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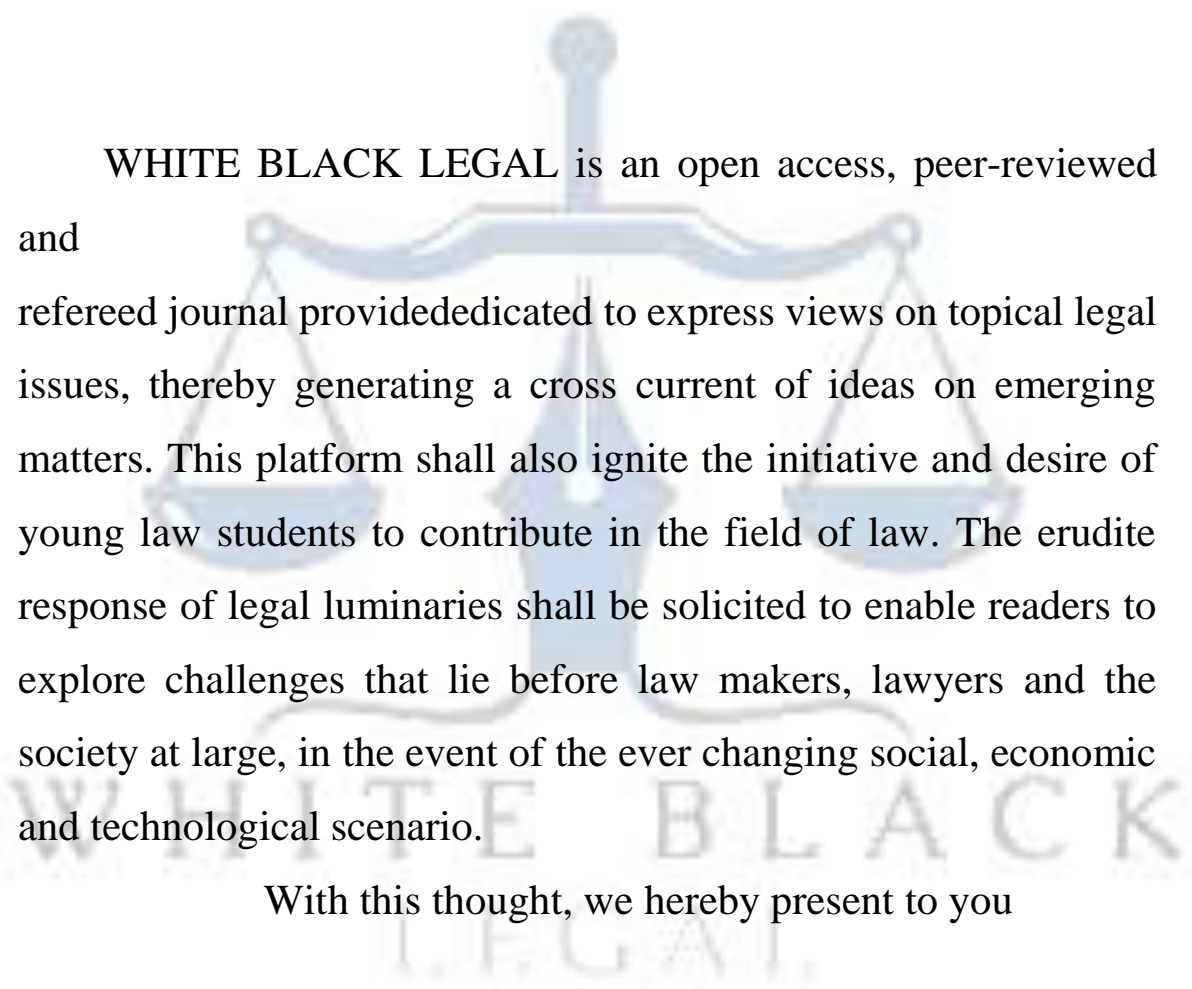


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With this thought, we hereby present to you

THE EVOLUTION OF PARSI MARRIAGES **IN INDIA**

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ABSTRACT

The entire idea of Parsi Marriages in India is governed under the Parsi Marriage and Divorce Act, of 1936, wherein the marriages are essentially a contract governed by Parsi traditions and ceremonies. Parsis are essentially classified as Iranians who have originated from the region of Persia and essentially follow the Zoroastrian religion. This research paper further seeks to analyze and delve into the intricacies of Parsi marriages and place emphasis on how these marriages have evolved from the 8th century to what they are presently. Parsi marriages are inherently different from Hindu, Christian, and Muslim marriages, and they strictly abide by their customary practices. The Parsi Marriage and Divorce Act, of 1936, explicitly states the essentials and conditions, which will be further elaborated in this research paper, that are required to be followed for a marriage under the Parsi law to be considered valid. The research question that this research paper seeks to answer is whether Parsi marriages have evolved from the 8th century to the present day and to what extent is this evolution appreciated and noticed. The paper follows the doctrinal method of research methodology by analysing the history, statutory provisions, and legal precedents governing Parsi marriages in India.

Keywords: Ceremonies, Customary Practices, Statutory provisions, Traditions, Zoroastrians

1. INTRODUCTION

1.1) THE CONCEPT OF PARSI MARRIAGES IN INDIA

The entire idea of Parsi Marriages in India is governed under the Parsi Marriage and Divorce Act, 1936¹, wherein the marriages are essentially a contract and are governed by Parsi traditions and ceremonies. Parsi marriages focus on the concept of Aashirvad or blessings, essentially a favour or a call to God to accept the marital relationship and its obligations. The Parsi community originates from the region of Persia, and before 1936, Zoroastrians from the countries of Iran and India were also referred to as 'Parsis', thereby leading to the Parsi Marriage and Divorce Act, 1936², classifying Indian and Iranian Zoroastrians as Parsis. Parsis follow the Zoroastrian religion, and the words 'Parsi' and 'Zoroastrian' are often interchangeably used. Parsi law does not permit conversion or inter-caste marriages. Generally, Parsis are supposed to marry a Parsi only or within the different sub-sects of Parsi namely, the Yazidis, Mandaean, Druze, etc³. Since Parsi customs and traditions do not permit conversion, a Parsi must marry a Parsi only for the continuation of lineage. The Parsi Marriage and Divorce Act, 1936, explicitly states the essentials and conditions, which will be further elaborated in this research paper, that are required to be followed for a marriage under the Parsi law to be considered valid.

This research paper seeks to analyse and delve into the intricacies of Parsi marriages and place emphasis on how these marriages have evolved from the 8th century to what it is presently. Parsi marriages are inherently different from Hindu, Christian, and Muslim marriages, and they strictly abide by their customary practices. This research paper will additionally also state judgements that further the concept of Parsi marriages and stress on the seriousness that Parsi traditions and customs hold. The paper will also analyse the validity of Parsi marriages through the Parsi Marriage and Divorce Act, 1936, whilst elaborating on the conditions and essentials required to constitute a valid marriage under the Act. Parsi marriages have constantly been evolving from the 8th century and the modern-day Parsi law has been trying to adapt to the changing social structure and traditions. Nevertheless, Parsi law with regards to marriage still holds on to its roots and follows the essentials to the maximum as prescribed under the Parsi Marriage and Divorce Act, 1936.

¹ Parsi Marriage and Divorce Act, No. 03, Acts of Parliament, 1936 (India).

² *Id.*

³ Shyamantak Misra, Prafulla Chandra Mishra, *Origin of Parsi Laws and Regulations in India: "Fons et origo of Zoroastrianism"*, Vol.14, IJFMT, p. 687, p. 688 (2020).

2. THE EVOLUTION OF PARSI MARRIAGES IN INDIA

2.1) THE DEFINITION OF A PARSI UNDER INDIAN LAW

Before delving into the history and evolution of Parsi marriages in India, it is important to define and determine who is a Parsi under Indian law. All Parsis of India belong strictly to the Parsi community, and the law governing such Parsis does not permit conversion to another religion. Parsis are classified as Iranians who have originated from the region of Persia and essentially follow the Zoroastrian religion. Since Parsi law does not permit conversion, all Parsis are original descendants of Persian emigrants, one whose father is necessarily a Parsi but whose mother is a non-Parsi but one who follows the religion of Zoroastrianism or is a Zoroastrian from Iran, presently residing in India. Thereby, Parsis are those who are strictly born into the faith of Zoroastrians, not converts. This was further elaborated in the case of *Sir Dinshaw Manockji v. Sir Jamsetji Jeejeebhoy*⁴, wherein the Bombay High Court held that a Parsi can be defined as:

1. An Iranian migrating from Persia to India, professing the Zoroastrian religion from birth.
2. Children of such Parsi fathers or mothers who are non-Parsis but follow the Zoroastrian faith.
3. Iranian Zoroastrians who are residing in India either temporarily or permanently, and;
4. Persians who were forced to leave their homeland in Persia almost 1200 years ago, to migrate to India. These refugees sought refuge in the areas of Kohistan and the Isle of Ormus, before finally settling in the Indian territory. Presently, Mumbai is both their social and administrative centre where such Parsis carry out trade and business for their living.

Furthermore, in the case of *Jamshed Irani v. Banu Irani*⁵, the Bombay High Court opined that before 1936, the Zoroastrians belonging to India and Iran were also referred to as Parsis, and thereby the Parsi Marriage and Divorce Act, 1936, includes within its ambit Indian and Iranian Zoroastrians, under the term ‘Parsi’.

Additionally, the definition of as to who is a Parsi has been defined under Section 2(7)⁶ of the Parsi Marriage and Divorce Act, of 1936, which states that:

“a “Parsi” means a Parsi Zoroastrian”⁷

⁴ Sir Dinshaw Manockji v. Sir Jamsetji Jeejeebhoy, (1908) 2IND. CAS.701

⁵ Jamshed Irani v. Banu Irani, (1966) 68 B.L.R. 794.

⁶ Parsi Marriage and Divorce Act, 1936, § 2(7), No. 03, Acts of Parliament, 1936 (India).

⁷ *Id.*

Thereby, under the Parsi law, the Act of 1936, and the precedents cited above, a person can only be defined and categorised as a Parsi if he/she meets either of the following essential criteria aforementioned. A person who has converted into a Parsi will not be considered one as it violates the customary law of the Parsi faith and a person will only be considered Parsi if he is born as a Parsi.

2.2) THE EVOLUTION OF PARSI MARRIAGES IN INDIA

2.2) (1) *EARLY PARSI MARRIAGES (8TH-19TH CENTURY)*

Parsi Marriages date back to the 8th century, continuing for as long as the 19th century, when Parsis from Persia (present-day- Iran) migrated to India, mainly after their persecution. They mainly settled in Gujarat and the marriages strictly abided by Parsi traditions and customs emphasizing purity, fire, ceremonies, and blessings. Furthermore, Parsis take the practice of endogamy very seriously and follow it strictly. They are not allowed to practice intercaste marriages and are permitted to marry within the Parsi community only. This was followed to preserve the Parsi and the Zoroastrian faith. Parsi marriages in this era were majorly patriarchal owing to the existing societal norms, but with the advent of the British Rule in India, Parsi marriages attempted to become more applicable to women as well, promoting their rights within the Parsi community.

2.2) (2) *THE BRITISH COLONIAL PERIOD (19TH CENTURY)*

The 19th century mainly saw the growth of the rule and administration of the British in India who were responsible for introducing Western legal systems in India. With the advent of the British rule in India, legislations were drafted in a more modern way catering to the personal laws of India as well. The introduction of such modern legal frameworks resulted in the creation of the first Parsi personal law Act, namely the Parsi Marriage and Divorce Act, of 1865. This Act was created as a result of the increasing need of the Parsi community to protect their customs and traditions. It was one of the earliest legislations to be codified in British India, that set the grounds for validating Parsi marriages in India. As stated above, during the British rule, legislations that were newly created, ensured to cater to women's rights in different religious communities, and the Parsi community largely benefitting from it. Before the colonial rule in India, Parsi marriages were largely patriarchal, but with the advent of the British and the enactment of the Parsi Marriage and Divorce Act, of 1865, women's marital and divorce rights within the community were largely enhanced.

2.2) (3) THE MODERN DAY: 20TH CENTURY TO PRESENT LEGAL REFORMS AND DYNAMIC DEVELOPMENTS

This era saw the introduction of the present-day Parsi Marriage and Divorce Act, of 1936, which replaced the colonial-era Act of 1865. The Act of 1936 laid down grounds and requisites for a valid marriage in Parsi law under Section 3⁸ of the Act of 1936, which states that:

“[(1)] No marriage shall be valid if—

- a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or*
- b) such marriage is not solemnised according to the Parsi form of ceremony called “Ashirvad” by a priest in the presence of two Parsi witnesses other than such priest; or*
- c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.]*

[(2)Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.]”⁹

The Act of 1936 modernised multiple aspects of Parsi law, as stated above, and that remains in effect today. As stated above, since this period began immediately after the British era, the rights of women still remained intact and Parsi women were granted greater access to educational rights. This shifted the patriarchal nature of Parsi marriages to more dynamic ones where a woman was able to exercise her own individual autonomy and freedom in a marital relationship.

The Parsi marriage laws and traditions are becoming a little flexible considering the present societal structure. Though not major, there have been minor amendments to the Act of 1936, wherein family and arbitration courts have become more well-versed with the current legal framework and societal standards. Furthermore, due to the decrease in the Parsi population, the practice of maintaining endogamy and interfaith marriages has become difficult, due to which many Parsis are resorting to interfaith marriages. Though in stark contrast to Parsi traditions and customs, it is evolving and slowly becoming more accepted. The Parsi community is

⁸ Parsi Marriage and Divorce Act, 1936, § 3, No. 03, Acts of Parliament, 1936 (India).

⁹ *Id.*

essentially trying to preserve its traditions in the modern-day, but due to the declining population within the Parsi community, has to change in traditions, especially interfaith marriages.

The Parsi Marriage and Divorce Act, 1936¹⁰, has placed few restrictions on marriages, which is to say that such marriages if carried out shall be void under the provisions of the Act of 1936. The main and most important restriction is that the Parsi Marriage and Divorce Act, of 1936 does not permit for marriages within blood or consanguineal relations. Schedule I of the Act of 1936 provides a list of restricted marriages within the Parsi community, the majority of which centers on relationships related to children, either spouse, brother or sister.

Parsi marriages emphasize and revere their ceremonies strictly. Ceremonies play an integral part in a Parsi marriage as it also is an important tradition of the Parsi community followed from the 8th century. One of the major ceremonies followed in Parsi marriages is the one of Aashirvaad or Blessings. This essentially means the calling of God to bless the marital union, and is usually carried out by a Parsi priest, Dastur and Mobed, defined under Section 2(8) of the Act of 1936. Either of the priests can perform the Aashirvaad ceremony in the presence of two Parsi witnesses.

Under Section 3(1)(c) of the Parsi Marriage and Divorce Act, 1936, the legal age for marriage in the Parsi community is 21 years for males and 18 years for females. A Parsi must strictly abide by the legal age even if he/she converts to another religion or changes the place of residence to outside India. Unless the consent of the father or the guardian of both parties is guaranteed, a marriage shall not be considered lawful under the provisions of the Act of 1936. In the case of *Sarwar Merwan Yezdiar v. Merwan Rashid Yezdiar*¹¹, the court placed emphasis on when a Zoroastrian is considered a Parsi. The court held that if the plaintiff who is a Zoroastrian is registered as a citizen outside India being a Persian, and temporarily shifts his residence to within India, he cannot magically or automatically become a Parsi just because of similar racial heritage. It is a mandate that for an Iranian or Zoroastrian to be considered a Parsi, he/she must be residing in India as per the requirements enshrined under the Parsi Marriage and Divorce Act, of 1936.

¹⁰ *supra* note 1 at. 1.

¹¹ *Sarwar Merwan Yezdiar v. Merwan Rashid Yezdiar*, AIR 1951 BOM 14.

Though the Parsi community places a lot of emphasis on its traditions and customs, it has become quite flexible in the modern-day era. Despite women being the subject of criticism for interfaith marriages within the Parsi community, the framework on which the modern-day legislations are shaped has increasingly provided women their autonomy and freedom in a marital relationship. Parsi marriages have drastically evolved from the 8th century to the present day, and despite strictly following the Parsi traditions and customs, certain leverages are permitted under Parsi law.

3. CONCLUSION

The question that this research paper sought to answer was whether there has been a noticeable and significant evolution in Parsi marriages in India. By dividing the history and development of Parsi marriages into three different eras, it can be positively concluded that Parsi marriages have evolved in India over the following decades. The concept of Parsi marriages can be considered a perfect example of balancing between the existing traditions and evolving with the dynamic society. Though the Parsi community places strict emphasis on its traditions and ceremonies during marriages, it is also becoming slowly open to the needs and the dynamic nature of the society.

Parsi marriages essentially are endogamous and do not provide for interfaith or inter caste marriages. But due to the declining population, certain Parsis resort to interfaith marriages which is initially looked down upon, but eventually is becoming more accepting due to the modern-day society. Though not completely adapted to the present-day societal dynamics, Parsi marriages have certainly evolved from the 8th century to the present day. Parsi marriages nevertheless still strictly abide by their traditions and ceremonies whilst granting leverage to certain aspects sometimes. With the evolution of personal laws and the societal structure, Parsi marriages will soon be slightly more relaxed and flexible, while still strictly abiding by their traditions and customs.