates the right and obligation intrinsic true matrimony before the state. When a marriage is performed with the religious content under the auspicious of a religious institution, then it is called a *religious marriage*. Thus there are two important types of marriages such as *civil marriage and religious marriage*. Unlike civil marriage, religious marriage recognizes and creates the right and obligation intrinsic to matrimony before that religion. Religious marriage is known variously as sacramental marriage in Catholicism, Nikah in Islam, Nissuin in Judaism, and various other names in other faith traditions through which one can enter into a valid religious marriage. India

is the hub of religious marriage. The essence of the Indian marriage system is spiritualism. Marriage creates spiritual bondage between two different selves. Besides India, in most of the third world countries, particularly in Islamic countries, religious marriage is dominated.

However, many countries do not recognize locally performed religious marriage on its own. Instead, they require a separate civil marriage for official purposes. Thus in a sense, religious marriage has *internal intrinsic implications* and civil marriage has an *external instrumental implication*. In the civilized world, the propensity for civilized marriage is increased day by day. But a religious country does not follow it. As a result that civil marriage does not exist in some countries governed by a religious legal system. Saudi Arabia is a case in point where a *religious legal system has been approved in marriage*. Countries like Lebanon and Israel introduced a mixed secular-religious legal system in marriage. Thus, it seems to me that marriage usually creates normative and legal obligations between the individuals involved and any offspring they may produce or adopt. Thus the question of rights, obligations, freedom, and responsibility is very much involved with marriage. This is how marriage as a social contract comes under the preview of philosophy. *This is where the relevance of the title of my thesis hinges on*. The concept of right, duty, obligation, freedom, responsibility, and equality are all philosophical and moral concepts each of which is deeply associated with the concept of marriage.

However, the concept of marriage that we have so far mentioned is being changed with every passing day. Even the percentage of marriage in developing countries, particularly in Europe, has been decreased by 30% from the year 1975 to 2005. Historically, in most cultures, married women had few rights of their own. Even in Europe and the United State right from the 19th century to the 21st-century marriage has undergone *gradual legal changes*. In such countries, marriage has been treated as an agreement. These changes included giving wives legal identities of their own, abolishing the right of a husband to physically discipline their wives, giving wives property right liberalizing divorce laws, providing wives with reproductive rights of their own,

and requiring a wife's consent when sexual relations occur. Such changes have occurred primarily in Western countries. Even in the 21st century controversies were going on regarding **the legal status of marriage.**

If we go through the history of human marriage, we find that primitive men who lived in tribes hordes were no longer associated with the so-called marriage that we are talking of right now. Primitivemen were engaged with intercourse with all the women, where no individual marriage existed. The children were the common property of the tribe. According to Dr. Post monogamous marriage originally emerged everywhere from pure communism in women, through the intermediate stages of limited communism in women, polyandry, and polygamy. Mr. Lewis H. Morgan, in his '*System of Consanguinities and Affinity of the Human Family*', as suggested no fewer than fifteen normal stages in the evolution of marriage and the family assuming the existence and general prevalence of a series of customs and institutions "which must of necessity have preceded a knowledge of marriage between single pairs, and of the family itself, in the modern sense of the term."¹

1.3: Meaning of Marriage

To me, the intuition of marriage is the backbone of every society. It is a loving relationship between the husband and wife. The development of this institution is co-related with the development of every civilized society in any part of the world. It is as old as the dawn of civilization. However, the nature and concept of marriage under various personal laws keep on changing with the changes in society and the social order. The general concepts of marriage require the subsistence of the social unit of the family which is the foundation of every society. Marriage is nothing but a tie or relation between male and female based on a compromise and mental confidence to lead a social life together. It is a stable relationship in which a man and woman are socially allowed to have children implying the right to sexual relations. Why do

¹ Morgan, L. H., "*System of consanguinity and Affinity*", P. 479.

people engage with marriage? In this regard, it can be said that people do not marry because it is their social duty to perpetuate the institution of the family or because the scriptures recommended matrimony or because they have fallen in love with each other, but because they live in a family as children and can get over feeling that being in a family is the only proper way to live in society. This position recalls the Aristotelian view that men are social animals. Marriage is thus the usual fact of most adult persons. In this regard, Bentham said, “Under whatever point of view the institution of marriage is considered, nothing can be more striking than the utility of this noble contact, the tie and society and the basis of civilization, and that to perceive its benefits, it is only necessary to imagine for a moment what men would be without that institution.” Even though the concept of marriage varies from society to society, from culture to culture, from tradition to tradition, but one thing is common that marriage is an exclusive tie or agreement between a male and female under laws, spiritual or civil. It is wrong to suggest that it is held for only sexual engagement; rather marriage is necessary for long and happy association of man and women to constitute an orderly family which contributes to the progress of the society. In this regard, mutual love, affection, and understanding must build the bonds of matrimony and binds them together for a happy harmonious conjugal life. The happiness of a life to a great extent depends not only upon their physical health but only upon the health and well-being of their marital relations. There is no question of doubt that a happy married life is undoubtedly a great *boon and bliss*. History lessons us that, domestic happiness, inner strength, and support of men and women essentially hinges on the relationship of marriage. Thus from time immemorial, marriage has been regarded as the basis of civilization and civilized society of sound morals and domestic affection by different systems of laws. Conjugal happiness essentially hinges on a good marital relationship. Sick marital relations pose a problem not merely for the related spouses, rather they have wider implications. Sick marital relations not only hamper the concerned persons, concerned families, it equally impacts the society and

community at large. Such relations impacted the harmony of the family as well as society. Thus marriage plays an important role in the hierarchy of social institutions. So the stability of marriage is a prerequisite. The stability of marriage is the *sine-qua-non* of every society. In this regard, various pieces of legislation and acts have been passed under different personal laws in India and abroad. In India, there are marriage laws. One has to follow such marriage laws. At the same time, there are marital moralities other than civil marital laws based on faith and spirituality.

It thus seems that marriage is an important social contact made between a male and a female based on marital laws, moral, spiritual, and civil. *A good marriage is good for society and family, but sick marriage is equally bad for family and society in some sense and others.* Thus it is very important to know what are the basic conditions of considering or treating a marriage good or bad. This is where the relevance of morality hinges. The objective of marriage is not only physical gratification and if anybody thinks in this way then it would be treated as mere barbarism. The intention or motive of marriage plays an important role. If marriage is being treated as a mere agreement, then the percentage of divorce would be comparatively higher. It is revealed in Western countries and societies. Thus besides agreement, there must be religious, spiritual, and cultural bonds behind marriage. Without this, the system of marriage would itself be treated like a fragile system.

Thus what is most important is to look at how a stable relationship between a man and a woman is possible. Marriage in the true sense of the term is *a social relationship* in which a man and a woman are socially permitted to have children. Children are the future of the family, community, society, and country at large. Nobody can deny it. The fate of the children hinges on a good marriage. Even in some societies, an unmarried girl will give birth to a child without loss of standing provided that she gets married soon afterward. It is allowed in Western society. It is justified by society that such proof of fertilities is necessary before a girl can get a husband. The

report suggests that the surplus of women and economic difficulties in post-war West Germany and West Berlin has brought about a mere liberal attitude towards parenthood without marriage. In India, we cannot imagine it. In Indian spiritualistic tradition, marriage has deep significance, unlike western civilization. In West Germany and West Berlin, an unmarried woman *had a right to have a child*. Thus marriage has a narrow and wider definition and implication. Western society is far more liberal than in Eastern countries. In the western context, it can be said that to have a child, it is a precondition for a woman to engage with civil marriage in the narrower sense of marriage. Alternatively, it can be said that whether every relationship in such a man and woman is permitted to become parents is to be called a marriage depends, of course, upon how narrowly one wishes to define marriage². In our sense, a society may make a distinction between a wife of full status and a combination while permitting both to have children by the husband. Of course, there is no question of doubt that the right to have children implies the right to sexual relations. According to the narrow definition of marriage, two other conditions must be fulfilled, namely, normal cohabitation in the same household, and some degree of economic cooperation. Having said, it is true that relationships with the full complex of rights and obligations exist in all societies. It is virtually true that in every society an adult couple of opposite sexes may live in the same house or co-operate in economic production without having sexual rights in each other. We also observe the opposite.

Edward Westermarck, a leading feminist, defines marriage as a “more or less durable connection between male and female, lasting beyond the mere act of propagation till after the birth of offspring”. Earnest R. Groves defined it as “a public confession and legal registration of an adventure in fellowship”³. *Thus there we have different perceptions of marriage. It is not a mere connection between male and female, it is not a mere sexual relationship, but there underlies the*

²see Friedeburg, 1953]

³ Bhusan V. & Sachdeva D. R., *Introduction to Sociology*, Kitab Mahal Distributors, P. 325.

commitment, obligation, and responsibility of both male and female. Professor Vinogradoff observed that “It is not only an institution regulating sexual intercourse and kept by conjugal affection but also an arrangement for bringing up of children and a partnership for economic ends and social co-operation, sometimes, one side and sometimes another predominates”.⁴ If we carefully go through the remarks of Professor Vinogradoff, it seems to us that there are some philosophical insights into the definition of marriage. According to Vinogradoff, marriage is not only an institution regulating sexual intercourse, it is also a conjugal affection through which economic and social partnership and co-operations come into being. According to Robert H. Lowie, marriage is nothing but a sort of sanctioned union which goes beyond satisfaction. Marriage helps a lot to lead a family life besides sexual gratification. Some others would say that marriage is an institution since time immemorial and it is almost uniformly regarded as a *sine-qua-non* for upgrading and cherishing *moral and ethical values* in society. It immensely helps the man to lead a disciplined life distinguished from animal life because of its rational sense which is completely foreign in the animal. According to Mrs. Aggrawala, the institution of marriage is one of the neatest tricks of human ingenuity. Mating is the beginning point of family, the foundation of the superstructure of society. As a result of that, it has been deliberately engaged with an aura of religiosity, morality, and a sense of social responsibility. This reflects in what sense marriage is deeply linked with *ethics and philosophy*. The philosophical perspective of marriage essentially has given the dignified label of marriage. It helps to lead a happy conjugal life. In this regard, Aggrawala remarks, “It (marriage) has as a result been deliberately encircled with an aura of religiosity, morality and a sense of social responsibility and given the dignified label of ‘marriage’ accompanied with rules and conditions for attaining and living the label.”⁵

⁴ Vinogradoff P., *Historical Jurisprudence*, vol. 1, P. 169.

⁵ Aggrawala, R. K., “Reform of Hindu Matrimonial Law - some slips in studies in the H. M. Act & S. M. Act, P. 71.

The philosophical relevance of marriage is also reflected in the writing of Lundberg. According to Lundberg, marriage consists of the rules and regulations which define the rights, duties, and privileges of husband and wife concerning each other. This suggests that the philosophy of marriage links with the social reconstruction of the family in particular and society and community in general. The reconstruction of the family is also reflected in the remarks of Horton and Hunt. According to them, “Marriage is the approved social pattern whereby two or more persons establish a family”.⁶ Some others conceive marriage as *a socially sanctioned* union of male and female. In summing up the above remarks of various philosophers and commentators, we can say that the very objective of marriage is to establish a household, entering into sex relations; procreating, and above all providing care for the offspring. In English Law, we have a classical definition of marriage where it is said that marriage is the voluntary union for the life of one man and one woman to the exclusion of the other. If this definition is taken into account, then we have the following essential elements of a marriage, such as that marriage must a voluntary union; it must be for life; the union must be heterosexual, and it must be monogamous. The above definition of marriage may be true if marriage is considered sacramental under English Law. However, after the recognition of divorce, it is not essential that the union must be for life. It can be dissolved during the lifetime of spouses on some specific grounds or in case of a breakdown of a marriage. Having said still we can offer a simple definition of marriage having philosophical implications. In this regard, we can say that marriage is *a union between a male and a female recognized by law*. As the union is given legal or civil recognition, the rights and obligations are basic and are of great importance to the spouses for their marital bliss and happiness.

1.4: Various Types of Marriage

⁶ Horton P. B. & Hunt C. L., *Sociology*, McGraw-Hill 1980 p. 216.

There are various types of marriage both in Western as well as Indian culture. These are Polyandry, Polygamy, and Monogamy. Let me explain each of these in turn:-

Polyandry

It is a type of marriage having *one wife and many husbands*. It existed in certain parts of the world for a long back. It is a form of marriage where one woman marries more than one man at a given time. It is witnessed in Tribe where the conditions of social life are harsh and as a result that the efforts of two or more men are needed to support a family. Thus in a sense polyandry is a sort of marriage that was prevailing in Tribe mainly for *economic benefit besides social life*. Our social life, in the true sense of the term, cannot survive peacefully without economic solvency. This sort of marriage had been supported by Marquesans of Polynesia and the Todas of Malabar. In Hindu Mythology, we learn that the five brothers called *Pandavas share the same wife*. Draupadi was the wife of Pancha Pandavas. This was a glaring example of polyandry existing in *Mahabharata* of Hindu Mythology. A careful study would reflect that polyandry was also available in some Tribes, such as Namib Bushmen, the Yaruro of Venezuela, the Lengua of Elchaco, the Singhalese, the Mundas, and some ancient tribes of the Malay Peninsula. It thus seems clear to us that polyandry was mainly prevailing in most tribe castes. It is, however, relatively a rare type of marriage. It is generally an improvised adjustment to certain peculiar extreme conditions. Polyandry again may be classified into two types, such as Fraternal Polyandry and Non-Fraternal Polyandry. Fraternal Polyandry is a form of Polyandry where one wife is regarded as the wife of all brothers who have sexual relations with her. Here the children are treated as the offspring of the eldest brother. On the other hand, Non-Fraternal Polyandry is the form of Polyandry where one woman has many husbands with whom she cohabits in turn. These husbands may not be brothers in relation. If a child is born there anyone's husband is chosen its a social parent by a social ritual. Thus it seems to me that polyandry is generally considered an obstacle in the way of social progress. It mostly prevails in Tribe cultures and

communities. It is hard to believe in the age of civilization. It is mostly dominated by Tribe religion, Tribe myths, and superstitions. It causes harm to married life and creates several other psychological problems. It is on this account that polyandry has generally been abolished even in the Tribe community because of the reflection of civilization and education. What I want to say here is that in the twenty-first century it is hard to believe polyandry in civilized society and community.

Polygamy

Polygamy is a type of marriage where *one man has two or more wives*. Polygamy is generally called polygamy but strictly speaking, the latter is a general term including both polyandry and polygamy. Polygamy is found among Eskimo Tribes, crow, and Hidatsa of North American and African Negros. In primitive times it was quite prevalent among the Assyro-Babylonians and the Hebrews. In India, till today we notice polygamy among Muslims and also among Hindus. It is more frequent than polyandry. Polygamy is closely related to the institution of slavery. It is noticed in general that women captured in the war are made his wives and concubines by the captor. Even at times *chieftain or Raja may purchase a dozen women for wives*. It is historically learnt that Nawabs of Oudh in India during Muslim times are said to have a large number of wives. Even at times the number of wives reached several hundred. Thus, it seems ridiculous from a practical point of view that a man has more hundred of wives. Thus, it is almost a notional practice perhaps backed by religion and culture of primitive men. Polygamy is partly based on the lower sex impulses of the male and partly on the desire to leave many descendants. However, over the course of history such myth oriented polygamy was almost banished. It is harmful and on account of its greater harmful effects on family life, polygamy has been declared illegal in the civilized societies. Even though polygamy is still prevailing in India in various communities that has been unrecorded, but the very fact is that Indian Government has been declared polygamy illegal and offensive under Hindu Marriage Act, 1955.

Monogamy

Monogamy is the most recent trend of marriage which is acceptable to all. Monogamous is a type of marriage where *one man marries one woman at a particular time*. This is the leading form of marriage that we accept as a civilized man living in a civilized society. Its advantages are not well recognized. It *produces the highest types of affection and sincere devotion*. Here there is no problem to take care of the children by their parents. The children are well looked after. Both father and mother will give earnest attention to the upbringing of their offspring. Even though it is said that monogamous is causing extra martial relations and exploitation of woman, yet according to Malinowski, “monogamous is, has been, and will remain the only true type of marriage”. It is perhaps to the great advantage of monogamy that the public officers in India have been legally forbidden to practice polygamy. At present in India majority of people engaged with monogamy. It is liberal, rational and based on human prudence.

Now if we compare different types of marriage as cited above, it seems to us that unlike monogamy, the other two types of marriage, such as **Polygamy and Polyandry**, are based on *religious prejudice and religious sanction*. These two types of marriage were prevailing in the past. However, over the course of history with the advent of science and technology such types of marriage are being abolished. However, monogamy is a sort of marriage which is accepted by all. Thus in the true sense of the term understanding marriage is surely associated with monogamy where the relevance of philosophy comes into being.

Having said the concept of marriage is functioning under various laws. Law and society are the two sides of a same coin. They are interdependent and interrelated. Society is guided by laws. However, law keeps on changing with the social change. In our sense the age old institution of marriage is the foundation on which the whole superstructure of civilization and prosperity based. This is how the philosophical relevance of marriage can be justified. Stability in material relationship has pivotal significance in civilized society. Without material relationship the

concept of social reconstruction would be far cry. To me, marriage plays significance role for social construction and reconstruction depend on proper material relationship between male and female.

We are living in a civilized society and therefore the concept and form of marriage must be agreeable with our civilized philosophical perception. In this regard we *cannot ignore socio-economic condition, the ethico-religious values and beliefs of different societies*. Social reconstruction cannot be sustained without socio-economic and socio-religious conditions, and the values of the world. Thus we need awareness about all these issues. We need social awareness among the people, especially the females, about their right, freedom, rights to equality, personal liberty, the stability in marital relationship etc. These cannot be maintained without adopting an extremely rigid attitude and making the marriage an indissoluble. It thus seems that the nature of marriage have undergone many changes with the changes in mental attitude and passing of different personal laws providing for the various matrimonial remedies of divorce, judicial separation.

So far we have outlined various types of marriage and also evaluated these types of marriage from our personal standpoint. Now let us move into the concept of marriage under various personal laws such as Hindu Law, Muslim Law, Christian law, Parse law and Judies law. Let me explain each of these.

1.5: Marriage under Hindu Law

Hindu law accepts ten sacraments. Marriage, according to Hindu ancient law, is the last of the ten sacraments. *Marriage is a tie, but it is a sacred tie*. As a sacred tie, marriage can never be broken according to Hindu law marriage. It is a sort of relation established by birth to birth. According to Smritikars, even human death cannot be broken the relationship of marriage between husband and wife. Unlike Western marriage, Hindu marriage is not only sacred and religious, but is a holy union. As a result of that, once marriage is created, it is created as a sacred

tie and cannot be united. It is not a mere contract. “The institution of marriage is a sacrament and not a mere socio-legal contract.⁷” The objective of marriage was to perform religious duties and to get progeny by a man and a woman. A man is incomplete without the woman. Thus marriage bears the concept of oneness which is expressed by an edge. A woman is half of her husband (*Ardhangini*) and completes him. As marriage is an integral part of life, every Hindu male and female had to marry. When a person could not remain a perpetual celibate where he did not desire to be an ascetic (*Sanyasin*), he was enjoined by the Shastras to marry. A girl might choose a husband and for herself and marry, but in the changing conditions of life, marriage become optional for both, a male and female.

What we intend to say here is that since marriage is sacramental, it is a process of religious and ethical resolution. That means in case of marriage, we cannot ignore the religious and ethical aspects of marriage. Marriage thus develops into a religious sacrament in Hindu law. Marriage is also regarded as a *sanskar* or sacrament. The sacramental aspect of Hindu marriage implies the following elements:

According to shastras, Hindu marriage was obligatory. It is obligatory for begetting a son in order to discharge the ancestor’s debt and for performance of religious and spiritual duties. In this sense wife was not only regarded as *patni*, but *Dharmapatni*. According to *Satpatha Brahmana*, “The wife is the very half of the husband.⁸” If it would be the case then we can say that man is only half but not complete until his marriage along with idealized picture of wife, the Hindu sages hold in clear term that husband is “the Lord and master of his wife. Accordingly, he must be adored and obeyed even if devoid of all virtues⁹”. According to shastras, *the husband should be worshiped like a God even though he is a man of bad character having no good virtues or good qualities*. The ideals of *Pativratya* are a case in point. It is the only duty of the wife and

⁷ Gopal Krishna vs Mithilesh Kumari, AIR 1979 All. 316.

⁸ Satpatha Brahmana, V. 16.10.

⁹ Paras Divan: Indian Personal Law-1, Law of Marriage and divorce p. 14.

purpose of the wife in her life. A river merging itself in the ocean loses its identity, likewise a wife was supposed to merge her individuality with that of her husband. In Hindu marriage law, the remarriages of either widow or divorce woman was not approved by the Smritikaras¹⁰.

Keeping sacramental nature of marriage in mind, it was also considered to be indissoluble. However, it was only in exceptional cases, the Sages allowed a woman to abandon her husband and take another. In this regard Manu declared mutual fidelity till death as the essence of Dharma for the husband and wife. According to Manu, man and women are united in marriage. They constantly exert themselves that they may be disunited and may not violate their mutual fidelity. According to Manu, a good wife desires of living in this as well as the next world with her husband. According to Hindu shastras, there is a life after death. Therefore, the tie between the husband and wife would be an eternal tie. Accordingly, they never do anything that would displease him, either alive or death. According to shastras, divorce was considered to be a *toboo*. The Shastric Hindu law did not provide for either divorce or judicial separation in the strict sense. Customary divorce was only an exception but not rule.

The significance of Hindu marriage is not external but something internal. It was valid not only during lifetime of spouses but also in lives to come. The significance of marriage as per Hindu Law marriage was *not only the meeting point of the body but also the meeting point of the soul*. In this sense we can say that Hindu Law marriage has both internal and external significance. As there is internal and everlasting, eternal significance of marriage, widow marriage as a rule was not considered in Hindu Law marriage. It is mainly for the fact that the ideal was that a widow who remains chaste reaches haven after her death even though she has no son. A widow becomes unfaithful to her husband has no claim to his property not even for maintenance, she even be

¹⁰ Manushriti, v. 147-654.

excommunicated. The widow remarriage was inconceivable in *Dharmashastric Law*. It is said that “a widow remarriage has always been taboo in India, especially among higher castes.”¹¹

As the Hindu marriage was considered sacramental union, for its solemnization, the essential religious ceremonies were performed. Marriage could not be solemnized without the performance of sacred rites and ceremonies. The details of these marriage ceremonies are given in *Grihasutras*. The main rites are home or offerings to the holy fire, *panigrahna* or taking the hand of the bride and *sapt padi*. The Bride and bridegroom takes seven joint stapes round the holy fire. This is followed by the addresses by the bridegroom to the bride and certain prayers. However, on the completion of the prayer, the bridegroom joins hand with the bride and says to her, “Give the heart to my religious duties, may they mind follow mine. Be thou consentient to my speeches. May *Brihaspati* unite thee into me.”¹² This is the genesis of Hindu Law marriage. The Madras High Court after noting the original traits in Hindu Law observed the importance of these ceremonies as under: “Religious rites and the ceremonies that create the indissoluble tie between the husband and wife, that these ceremonies are essential for all forms of marriage among Hindus that it should not be to the will of some people to alter the forms of marriage preserved by the shastras or by custom”. This clearly reflects that the religious rites influence a lot to marriage law of Madras High Court. In the case of marriage, particularly in India, we cannot avoid religious sanctions and rites even at the age of twenty first centuries.

So far we have explained and examined various concepts of marriage and its religious implications. It gives us sufficient clues to describe the marriage in general. But still we have to understand in proper of Hindu marriage systems which is not to be found in other places. Hindu marriage can be defined as to fulfil the goals of religion, citizenship and a conjugal life. It is a sort of holy alliance between a man and a woman. It is approved by traditions. It is performed

¹¹ Singh Soren Gurdev, “Law & Population” Indian Journal of Legal Studies.

¹² Paras Divan, Modern Hindu Law, p. 87-88.

with regard to religious rites. It is called Hindu marriage where religious rights play important role to make the tie between a man and a woman. In this sense it can be said that Hindu Marriage is nothing but a religious sacrament. It is not at all social and legal compromise like western marriage. Western marriage is purely a contract based on marriage law and in the case of western marriage there is no bar of divorce or separation. Hindu marriage is based on religious ceremony because in Hindu marriage no records are to be mentioned or maintained. It is purely based on *religious sacraments or religious rites* which are customary and purely cultural backed up by religious principles. The importance of religious ceremony can be signified from the fact that all religious books emphasis their importance in the life of a being right from his birth to death.

Hindu ethics is all about of purification of life. Purification of life is made possible through religious practices. Marriage is one of the event through which purification of life is made possible. Marriage ceremony is an important sacrament. By this sacrament, a couple is granted permeation to enter the *Grihastha Ashrama*. *Grihastha Ashrama* is the basis of the *ashrama* scheme. Marriage is the foundation of *Grihastha Ashrama*. Procreation is necessary to pay one's debt (*rna*) towards parents as well as ancestors *Grihashta Ashrama* of the family. From this point of view, Hindu marriage has played a very important role without which a man cannot advance towards the attainment of *Moksha*. *This is where the significance of philosophy of marriage actually hinges on*. The basic objective of Indian Philosophy is to attain liberation and *Moksha*. This is the end of human journey. All contemporary thinkers like, Radhakrishnan, Vivekananda, Iqbal, Krishnamurti, Tagore, Aurobindo were craving for universal salvation or *Jivanmukti* by developing various philosophical theories. In Advaita Vedanta to have the sense of *Nirguna Brahma* beside *Saguna Brahman* is the ultimate end of philosophy. What we have seen so far is that without marriage, according to Hindu Marriage Law, universal salvation or the knowledge of Brahman is not possible. This is where the significance of the philosophy of marriage actually hinges on. According to Hindu Shastras, there are four different *ashramas* or the periods of life,

such as, *Brahmacharya*, *Grihastha*, *Banprastha* and *Sanyas*. These are in historical order. Human life begins with *Brahmacharya*. During this period of time, a man spends his time in *Gurugriha* and can learn the principle of leading a harmonious life. Then a man enters into *Grihasthaashrama*, where he can marry a girl. Without *Grihastha Ashram* man cannot move into higher *ashramas* or periods of his life. In the *Grihastha Ashrama* a man engages with marriage and produce children. After that they can bestow upon all his family responsibility to his children and enter into *Banprastha*. After *Banprastha* he eventually enters into *sanyasa*. It is the last destination where a man can get liberation or *Jibanamukti*. It is a stage where he can merge with *Nirguna Brahman*. It is a stage where he can act desireless action or *Niskamkarma*. This is the ultimate objective of human life where a man can have the knowledge of *Brahman*. This is the stage where a *Sanyashi* can evaluate and justify the *meaning of life*; can reveal the value of the world in the real sense of the term. This clearly indicates the philosophical significance of marriage according to Hindu shastras.

Thus it seems to us that Hindu marriage actually opens up the path or gate of *Grihastha Ashrama*. To enter in this new life, some religious duties and rituals are to be performed. At every level holy Lord (God) is regarded as wishers to each of the deeds. Therefore, we can say that Hindu marriage is to be called as a *religious sacrament*. If we go through the history of Hindu marriage right from ancient to modern times, we find some modification over the course of history. The description of different forms of marriage was mentioned in the *Manu*, *Narad*, *Yajavalkya*. According to ancient marriage history, there are eight different forms of marriage which were prevalent in the societies of ancient times. These are as follows:

- i) Brahma Marriage
- ii) Daiva Marriage
- iii) Arsha Marriage
- iv) Prajapatya Marriage

- v) Asura marriage
- vi) Gandharva Marriage
- vii) Raksha Marriage
- viii) Pichachi Marriage.

Let us explain in brief each of these in turn:

- i) Brahma Marriage

The first one is called *Brahma Marriage*. Its primary objective is directed to the attachment of Brahma or God i.e., salvation through the performance of householder's duties. In this form of marriage, the father of the girl searches for a boy who is scholar, able and possesses a high moral character. Here the father invites him to his house by performing religious rituals presents his daughter to that person. According to *shastras* there are three main factors of this marriage:

- 1) Consent of mother-father,
- 2) Marriage sacrament,
- 3) Abstinence from dowry.

It is further described in Manushriti that the father has to give daughter as a gift only with a piece of clothe as establishment. This marriage is regarded as the most ideal form of marriage according to Manusmriti. This form of marriage is mainly based on spiritual rituals. In this regard Manu says, "The gift of a marriageable daughter with suitable dowries is made to be learned man of good conduct whom the father or guardian invites."¹³ Here the union of *Siva* and *Parvati* is cited as the perfect example of *Brahma* Marriage. It shows that the bride herself underwent severe penances in order to secure the affection companionship of the learned God. The instance of *Arundhati* and *Vasistha* also indicate a mutual desire of the bride and the groom for an intellectual companionship in addition to partnership of house-holder's duties. It is there for considered as an ideal form for all. Thus Brahma marriage, according to *shastras*, is the ideal

¹³ Manushruti 3/27.

marriage through which one can lead a happy conjugal life according to *shastras* and the future Progeny will get the essence of good human qualities from the essence of his or her parents.

ii) Daiva Marriage

The next *daiva* or divine form of marriage is recognized in *shastras*. It is a form of marriage where the gift of a daughter is made to a priest who duly officiates in a sacrifice during its performance. In this marriage, the father of daughter performs an elaborate *Yana* and various eligible bachelor scholars are invited. Here daughter is overstated with muslin and Jewellery and makes an appearance. Here the scholar, who establishes his supremacy, gets that girl. If we look back on our *shastras*, we find many illustrative instances of these types of marriages. In *Ramayana* a condition was given to *Ram* before the arrangement of marriage to *Sita*. Here princes of various states were invited by *Dhakaraj*, the father of *Sita*, to lift the arrow. He declared that he would give marry to *Sita* to any prince who can be left the arrow in front of the gathering. Here it was *Ram* alone who had lifted the arrow and eventually *Dhakaraj* marry *Sita* to *Ram*. A very similar instance we find in *Mahabharata* as well where a criterion was set up by *Krishna* to marry his sister to whom he can accurately hit the eye of a moving fish from a considerable distance. This criterion was fixed by *Krishna* to marry his sister *Dropoti* to anybody who can overcome the test set by *Krishna*. *Arjuna* succeeded it and eventually married *Draupadi*. Thus *Daiva* marriage was prevailing in the ancient period. It is said that “With the end of the era of *Daiva-Pooja*, *Daiva* marriage also lost its importance.”¹⁴ Here the competent priest of ancient times was considered the most promising man of the society having proved his attainments and character by the successful performance of his priestly duties. It was regarded as the most novel and lucrative profession in ancient societies. Such a groom should be the choice of the bride. Such union promises intellectual championship, economic freedom, and aristocratic social status. This may be illustrated by the marriage of *Cyavana* and *Ricika* and *Indra* and

¹⁴ Mr. A. S. Altekar.

Indrani. The later instance will show its royal character according to Manu. Thus, unlike the *Brahma* marriage, *Daiva* or Divine marriage has actually portrayed the novelty of the royal character of the parents of the bridegroom.

iii) *Arsa* Marriage

Arsa marriage is the form of marriage where the father of the girl gets a cow or ox or two cows and oxen from the boy and presents him his daughter as a gift. It is just like an exchange system that we use and practice in our day-to-day life. Some commentators believe that this type of marriage is like a purchasing system that was prevailing among tribes. But in this marriage, in the name of purchasing, a little is taken that it would much better to say that the marriage essentially symbolizes the fact that the man has chosen to enter into *Grihasta Ashrama*. Thus the term *Arsa* or sagely form derives its significance from *Rsi* (Sage) who is usually reluctant to undertake the responsibilities of wedlock and wants to remain free to follow his intellectual pursuit. According to *shastras*, here he is respected for his brainpower and character and is expected to beget *intellectual children who are an asset to society*¹⁵. Thus both the bride as well as her parents desires to have such a bridegroom. The decision of such a groom to enter into the matrimonial commotion is implied by the condition of this form.

Here the parents of the bride under consideration give away their daughter to sage after receiving from the bridegroom, for the fulfillment of the sacred law, a cow and a bull or two pairs. Thus it seems clear that the cattle given by the groom are not the sale-price of the bride. The significance of it essentially lies elsewhere. It merely indicates that the sage groom has decided to live a householder's life and earn his livelihood by agricultural pursuits. Thus the concern of security was very much present at that time. The cattle given to the bride's parents serve both as security and surety even no children were born of such union, the sage temper and conjugal championship are ensured. For example, the marriage of the sage *Āgastya* with *Lopāmudra* may

¹⁵ Rg Vedic Culture, Abinas Ch. Das.

be cited above as an illustration of *Arsa* marriage. This is an ordinary middle-class marriage and has no spiritual bias in it.

(iv) Prajapatya Marriage

The fourth recommended form of marriage is known as *Prajapatya Marriage*. Like Brahma marriage, it is also a very simple form of marriage. In this marriage, no religious ceremony is performed. Here both the bride and groom are preached *Yanasala* to practice religion and lead a life by learning children. This form of marriage is significantly called *Manusha*(human) or *Prajapatyo* which necessarily aims of children (Prajā). In contrast to spiritual, divine, and sagely forms, this is the ordinary human union of man and woman solemnized with the express junction- “May both of you perform together with your duties”. Thus its main purpose is indicated by its little of *prajapatya* which implies that the husband and wife should unite to give birth to children. There is an instinctive desire for sexes the fulfillment of which is emphasized by this term. It also reveals the fundamental nature of Hindu and their marriages viz., a wife is to be secured to beget a son (or a daughter) to perpetuate the householder's duties of offering obligations to the manes, feeding the dependent guests and the needy beings, and thereby maintains the society and its institution¹⁶.

According to *shastras*, these four forms of marriage are stated to be normal and commendable ones. The children of these four forms are stated to endow with the qualities of beauty and goodness, possessing wealth and fame, obtaining as many enjoyments as they desire, and being most righteous will live hundred years.” Thus according to *shastras*, laudable marriages are to be judged not only by personal comfort, convenience, and happiness of the husband and wife but also by the proved. According to *shastras*, the remaining of the four types of marriage, which are yet to be discussed, are the special forms allowed but not performed owing to special circumstances and human weakness. The object was to keep up the social order, social

¹⁶ Manu Smruti 3/30.

discipline, and social equilibrium. However, the children of their blamable marriage are stated to be cruel and speakers of untruth who had the Veda and the sacred law.

(vi) *Asura* Marriage

The fifth form of marriage is known as *Asura* Marriage. It is not *a divine marriage*. It is an undivine marriage. It is a kind of marriage where the boy gets the girl by payments of some money to the father of the girl, or in other words, the parents of the bride used to accept money in exchange for their daughter. It is a form of girl purchasing. This type of marriage is primarily confined within the lower caste of the Hindus. Such marriage is quite common in the lower caste of Hindus. Here a bridegroom receives a grown-up maiden offer having afforded to the kinsman and the bride herself.

vi) *Gandharva* Marriage

The sixth form of marriage is known as *Gandharva* Marriage. *Gandharva* means **love or romance**. Thus the *Gandharva* is the love or romance form of marriage. It is the voluntary union of the maiden and her lover like the *Gandharvas* who indulges in sexual connection whenever they fall in love. It is the marriage that we denote in today's life as '**love marriage**'. The present generation is a generation of love marriage where the boy and the girl without any religious sacrament start conjugation and start living together irrespective of caste and creed. As love and romance are the main contentions of such marriage, it is, therefore, called *Gandharva* Marriage. In such a marriage the boy and girl have the patience to wait for the sanction of society. Sexual intercourse which is its only purpose takes place before any rites are observed. It is, however, recognized by society after the usual rites are performed to maintain sexual purity, social peace, and individual harmony. The marriage of *Sakuntala* and *Dusyanta* may be cited as an illustration of *Gandharva* Marriage. In *KamaSutra* this type of marriage has been recognized to be an ideal

type of marriage. ‘The nomenclature of this form of marriage is after the Gandharvas among whom this type of marriage was prevalent.’¹⁷

vii) Raksasa Marriage

The seventh form of marriage is known as *Raksasa* Marriage. It is a form of marriage where the Raksasa or heroic form implies the forcible abduction of a maiden from her home. It is a form of marriage where the maiden cries out and weeps after her kinsman has been slain. It is learned that to marry a girl who has been won in a battle or has been sacked by force is called *Raksasa* Marriage. Precisely speaking, this form of marriage symbolizes ultimate victory in a battle. This marriage is alternatively known as *Kshatriya* marriage because only Kshatriyas in particular indulge in battles. It is also important to note that this form of marriage was of a degenerated type and it was prevalent in the age when women were considered as the prize of a man. The brides were taken forcibly by the invading bridegrooms after killing or wounding her relatives. It is just like a kind of abduction of females. Here the society recognized this high-handedness to offer facilities to a hero to accept the abducted maiden as his lawfully married wife after going through the usual ceremonies. This form is illustrated by the abduction of *Subhodra* by *Arjuna* and of *Rukmani* by *Krisna*. These marriages proved happy and successful. It deserves philosophical significance to restore a happy conjugal life. It is called a *heroic form of marriage*. This is perhaps the reason for the continuance of its formal character in the modern marriage procession of the bridegroom which in some places looks like a military expedition composed of dummy forces and martial music.

(vii) *Pisacha* Marriage

The last form of marriage in hierarchal order is known as *Pishacha* or devilish form of marriage. This was the worst form of marriage in which a man entered into a sexual relationship when the woman was sleeping, drunk, or even unconscious. These acts were regularized after the marriage

¹⁷ According to ‘Taittiriya Sanhita’.

ceremony which took place only after the couple has established a sexual relationship. The union of *Usa* and *Pradyumna* may be cited as an illustration of this kind of marriage. This and *Asura* (undivine) forms of marriage were considered unlawful even in *Manusmriti*.

These eight forms of marriage as cited and discussed above, display various principles. According to *shastras*, *the first four forms of marriages are commendable* forms where parents made alliances but they imply mutual consent. Having said, all forms of marriage have been accepted by the Shastrakar for the *welfare of society*. The ultimate objective of marriage is nothing but the *welfare of society* according to Shastrakars. *This is where the significance of the philosophy of marriage is actually based on*. The term welfare of society has multidimensional philosophical implications. It has religious, aesthetics, axiological, economical, socio-political implications. Thus in a sense, the welfare of society has broad philosophical and social implications. However, as these eight forms of marriage are orderly constructed, one form of marriage is considerably good compare to other forms of marriage according to Shastrakars. In this regard, all forms of marriage are divided into two types based on merit. The first four kinds of marriage are more acceptable than the last four types of marriage. Having said, these eight forms of marriages are the result of an intellectual understanding of our *Rishis* and *Munis*. All these forms of marriage discussed above were guided and recommended by our Shashtrakaras from religious and spiritual perspectives. But in modern times we have a different perception of marriages that we will discuss in other sequels.

1.6: Svarna and a savanna marriage

It is important to note here that all these eight types of marriages so far discussed above are held within the same caste or *varna*. In this sense, each of these marriages is held only within *savanna* (caste). According to *shastras*, any marriage held in the *savanna* is acceptable. But *shastras* strictly prohibited marriage within *asavanna* or inter-caste of a certain kind. In this regard their

developed various concepts of marriage in Indian shastras, some of which would be acceptable within savannas. In this regard, shastras introduce the marriage of Anulom and Protilom.

1.7: Marriage under Muslim Law

In Islam, marriage is alternatively known as Nikah. In pre-Islamic Arabia, the term Nikah actually means different from the sexual relationship between a man and a woman. In pre-Islamic days, women were treated as chattels. They were not given any rights of inheritance. They were absolutely different. This was indeed anarchy rested on women. Prophet Mahmood first brought a complete reformation of Nikah. Mahmood took initiative to bring a radical change in the position of women. Under Muslim law, marriage is considered civil conduct. After marriage women do not lose their individuality. She enjoys a distinct member of the community. The existence of the personality of woman helps her to lead an individual life. The contract of marriage gives no power to anyone over her person, her property beyond what the law defines.

What then the definition of marriage in Muslim law. The Arabic word nikah literally means *the union of sexes*. In law, this term means ‘marriage’. In Baillie’s Digest, marriage has been defined to be a contract to legalize sexual intercourse, the procreation of children. In Hedaya, marriage is defined as, “nikah in its primitive sense, means carnal conjunction. Some have said that it signified conjunction generally. In the language of the law, it implies a particular contract used for the purpose of legalizing generation¹⁸.” Ashabali says, “Marriage is a contract underline a permanent relationship based on mutual consent on the part of a man and a woman.” Dr. Jang believes that “Marriage through essentially a contract is also a devotional act; its objects are rights of enjoyment and procreation of children (progeny) and regulating of social life in the interest of society.” The prophet reported having said, “Marriage is my Sunnah and those who do not follow this way of life are not my followers.” And he then says that “there is no mockery in

¹⁸ Ahman A., Mohammedan Law, P. 107.

Islam.¹⁹” Thus careful study would reflect that marriage under Muslim law is always similar to the marriage in Christen Law where St. Pale's concept of marriage reflects the same. Many would say that Nikah under Muslim Law is a religious ceremony. Thus marriage in the Islamic system neither being comprehended nor sufficiently appraise by outsiders. Marriage is recognized in Islam as the basis of society. According to Islam, marriage functions as a social construction. Marriage is essential for social construction and social reconstruction. It has two implications, first, it is a contract, and second, it is also a sacred covenant. Thus, in a sense marriage leads to the uplift of man for the continuance of the human race. Further, it is said that Nikah in the word is an act of worship. It preserves mankind in generally free from pollution. This is how Muslim Law justifies the relevance of marriage and the philosophy of marriage. According to Prophet Mahmood, “Marriage among Mohammedan is not a sacrament, but purely a civil contract.²⁰” In this sense, the marriage prophet Mahmood is somehow different from Indian marriage Law. In Indian shastras, the relevance of sacrament in marriage has given pivotal importance. Some would say that marriage brings about a relationship based on a permanent contract for intercourse and procreation of children between and a man and a woman. Thus as far as the nature of Muslim marriage is concerned; there we find a divergence of opinions concerning the nature of Muslim marriage. Some jurists believe that Muslim marriage is purely a civil contract where others held that it is a religious sacrament in nature. We have already seen that prophet Mahmood in this regard denies the former and accepts the latter.

¹⁹ Dr. Jung, M. U. S., Dissertation on the Development of Muslim Law in British India, P. 32.

²⁰ Hedaya 32 balli, 1, 10, 16, 18, II, I.