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## Women's Position on the Hindu Law in the Vivaha Samskara System

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### Abstract

There are assumptions and interpretations which consider marriage as a part of the *Panca Yajna*, especially the *Manusa Yajna*, as *Pawiwahan* (marriage) involving human affairs (individual). *Pawiwahan* is included in the tiered *samskara* (rites of passages in one's life and purification) system. The study discusses the women's position in law of Hindu of *Vivaha Samskara* system. This study employs qualitative research method with normative law research design. To achieve objectives of the study, this study made use of statute approach and conceptual approach in collecting and analyzing the legal materials. The results show that women's position in the *Vedas* is highly respected although the law has always undergone modifications and change of material. In Hindu marriage system, sanctions are to be enforced for: impregnating biological children, having sexual intercourse in the temple, sexually assaulting an underage daughter (*kanya wighna*), sexually assaulting their own daughter (*swaputribhajana*), having sexual intercourse with biological mother (*mater bhajana*), killing women (*yuwati wadha*), abortion (*bruhanahatya*), and sexually assaulting underage children. All of these are considered great sins (*Ati Pataka*) according to Slokantara 15-17, whose sanctions are not included in the *awig-awig adat* (traditional custom rules).

**Keywords:** Hindu Marriage System; *Vivaha Samskara*; Women's Position

### I. INTRODUCTION

Crenshaw is objected to the finding that race and sex discrimination must be assessed as separate entities, without consideration of compounded discrimination (Brewer & Dundes, 2018). Partly as a response to this decline, women's activists in and outside political parties are advocated for the adoption of gender quotas to increase the presence of women in formal political life (Kang, 2013). Women feel that when their husbands want to have sex, they must fulfill it (Riyani & Parker, 2018). While many urban elite women were moving into the public sphere, there were those who did not (Toktas & O'Neil, 2015). Globally, women are more likely to live in poverty than men, being employed in precarious, gendered and poorly paid jobs and are less likely to have access to land, credit or education (Coşkun, 2018).

A substantive portion of this variation can be explained by the competing framework between formal and informal institutions governing women's inheritance rights (Yasun, 2018). Even if women own dairy cattle, these are generally in smaller number as compared to men (Oladokun, Adenegan, Salman, & Alawode, 2018). Domestic violence has been continuously done and hidden due to the silence or the muted voices of its victims, and the inability or unwillingness of institutions of law and justice to listen (Ailwood, Easteal, & Kennedy, 2012).

There are assumptions and interpretations which consider marriage as part of the *Panca Yajna*, especially the *Manusa Yajna*, as *Pawiwahan* (marriage) involving human affairs (individual). Other ceremonies involving human affair includes *mesangih* (tooth filling ceremony), which is considered

*Manusa Yajna* as well. Until now, the tooth filling ceremony and *pawiwahan* (marriage) are interpreted and implemented as the *Manusa Yajna*. In fact, the *Manusa Yajna* is supposed to be a selfless service (*sewa*) performed for other creatures, especially humans, such as renovating houses, providing medical examinations and basic necessities, providing assistance to the poor, orphanages, or nursing homes, and other activities aimed at helping others. However, marriage does not provide services to human beings. Therefore, it is classified as a part of the *samskara* (read: *vivaha samskara*). None of these formulas is fulfilled; other than that *pawiwahan* falls under the 16 *samskara* (purification), in terms of system and procedure.

*Pawiwahan* is included in the tiered *samskara* (rites of passages in one's life and purification) system. From *Garbhadana Samskara* (newly declared pregnant to 3 months pregnancy), *Punsavan* (4-6 months pregnancy), *Simantoyan* (7-9 months pregnancy), *Jatakarma* (newborn child), *Niskama* (the child is taken out of the house by the parents) *Namakarma* (naming the child on eleventh day after birth), *Mundan* (shaving the head of the children), *Karnadeva* (piercing the earlobe of the child, especially daughter), *Annaprasana* (the child eats solid food for the first time), *Upanayana* (the child starts entering school), *Vedarambha* (the child starts learning the Vedas), *Samavartana* (the child has completed education), *Grahasta* (starting a household), *Vanaparasta* (leaving worldly life), *Bhiksuka* (entering the spiritual world) to *Antyesthi Samskara* (death or *ngaben*). All of these belongs to the *samskara* (rites of passages in one's life) and is part of the purification with the stages of the *samskara* as described previously. *Pawiwahan* is a part of the *samskara*, not the *Manusa Yajna*.

Based on the explanation above, this research focuses on the discussion of women's position in the Hindu law perspective of *Vivaha Samskara* system.

## II. METHOD

This study employs qualitative research method with normative law study design. Normative legal research is a scientific research procedure to find the truth based on the logic of legal science from the normative side. To achieve the study objectives, this study makes use of statute approach and conceptual approach. Types of legal materials used in this study include primary legal materials in the form of legislation and regulatory policies applicable in Indonesia, particularly those that have relevance to this study; secondary legal materials and tertiary legal materials. The three legal materials were processed and analyzed qualitatively juridical so that it could provide answers to the problems of this present study.

## III. DISCUSSION

Marriage is the physical and spiritual bond between a man and a woman as husband and wife in order to have a happy and eternal household based on the One and Only God (Law Number 1 of 1974 on Marriage). In the Hindu Law, marriage or *vivaha* (*pawiwahan*) is included in one of the 16 *samskaras*, *yajna-samskara* (purification), and that the string of events in one's life since a person is declared pregnant until dead is classified as *samskara*, not *Panca Yajna*.

In the spirit of Vedas, there are three goals for marriage: *dharmasampati* (performing *yajna* together), *prajna* (continuing the lineage), and *rti* (having sex legally). In this context, the marriage between Drupadi and her five husbands (polyandry) meets the terms and conditions in the rules of sexual intercourse. Mixing the seeds simultaneously must be avoided in order to ensure the purity and authenticity of the child, especially when sexual intercourse is done simultaneously within the same time frame. Yudhisthira, as the first child, gets the first turn without getting tainted with the second turn. Between the first turn and the second turn, there is a more or less two-year grace period: one year for pregnancy and birth, and one year for cleansing the old seeds. This applies not only to the second turn, but also the third, the fourth, and the fifth. Therefore, someone can have sex again after two years, during which pregnancy and cleansing occur, to avoid the old seeds that are still perched in the womb. The second rule is that both of the second and the next siblings (Bima, Arjuna, Nakula, and Sahadewa) should not be pacing in front of the room (or the house) or enter the room (or the house) without permission or for any reason, as the three relations are sacred without any stains.

Marriage in Hinduism is considered as two families (*warang*) which give an impact to both families and one system. Marriage is a relation between two sacred institutions, two families, and two individuals who keep interacting with each other even until the future. The principle adopted in the marriage system

is monogamy. Then what about the marriage between Draupadi and the Pandavas? When it happens otherwise, it is considered a bad social stigma against family relations. Often marriage is meant as a political investment, as by uniting two families (especially in the royal era) geopolitically, they can gain new allies, end conflicts, and strengthen the bond between families. In the Dwaparayuga era, the royal princesses are deliberately married to the kingdom that will be their allies for the upcoming Kurukshetra War, to give more strength to both families.

There are polygamy and polyandry marriage in Hinduism, as proven empirically. The ancient kings, for instance, often married for several times in order to get *suputra* children, multiplying human population until it becomes a big community and finally becomes a *samasthi* (communal society). Bima, as well as Arjuna, has married for several times. King Windusara and King Dristarashtra even get married three times. In ancient times, someone from the *Ksatria varna* can marry up to three times. King Drsithrashtra married Kausalya, Sumithra, and Kekayi respectively, as he does not have any offspring with his three spouses.

The marriage between Draupadi and the Pandavas is a polyandry marriage (marrying five men at once), a marriage to more than one man (one husband). Draupadi's polyandry marriage is not a good example, but a problem a casuistic one which should not be followed. The problem with Draupadi's marriage lies in Draupadi's desire to have a very ideal husband. Since young, Draupadi wants a husband who has a good and noble heart, strong, smart, handsome and devoted to Mahadeva. The only way to fulfill her wish-which is nearly impossible and does not make sense is for Draupadi to marry the Pandavas, each of which has five representations of characters expected by Draupadi.

Draupadi's expectation to have a perfect husband is actually a disavowal of the limits of human ability. Each of her five husbands Yudhisthira represents morality and ethics, Bima represents power, Arjuna represents skill and intelligence, Nakula represents smartness, and Sahadewa represents diligence is a representation of a desire, a wish. Although until now almost everyone thinks that Arjuna is handsome (smart, playboy), in *Itihasa*, Arjuna is actually a symbol of intelligence. In this Kaliyuga era, the postmodern era, no human being has the capacity to overcome some of the limitations of human beings as expressed by those five. Therefore, do not wish for anything that is absolute, as perfection is not possible.

According to Manu, in the Hindu marriage system, there are two marriage systems *anuloma* (marriage in descending order) and *pratiloma* (marriage in ascending order) that occur in marriage between two different *varna* (not between two different castes). To date, a marriage between different *soroh* (*clan, warga*) in Bali is considered as a marriage between two different *varnas*. According to the culture of Balinese Hinduism, it is considered *nyerod* if a woman (a daughter) from the class of Ida Ayu, Cokorde Istri, Sagung, or Dewa Ayu gets married with "common people" whose name is usually Gede, Made, Nyoman or Ketut without any titles. It is called *nyerod* because the woman's high status will be erased by marrying a "common" man. Sanction, namely a *patiwangi* ceremony, is a manifestation of a status downgrade of those who marry someone who is not their equal in *soroh*. On the contrary, if a woman of common birth (read: *jaba*) is taken by a man of the higher class (those with the name Ida Bagus, Cokorde, Anak Agung and Dewa) is considered as a marriage that elevates the woman's status. Upon marriage, her status will rise to *Jero*. The name *Jero* is added to her original name, showing her status within the family circle of the *purusha* (male). However, all of this is actually a misunderstanding. According to the literature, such marriages only involve different *soroh* (*clan, warga*), not different *varna* (functions, professional competence).

It makes sense that a marriage must be held between those of the equal status, because they can get protection from the husband (for instance, if a person from *Brahmana Varna* is married to someone who is not from the equal *varna*, then it can cause inequality, as each of them practice their own profession, the husband practicing his competence as *brahmana*, while the wife practicing another profession. This is not in line with their *swadharna*.) Furthermore, the names mentioned previously, in essence, do not show their true identity in terms of functions (competence, professionalism), talents and *guna karma*, because they do not practice the *swadharna* as expected. Caste and Varna are too different in principle. In short, the name does not show the identity and character of its bearer and instead has fallen into *kapatita* since it has deviated from their *swadharna*. Unfortunately, the sanction contained in the Hindu Law in Bali is very weak because none of these standard systems are expressed by the *awig-awig* of

Desa Pakraman in Bali.

### Women's Position in the Vedas

Women's position in the Vedas is highly respected although the law has always undergone modifications and change of material. Yet, the sanction and its provisions are always in accordance with *Desa*, *Kala*, and *Tattwa*. Therefore, a married woman is called *sthri*, which then becomes the word for wife. Each of the letters has its own meanings: *s* (*sathyabinava*) means performing *yajna* together, *th* (*thyaga*) means sacrifice, and *ri* (*rasa*) means sweet. A wife has all of her noble qualities in herself. According to the Book of Manava Dharma Sastra III.56, which occurred in Kerthyayuga era, women are highly respected. The Book of Manusmerthi even inserts the superiority and noble qualities of women.

*Yatra naryastu pujiyante ramante tatra dewatah, yatraitastu na pujiyante sarwastatraphalah kriyah*  
(Where women are respected, there the gods feel happy, but where they are not respected, no work will be rewarded)

*Sosanti jamayo yatra, winasyatyesu tatkulam, nasosanti tu yatraita, wardhate taddhi sarvada*  
(Where women live in sadness, the family is quickly destroyed, but where the women are not tortured, the family will always be happy)

*Striya tu rocamanayam sarwam tadrocate kulam,gtasyam twarocamanayam sarwamewa na rocate*  
(If the wife is always radiant, the whole house will look glowing, but if she does not show such expression, then everything will look bleak)

Women's position should always be protected. From infancy until growing up, a woman is nurtured by her parents. Since getting married, she is under the care of her husband's care. Then when she reaches old age, she is under her children's care. So women are always in a heavily protected position where they do not have much freedom. This comes with a very logical reason because if women are always in an exploited position, where they are always marginalized and bearing a burden, it is always women who get the short end of the stick. In this case, women always keep their honor (*pativrata*), perform their duties and obligations (*sadvi*) and keep the families' name alive (*kirtim*).

There are five manifestations of gender inequality: **marginalization** (treating a certain group of people as insignificant), **subordination** (placing a person in a state of constant dependence), **stereotypes** (placing a negative label to a certain groups so as to cause injustice, unless they depend on other persons), **a double burden** (one who has to bear the burden of work on two fields at once), and **violence** (an attack or invasion that inconvenience a person) ("Memecah Kebisuan", Central PHDI, 2014: 18). The Rgveda states *Jayed astmamaghavan sed u yonih* (the household is the woman herself), and that she is the most important element to achieve the prosperity of the family. *Dhartri* and *dharani* mean a balancer. In Atharva Veda, it is mentioned that: *sumanggali pratarani grhanamadhah pasyasva maupari samtaram padakau hara* (O woman, enter the house by wearing clothes and release your husband from all suffering (Atharvavadea: 142-26). Meanwhile, the Vedas mentions that as *dampati*, two masters in one household, it is the woman who has to choose her own husband if she wants to live happily... (*savayam sa mithram vanette jene cit*, Rgveda: 10-27-12), *patni sukrtam bibharti* (without the presence of women, *yajna* is imperfect), if women practice *yajna*, then it will drive the giants/*bhuta* of Agni away. Rsi Walmiki gives women rewards, as they are the embodiment of *bhakti* and the manifestation of knowledge.

The unclean period caused by birth for each *varna* is different. *Brahmana* is 10 days, *Ksatria* is 12 days, *Vaisya* is 15 days, and *Sudra* is 30 days.

### Enforcement of Sanctions

In Hindu marriage systems, sanctions are to be enforced for: impregnating biological children, having sexual intercourse in the temple, sexually assaulting an underage daughter (*kanya wighna*), sexually assaulting their own daughter (*swaputribhajana*), having sexual intercourse with biological mother (*mater bhajana*), killing women (*yuwati wadha*), abortion (*bruhanahatya*), and sexually assaulting underage children. All of this is considered great sins (*Ati Pataka*) according to Slokantara 15-17, whose

sanctions are not included in the *awig-awig adat*. The *awig-awig* only contains *amandal sanggama* (disobedience for refusing sexual intercourse), *salah timpal* (having sexual intercourse with animals), *gamy gamana* (having sex with people who still have blood ties), however, there are no sanctions included. However, in the Hindu Law, all matter concerning sexual intercourse between people with blood ties is a subject to *Ati Pataka* (the Great Sin).

Meanwhile, the Hindu Criminal is grouped into three foundations: *Dusta* (a crime involving the life of a person with *Jiwadanda* sanction), *Corah* (a crime related to wealth with *Arthadanda* sanction), and *Paradara* (a crime related to ethics and morality with *Sangaskaradanda* sanction). Based on this mapping, sexual assault towards biological children and having sexual intercourse are subjects to severe sanctions, which fall into the category of *Dusta*. This is evident in the way the crimes are included in the *awig-awig* in Bali.

The Dvaparayuga era applies Manawa Dharmasastra (Dharmasmerti), during which a Brahman may marry up to four times, Ksatria three times, Vaisya twice, and Sudra once, in line with their *varna* (not caste). The Catur Varna system embraced by the Hindu culture (once again not caste) is a classification based on the functions or professional competence a person chooses, and not on the basis of social status. That is why *Brahmajati* is given a bigger space, because only a brahman who has the wisdom, morality, socio-economic status, and dignity to bear the responsibility for such a position. Hence, even though the Hindus adheres to monogamy marriage which implies that marriage only occurs for once in a lifetime and that it has an impact on contributing to a married couple's loyalty to stay together until death do their part a *brahman* is allowed to marry up to four times because he has the social status (and financial condition), wisdom, and justice to support his wives. In short, a *brahman* can marry up to four times because he is more qualified than the others. *Sudras*, on the other hand, are allowed to marry only once because they have a very low socio-economic status, which makes it impossible for them to marry more than once. It is assumed that he cannot support multiple wives if he is unable to support one wife, physically and spiritually, and even himself. When Abimanyu perishes in the Kurukshetra War, Dewi Uttari remains a faithful widow, deciding not to marry a second time. In the course of the judicial era, everything changes and shifts to a more rational comprehension. Obedience, loyalty, and attachment begin to be contaminated in the Kaliyuga era, with the first wife must also be a *brahman*, and only after that he is allowed to marry a *Ksatria*, and then a *Vaisya*, and the last a *Sudra*. However, he must be able to act fairly, provide socio-economic status and simple education, fulfill the need for justice, and give physical and spiritual support.

Ida Pedanda Sakti Wawu Rauh has married four wives: the first wife is a *brahman*, a princess of Daha, a daughter of *Dahyang Panawasikan*. She gave birth to Ida Ayu Swabhawa and Dang Hyang Wariga Sandi. His second wife is Diah Sanggawati from Pasuruan, who gave birth to four sons (Ida Wetha, Ida Kulwan, Ida Lor and Ida Ler). The third wife is a princess of Blambangan, Diah Patni Keniten (a sister of Dalem Juru, the King of Blambangan), while the fourth wife is a daughter of Ki Bendesa Mas (Kanduk, 2015: 35-36, Babad Usana Bali Pulina).

A wife may take a husband for the second time if the husband acts arbitrarily, passed away, becomes an ascetic, loses his manhood, or his status has been reduced to a lower one (Parasara Dharma Sastra, IV. 26). Additionally, a wife who has despised her husband for his poverty and dullness will be born as a female snake in the next cycle of birth, tortured with life's difficulties of being a widow in such a hateful incarnation (PDS, IV.16).

The Book of Parasara Dharma Sastra, which applies in the Kaliyuga era, also implies for the women (the wives) who violate the rules, or the rules aimed at women. In Parasara Dharma Sastra X.11-15, it is said that:

After having an intercourse with his mother, sister, or daughter, because of his ignorance, a man must perform three *krcchra vratam* and an atonement ritual of *candrayana* after; and cut off his genitals to atone for his sins. The same atonement must be done by those who secretly have an intercourse with the mother of one's sister.

For his foolishness, one who has an intercourse with the mother of his own sister, must carry out an atonement ritual of *candrayana* and give 10 cows and 10 bulls to *brahman*s whereby he would be purified again.

After having an intercourse with his own father's wife, his mother's female companion, his brother's daughter, his teacher's wife, his niece, his brother's wife, his uncle's wife from the mother side, or his daughter with whom he still has familial ties, one has to carry out three atonement rituals of *prajapatya* and give a pair of cows to *brahmans* whereby his sins can be forgiven.

After having sex with female animals, prostitutes, a female buffalo, a female camel, a female monkey, a female donkey, or female pig, one must carry out the atonement ritual of *prajapatya*.

Hindu Customary Law in Bali is apparently inspired by the Parasara Dharmasastra Book. It is included in the *Awig-Awig* of *Desa Adat*, which later became the Customary Criminal Law in Bali. Crimes such as having an intercourse with his father's wife, his mother's female friend, his brother's daughter, his teacher's wife, and his niece falls under *gamyā gamana* (having sexual relations with a person who still has blood ties). Having sex with animal falls under *salah timpal*, meanwhile, adultery falls under *dratikrama*.

#### IV. CONCLUSION

In the Hindu Law, marriage or *vivaha* (*pawiwahan*) is included in one of the 16 *samskaras*, *yajna-samskara* (purification), and that the string of events in one's life—since a person is declared pregnant until dead—is classified as *samskara*, not *Panca Yajna*. Women's position in the Vedas is highly respected although the law has always undergone modifications and change of material. In Hindu marriage systems, sanctions are to be enforced for: impregnating biological children, having sexual intercourse in the temple, sexually assaulting an underage daughter (*kanya wighna*), sexually assaulting their own daughter (*swaputribhajana*), having sexual intercourse with biological mother (*mater bhajana*), killing women (*yuwati wadha*), abortion (*bruhanahatya*), and sexually assaulting underage children. All of this is considered great sins (*Ati Pataka*) according to Slokantara 15-17, whose sanctions are not included in the *awig-awig adat*.

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