

# Forms Of Marriage and Methods of Acquiring a Wife in The Dharmasastric Tradition *Questions of Purity of Varna, Patrilineage and Virginity of Women*

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Dharmaśāstras being part of non-religious literary tradition of ancient India are a vast and complex genre of ancient Indian texts that deal with law, ethics, and social norms. To authenticate and legitimize their codes on socio-legal and cultural matters they owe their allegiance to the revered Vedas. This becomes evident in the description of Manu as knowledgeable and well-versed in scriptural laws and declaration that whatever laws are laid down in the Manu Dharmaśāstra/Manusmṛti can be traced back to the Vedas (MS II.7). This emphasis on being in compliance to Vedas serves an important purpose of validation of Dharmaśāstric codes pertaining to various aspects of a man's life. These codes provide guidance and regulation of behaviour in the different *āśramas* (stages of life) known as *varṇāśramavyavastha*. Study of Manusmṛti has always provoked polarized reactions of – reverence or aggressive criticism – reflecting on its nature as a text that addresses the privilege based hierarchization of social order as an essential prerequisite for maintaining the cosmic order 'ṛta.' Initially the text begins with a discourse on rituals and instructions for *śrāddha* observance by the rightful participants and then shifts its focus towards *varṇāśramadharmā* by discussing in detail the management of second *āśrama*, *gṛhasthāśrama* (the household) which leads to the complex problem of the rightful marriage

leading to the rightful inheritor of property, if not upheld leads to confusion for patrilineal structure.

It seems the text might have existed as floating literature before being penned down during the period between 200 BCE –300 CE. In order to contextualize content of the text it is essential to know that the period of its compilation was a period which witnessed the revival of the Brahmanical tradition under the aegis of the Śunga dynasty.<sup>1</sup> Prior to this period, the accession of non- Kṣatriya Maurya rulers to the throne challenged the orthodox varṇa order. Another important feature of the period was that in the Mauryan period the length and breadth of north Indian sub-continent became a part of the Mauryan Empire. In the post-Mauryan period a vibrant economic exchange network, via land routes in the northern part of Indian subcontinent (*uttarpatha-dakṣinapatha*), was witnessed during 200 BCE–300 CE. The outcome of this administrative unification and flourishing economy was the creation of a heterogeneous society in urban cities. The legacy of this pluralistic society continued into the Śunga period. People with varied cultural practices became part of state jurisdiction. There was an amalgamation of customs and traditions and we find glimpses of adjustments to their cultural practices in the Dharmaśāstra codes, for the most part in the codes on conventional marriage practices.

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<sup>1</sup> To substantiate this argument, we have inscriptional evidence of famous pillar of Heliodorus, erected around 113 BCE (i.e., 200 BCE), in Besnagar (ancient Vidisha), Madhya Pradesh, dedicated to the god Vāsudeva. The person in question, Heliodorus, was an Indo-Greek ambassador, representative of Indo-Greek king Antialkidas of Taxila, presumably in the court of Śunga king Bhagabhadra. This pillar is a

Garuḍadhvaja, as it has an emblem of Garuḍa on its top. The base of the pillar has an inscription which declares Heliodorus a *bhāgvata* (devotee of Vāsudeva). It also mentions that the pillar was installed during the reign of Śunga king Bhagabhadra. This corroborates the argument of revival of orthodox Brahmanical tradition and also contextualizes the codes of the Manu Dharmaśāstra.

On the one hand the text is trying to remain true to the Vedic society's structural framework upholding *varṇa* hierarchy but on the other hand the expanse of political dominion created structural pressure which even made its way into the patriarchal society of Brahmanical tradition. The Vedic-Brahmanical social order was henceforth interfaced with dual threat to its pre-eminent position. On socio-religious front it had to confront non-brahmanical sectarian practices, Buddhism and Jainism, which had gained popularity among masses from 3rd century BCE onwards, especially with Aśoka Maurya actively engaged in propagation of Buddhism. Whereas, on socio-political front, from the ascendancy of non-Kṣatriya rulers.

#### I. CONCEPT OF 'DHARMA' AND SIGNIFICANCE OF 'GRHASTHĀŚRAMADHARMA' IN DHARMAŚĀSTRAS

Within the circumstances for revival of Brahmanical tradition the Dharmaśāstra textual tradition was formulated. The concept of *dharma* as a way of life for the orthodox tradition was central to Dharmaśāstras, which attempted to reinforce social disparities based on *varṇa* hierarchy. Historically, three frameworks have been used to divide *dharma* into discussions of specific duties. The oldest text of this tradition is the Manusmṛti, which divides *dharma* according to *varṇa* and life-stages. Another early scheme appears in the Yājñavalkyasmṛti (100 BCE–300 CE) which divides *dharma* into three subtopics: household rituals and duties, legal procedure, and penance. Later, when digests of *dharma* material were written in the twelfth century AD, extensive compendia on subtopics within older *dharma* schemes (legal procedure, gift, ancestral rites, kingship, etc.) came into vogue, though no fixed list of such topics existed. These three divisions were ways to organize the contents of a text, but they also reveal the detailed enumeration of rules for rituals and legal matters that characterize their socio-legal writing. The tenth century Dharmaśāstra commentator Medhātithi made exactly the same point in his commentary on Manusmṛti: 'The authors of the traditional texts use the word *dharma* sometimes in the sense of actions which forms the subject of injunctions and prohibitions and sometimes in the sense of the things that arise from the performance of those actions

and persist until it has given its reward.'<sup>2</sup> It is this ambiguity that allows *dharma* to be seen as both law and merit.<sup>3</sup>

In the orthodox tradition of Dharmaśāstras the entire lifetime of a man is divided into four phases called '*āśrama*.' Each phase was attributed with specific duties, thereby bringing order in the household which resonated in the kinship structure and finally led to an organized society. Administratively this was helping the state in managing social affairs as the śāstric texts proclaimed the king as an upholder of *varṇa* hierarchical order. A mutual benefitting relationship developed between the Dharmaśāstras and administration, indirectly nourishing the monarch, who was also custodian of law and society. The first phase/ *āśrama* of an upper *varṇa* man's life, specifically Brāhmaṇa, was the '*brahmacārya-āśrama*', where it was expected of a man (in his boyhood/adolescence) to attain education and observe austere celibacy during that duration; after completion of education, he was advised to enter the '*grhastha-āśrama*' phase and was advised to marry and become a *grhastha* (householder). Later in life with his sons grown up and ready to take up the responsibility of household he was expected to leave the house and proceed to forest, the '*vānaprastha-āśrama*' and eventually enter the '*samnyāsa-āśrama*,' last phase of his life where he was expected to renounce all worldly pleasures and desires (a state of *prāyaścīta* to attain heaven after death).

Out of the four *āśramadharmas*, *grhastha-āśrama* was celebrated most in the śāstric tradition, as it encompassed all the four '*puruṣārthas*' noted as essential engagements for householder (the patriarch): *artha* (wealth and economic activities), *kāma* (sexual needs), *dharma* (righteous duty) and *mokṣa* (liberation). The '*grhasthāśramadharma*' required the performance of household rites and rituals. Dharmaśāstras sustained the ritualistic tradition performed either annually like making *śrāddha* offerings to the ancestors or daily offerings known as *pañcayajña*, primarily in the Brāhmaṇa house as instructed in the Dharmasūtras (Jaya Tyagi, 2008, pp.64-66) and Dharmaśāstras. This created a unique and privileged identity for the Brāhmaṇa *varṇa* within the social structure. It was presumed that through these daily offerings the *grhasvāmi/grhapati* (the

<sup>2</sup> Medh. on MS II.6

<sup>3</sup> Davis, Jr. *The Spirit of Hindu Law*.

householder) contributed to the stability of the cosmic order 'ṛta.' Through these ritualistic performances the status of *grhapati* was ascertained not only within the household but in the kin group and society (Jaya Tyagi, 2008).

Empowered by his ritualistic status the householder acquired control over household resources and was responsible for the supervision and management of the socio-economic activities occurring within the household, where he was primarily engaged in multiple activities related to production of wealth and upholding decision-making power structure. He was liable to make provisions for the daily requirements of the members of his household and his responsibilities even spanned out of the house to provide material support to the economically non-active members of society like aged people, students and hermits. To achieve these aforementioned objectives his prime duty, therefore, was to marry and have sons as the next line of descendants, essential for the continuation of the patrilineal household structure and primary economic relations. For the perpetuation of patrilineal line of descendant's reproduction activity was an inseparable part of the household functioning in which marriage was seen as fundamental to continue the patrilineage. Theoretically, one could not marry anyone of choice, as entering into this relationship was not a simplistic union of man and woman for conjugal purpose but was maneuvered with the intention of maintaining kinship structure. Marriage led to extension of relations outside the kinship group therefore, was finalized by adhering to the rule of exogamous *sapinda* and *gotra* association and practicing endogamy in *varṇa* relation. The institution of marriage thus had social forces acting upon it in the form of maintaining the *varṇa* hierarchy on the one hand and kinship structure on the other. Existence of women in this arrangement was as a mere tool or a medium to keep this machinery functioning efficiently. Jaya S. Tyagi observed in her socio-historical study of Indian household as constructed in *Gṛhyasūtra* text that

the capability of women to reproduce was maximized to uphold the *varṇa* based patriarchal social structure. It followed endogamous *varṇa* practices and norms of patriarchy, resulting in various rules and taboos for womenfolk.<sup>4</sup> Manusmṛti perceived that if the sexuality of women was not supervised properly it posed a great threat to the continuation of patrilineage and purity of *varṇa*.<sup>5</sup> The text apprises this need for supervision arises because a man becomes an embryo when his wife conceives and is born again of her and this is wifehood all about.<sup>6</sup> The wife is perceived as a medium to procreate oneself with the implicit requirement of *varṇa* purity. Birth of son out of same *varṇa* union was fortified with the privilege of the right of such a son to offer funeral oblations to father after his death and *śrāddha* offerings to *pitris* (ancestors) along with being the rightful legal inheritor of patriarchal estate. Such structural requirements empowered men with many privileges and bounded women with restrictions prohibiting their movement outside the kinship group.<sup>7</sup> Manu says that women were created to be mothers and men to be fathers. Such role specification highlights the emphasis given to the household structure by *Dharmaśāstras*,<sup>8</sup> which limited the role of women and men as sexual beings and being useful to the society as procreator. This discernment objectified women, who were perceived as the promulgator of the lineage through male progeny. With such obligations men and women lost their identity as individuals for greater purpose of continuity of patrilineal-social order.

Anthropologist Lévi-Strauss observed that kinship group functioned as corporate units where men are administrators and women are looked upon as a form of capital that are necessary because of their reproductive capacity because as the producer of children they enable the kinship group to perpetuate itself. Marriage is the medium through which women are exchanged for gifts, honor, protection or valuable commodities.<sup>9</sup> It is a type of exchange system in which women are exchanged among the selected kin groups,

<sup>4</sup>Jaya Tyagi, "The Dynamics of the Early Indian Household: Domesticity, Patronage and Propriety in Textual Traditions," in *Looking Within Looking Without: Exploring Households in the Subcontinent through Time [Essays in memory of Nandita Prasad Sahai]* ed. Kumkum Roy (Delhi: Primus Books, 2015), 137-171.

<sup>5</sup> MS IX. 2-3

<sup>6</sup> MS IX. 8

<sup>7</sup> MS IX. 3-7

<sup>8</sup> MS IX. 96

<sup>9</sup>Lévi-Strauss as quoted in Bernard Farber, *Comparative Kinship Systems: A Method of Analysis*. (New York: John Wiley & Sons, INC., 1968). Bernard discusses Lévi-Strauss' understanding of functioning of kinship groups.

who are acceptable in the given social structure leading to the formation of inter-lineage relations and extension of patrilineal relationship outside the clan. This exchange was expected to strengthen the power-centric patriarchal and varṇa structure. It is aptly put by Lévi-Strauss that problems in kinship organization are the variations in the use of women, variations which have to do with marital prescriptions and prohibitions, descent and inheritance, and residence and rules.<sup>10</sup>

## II. EIGHT FORMS OF MARRIAGE: THEIR LEGAL AND RITUAL STATUS

In ancient India pluralistic cultural traditions of the varied regions of the subcontinent led to diverse forms of exchange of women in marriage. Śāstric literary tradition noted these customary forms of marriages, differentiated in practice either in the procedure or means to acquire woman as wife. Manusmṛti mentions eight legal forms of marriage as way of procuring a wife, recognizing the multiple cultural traditions within the post-Mauryan states. It classified these eight forms in hierarchical order of their recognition and approval in brahmanical-patriarchal socio-ideological framework. This categorization was based on the degree of spiritual benefit obtained from these forms in this life and even after death. A close connection can be seen between the claimed ritualistic prime position of Brāhmaṇas and the hierarchy of marriage forms, which was closely associated with the performance of rituals and lighting up of sacred fire.

*Brāhmo daivas tathaiivāarṣaḥ prājāpatyas tathāasuraḥ |*

*Gāndharvo rākṣasāś caiva paiśācāś cāṣṭamoadhamah || [MS III.21]*

The Brāhma, the Daiva, the Ārṣa, the Prājāpatya, the Āsura, The Gāndharva, the Rākṣasa and the Paiśāca, which is the eighth and the lowest.

<sup>10</sup> Ibid.

<sup>11</sup>MS III.28, *Yajñe tu vitate samyagr̥tviḥ karma kurvate | Alan̄kṛtya sutādānam daivam̄ dharmam̄ pracakṣate ||*

While a sacrifice is being performed, if one gives away his daughter, after having decked her, to the priest who is officiating at it, this they call the Daiva form.

*Ṣḍānupūrvyā viprasya kṣatrasya caturoavarān | Viṣṭūdrayos tu tāneva vidyād dharmyānarākṣasān || [MS III.23]*

One may know that the first six according to the order (followed above) are lawful for a Brāhmaṇa, the four last for Kṣatriya, and the same four, excepting the Rākṣasa rite, for a Vaiśya and a Śūdra.

*Caturo brāhmaṇasyāadyān prasastān kavayo viduḥ | Rākṣasam̄ kṣatriyasyaikamāsuraḥ vaiśyaśūdrayoh || [MS III.24]*

of a Brāhmaṇa, one, the Rākṣasa (rite in the case) of a Kṣatriya, and the Āsura (marriage in that) of a Vaiśya and of a Śūdra.

Medhātithi in his commentarial work on Manusmṛti, Manubhāṣya (825–900 CE), analyzed Manusmṛti's description of forms of marriage and stipulated their differentiating characteristics: (1) *Brāhma* form of marriage was one that comes without asking, just like landed property, gold and the rest; (2) *Daiva* form of marriage required virtue of one's priestly character<sup>11</sup>; (3) *Ārṣa* form was accompanied by the present of a cow and a bull and; (4) marriage ceremony performed with the implied clause, 'may you together perform your duties' and, which comes either by asking or without it, is *Prājāpatya*; the characteristics of the rest of the forms are easily discerned.<sup>12</sup> The first six forms were approved for Brāhmaṇas, reinstating the status of sacramental fire in marriage except the *Gāndharva* form. The last three forms did not require ceremonial fire and rituals hence were approved only for the remaining three *varṇas*, except for the *Rākṣasa* form, permitted only to the Kṣatriya.

Manusmṛti mentions that among Brāhmaṇas gifting of daughter by a libation of water is the most approved form of marital union.<sup>13</sup> Bhāṣya explains that it meant the consent of the girl and the boy was not required for marriage and the father of the bride was not to put any condition on the groom for his daughter's treatment post-marriage, nor could accept any presents from him. On the other hand, for the remaining three *varṇas*

<sup>12</sup> Medh. on MS III. 34

<sup>13</sup> MS III. 35

marriage could be performed by the mutual consent of both the girl and the boy.<sup>14</sup> Elaborating further it incorporates the view of other commentators who (not clarifying ‘who’) elucidated ‘mutual desire’ as a case where father of the bride may receive presents from the groom or his family or could give her with ‘libation of water’ only, which signifies that *Brāhma* form of marriage was universal to all *varṇas*.

Medhātithi broadly puts the methods of getting wife in the stipulated eight forms in two broad categories, one by ‘acquiring’ and second by ‘approaching’ woman for sexual intercourse, as approved and baser forms of marriage respectively. ‘Acquiring’ a wife implied to get her with the approval of her kinsmen with due performance of associated ceremonial rituals for the purpose of perpetuation of family. Any act of violence ‘*balāt*’ (forcefully) in this was disapproved. This was a social event where kinsfolk of both sides was present. It marked the extension of kinship relations outside kin group and upheld the *varṇa* based social order. On the other hand, ‘approaching’ a woman by use of violence, ‘*balāt*’ (forcefully), for the purpose of intercourse was an act done without ceremony and approval of the kinsfolk of both sides, *Paiśāca* form of marriage. Though this act was granted the status of marriage in the scriptures, was a prohibitory and disdainful act.

*Suptām mattām pramattām vā raho yatropagacchati |  
Sa pāpiṣṭho vivāhānām paiśācaḥ prathitoadhamah ||*  
[MS III.34]

When the man has approached a girl, by stealth, while she is sleeping, or intoxicated or unconscious, it is the *Paiśāca* form, the wickedest and the basest of marriages.

The auspiciousness of the first four forms of marriage was due to their performance with proper rituals of lighting up sacrificial fire and chant of proper hymns to give away the daughter in marriage in the ‘*kanyādāna*’ ceremony. Use of word ‘*kanyādāna*’ for giving away daughter in these marriages entails gifting

of daughter, as ‘*kanyā*’ means maiden and ‘*dāna*’ imply gift as donation.<sup>15</sup> This becomes more apparent in *Manusmṛti*’s illustration of *Daiva* form of marriage as a sacrificial arrangement where after the completion of sacrifice the patron gives his daughter, through the ritual of ‘*kanyādāna*’ to the officiating priest of the sacrifice. This was probably an ancient tradition *Medhātithi* too gives the same explanation of ‘*kanyādāna*’ as a ritual performance in which a person gives his well adorned daughter in marriage to the presiding priest as the medium of payment of sacrificial fee to the officiating priest. Though he declares that this practice is not befitting to the customs of his times hence states that: ‘the cow, the house, the mule and other things have been mentioned as the fee for priests, the giving of the daughter has not been found laid down anywhere as helping in the fulfillment of sacrificial performances.’<sup>16</sup> This suggests that with passage of time the *dāna* of *kanyā* as part of fee to the officiating priest at a sacrifice was no longer discernible in practice so it seems that *Daiva* form of marriage in its original concept underwent changes. Although the exchange of women is an integral part of marriage ceremony, but her exchange as means of payment of sacrificial fee went out of practice around tenth century A.D. north India. This tradition gradually got transformed in to an exchange process with ritualistic sacramental ceremony.

The eight forms of marriage were *varṇa* specific and people were instructed to marry only from the allocated forms of marriage for their *varṇa* category. This specification reinforced the *varṇa* hierarchy in forms of marriage ceremonies, marking them superior or inferior in status as per their association with the *varṇa* group. The *Brāhmaṇas*’ claim of being on top of the *varṇa* pecking order gave them the privilege to marry from the first four forms of marriage practices which were performed with sacramental rites (*vivāha saṃskāra*). The last four forms were permitted only for *Kṣatriyas*, *Vaiśyas* and *Śūdras*, out of which the *Rākṣasa* form was to be practiced only by *Kṣatriyas* and not by the last two *varṇas*. Not all forms were acceptable because *Manusmṛti* was not in favour of

<sup>14</sup> Medh. on MS III. 35

<sup>15</sup> Opcit., Lévi-Strauss as quoted in Bernard Farber, stressed that marriage is the medium through which women are exchanged for gifts, honor, protection or

valuable commodities. The use of the word *dāna* for giving away daughter in marriage with *varṇa* and kin group restrictions confirms Lévi-Strauss’ observation.

<sup>16</sup> Medh. on MS III.28

*Paiśāca* and *Āsura* forms of acquiring wife by men of any *varṇa*.<sup>17</sup>

There are slight variations in the observations made in the commentarial work on Manusmṛti which diverges from the opinion of their *mūla* text. Manubhāṣya does not approve *Paiśāca* form for the Brāhmaṇas on one hand and; *Brāhma*, *Daiva* and *Ārṣa* forms for the other three *varṇas*. It declares the *Rākṣasa* form suitable only for the Kṣatriyas as interdicted in Manusmṛti;<sup>18</sup> this practice had been enjoined absolutely without any option in all the four verses of its third discourse.<sup>19</sup> The other three forms permitted for the Kṣatriya *varṇa* included *Āsura*, *Gāndharva*, and *Paiśāca* forms.<sup>20</sup> These three forms find approval in Manusmṛti along with the assertion that the *Rākṣasa* form is alone for the Kṣatriya.<sup>21</sup> Medhātithi puts an end to this confusion by stating that these latter forms were to be opted only if *Rākṣasa* form was not pursued or feasible. Manubhāṣya observes that some people in its time understood this verse as pertaining to Brāhmaṇas also. It is plausible in the context of changing economic scenario, when the association between profession and *varṇa* categorization was fading people opted for occupations besides their *varṇa-dharma* which were not permissible to their *varṇa* earlier in the Vedic period, noted in Smṛti tradition as *āpad* (distress) *dharma*. This provision permitted Brāhmaṇas to practice the *Rākṣasa* form of marriage for acquiring a wife for those who might have adopted the profession of Kṣatriya *varṇa* as their *āpad dharma*. These people recommend performance of expiatory rites for a Brāhmaṇa if he does some 'killing and wounding' in connection with marriage; stating that such actions would not deprive the *Rākṣasa* form of the character of 'marriage'.<sup>22</sup>

For Medhātithi this raises the question of the importance of sacramental fire in marriage ceremony. He disagreed with the idea of marriage without sacramental rites on the apprehension that it would lead to confusion about what confirms a marriage and continuation of the family line in a patrilineal society. Reasserting the significance of sacramental rites as the main constituent element for marriage he mentions that according to some scriptures the *Gāndharva* form

of marriage was accomplished by sexual intercourse, the *Rākṣasa* by abduction and the *Paiśāca* by mere approach, irrespective of the sacramental rites relating to the 'taking of the hand' etc. This understanding is based on the idea of considering them as an alternative form to 'marriage' with sacramental rites. As regards the *Gāndharva* form Manubhāṣya gives reference from Mahābhārata where the revered Kṛṣṇadvaipāyana Vyāsa has described it in connection with the union of Duśyanta and Śakuntlā through *Gāndharva* form was performed as '*pāṇigrahaṇasamskāroasti mantrādi varjītaḥ*,' 'without fire and without sacred texts' this gives us an idea that there are certain sacramental rites of taking the hand etc. but they are performed without sacred texts and sacrificial fire. Medhātithi questions this arrangement and points out if that is acceptable than sacramental rites are inconsequential in the *Brāhma* and the remaining forms also, since the 'giving' is mentioned as similar to marriage, '*dānavivāhayoh*,' and hence, no requirement of sacramental rites would arise if such is the given condition. He writes, 'it is only figuratively that the term 'marriage' has been applied to that act of 'giving' (*dāna*) which is done for the purpose of marriage'.<sup>23</sup> He stresses on the performance of ceremonial rituals as per the sacred texts and in presence of sacrificial fire for the union to be given the legal status of marriage. For Medhātithi performance of sacramental rites is the constitutive element of marriage of any form but he observes variance in the understanding of consummation in the approved form of marriages and the lower forms.

### III. ELIGIBILITY OF A BRIDE: MAIDENHOOD AND QUESTION OF VIRGINITY

*Avyāṅgāṅgīm saumyanāmnīm hansvāraṇagāminīm |  
Tanulomakeśadaśanām ṛḍvāṅgīmudvahet striyam ||*  
[MS III.10]

One should marry a 'striyam' (female) with a faultless body, who has an agreeable name, having her gait like that of the swan or the elephant, having fine hair on the body and the head, and fine teeth, and with tender limbs.

<sup>17</sup> MS III.25

<sup>18</sup> MS III.24

<sup>19</sup> MS III.21-24

<sup>20</sup> MS III.23

<sup>21</sup> MS III.24

<sup>22</sup> Medhātithi on MS III.25

<sup>23</sup> Medh. on MS III. 34

Manusmṛti lists out the qualities a maiden (*striyam*) should possess to be a wife of 'dvija' but ignores the question of virginity as essential prerequisite condition. The focus is more on the physical attributes of a maiden. Manu's commentator Medhātithi explains the use of the term 'striyam' (maiden) as implying a woman who has not experienced sexual intercourse. For strengthening his argument, he cites Vaśiṣṭha's observation about the credentials required in a woman to be accepted as wife, 'on completion of studentship one should acquire a wife who has had no sexual intercourse, one who is younger than himself, has brother and who is similar to himself (same *varṇa*).' The concept of virginity is further expanded to include woman who once been 'consecrated' (by marriage) by one man could not be 'consecrated' by another; 'as there can be no redoing of what has been already done' meaning once the sacramental rites are performed only once for marriage, and it cannot be dissolved by mere absence of husband or sexual intercourse. So that if a girl has been married, and her husband goes away before she has had intercourse with him or if she happens to be a loose woman (had sexual intercourse without marriage), she cannot be married to another person, even though she is still a 'maiden' (in the technical sense not given in marriage with sacramental rites and libation of water); and such are the qualifications required of a maiden in the words of Vaśiṣṭha. As already mentioned above Yājñavalkyasmṛti too laid down the rule that one should marry a maiden who is '*ananyapūrvikām*,' i.e., one who had not been known by any one before or who had not previously been promised to any one; '*aroginīm*', one who is free from diseases; having brother; '*asmānagoṭr*', born in different *gotra*.<sup>24</sup>

Medhātithi comes across differing opinions on the concept of 'maidenhood' while explaining the *Paiśāca* form of marriage. He maintains '*upagamana*' i.e., 'approaching' the girl (for sexual intercourse) stealthily is proclaimed to be *Paiśāca* form and was declared the basest form of marriage. But the question arises that does this deprives the girl of her 'maidenhood', Medhātithi argues that it does not as this can only be done by going through the sacramental rites performed during marriage ceremony. The rituals

of marriage mark the transition of a maiden to a wife (*pāṇigrahaṇikā mantrāḥ kanyāsvēva pratiṣṭhatāḥ*).<sup>25</sup> Thus, any form of marriage would not change her maiden status if it did not include sacramental rites. On the basis of these arguments Medhātithi decidedly sees a connection of marriage with the sacramental rites. Consequently, even the girl married by the *Paiśāca* form has her maidenhood destroyed only when she has gone through the ceremonial rites of marriage. Accordingly, if she has been 'approached' first and her marriage ceremony was performed later yet she was not to be tainted of 'non-maiden-hood' till the performance of her marriage. The story of Karṇa's birth has been cited from Epic Mahābhārata to unmarried Kunti, who and others like him were termed as *kānīna* 'maiden-born'. On its basis Medhātithi argues, if mere intercourse with a man was to deprive the girl of her 'maiden-hood' then, how a son born to an unmarried girl could be called 'maiden-born'. It is possible only in a situation if the name 'maiden' be applied to such girls who have not had the sacramental rites performed for them, thereby declaring Karṇa and others of his kind being sons of unmarried girls (*Karṇodayo hyanūdhāyāḥ putrā*).<sup>26</sup>

Manubhāṣya reflects upon the paradoxical views held by others who all say that, 'in reality, the intercourse itself is the principal factor; for if it was not so, there would be no point in the prohibition of intercourse (with maidens).' The text disagrees and comments, 'If intercourse was the principal factor, then that itself would constitute 'marriage'; none other being possible, according to this reasoning just put forward; so that there would be no purpose for the prohibition to intercourse.' He then focuses on two contradictory statements: though the performance of sacramental rites has been interdicted in the case of girls who already had sexual intercourse, nevertheless, the *Paiśāca* also is like the *Brāhma* and the rest forms of marriage, a means (of acquiring a wife), and therefore, this form also is capable of being called marriage, consequently the term '*upagama*' (approach) is only a secondary factor in establishing the 'maidenhood' of a girl. This entire discussion permits woman of nuptial rights even if sexually violated as without the performance of marriage rituals she remains

<sup>24</sup>YS I.52, 53

<sup>25</sup>MS VIII.226

<sup>26</sup>Medh. on MS III.34

unmarried, which is the only condition for marrying a girl. Yājñavalkya puts ‘*ananyapūrvikā*’,<sup>27</sup> meaning one who has not been accepted by any other man either by way of gift, or enjoyment, as one of the prime requirements for a girl to be eligible for marriage.

Bhāṣya addresses the query around the significance of intercourse in relation to marriage: ‘when sexual intercourse has been already accomplished with the help of intoxicants, etc., what would be the use of the sacramental rites?’ by highlighting the fact that though the act of copulation has been accomplished, and the man has transgressed the prohibition of intercourse with a ‘maiden’, yet the performance of the rites is necessary, firstly, for the purpose of making her entitled to share in the religious acts of her husband, and, secondly, for the purpose of avoiding the sin of repeating the act of having intercourse with a maiden.<sup>28</sup> Traditionally marriage was seen as a means to acquire a *savarna* wife for the continuation of household rituals. The sanctity of such relation was only through performance of sacramental rites in presence of kin of both, man and woman, and was also done for the continuation of lineage. It brought two kin groups into close relation creating extended family relations outside their group. Accordingly, marriage was not mere sexual intercourse but an important event which propagated not only family, kin group but also society in an orderly manner upholding the patriarchal values. Sexual intercourse with a maiden was, therefore, a challenge to the existing social order practicing *varṇa* endogamy.

Manubhāṣya explains ‘wife’ as a consort and the state of wifehood is achieved through recitation of proper mantras (*dārā bhāryā, tasyā lakṣaṇam nimitam vivāhamantrāḥ*). It declares it is in this sense that the mantras are indicative of the sacramental rite of marriage.<sup>29</sup> Quoting Manu from the section on types of sons Medhātithi points to a situation where a girl who had intercourse and was pregnant prior to her marriage, was betrothed to another man, who marries her with or without the knowledge of her condition, if she gives birth to a son in such situation, the son was called ‘*sahodha*,’ meaning son received with the bride,

and belongs to him who weds her.<sup>30</sup> Medhātithi uses this argument to strengthen his view on the significance of the performance of sacramental rites, as the reference of ‘*sahodha*’ alludes to intercourse with other man prior to her betrothal to another with proper rituals, who then had the claim to the fatherhood of the child in the womb?<sup>31</sup> In a way the eight recognized forms of marriage not only integrated varied regional customary marriage ceremonies but also attempted to smooth out their differences in rites and rituals.

*Pāṇigrahaṇikā mantrāḥ kanyāsvēva pratiṣṭhātāḥ |  
Nākanyāsu kvacinṇṛiṇām luptadharmakriyā hi tāḥ ||*  
[MS VIII. 226]

The marriage-ritual texts are applicable to virgins only, and nowhere among men, to non-virgins; and this because these latter are excluded from religious acts.

*Pāṇigrahaṇikā mantrāḥ niyataṁ dāralakṣaṇam |  
Tēṣāṁ niṣṭhā tu vijñēyā vidvadbhiḥ saptamē padē ||*  
[MS VIII. 227]

The marriage-texts are clearly conducive to ‘wifehood’; And they are to be recognized by the learned as completed at the ‘seventh-step.’

While contextualizing Manusmṛti’s codes on rescission of sale in the eighth chapter Bhāṣya, in contrast to its discussion on sacramental rites constituting marriage and not mere sexual intercourse, prohibits marriage for such woman who already had sexual intercourse and states that if the matter is disclosed even after the sacramental rites of ‘fire-laying’ and ‘offering of fried grains’ have been performed marriage can be revoked. To have a deep understanding of sacramental rites we must understand that the *vivāha saṁskāra* is a complex procedure performed with the recitation of mantras along with *saptapadi* (seven steps) rite. The completion of marriage is considered with the performance of *saptapadi* rite. Manubhāṣya clarifies that after ‘offering of fried grains’ the bride go round the sacrificial fire thrice and then take seven steps forward along with the announcement ‘*ēṣa ēkapadī bhava*’

<sup>27</sup> YS I.52

<sup>28</sup> Ibid.

<sup>29</sup> Medh. on MS VIII. 227

<sup>30</sup> MS IX.173

<sup>31</sup> Medh. on MS III.34

(this is first step taken) completing with the seventh step ‘*sakhā saptapadi bhavēti,*’ which makes marriage irrevocable for both parties even if the girl is found to be insane, she has now become his wife (*unmādavatyapi bhāryaiva, na tyājyā*). This establishes the inviolability of sacramental rites in marriage, where completion of *saptapadi* rite makes marriage irrevocable, implying that without them marriage has no legal standing. Marriage relation among *sapinda-relationship* was also prohibited. Marriage by nature was exogamous *sapinda, kula, gotra* relations.

The ceremonial rituals of marriage went through an evolutionary process with gradual absorption of regional variations of wedding rites. There is an attempt in the śāstric tradition to integrate the prevalent practices of conjugal relationship because marriage was not just a social ceremony but a legal contract between two families and communities. It involved sharing and at the same time having access to each other’s familial resources often leading to inheritance dispute. Women gain the central position in this exchange system as they are biologically equipped to reproduce and hence propagate the lineage. Purity of lineage blood and varṇa is prioritized delimiting the rights of women. She’s gifted in *Brāhma* form of marital union, violently abducted in the *Rākṣasa* form, secretly violated either in sleep or intoxicated state in the *Paiśāca* form. All the eight variations in ceremony and approach led to the question of what constitutes a marriage and who is a maiden which can be legally given in marriage. Śāstric textual tradition while giving different interpretations of what girl is eligible for marriage find itself entangled with the question of virginity implying a maiden is who is ‘*ananyapūrvikām,*’ i.e., one who had not been known by any one before or who had not previously been promised to anyone.<sup>32</sup> Medhātithi declares state of wifehood is achieved through recitation of proper mantras<sup>33</sup> hence, sexual intercourse without consent does not constitute marriage nor it takes away the eligibility of such girl to be a bride.

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<sup>32</sup> YS I.52, 53

<sup>33</sup> Medh. on MS VIII. 227

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