

# **IMPACT OF WESTERN CULTURE IN INDIAN MARRIAGE**

Dr. (Mrs.) S.Ambika Kumari,  
Lecturer in Law,  
Dr.Ambedkar Govt. Law College,  
Pondicherry.

Among all Countries in the world, Indian Society is having the credit of a classical society which is deep rooted in abundant moral values and widely acclaimed cultural heritages. The said moral values and cultural heritages keep the equilibrium of modern Indian Society. The liberalisation policy of the Government has resulted in the tremendous development of economic, social and cultural fields. As a result westernisation has taken place in all the fields. Even though India was under the control of Europeans for a long time up to 1947, the western culture had not influenced much our society during that period. The influence of western culture started developing in recent years. The reasons for the influence of western culture are many. The most important, which we can say are the development in the field of information technology, the developing electronic media and the tremendous increase in literacy. The educated men started reviewing his age old societal structure and values. Reviewing and revising the law in tune with the changes of society is a feature of every legal system and is in fact the necessity of an organised society. As the Industrial Revolution has evolved new laws and changed the social equations, electronic media and the development of information technology has influenced the equations of modern society and social and moral values.

The family is a community in itself and is a small, relatively permanent group of people related to each other. They are related in the most intimate way and are bound together by the most personal aspects of life. Family is that group within which the most fundamental appreciation of human qualities and value takes place<sup>1</sup>. The very foundation of Indian family is marriage and it binds the society together. Marriage is the formally recognised means of recruiting new members to a line of descent, and it creates alliances between such lines. It can very well be stated that marriage is a form of legal recognition for sexual relationship or conjugal life. The said ritual enjoins some rights and obligations

on both the spouses and is considered as a legal institution. Social habits and religious doctrines have had their effect in shaping the law of marriage, but the rules of law stand independent of the influences which brought them into existence.<sup>2s</sup> It is a transaction between a man and a woman from which certain legal consequences result. Marriage gives each party the right to the other's company including the mutual right mainly based on sexual relationship. The corollary of this mutual right of Husband and Wife to each other's company is their reciprocal duty to live together and to share a common home and domestic life. Marriage is primarily of importance as a knot in the network of kinship links that bind such a society together<sup>3</sup>

Whereas man and woman live together without a marriage the relation is called as "Common Law Marriage". Marriage originates in contract, but it creates a status that is to say 'the condition of belonging to a class in society to which the law ascribes peculiar rights and duties, capacities and incapacities'. Marriage confers the status of legitimacy on any children born to the couple<sup>4</sup>... However this concept is not recognised by law especially in India. Equally it is unfair to treat a man and woman living together without a formal marriage as total strangers. In England some kinds of benefits have been extended to such couples. One such example is that a mistress has been held to be a member of her partner's family for the purpose of succeeding to a Rent Act tenancy after his death<sup>5</sup>. But many legal provisions which regulate husband and wife do not extend to unmarried couples. A western marriage is marriage without the ceremony of any sort and it occurs where a man and woman live together as spouses. As far as western system is concerned, in addition to their mutual recognition, they hold themselves out to the public as husband and wife. The bare fact that a man and a woman live as husband and wife does not at any rate normally give them the status of husband and wife even though they may hold themselves before society

as husband and wife and the society treats them as husband and wife.<sup>6</sup> It is a fact that today marriage is something that one is free to undertake or not. It is the formulation deep emotional bonds by sharing of thought and experience. Marriage can be presumed from long cohabitation and repute. It is submitted that before such presumption can arise, it is imperative to make out that the conditions like sapinda rule; prohibited degrees of relationship etc. do exist.

Marriage was considered as a well organised institution from the very beginning of the Rig Vedic age and is one of the necessary Samskaras or religious rights for all Hindus. According to Hindu orthodoxy, it is a Holy union and is the religious duty of the father to give his daughter in marriage to a suitable person. Hindu marriage is to be treated both as a sacrament and as contract<sup>7</sup>. According to Muslim Law marriage is a contract between one man and woman guaranteeing to each one's mutual rights and obligations. Husband and wife share equal responsibility in married life which ultimately ends in family. Marriage is considered to be a basic. Vital and fundamental institution for physical. Mental, spiritual and social comfort of the spouse. More than this marriage is essential for the protection and maintenance of the progeny. Similarly, Christian concept of marriage is that in reality, it is a contract, in its formation entered into by the free volition of the parties to the marriage, but regarded as a sacrament in its consequence<sup>8</sup>. According to Christians, marriage being obligatory for every human being is a sacrament, as an indissoluble union entered into by the parties.

Recently The Allahabad High Court in Payal Sarma Vs. Supdt. Nari Niketan, Kalindi Vihar<sup>9</sup> held that a man and woman, even without getting married can live together if they wish. This may be regarded as immoral by society but it is not illegal. The Court further observed that since the petitioner is major she can go any where and can live with any one as she desires<sup>10</sup>. A valid marriage is the very foundation of family. If marriage is considered as a relationship in which two adults of the opposite sex make a commitment to live together as husband and wife one has to rethink about the sanctity of marriage and family relationship. If living together is equated to marriage, the sacramental

nature of marriage will not have any value. So also, just like in Western countries family relationship also will disappear. Hence it is to be considered very seriously how far such living together can be allowed. In India, it may be borne in mind that conjugal rights, that is the right of the husband or wife to the society of the other spouse is not merely a creature of a statute. Such a right is inherent in the very institution of marriage itself<sup>11</sup>. The essence of marriage is a sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life. It is an experience of the joy that comes from enjoying in common, things of the matter and of the spirit and from showering love and affection on ones offspring. Living together is a symbol of such sharing in all its aspects<sup>12</sup>. But living together can never be equated to marriage. The concept of family is important as society. Family is the cause for personal attachments that will result in so many rights and obligations. In some countries like china there is no law to impose upon the people to have the marriage compulsory. There is no regulation on marriage. In such countries, it can be well presumed that free sex is permitted and hence the marriage is not a sacrament.

In India a premarital sex by a girl is still regarded as unpardonable sin and unchaste girl is viewed with a particular disgust even by educated persons. The discovery of the fact of the premarital unchastity of wife may destroy the conjugal relations. In a free society, the State is at liberty to prohibit a practice, if majority of the citizens dislike it. The law does not prohibit sexual unions outside marriage but morality does. In common law the marriage is regulated by the canon law and the status of marriage is created in the complete absence of formality. Marital relationship is legal and emotional and it is very stable. From this legal position different rights and obligations arise between the parties to the marriage and with regard to the community. In the case of living together it is purely moral and no legal rights exist between the parties. Children born of living together are always illegitimate and the parental right will vest only in the mother. Even though the children can get maintenance, the parties to the living together cannot claim maintenance each other. There is no property right conferred on an unmarried partner. If one partner dies intestate the other is not having the right of succession. In marriage, certain social security benefit may be

claimed by virtue of a spouse's contributions. This principle does not extend to a cohabitant's contributions. A cohabitant cannot claim any statutory right to occupy the so called 'quasi-matrimonial home' but is entitled to remain in it only as an owner.

It is imperative to have a look at the possible consequences of developing a new institution parallel to the family life. The very basis of the said parallel institution of living together without marriage is very weak and is mainly based upon physical attraction. There is every possibility that the progenies of such living together may become a question mark in the near future. The progenies of married life are legally and socially protected whereas the children of such living together are not. If the Indian society and legal system are giving a green signal to such living together the very social life itself will be affected. Some may qualify the said possibilities and apprehensions as a reluctance to deviate from the established traditions. The proper way to prevent such social problems is to restrict the electronic media and the development of information technology from destabilising the social values of Indian society and also a cautious and well restrained judicial approach to the issue so as to keep up the equilibrium of the Indian society and social values. If it is inevitable to adjust with the side effects of westernisation of Indian life, a rethinking is necessary with regard to the legalisation of cohabitation contract entered into between unmarried couple. As marriage implies an emotional and legal commitment, marital relationship should be more stable than extra-marital ones. Consequently, by giving to the unmarried, the rights possessed by the married, the law is weakening the institution of marriage and thus undermining the family<sup>13</sup>. There would seem to be nothing prejudicial to public policy in agreements designed to regulate some of the incidents of living together, such as the ownership of the house or other property, provided that cohabitation was not used as the consideration for such agreements<sup>14</sup>. S

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