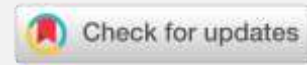


Type: **Research Article**



Marriage at the Foot of the Great Wall, in the Land of the Rising Sun and on the Banks of the Ganges – Chinese, Japanese and Hindu Marriages

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ABSTRACT

This research explores the legal systems of China, Japan, and India, focusing on their transition from customary to codified law, shaped by European colonialism and Christian missionary activity. Specifically, it examines how matrimonial law in these countries remains primarily governed by common law rather than codified statutes. The study emphasizes the role of customary religious law, analyzing its ongoing influence despite the adoption of codified legal frameworks. Using a comparative method, the research traces how the legal systems of China and Japan evolved similarly, influenced by German and French legal traditions, while India's system reflects the impact of British colonialism and English common law. This analysis contributes to understanding the intersection of civil marriage, religious rights, and legal traditions, providing insights into the enduring relevance of customary and religious practices in modern legal systems. The findings are crucial for further exploring the potential introduction of optional civil marriage in these countries.

Keywords: *Japanese Marriage Law, Chinese Marriage Law, Hindu Marriage Laws, German and French Reception, English Colonization*



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INTRODUCTION

Chinese, Japanese and Indian cultures are special and exotic for Europeans, since these societies developed and formed for a long time hidden and inaccessible to Europe. The legal systems of all three states began to move from customary to codified law in connection with European colonialism and the emergence and work of Christian missionaries. However, precisely in the case of matrimonial law, each state settles it primarily not by means of codified law, but by retaining the peculiarities of customary law. In my work, I would like to present Chinese and Japanese marriage law and Hindu marriage law using the methods of legal comparison and analysis, which, although on different continents, have developed and developed in some respects very similarly, not only in terms of customary law, but also in the legal relations established by the state.

The peculiarity of the comparative law analysis is that the researcher has to discover connecting elements between the objects of comparison, along which the comparison can be carried out. In the case of legal systems such as Chinese, Japanese and Hindu jurisdictions, it is appropriate to grasp the points on which these regulations are identical. Thus, in the course of this research, the author will examine the development of the history of these three legal systems, the rules of marriage law, the practice of marriage, and the rules of religious law. As an introduction, the author would like to present the development of these four aspects in a summary table, which the author will explain in more detail.

Table I Comparasion of Legal History, Matrimonial Law, Practice and Religious Law of China, Japan and India

	Marriage in China	Marriage in Japan	The India Hindu Marriage
History	The first legislation dates to 221 BC during the reign of Emperor Qing Shi Huang Ti, and until the 20th century it was based on <i>Taoist-Confucian</i> foundations. The first Civil Code will be established in 1911, the second in 2021. This Act regulates family and marriage law.	The Yoro Codex, issued in 769 A.D., was in force until the 19th century, and marriage law was based on the Chinese model. With the <i>Meiji</i> reforms in the late 19th century, the German BGB became the basis of the Japanese Civil Code, but marriage law remained customary.	From 1588, with English colonization common law was replaced by codified law, which ended by the end of the 19th century. The customary nature of marriage law was abolished by the regulation of the First Marriage Act, issued in 1950.
Matrimonial Law	Marriage law is governed by the Civil Code	Although marriage law is regulated by the Civil Code, it only defines its formal conditions.	The conditions for entering marriage are laid down in codified legislation.
Marriage Practice	Chinese marriage law does not recognize a marriage ceremony, the marriage is completely administrative, it is performed by registering the spouses in the family register.	Japanese marriage law does not provide for marriage ceremonies, the marriage ceremony is completely administrative, with the registration of the spouses in the family register.	The state considers all marriages contracted with religious ceremonies to be valid from a state point of view. Marriages must be registered.
Religious Law	The parties to the marriage are free to marry by religious ceremony, and the state has no influence on this.		

BRIEF HISTORY OF THE LEGAL SYSTEMS OF CHINA, JAPAN AND INDIA

In Far Eastern societies, the role of written law is weaker than that of morality and mutual respect for each other. The foundations of Chinese society and law can be found both in the philosophical writings of Lao Tzu, which we call Taoism, and in the philosophical school called Confucianism. Lao Tzu's idea was that if people followed the path of the Tao and did nothing, there would be order in the world, while Konfu Tzu believed that the world of humans and gods works differently, people's lives are governed by rituals developed by the community instead of the Tao.¹ The first legislation in China dates back to the time of Emperor Qin Shi Huang in 221 BC. The fact that the Chinese legal system is based on Confucian-Taoist foundations did not change until the twentieth century.

At the beginning of the twentieth century, during and after the reign of the last Qing Emperor, China, which had been locked up until then, was forced to let in foreign powers, which forced the Chinese state leadership to reform. The codification of private law ended with the Civil Code issued in 1911. China established its legal system on the model of continental Germany and Switzerland, but while retaining the specifically Chinese ideas.²

China's communist transformation in the 1950s meant replacing the previous legislation with Soviet-style legislation. The development of the new Civil Code started already in 1954, but was interrupted several times, and in 1986 a preliminary document was created, which was entitled General Principles of Civil Law of the People's Republic of China. In fact, this document regulated civil relations until 2020, when the Chinese People's Congress adopted a new Civil Code³ called Minfa-Dian in Chinese, which entered into

1 Mezei, Péter, 2020, *Betekintés a kínai jog világába*. Bado Attila, et alii: A jogrendszer világa. Szeged, Pro Talents Universitatis Alapítvány, 2020. p. 290.

2 *Ibid.*, p. 293.

3 Zhōnghuá Rénmín Gònghéguó Mínfǎ Diǎn

force in 2021. Book V regulates family and marriage law. The foundations of the Japan's traditional legal system must be sought in Chinese law, since the first specialists in law were trained in China.

The first administrative codes were created in the 600s AD. These are the Tahio Codex, published in AD 702 by Mommu Tenno, also known as the Japanese Justinian, followed by the Yoro Codex in 769, which was in force in Japan until the end of the 19th century.⁴ At the same time, marriage law began to change, especially with the spread of Confucian doctrines,⁵ which, essentially mixed with Shinto⁶ religion, form a specific religious environment even today.

Marriage law also developed in accordance with the Chinese model, as a result of which the situation of women began to deteriorate. Marriage already required the consent of the family, followed by the conclusion of a contract and the religious ceremony that legalized it.⁷ The wife's property was administered by the man, divorce was the man's prerogative, and the husband could physically abuse his wife, although he had no right to kill her.⁸

This later worsened to the extent that parents could force their children into marriage against their will.⁹ By the 17th century, stratification of society had developed, and the practice of marrying nobles and commoners in other ways. Engagement and marriage ceremonies are part of the common people's marriage, but the

4 Jany, János, 2011, *A világ főbb jogrendszerei-A nem nyugati kultúrák*. Budapest, Akadémiai Kiadó, p. 126.

5 Confucianism probably reached Japan in the 5th century A.D. and spread to Japan by the 7th century along with Taoism and the philosophy of Yin and Yang. All this stimulated the development of Shinto ethics. Parallel to the gradual centralization of the state structure, all-Japanese mythology developed, and Shinto became more and more a national religion. By the beginning of the 10th century, around 3,000 shrines had received imperial donations.

6 Shinto is an ancient religion of Japan, derived primarily from folk beliefs and customs. Its three main branches are shrine (*jinja shintô*), sect (*kyôha shintô*) and folk shintô (*minzoku shintô*). Shrine Shinto has lived continuously since the beginning of the history of the Japanese Empire to the present day and is the main current of the Shinto tradition.

7 This is similar to the Jewish and Islamic preferred method of marriage.

8 Jany, János, 2011, *A világ főbb jogrendszerei-A nem nyugati kultúrák*. Budapest, Akadémiai Kiadó. 127 p.

9 *Ibid.*, p. 128.

marriage was usually contracted only after the birth of the first child.¹⁰ The 19th-century reforms also changed the way we think about marriage, which legal history calls Meiji reform. Japan's isolation came to an end, and Japanese society and legal thinking changed. The Japanese government, as a result of the unequal international treaties imposed on it, began to modernize the legal system, translating the German BGB into Japanese for civil law and entering into force.

However, mainly with regard to family law, the rules of traditional Japanese law remained in force.¹¹ Thus, the Japanese legal system represents the continental legal system, with the exception of family law, and the legal changes after World War II did not change this. From the 19th century, the registration of marriages became mandatory, since the marriage ceremony alone derived from common law was no longer sufficient for the marriage to be legal from the point of view of the state.

Those who refused to register were at risk that the child from their unregistered marriage would be illegitimate, which was unacceptable for the survival of the extended family.¹² According to modern jurisprudence, marriage registration is also mandatory in Japan, but the state does not use its own marriage ceremony, but the author will explain the essence of this later.

In contrast to Japan, which was an isolated country, the Hindu territories were quickly conquered and colonized. In addition to the English, the Portuguese, French and Dutch also tried to colonize India. Beginning in 1588, the English gradually occupied the East Indies, and with it the influence of the English legal system gradually appeared in the states, which had been mainly based on customary

10 Fuetto, Toshio: *The Discrepancy between Marriage Law and Mores in Japan*. In *The American Journal of Comparative Law*, Spring, 1956, Vol. 5, No. 2 p. 256. DOI <https://doi.org/10.2307/837376>

11 Jany, János, 2011, *A világ főbb jogrendszerei-A nem nyugati kultúrák*. Budapest, Akadémiai Kiadó. p. 135.

12 Fuetto, Toshio: *The Discrepancy between Marriage Law and Mores in Japan*. In *The American Journal of Comparative Law*, Spring, 1956, Vol. 5, No. 2. p.257.

law.¹³ Traditional Hindu law is primarily a system of religious rules rather than the regulation of everyday life. His most important document is the Code of Manu, which is not only legal but also a religious, moral and philosophical work. The Manu is a rather extensive work, contains twelve books, including 2,694 ślokas (couple poems), which regulate certain aspects of everyday life, including marriage.

In 1778, the English conquerors first regulated various parts of civil law, including family law, which they left intact. Obviously, however, Hindu law, as English colonists applied English law, began to evolve more and more into common law system.¹⁴ In the 19th century, codification began, as in Japan, and the role of customary law was gradually taken over by codified statutory law. At the same time, for example, the codified basis for criminal law was the French Code Penal. The process of codification was not interrupted even after India gained independence in the 1950s. The legal output of this period was the first Hindu Marriage Law, the Hindu Marriage Act of 1955, which was replaced by the new regulation in 2017, and which was attempted to change in 2021.

MATRIMONIAL PRACTICES AND RELIGIOUS LAWS IN CHINESE MARRIAGE

In the middle of the 20th century, Chinese family law fundamentally changed according to the Soviet model, breaking with the regulations of the 1911 Code. Chinese marriage and the family are fundamentally entitled to the protection of the state. The parties are free to enter into a marriage based on monogamy, the essence of which is the equality of man and woman in marriage.¹⁵ The state

¹³ Jany, János, 2011, *A világ főbb jogrendszerei-A nem nyugati kultúrák*. Budapest, Akadémiai Kiadó p. 69.

¹⁴ B.K., Sharma, Hindu Law. *Far Eastern Survey*, Apr. 1956, Vol. 25, No. 4 (Apr. 1956), 50. p.

¹⁵ Minfa-Dian. Art. 1041

prohibits arranged marriage as well as forced marriage and all cases involving the contractual treatment of marriage, i.e. pecuniary interest.

Double marriages and domestic violence are also prohibited.¹⁶ „Marriage remains an intrinsic part of the life of Chinese people, permeating their life choices and consequently determining the course of their lives, being the influence of Confucianism still very strong on their society. “Society remains permeated by Confucian traditions, which place special value on the continuation of the family line and filial piety. [...] Chinese society offers scarcely any alternatives to marriage.”¹⁷

The 1980 amendment to the Marriage Act gave the husband more freedom, especially in the area of divorce. However, the method and form of the marriage were maintained.¹⁸ In 2001, the legislator carried out a reform of the marriage law: It affirmed the monogamy of marriage and the stability of the family. It prescribed the fidelity of the spouses to each other and prohibited cohabitation. In doing so, the legislator also clarified the ethical characteristics of marriage and the family.¹⁹

A. Meaningful Prerequisites for Marriage

Marriage is regulated by Minfa-Dian Book V. The marriage age in China is 22 for a man and 20 years old for a woman.²⁰ The legislation is similar to the conditions laid down in the common law countries' matrimonial laws. Similar to Japanese marriage law, the

¹⁶ *Ibid.*, Art. 1042

¹⁷ Storelli, Ilaria: *Marriage in Contemporary China and its Complexities*. In European Guanxi, Jun 28, 2021. <https://www.europeanguanxi.com/post/marriage-in-contemporary-china-and-its-complexities>

¹⁸ Bastone, Jessica: *Law and Marriage-An Examination of the Transformation in the People's Republic of China's Marriage Laws*. p. 10-11 <https://soar.suny.edu/bitstream/handle/20.500.12648/1304/fulltext.pdf?sequence=1&isAllowed=y>

¹⁹ Guo, Qingmin: *Seventy Years of Marriage and Family Law in China: Achievements, Challenges and Prospects*. In *Asian J Law Econ* 2024; 15(3): 379-409

²⁰ *Ibid.*, Art. 1047

Chinese Civil Code prohibits marriage between relatives. It is absolutely forbidden to marry in a direct line, it is possible beyond the third degree of descent in a collateral line. However, the BGB serving as a model, does not specify that marriage is prohibited up to the extent of the decline of the lineage in the collateral branch,²¹ nor does the other model, the Swiss Civil Code.²²

B. Establishment of Marriage

Chinese civil marriage, like Japanese one, does not have a ceremonial form defined by the state. The marriage is concluded when the parties personally submit the form certifying their intention to marry to the registry office, and the registry office registers it after establishing that there are no legal impediments or prerequisites for the marriage. With this entry, the marriage is established, and the wife can take the name of her husband, as well as their marital union begins.²³

The marriage can only be registered if the parties present to the registrar a document proving their place of residence, their identity card and a signed declaration that they are not married to someone else and that they are not relatives in the direct line or collateral relatives beyond the third degree of descent. The marriage registration authority examines and verifies the certificates and materials provided by the parties applying for marriage registration and checks the relevant information.

If both parties are eligible for marriage, the marriage certificate must be entered immediately in the marriage register. The marriage certificate must be issued to the parties without delay. In principle, the civil registration authority is established and maintained by the municipalities.²⁴ Before registering a marriage, the parties must appear for a health check and certify this. Its purpose is to establish

21 Bürgerliches Gesetzbuch (BGB) § 1307 Verwandtschaft

22 Schweizerisches Zivilgesetzbuch, Art. 94.

23 Minfa-Dian, Art. 1049-1050

24 Regulations on control of marriage registration 1994. Art. 5.

that the parties are fit for marriage and that healthy offspring will be born from the relationship.²⁵

C. Taoist-Confucian Approach to Marriage

A religious marriage ceremony in China is a pronounced family event in which a representative of the state is not involved. The main reason for this is that Confucianism does not require a functional priesthood, but that the head of the family himself is also the religious leader of the local community.²⁶ Since the Chinese people's democratic state is basically secularized, this can be considered natural from this point of view as well, but at the same time the Chinese state preserves its traditions significantly, so basically it does not hinder religious marriage.

Chinese people's democracy is a peculiar blend of communist-socialist ideology, within the framework of which it also fits. The traditional wedding ceremony consists of six basic elements: preparing the marriage proposal (nacai), asking for the bride's name and date of birth (wenming), for the purpose of divination, to determine whether the parties are compatible, the ceremony of the result of the divination and the sending of engagement gifts (naji), sending wedding gifts to the bride's house (nazheng), asking for the date of the wedding (qingqi), and receiving the bride in personally (qinying), and taking her to the husband's house. This list is a description of the traditional wedding, which has recently been significantly modified and simplified. Since arranged and forced marriages are prohibited by the state, the²⁷ role of the marriage mediator is negligible, although, of course, it has not completely disappeared. The marriage is preceded by an engagement, where it is customary to please the future wife with expensive gifts.

²⁵ *Ibid.* Art. 9-10

²⁶ John W., Engel, *Marriage in the People's Republic of China: Analysis of a New Law*. Journal of Marriage and Family, Nov., 1984, Vol. 46, No. 4 (Nov., 1984). p. 958. DOI: <https://doi.org/10.2307/352547>

²⁷ Meiren, meishhuo.

The color of marriage is red and gold. Today, couples at the simplified ceremony, dressed in traditional clothes, in the framework of the traditional Chinese tea ceremony, drink four times from a cup, expressing respect for Heaven and Earth, ancestors, parents and spouses. This gives rise to a religious marriage, followed by the marriage dinner.²⁸ An essential part of marriage is consummation. Another religious tradition is Buddhist marriage, which, however, takes a much simpler view of the essence of marriage. A marriage is considered a legal agreement between the parties, which does not create any religious obligations. They basically accept state civil marriage and²⁹ then give a blessing based on the Buddha's teachings, which are basically contained in the so-called Pauline canon.³⁰

MATRIMONIAL PRACTICES AND RELIGIOUS LAWS IN JAPANESE MARRIAGE

Japanese matrimonial law basically belongs to the mixed marriage system, which means that the marriage is basically contract-based, and the state does not require a marriage ceremony or a special solemnity in the case of the marriage. Modern Japanese family law breaks with the patriarchal social system established in the Meiji era, i. e. the unlimited power of the father and husband of a woman and a wife.³¹ With the change of the legal system, post-World War II

28 Cf. Muqí, Cheng: *A Comparison between Traditional Chinese and Western Marriage Culture*. Journal of Higher Education Research 2(3) June 2021. p. 135-136. DOI:10.32629/jher.v2i3.344

29 Cf. Dondhup, Yeshe: *Taboos in Tibetan Matrimonial Custom*. The Tibet Journal, Autumn/Winter 2019, Vol. 44, No. 2 (Autumn/Winter 2019). p. 81-82.

30 The Pali Canon, or Tipitaka, is the writings of the Theravada Buddhist school, written mainly in India and Sri Lanka, and containing mainly ecclesiastical regulations and philosophical guidelines.

³¹ Cf. Hendry, Joy: *Marriage in Changing Japan*. London, Rutledge, 2011. p. 24.

legislation declared that husband and wife were equal in marriage.³² In reality, however, traditional values are still alive in Japan, which meant until the mid-20th century that there were many so-called marriages in Japanese society, in³³ which those intending to marry did not meet until the wedding, and the details and property relations of the marriage were settled by an agreement between the families of the two parties.³⁴

A. Prerequisites for Marriage

Japan's family law system is unique in that it only settles the formalities and not the formal requirements in the case of marriage. In practice, this means that Japanese marriage does not consist of three phases - premarital procedure, marriage ceremony, registration - but only two, premarital procedure and birth registration. The Japanese family law does not require a solemn ceremony to celebrate a marriage, but each family organizes a marriage ceremony according to its own religious beliefs.³⁵ This is partly similar to Hindu marriage, except that the Hindu Marriage Act declares that the state accepts as marriage any religious ceremony specified in the law and does not use a state ceremony.

Book IV of the Japanese Civil Code regulates the formation and termination of marriage. Basically, the substantive prerequisites for marriage are similar to that customary in continental legal systems. In Japan, a man over 18 years of age and a woman over 16 years of age can get married. In the case of a woman, the regulation of the age of

³² Cf. Imamura, Anne E.: *The Japanese Family Faces 21st-Century Challenges*. In National Clearinghouse for United States-Japan Studies <https://fsi9-prod.s3.us-west-1.amazonaws.com/s3fs-public/family.pdf>

³³ Arranged marriage differs from forced marriage in that, in the case of the former, the woman has the right to refuse the offer, and in the case of the latter, she does not.

³⁴ Cf. Akiba, Jun'ichi-Ishikawa, Minoru, *Marriage and Divorce Regulation and Recognition in Japan*. Family Law Quarterly, Fall 1995, Vol. 29, No. 3 (Fall 1995), p. 590.

³⁵ *Ibid.*, p. 591.

marriage under the age of 18 is somewhat reminiscent of canon law rules.³⁶

A woman's consent to marry between the ages of 16 and 18 also requires the consent of the parents, but if the parents are not alive, consent is not required, so this right does not extend to the woman's ancestors.³⁷ Parental consent can be given by only one of the parents, and the parents' agreement is not required.³⁸ The Japanese Civil Code also prohibits double marriage, so those who are already married cannot enter into a new marriage. In the context of this provision, the importance of registration in the registrar's office is apparent, since if the marriage were not registered, the rules of the Japanese Civil Code would not apply.³⁹

Traditional Japanese religious marriages are registered neither by the church organization nor by the state.⁴⁰ Japanese matrimonial law also applies the legal concept of 'tempus lugendi',⁴¹ i. e. a woman whose marriage has ended for any reason cannot marry within 6 months of the end of the marital union. The purpose of this is to clearly define the family affiliation of the child that may be conceived and the identity of the father. If it turns out within 6 months that the woman is pregnant, the former husband is considered to be the father of the child, even if the woman is a widow and even if the marriage has been dissolved.⁴² If it turns out before the divorce or annulment of the marriage or the death of the husband that the woman is expecting a child, the above rules do not apply.⁴³ In the case of

36 Code Civil Japan, Art. 731.

37 Akiba, Jun'ichi-Ishikawa, Minoru, *Marriage and Divorce Regulation and Recognition in Japan*. Family Law Quarterly, Fall 1995, Vol. 29, No. 3 (Fall 1995). p. 590.

38 Code Civil Japan, Art 737. (1)-(2)

39 Code Civil Japan, Art. 732. (1)

40 Shinto, Confucian, Buddhist. Christian marriages are an exception.

41 Cf. Róbert, Kasuba, *A házasságot akadályozó semmisségi okok rendszerének összehasonlító elemzése: az olasz és a magyar házassági jog sajátosságai*. Glossa Iuridica, 2023/5-6., p. 108-109.

DOI: <https://doi.org/10.55194/GI.2023.5-6.6>

42 Imamura, Anne E., *Marriage in Japan yesterday, today and tomorrow*. Association for Asian Studies, Volume 13:1 (Spring 2008)

43 Code Civil Japan, Art. 732. (2)

relatives in the direct line and kinship up to the third degree of collateral line, marriage is prohibited, but this does not apply in the case of a family relationship established by adoption, where the adopted person can marry collateral relatives without restriction.⁴⁴ Japanese family law also includes a ban on affinity, which is a prohibition on direct relatives entering into any form of marriage. In Italian law, for example, affinity can be averted on the basis of a collateral judicial acquittal, which is not the case in Japanese law.⁴⁵

The Japanese legislation is also similar to the provisions of the Italian Civil Code in relation to affinity arising from adoption,⁴⁶ in so far as both Civil Codes prohibit marriage between the adopter and the adopted, and between the adopter's direct and collateral relatives, even if the adoption has been dissolved or terminated.⁴⁷ With regard to the person under guardianship, the adult person under guardianship is not obliged to apply for the permission of his or her guardian to enter into a marriage. Just as Hungarian law does not require the consent of the guardian in the case of a person whose legal capacity to act is limited in certain cases, but it is required in the case of a person whose capacity to act is completely limited, the difference is that under Japanese law the consent of the guardian is not required in any case.⁴⁸

B. Establishment of Marriage

As previously mentioned, in Japan, marriage does not require a solemn ceremony but takes place by registering at the civil registry office, which is regulated by special legislation. Thus, besides the Japanese Civil Code, this legislation is the one that has particular relevance to the subject. According to the regulations of Family

44 Code Civil Japan, Art. 734. (1)

45 Róbert, Kasuba, *A házasságot akadályozó semmisségi okok rendszerének összehasonlító elemzése: az olasz és a magyar házassági jog sajátosságai*. Glossa Iuridica, 2023/5-6. p. 104.

46 *Ibid.*, 111.p.

47 Code Civil Japan, Art. 736.

48 Code Civil Japan, Art. 738.

Register Act, a family register must be kept in each municipality at the registration/registration office maintained by the municipality, which contains all family-related data and into which changes must be entered. It is also entitled to issue any certificate from the family register. For the purposes of the law, a community consisting of a husband, wife and children must be considered a family.⁴⁹ The family register must record the name, date of birth of the person concerned, the reason why he or she was entered in the register, the names of the parents in the case of a natural child, the names of the adopters in the case of adoption and the document establishing it, and, in the case of marriage, the declaration of the husband and wife on the conclusion of the marriage. It is also necessary to register in this register the name that the wife will bear after her marriage.⁵⁰ It can therefore be seen that, unlike states applying continental law, this civil status register is much more complex and in fact involves the merging of several civil status registers.

If a man and a woman marry, they are obliged to declare it by means of a document issued by the civil registry office.⁵¹ Without this, their marriage will not be recognized by the state. With the announcement, a new family card must be opened in the family register, and the man and woman are removed from their original family community, forming a new family.⁵² Unless the wife takes her husband's name, and the husband already has his own page in the family register. In the case of a marriage between a Japanese citizen and a foreign citizen, a family registration page should be opened only for the Japanese party.⁵³

49 Family Register Act (Act No. 224 of 1947) Art. 6-7

50 *Ibid.*, Art. 13-14.

51 However, the law also allows oral filing if the documents supporting the filing are available.

52 *Ibid.* Art. 16 (1)-(2)

53 *Ibid.*, Art. 16. (3)

C. Shinto Approach to Marriage

Shinto ceremonies are basically very similar to Chinese ceremonies. The bride is always dressed in a white kimono, a symbol of death and mortality in Japan, symbolizing that the girl dies for herself in marriage and dedicates her life to the well-being of her husband and his new family. In the Shinto tradition, marriage has two patron gods: Rokusho Jinja Kushiinada-hime no Mikoto⁵⁴ and Susanoo no Mikoto,⁵⁵ who are the deities of dating and, according to Japanese tradition, performed the first marriage ceremony, so Shinto religious marriage developed in accordance with this ancient tradition.

Shinto priests, who conduct the ceremony and read from the sacred scriptures, are essential to the ceremony. The ceremony is usually held in one of the Shinto shrines, but it can also be held in a private house. At the beginning of the ceremony, a priestess leads the groom, the bride and the participants of the wedding to the sanctuary. Then the Shinto priest purifies the groom and the bride, then reads the sacred texts and asks for the protection of the deities for the new spouses. After that, the newlyweds drink three times from a common glass, the so-called sake,⁵⁶ and then the groom reads out his marriage promise, and the spouses exchange rings.

Then the priestess rekindles the sacred fire, and the spouses offer the Tamagushi-hairei, which is actually a bouquet of evergreens that signifies eternal fidelity.⁵⁷ Finally, the couple distributes sake among the family members as a symbol of family unity. The ceremonial form

54 Rokusho Jinja Kushiinada-hime no Mikoto, wife of the Japanese goddess Susanoo, with whom, according to tradition, the first marriage ceremony was performed. The central deity of the Gion cult, its sanctuary is the Yasaka sanctuary.

55 Susanoo no Mikoto is the brother of the sun goddess Amaterasu Omikami, a versatile deity who is responsible for agriculture, storms and harvesting, among other things. One of the main deities of the Gion cult.

56 This is a traditional Japanese rice brandy made by fermentation.

57 The festive branch of the evergreen tree is dedicated to the Kami. Representatives of the escorts take the Tamagushi branch one by one and rotate it clockwise so that the base of the branch faces the Kami (the altar). The representative then bows deeply twice, applauds twice, and then bows deeply again.

described here is, of course, only a model formula, which is used in some sanctuaries, in other sanctuaries other forms can be used, or even some elements can be omitted. If the marriage takes place not in the sanctuary, but in a private house, then the ceremony may be simplified to the common sake drinking, which is the central element of the marriage.⁵⁸

MATRIMONIAL PRACTICES AND RELIGIOUS LAWS IN INDIAN MARRIAGE

After India gained independence in 1947 and the proclamation of the republic in 1950, it was also necessary to settle legal relations in order to change the laws created under colonialism that transformed the ancient Hindu legal system, although on paper they ensured its protection.⁵⁹ The first marriage law was the Hindu Marriage Act 1955, which settled Hindu marriage relations entirely but in a peculiar way. The legislation applies throughout India, with the exception for the states of Jammu and Kashmir. These two are exceptions because the territories of the two states are inhabited by a majority Muslim population, who are subject to the rules of Shari'ah law. The law also applies to persons of any branch of the Hindu religion, whether Buddhist, Jewish or Christian.⁶⁰ The law permits the use of any customary form of marriage which has been consistently and uniformly observed for a long period of time and which has acquired the force of *res judicata* among Hindus in any local territory, tribe, community, group or family, provided that they do not violate public order.⁶¹

58 <https://rokusho.jp/en/index.php/wedding/>

59 Kishwar, Madhu, *Codified Hindu Law: Myth and Reality*. In *Economic and Political Weekly*, Aug. 13, 1994, Vol. 29, No. 33 (Aug. 13, 1994). p. 2146.

60 The Indian Christian Marriage Act 1872 specifically regulated Christian marriages, but it is no longer in force.

61 The Hindu Marriage Act of 1955. Art. 3(a)

A. Prerequisites for Marriage

The Hindu Marriage Act, like other codified marriage laws, sets out the conditions under which a marriage may be concluded. Since polygamy is acceptable in Hindu society, taking this aspect into account, a marriage can be concluded if neither of the parties has conjugal union with the other at the same time, i. e. either is single or unmarried, or is widowed, or the marriage has been dissolved.⁶² At the time of marriage, both parties must be able to act, that is, the mental disorder of either one or both parties makes marriage impossible.

The law does not address the issue of incapacity or temporary mental disorder. If a person is able to consent to marriage but suffers from a mental or physical illness that renders him or her incapable of procreating children, he or she cannot enter into a valid marriage. As regards the age of marriage, a man may not marry before the age of 21 and a woman before the age of 18. The provision of the legislation aims to prevent child marriage, which is a practice in India. Marriage between direct relatives is prohibited, these are persons whose father and mother are the same, but the law introduces a new concept of the degree of kinship of the so-called "blood of the womb", which means that the siblings, although descended from the same mother, but from different fathers, is in fact a legal category of half-siblings.⁶³

The law also uses the terms 'whole-blooded' and 'half-blooded' to define degrees of kinship. Full-blooded persons are related if they are descended from the ancestors of the same mother, while half-blooded relatives are related if they are descended from the common ancestor of their father but have different mothers. This division seems very complicated at first reading, but it actually covers the degrees of kinship known in continental law, taking into account polygamy.

⁶² *Ibid.* Art. 5(i)

⁶³ *Ibid.* Art. 3(d)

The legislation also considers the situation where one party is a lineal ancestor of the other to be a prohibited relationship; or if one of them was the wife or husband of a direct ascendant or descendant of the other; or if one of them was the wife of his brother, of the brother of the father or of the mother, of the brother of the grandfather or of the grandmother; or if they are both uncles and nieces, aunts and nephews, or children of the two brothers.⁶⁴ Special mention should be made of 'sapinda' marriage, which corresponds to the obstacle of direct in-laws, since marriage between such relatives can be valid only beyond the third degree between relatives in the ascending line and is therefore, in fact, prohibited.⁶⁵

In this regard, it is worth mentioning the judgment of the Delhi Supreme Court in 2024 in the case *Neetu Grover v. Union of India & Ors*, according to which the state has the right to regulate who can marry each other and, on the other hand, the parties have not sufficiently proven that 'sapinda' marriage is an integral part of Hindu customary law, so they cannot raise a constitutional objection because the registration of such marriage was refused by the authority based on the Marriage Act of 1955.⁶⁶

B. The Marriage Ceremony

The Hindu Marriage Act 1955, like the Chinese and Japanese legislation, does not define a form of civil marriage, but rather accepts religious ceremonies that can be used to marry in the territory of India.⁶⁷ However, it establishes some basic conditions regarding these ceremonies. Marriage may be contracted according to a ceremony accepted by either party, and the marriage thus contracted will in any case gain recognition under civil law.⁶⁸ In particular, the law

⁶⁴ *Ibid.* Art. 3(g)

⁶⁵ *Ibid.* Art. 5(v)

⁶⁶ Cf. New Delhi High Court, W.P.(C) 910/2024 & CM APPL. 3776/2024. <https://indiankanoon.org/doc/165310576/>

⁶⁷ The Hindu Marriage Act of 1955. Art. 7

⁶⁸ Hindu Marriage Act, Art. 7 (1)-(2)

highlights the '*Saptapadi*' ceremony, or the ceremony of the seven steps, which originated in Vedic times, in which case the groom and the bride move around the sacred fire or towards the sacred fire seven times. At each step, the two sides make different vows. Then they ask for Vishnu's⁶⁹ and Lakshmi's⁷⁰ blessings.

Marriage is a sacred and special contract for Hindus, for which the blessing of the gods must be sought.⁷¹ With the seventh step, marriage is established. This is the most well-known and accepted form of Hindu marriage, practiced equally in all provinces of India. Marriages concluded in this way must be registered with the civil registry office in order to obtain state recognition.⁷² If the parties violate this rule, they can be fined up to 25 rupees,⁷³ but failure to register has no effect on the validity of the marriage.⁷⁴

C. The Special Marriage Act

There is also a special marriage law in the Indian legal system, which entered into force one year earlier than the general legislation and which provides foreigners with the opportunity to marry in the registrar's office.⁷⁵ According to the law, the pre-marriage procedure is similar to that known in continental law, and the parties must prove that there are no obstacles to their marriage based on their own law,

69 In Hinduism, Ishvara is a form of the divine trinity (trimurti). He is the maintainer and protector of material creation. Its followers are the vaishnavas, who say that it is the supreme god, and some of its many names have this meaning: "He who permeates everything penetrates everything", i.e. Brahman, the embodiment of ultimate reality.

70 Also known as Shri, the Hindu goddess, the goddess of wealth and good fortune, she distributes the necessary goods among people. One of the manifestations of Mahadevi is Vishnu's wife, Shakti. Vishnu is the maintainer in Hinduism, material and spiritual well-being is necessary for the maintenance of the world, therefore he is associated with Lakshmi Vishnu.

71 Bedi, Harsimaran Kaur: *The concept of marriage under Hindu law and its changing dimensions*. In ILI Law Review, Winter Issue 2022. p. 112.

72 Hindu Marriage Act 1955, Art. 8 (1)-(2) and (4)

73 In 1955, this was a significant amount, currently 25 Indian rupees would be equal to 0,27 USD or 0,21 GBP.

74 Hindu Marriage Act 1955, Art. 8 (5)

75 Saxena, Poonam Pradhan, *Matrimonial Law and Gender Justice*. Journal of the Indian Law Institute, July-December 2003, Vol. 45, No. 3/4. p. 338.

but they do not have to comply with the rules of the Indian Marriage Act.⁷⁶

Thus, the legislation establishes some prerequisites for the existence of which a marriage cannot be validly concluded. These are: marriage is prohibited between full-blooded, half-blooded and womb-blooded⁷⁷ persons, between direct relatives and half-siblings, and, in the case of relatives by adoption, between the adopter and his or her relatives and the adopted person.⁷⁸ Such a marriage may not be contracted before all state officials, but it is the right of the state to appoint some officials for the whole territory of a province or of the whole country a few officials authorized to assist in the celebration of the marriage.⁷⁹

Prerequisites for marriage: neither party has an existing marriage with another party, one of the parties is unable to give consent due to mental disorder, i.e. completely incapacitated, the party suffers from a mental or physical disorder, which renders him unfit to procreate, the man is 20 years of age and the woman is 18 years of age. Indian law, unlike Hungarian, Japanese and continental law, does not recognize marriages contracted by persons who are incapacitated due to their age, so the parties may not marry between the ages of 16-18 and 16-20.⁸⁰

The marriage must be registered using the form provided for by law with the official authorized to register the marriage, who will examine whether the conditions are met. The condition for filing is that one of the parties must reside in the place where the marriage is to be contracted for a continuous period of at least 30 days prior to the

76 See Special Hindu Marriage Act 1954. Art. 4-7

77 Two persons are related by the blood of the womb if they are descended from common ancestors but from different husbands.

78 *Ibid.* Art. 2

79 *Ibid.* Art. 3 (1)-(2)

80 Naturally, this is aimed at preventing child marriages in accordance with Indian religious practice and is in line with the Convention on the Protection of Children adopted by the United Nations in 1989. However, since religious marriage can be valid without state recognition, not everyone necessarily follows the rules.

marriage.⁸¹ The proclamation of marriage is also mandatory, and anyone can object to the marriage within 30 days if they encounter any of the above-mentioned obstacles.⁸²

This solution is similar to the proclamation known from continental legal systems, e.g. Italian, Spanish or English matrimonial law regulates it in a similar way. The marriage may be contracted either in the office of the marriage official or at a reasonable distance from it, in the presence of the official, but according to any ceremony. This should be understood to mean that it may actually be a religious ceremony, e. g. an Anglican couple, for whom only a marriage with an Anglican religious ceremony confers civil validity under English law, may marry in an Anglican church in India with the presence of an Indian state official, although he does not actively participate in the ceremony.

This marriage with the Anglican religious rite will also be valid under Indian law in India. This may seem very complicated when written, but it is nothing more than a case of the application of the optional civil marriage system. In this case, the presence of three witnesses is also required for the marriage.⁸³ After the marriage, the official enters the entered marriage in the register of married couples, which is signed by the parties and witnesses.⁸⁴

D. The Hindu Religious Marriage

„Customary marriages are accepted under Hindu law because there are many Hindu tribes, sect, groups and families who do not follow Hindu marriage practices but follow their own customary ceremonies while entering marriage and have been accepted by Hindu text writers in different parts of India like Lingyats, Sikhs, Gosavins, Santals etc.” - writes Bedi in his already quoted study.⁸⁵ The

⁸¹ Special Hindu Marriage Act 1954. Art. 5

⁸² *Ibid.* Art. 7

⁸³ *Ibid.* Art. 12

⁸⁴ *Ibid.*, Art. 13

⁸⁵ Op.cit. Bedi, 2022. p.113

author have already mentioned a kind of religious rite, the *Saptapadi*, which, however, is the only one that appears in the Hindu codified law, so the author can regard it as an official form.

Another important religious marriage ceremony is the 'panigrahana',⁸⁶ the grasping of the bride's hand. In this ceremony, the groom takes the bride's hand for the first time, and their clothes are knotted together to symbolize that their lives are bound together forever. The author adds that a Hindu wedding consists of several moments, one of which is the *Saptapadi* and another is the panigrahana, but undoubtedly the former is the most important and irrevocable.

In the case of the *Saptapadi*, as the author have already mentioned, the bridegroom takes seven steps with the bride around the fire or towards the bride, and at the same time he says various blessings. The seven steps:

1. 'Be in one step (*i. e.* be one who has taken one step forward) for life'. *Vishnu* bless you.;
2. 'One step for food',⁸⁷ followed by *visnus tva nayatu*: 'Visnu protect you.';
3. 'Visnu raise you up.';
4. 'May it be the fourth step for our well-being';
5. 'Be the fifth step for offspring';
6. 'Be the sixth step for common years';
7. "Let it be the seventh step for our friendship", *i. e.* "So be faithful to me. Let us beget many boys who can reach old age." The bride stops at the seventh step, then the groom says, "With the seven steps we became partners."⁸⁸

⁸⁶ Bhaduri, Kisor Chira, *The marital system in the days of the Vedas*. Proceedings of the Indian History Congress, 1991, Vol. 52 (1991) p. 215 p.

⁸⁷ Prayer "Visnu bless you"

⁸⁸ Patyal, Hukum Chand-Patyal, Hukum Chand, *The saptapadi rite*. Bulletin of the Deccan College Post-Graduate and Research Institute, MARCH 1976, Vol. 35, No. 3/4 (MARCH 1976). pp. 105-109.

By saying the last sentence, the marriage is considered to have been concluded, which is also final for the state. By entering into marriage, the woman is no longer part of her own family, but is integrated into her husband's⁸⁹ family, which in fact produces a result similar to the Manus marriage known in Roman law, with the difference that the woman's independence is not completely eliminated.⁹⁰ The same appeared in the private law of Hungarian legal history, as the woman became a member of her husband's family and was separated from her own family.⁹¹

CONCLUSION

The way in which marriage is contracted varies widely and differs greatly between continents and nations. In this research the author presented the matrimonial legal systems of three states that may seem exotic to the readers, who are not familiar with marriage law, but if we carefully observe the functioning of these legal systems, it can be seen that although there are significant differences, these legal systems do not differ much in their basic principles from the systems already known by lawyers. China and Japan have significant similarities, as the Japanese legal system adopted Chinese ideas, but they differ significantly in terms of religious marriages. India is a diverse society, where different legal ideas and religions are significantly mixed, so it was not an easy task for the legislator to create a uniform law to regulate marriages, but it can be said that it succeeded precisely because of the supplementary nature of the legal regulation. The comparison of the three legal systems was possible

89 Cf. Saxena, Poonam Pradhan, *Matrimonial Law and Gender Justice*. Journal of the Indian Law Institute, July-December 2003, Vol. 45, No. 3/4. p. 336. Family Law Special Issue (July-December 2003),

90 Cf. Imre, Molnár-Éva, Jakab, *Római jog*. Szeged, Diligens Bt. 2001. 156. p.

91 Mária, Homoki-Nagy, *A magyar magánjog történetének vázlata 1848-ig*. Szeged, JATEPress, 2010. p. 32.

because we are talking about legal systems based on basically the same philosophical principles of law, and therefore the basic systems of the three legal systems are similar. Thus, the author was able to present both the advantages and disadvantages of the three legal systems in a uniform manner.

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