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South Africa celebrates Youth Day on 16 June. As youth are responsible for taking the legacy of humanity forward the focus of this issue is on Marriage.

Vedic literature illuminates the sanctity of the *Vivaah Sankar*. The choice of a partner, the decision to marry or not, to have children or not rests with young adults. Weddings are events that bond families and communities.

Separation and divorce with the irretrievable breakdown of marriage is a reality. There is a clash between modern and traditional values. Current social practices, shaped largely through media and broadcast mediums, influence the structure, form, and content of weddings.

We thank Dr Satish Prakash the Founder-Acharya of the Maharshi Dayananda Gurukula in New York, United States of America & Guyana, South America for the in-depth research on the *Vivaah Sanskaar*. Our feature article presents his thought provoking points.

The discussion presented on social practices associated with weddings was developed from interviews with our Vedic Priests. Sincere thanks to them for sharing their views with us.

We are grateful for articles on the reforms in the Marriage Act and on the Maintenance Act authored by Magistrate Chetna Singh.

In this issue we share comments received from readers on the content for our March, April, and May issues. Thank you for the kind and wise words of appreciation and encouragement.

67 years ago on Sunday 26 June 1955 at Kliptown, Soweto about 3 000 people gathered at the Congress of the People. They adopted the Freedom Charter, the founding document of a free South Africa. We thank the volunteers of the Freedom Charter campaign who painstakingly collected the demands of South Africans. The Freedom Charter forms the basis of the Bill of Rights in the South African Constitution promulgated in 1996.

Veda Jyoti Editorial Committee:

Arthi Shanand, Karuna Mohan, Kirun Satgoor, Ressma Rambaros, Shoba Singh, Sudhira Sham, Usha Debipersad.



ओम् तां पूषञ्छिवतमामेरयस्व यस्यां बीजं मनुष्या वपन्ति

Aum tāna pūṣñchivatamāmerayasva yasyāna bījaṅ manuṣyā vapanti.

Rig Veda 10.85.37

Meaning: It is a miracle of divine justice that in the heart of every youth reigns a supreme conviction that his wife will receive and welcome his loving overtures.

Discussion: Relationships, marriages, and family form the core of every community. The Rig Veda 10.85.37 tells us that humans connect with each other through the wonder of divine fairness.

Humans are programmed to look for love, companionship, and togetherness. This search becomes the basis on which two people commit to marriage and shape the structure of a family.

The belief that loving overtures will be reciprocated is the basis for a life-long commitment. It is the basis of trust. It is the thread that makes a relationship cohere. It spurs the couple to make a public commitment.

To give form and structure to the association, society develops systems to cover legalities and financial security to protect the results and offspring of the association and to ensure fairness.

Marriages and families are societal institutions practiced differently in various cultures across the world. Families and marriages, like other institutions, adapt to social change.

In South Africa families are being reshaped to be single headed households run by women, without the concomitant cultural power being passed on to women.

Globally the acceptance of same sex marriages is shaping the 21st century. Here the love, companionship and togetherness are being reshaped from the dichotomy of male and female being attracted to each other to people of the same sex entering relationships.

Conventions and norms in society will adapt over time to accommodate change. Youth though will continue to attract each other, make a commitment to be joined in a union through marriage, be responsible for a family and thereby contribute to the growth of society.



ओम् जाया पत्ये मधुमतीं वाचं वदतु शन्तिवाम्

Aum jāyā patye madhumatīm vācham vadatu shantivām.

Atharva Veda 3.30.2

Meaning: May spouses ever converse in sweet loving tones!

Discussion: Keeping the bonds created by marriage intact requires commitment and love. The couple needs to nurture self-respect and respect for the other to be genuinely happy and successful. A marriage based on love and respect does not just happen. Both spouses must do their part. Speaking in loving tones is one of the foundations of a successful marriage.

Setting and maintaining healthy boundaries is a pivotal aspect of what keeps couples together. When healthy boundaries are set, and these are respected it builds trust, mutual respect, intimacy, and communication in the relationship.

Families are universally recognised as an important source of support and security. The relationship between the couple sets the tone for the way children in a family learn. This relationship provides safe and stable environments which nurture the growth and development of each member throughout the various stages of life, from birth to old age.

Message from the President

Namaste Dear Readers

This issue of the Veda Jyoti discusses one of the most important Sanskars (Sacraments) in the life of an individual – The Vivāḥ Sanskāra or the Sacrament of Marriage.

A couple enter marriage of their own volition for the sole purpose of living together, having children, and starting a family. Their responsibilities include caring for and nurturing their children and the extended family which includes their parents and siblings.

The rights, responsibilities and practices revealed to the ancient Rishis in the Vedas has made Hinduism relevant through the ages.

The Yajur Veda speaks of the womb as the birthplace of the Divine. The dignity and worth of the child flows from the fact that he or she embodies the infinite Divine.

As Hindus, we understand that God is the Creator of all, thereby loving God by loving and valuing His creation. The value we place on a child is only enhanced if we practise and nurture that which nurtures and helps the child progress and flourish. The Hindu teaching about the divine value of the child must find expression in work dedicated to the happiness of the child in society.

The first three Sanskāras after marriage are the pre-natal sanskāras wherein the parents undertake to contribute to maintaining a strong and healthy foetus, asking God to bless them with a healthy child at the end of ten lunar months. These three sanskāras ensure that the child has a Right to Life.

Thereafter when the child is born it has a right to an identity which is fulfilled in Hinduism by the Nāmkarana Sanskāra or the Naming Ceremony.

The child has a right to a family which offers it protection from harm, love and care, nourishment, sanitation, and good health.

The Upanayan Sanskāra and the Vedaarambh Sanskāra introduce the child to education, thus fulfilling its Right to an Education.

Children have a right to freedom of thought which enables them to express themselves, and parents are compelled to listen to them and to guide them. At the same time they have access to information. They have a right to receive and transmit information via the internet, radio, TV, phone, books etc. Adults need to ensure that the content is not harmful. Children have a Right to the arts. Cultural and creative works should represent children of all backgrounds.

When we celebrate Krishna's childhood and his pranks with joy, we must be awakened to the suffering of millions of children all over the world who have no opportunities to experience the joys of childhood, as many of them are exposed prematurely to the harsh realities of the working world through child labour.

It is incumbent upon all of us to work towards eradication of sexual exploitation, malnourishment, illiteracy, and abuse.



The Significance of the Vedic Marriage – the Vivaah Sanskaar

To appreciate the significance of *Vivaah Sanskaar* we need to understand the Vedic doctrines. Marriage or a union of two people has been a norm for centuries and is the cornerstone of the social institution - the family.

The Vedic doctrines advocate that marriage is a religious ceremony, a ritual associated with the starting point in household life, which brings into its wake newer phases of duties to be jointly discharged by husband and wife.



The Code of Duties relating to the householder laid down by Rishi Dayananda and all the earlier Rishis who wrote the *Dharma Shaastras*,¹ bear evidence that wedded life is one of the spiritual disciplines in which the union between the two partners attests to an extra ordinary state of realisation.

Hindu ethics regards men and women not only as members of human race or society, but also as forming a necessary part of the cosmic whole, with which they are explicitly and implicitly related.

The wedding ceremony binds two souls to form one composite whole and paves the way for the realisation of this metaphysical unity.

The common share of duties involving two persons who have their destiny joined together through wedlock leads them onward and tends to actuate the feelings of unity, in which glimmers the consciousness of universal unity.

¹ Treatises on *Dharma*

Marriage is therefore one of the most essential *Sanskaars*. Marriage is the institution which initiates entry into the householder's stage of life for the discharge of several civic and religious duties, including the five daily duties.² Tradition even goes as far as to say that a person repays the indebtedness, he owes his parents by procreating and bringing up a child. In fact, it further states, a child born in consecrated wedded life is a religious asset.

Thus, to create progeny and to execute *Dharma* is the cherished goal of marriage as conceptualized in *Smriti* Literature. It is primarily because of this concept that Rishi Dayananda considers the Householder Stage to be the most excellent. His view was that married life is the pivot upon which the entire system of organized human community revolves and that everything that concerns life is dependent on this stage of life. If this Stage of Married Life did not exist, humans could not have been propagated, and consequently, the Stages of Studentship, Retirement, and Renunciation could not be called into existence.

There are several words used in the vast range of Vedic and post Vedic literature to convey the sense of marriage. These words – *Vivaaha*, *Parinaya*, *Upayama*, – clarify the nature and definition of Marriage.

The word *Vivaaha* is derived from the root *Vah* to carry, yielding the meaning of carrying or escorting the bride for the purpose of marital fulfilment.

Udvaaha is similarly derived to mean carrying or escorting the bride from her parent's house. *Vadhoo*, derived from the same root, means a bride, she who is escorted from her parent's house to her husband's house.



Parinaya conveys the sense of the wedding couple circumambulating the holy ritual fire, while *Upayama*

² called *Panch Mahaa Yajñas*. These duties are service to God, Atmosphere, Parents, Guests, and Animals.

yields the sense of accepting as one's own or accepting the girl by bringing her near the groom.

Further, *Paani-grahana* has a reference to the rite wherein the groom takes hold of the bride's hand, symbolically accepting her as his wife and thereby accepting her full rights, privileges, and responsibilities.

The definition of marriage offered by Rishi Dayananda goes far beyond what the forgoing words seek to convey. Maharishi Dayanand's definition reveals the deep concern he cherished for sexual restraint and spiritual discipline to govern this relationship of two souls brought into one.

Vivaaha, for him, refers to the sacred bond that two people have brought about for themselves, after having practiced a life of studentship based on the principles of self-control, and after having ascertained the compatibility of their respective natural tendencies. This bond, meant to be inseparable, has its primary purpose in the procreation of progeny, and in the fulfilment of duties as delineated by the *Varnaashram* system.



The fulfilment of these obligations of life constitutes an all-important element of the life of a householder. Marriage is an induction of the wife into the husband's home. There, both he and she are called upon to jointly discharge functions that relate to a broad spectrum extending from God to every living creature of world.

Humans are cosmic beings, integrally bound up in an eternal bond of relation with others, whether direct or not. For this reason, no part of the householder's duty is to be accounted for in terms of their selfish efficiency.

To give and not to seek anything in return becomes the householder's prime motivation in life. One sees such a motivation becoming most manifest when the

householder practices the five great daily duties called *Panch Mahaa Yajña*.

The ideals enunciated by Dayananda in his *Satyarth Prakaash* for the selection of the two partners contracting a marriage are unheard of in the complete range of *Smriti* literature. They are his own creation and constitute a unique contribution towards certifying that after marriage, the two partners can enjoy maximum bliss. He enjoins that when a boy and a girl attain marriageable age compatibility for marriage needs to be ascertained.

The final decision about marriage should be left to the two persons concerned. To facilitate this mutual consent, they should be allowed to see each other and converse in the presence of the teachers.³ The Rishi expressly advises against two potential life-partners seeing each other in secrecy before marriage, because such meeting between young people may lead to undesirable consequences.⁴

As soon as the two persons agree to be married, they should start eating healthily to build healthy bodies. Their bodies might have become quite weakened through the rigors of studentship. Strong bodies are important for having strong offspring. Also, pre-nuptial chastity⁵ powerfully influences superior quality in the offspring.⁶ Rishi Dayananda, in placing emphasis on pre-nuptial chastity, has never shown himself as taking a partial view in demanding chastity from females only. He has placed equal emphasis on the preservation of virginity in females and seminal fluid in males.

In the *Sanskaar Vidhi*, Rishi Dayananda has brought together parts of principally three household treatises the *Grihya Sutras* – the *Paaraskar*, *Aashva-laayan* and *Gobhil* – to make up the Wedding Rites.

A study would reveal that there is nothing of significant importance that Rishi Dayananda has added on his own. The Wedding Rites in the *Sanskaar Vidhi* are long and cumbersome, unlike the brevity that one perceives in the rites of other *Sanskaars*.

In fact, an observation of modern-day wedding practices would reveal that not all the actions the Swami has ordained as Wedding Rites in the *Sanskaar Vidhi* is conducted. However, compared to the extraordinary number of actions prescribed in Medieval and other Wedding Manuals, one cannot doubt that the Rishi has indeed simplified and shortened the Wedding Rites in his Manual.

³ *Satyarth Prakaash*, p. 105

⁴ *Ibid*, p. 105

⁵ called *Brahmacharya*

⁶ *Satyarth Prakaash*, p. 106

From the Vedic doctrine to the Arya Samaj tradition, the premise is that the marital union is protected by spiritual powers. For this reason, a marital union is indissoluble and sacramental in nature. The binding forces of legal validity become further strengthened through supernatural sanction derived from a solemn, publicly celebrated and spiritually revered ceremony, in which Vedic Mantras are recited.

These Mantras contain vows and incantations to God and to the forces of Nature. Rishi Manu attaches tremendous importance to the recitation of Mantras and the performance of various rites connected with them. The marital contract, says Manu, is known by the learned to be complete and irrevocable on the completion of the *Ceremony of Seven Steps*.⁷

Vashishth⁸ Muni proceeds a step further to declare that a marriage without the pronouncement of Mantras is to be treated as devoid of any validity. Rishi Dayananda does not make any direct reference to the importance of reciting Mantras. He has, however, stated in his *Satyarth Prakaash*, that on the day of the marriage the pair shall undergo the Wedding Sacrament contained in his *Sanskaar Vidhi*, in the presence of learned people. These ceremonies are performed with the recitation of Vedic Mantras.

The various Mantras, contained in the *Sanskaar Vidhi*, recited by the bride, the groom and the other parties concerned with the marriage rites, reveal some of the vital social implications underlying the Vedic view of Marriage.



The Vedic Mantras repeat and reiterate the fundamental ideals of Marriage. To fulfil these ideals, the two are required to pledge themselves together. Socially, as well as personally, both the husband and the wife are

conceived as equal, having equally essential functions and status.

The two are asked to start their after-marriage career as joint keepers of their home. They are exhorted to strive their best to fulfil their marriage vows of not failing each other while they pursue their aims.⁹ In their home, the husband and the wife possess rights, obligations, and status consistent with their distinct nature and capacity. Respecting and living by these rights, obligations and status is crucial to the proper nurture of the family, its traditions, and its culture.



While it is a fact that judicious choice of one's partner is important for determining the conditions that lead to fulfilment in married life, one cannot underestimate the role other factors do play to ensure such a fulfilment. What is essentially required for happiness in wedded life is the mental attitude that each of the two adopts vis-à-vis the other.

Rishi Dayananda insists that the two must realise that neither is independent of the other, for which reason they should treat each other with due love and consult each other on all matters. The approach to various issues should be such as not to magnify minor differences. They

⁷ *Manu Smriti* 8:227. This Ceremony is called *Sapta Padee*

⁸ *Vashishth Dharma Sutra* 17:72

⁹ These aims are *Dharma*, *Arth*, and *Kaama* – Religious Virtue, Wealth, and Enjoyment.

should be willing to give and take, to seek harmony and to adapt to situations as they present themselves.

The wife is as much the head of household, as the husband. The wife, asserts Rishi Dayananda, should, together with the husband manage the household. Each of them is repeatedly reminded to regard the other as his or her indispensable complement for the fulfilment of various social and domestic obligations.¹⁰

Although the family began in its earliest origins as a reproductive or biological association, it has developed over the centuries into a primary social unit of the highest importance for humanity.

Western sociologists are of the firm opinion that of all the organizations, large and small, which society unfolds, none replace the role of the family in the intensity of its sociological significance.¹¹



Humans are socialised and this begins in the family. Values, social traits, and skills are products of socialisation which occurs through association and communication. Family is primarily the agency in a human being's 'cultural conditioning.' It provides us with the earliest behaviour patterns and standards of conduct.

From this, one can gather that the earliest basic traits of the personality of the individual are formed in the family, which transmits a cultural heritage to him and thus maintains a cultural continuity between the individual and his society, and indeed between one generation and another. It is indeed the most effective link of cultural adjustment between them.

In addition to being important from a socio-psychological point of view, the family as an institution, performs several other functions. Particularly important among

these is regulating and disciplining the sex impulse and giving it stability, durability, and respectability.

Marriage and Family are the means used by society to control promiscuous expression of sex and dissipation of man's energy. In the Family, this energy is directed and used in many other useful channels, without at the same time, suppressing the sex urge found in every normal human being.

This is an opinion shared not only by Western sociologists and psychologists, but also by those of the East as well. Rishi Dayananda's views are the same. He recommends marriage and family life for all those who cannot endure the rigors of life. In fact, for such persons, Marriage and Family life are a necessity.¹²

But Dayananda does not stop here. He adds a new dimension to the purpose of family life by enumerating a function unheard of in western sociology.

Family life, says the Rishi, is meant to provide man with not only the means of giving birth to progeny and training them to be responsible citizens, but also with those other means whereby he can ensure both mundane and supra-mundane bliss for himself.¹³

The acquisition of this two-fold bliss would demand of him the execution of certain types of actions. Family Life provides him the scope for the performance of these actions which include doing good to others,¹⁴ communing with God,¹⁵ and resolutely following the dictates of Truth.¹⁶

To elaborate on these disciplines Dayananda wrote the chapter of the *Sanskaar Vidhi* titled *Griha Aashram*.

¹⁰ Satyarth Prakaash, pp. 124, 125

¹¹ Mclver And Page, p.240

¹² Satyarth Prakaash, pp. 130, 133

¹³ Sanskaar Vidhi, p. 234

¹⁴ called *Paro'pkaar*

¹⁵ called *Eeshwar Upaas-naa*

¹⁶ called *Satya Dharma*

Social Conventions are Changing

One fifth of the 21st century has passed. Many are struggling to adapt to the swift changes that are taking place in the world. Not only has technology bypassed their skills, but the new wave of 21st century morality has also swept them off their feet.

Although high levels of modern education have raised a generation of forward thinkers, religious practices have been replaced with easy-to-follow programmes. The fallout is a neglect of those practices that traditionally build character and keep one's morals on an even keel. A number of these changes to practices are linked to the Hindu wedding ceremony.

Traditionally, the wedding was arranged, organised, and paid for by the parents of the bride and the groom who made this a family affair where all members of the extended family were involved. In recent times the bride and groom are no longer simply passive participants in the ceremony. They now fall in love, select their partners, organise, and pay for the wedding themselves.

In keeping with modern, Western orientated lifestyle they have included practices that are foreign to the Hindu wedding. The emphasis is now on material aspects such as the venue, décor, meals, clothing, and entertainment rather than the sacred ceremony.



With increasing incomes weddings have become an opulent display of conspicuous consumption. This has increased competition in society and has created and maintained jobs. While those who have the means carry this off with ease, many who cannot afford it find themselves in additional debt attempting to also display their ability and keep to the new standards.

Modern society has also witnessed the phenomenon of premarital sexual relations. Initially the community witnessed teenage pregnancies and today live-in relationships between young people is fast becoming the norm. As society progresses social and cultural practices evolve and change. In this process care must be taken to ensure that the core values and sanctity of Vedic Sanskaars are not eroded.

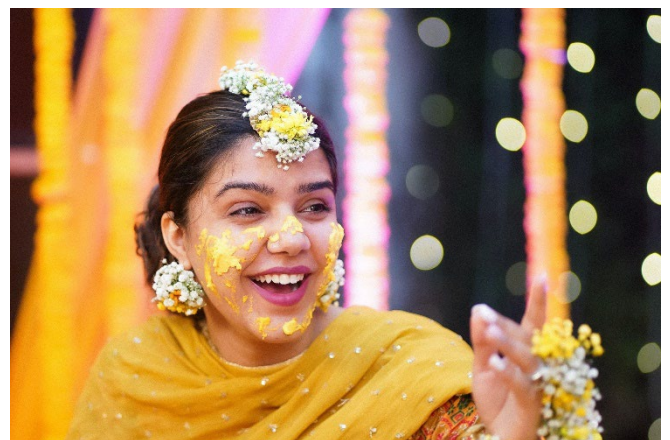
Priests interviewed for the article observed that many marriages break down because the couple do not fully understand or accept how important the marriage vows are and what changes they must make in their lives to fulfil their vows.

Some of the priests noted that the sacredness of the ceremony was compromised by the inclusion of non-vegetarian food and alcohol which is strictly forbidden among Hindus. Others were not happy with the emphasis on Bollywood style weddings, or some obscure practice being highlighted because it was observed in some magazine, TV show, movie and was thought to be "cool".

Another point of contention was the serving of meals or snacks during the ceremony which the priests felt again intruded on the sanctity of the religious ceremony.

In the past weddings and memories were captured through photographs and later videos. Today, drones are employed to capture every moment.

There is a tendency of the modern bridal couple to want the ceremony to be shortened to allow for entertainment or some other activity not essential to the wedding ceremony. Some did not want the application of hurdee because it was not attractive, or it damaged the expensive make-up and hairdo.



The significance of this cultural practice, the transition from *Brahmachari* to *Grihasth Ashram* and all the implications thereof, is overlooked. The sermon on the

ritual explains to the bride and the groom individually the responsibilities they must shoulder when they leave the one ashram and enter the next. "Hurdee ceremony" is a social practice which bonds a family and is a celebration. In recent times there has been an addition of sangeet, where the family is able to enjoy the celebration courtesy of the Bollywood film industry. In the past the entertainment was a local band and folk songs, drama, and dance and sometimes the screening of a film.

While many of the superficial factors are easily remedied by the priest "laying down the law" and forcing the couple to separate the fun and celebratory aspects from the sacred aspects of the wedding, the real problem is one of breakdown of marriages soon after the wedding. This is due to an unwillingness or inability to translate the vows into the daily lifestyle.

What is needed now is a shift of emphasis to the sacred aspects of the ceremony which focus on integrity, honesty, trust, humility, and respect, not just for the moment of the taking of the vows but for the rest of the couple's lives together. This can be introduced to couples intending to marry in the form of pre-nuptial counselling by the priest. Equally important is post-marital counselling that would help couples negotiate the rough patches they will inevitably experience.

The Arya Samaj South Africa has led the path in training and developing women as priests. It is poised to focus on supporting young people to understand the values of the Vivaah Sanskaar and the responsibilities of the young couples entering the stage of householder.

A series of public lectures "Back to the Vedas" is organised monthly to share the messages on the Vedas.

On 15 June 2022 7pm to 8pm (GMT+2) the focus of the lecture will be on "The Vedic Marriage".

Join in the conversation and share your views:

<https://zoom.us/j/98248112922?pwd=bEhhTXdwcGgyd0Fsb0QzUTRnVXk5UT09>

Meeting ID: 982 4811 2922

Passcode: back2vedas

One Ring to Equally Benefit them All

HAVE WE FINALLY FOUND THE ELIXIR IN THE NEW FRAMEWORK ON MARRIAGES?

In South Africa prior to 1994, the solemnization of a marriage union, a contract usually reserved between two consenting individuals, was placed into jeopardy by the prevailing apartheid laws of the time. The Prohibition of Mixed Marriages Act 55 of 1949 was an apartheid law that prohibited marriages between "whites" and "non-whites."

Marriage unions were permitted between couples of the opposite sex and were regulated by either the Marriage Act 25 of 1961 ("Marriage Act") or the Black Administration Act 38 of 1927, but again, this was dependent upon the couple's race group.

There were no laws which permitted the solemnization of a union between same-sex couples.



In as far as the patrimonial consequences of marriage were concerned, the Sanskrit saying "*Na stri swatantramarhati-Swatrantam Na Kachit Striyah*" meant that Indian women were unfit for any independent existence. A woman was considered less than fully human, an object to be preserved by her male guardians. Even though the Puranas describe women as Goddesses, mortal women were placed at the lowest level of society.¹⁷

In South Africa it was only until 1988, and only much later for Black women, that the doctrine of 'marital power,' was abolished. Marital power, a draconian and equally repugnant law gave the husband full power over the wife

and Religion Vol. 24, No. 2 pp. 663-687. Available online at <https://www.jstor.org/stable/25654333>. Accessed 25th April 2022.

¹⁷ D Halder and K Jaishankar, "Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India" (2008-2009) *Journal of Law*

both in legal proceedings and to administer her property, emanated from the Dutch theorist Grotius, who theorized by the laws of nature, that men were the wisest to rule, as women were moodier.

The abolishment of marital power came a mere four years after the Republic birthed the Marital Property Act 88 of 1984. This Act still governs the prevailing marriage regimes of today – marriages in community of profit and loss, and those out of community of property.

The Constitutional Era: A New Dawn

The implementation of the Constitution and its accompanying Bill of Rights banished the cloaks of those disenfranchised, heralding a new dawn and triggering a series of repeals of unequal and discriminatory marriage laws, and the creation of new and just ones.



In its place, the legislature crafted the Recognition of Customary Marriages Act of 1998 (“RCMA”), the aim of which was to provide for equal status and capacity of spouses.¹⁸ It did this by legally recognizing those marriages which were valid at customary law prior to the commencement of the RCMA,¹⁹ and those which complied with the requirements as thereafter set out in the RCMA.²⁰ It further recognized polygamous marriages.²¹

The RCMA, by no means a sterling example of draughtsmanship and for all its lofty ideals has been met with practical challenges (compounded by cultural differences) and has been unable to convey the protection its drafters envisioned. The reality is that spouses married under the RCMA cannot access pension

¹⁸ Section 6 of the *Recognition of Customary Marriages Act* 120 of 1998 (“RCMA”).

¹⁹ Section 2(1) of the RCMA.

²⁰ Section 2(2) of the RCMA.

benefits, inherit property or divorce without a registration certificate, or by court application.

Later, making international strides in the pursuit of equality, the country witnessed the enactment of the Civil Union Act 17 of 2006, placing South Africa as one of only five countries in the world to enact same-sex marriage legislation.²²

The Act followed the decision by the Constitutional Court in *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC), which struck down section 30(1) of the Marriage Act. It was contended that the section unfairly discriminated against same-sex couples and denied same-sex couples equal protection and benefit before the law in contravention of the Constitutional right to equality.²³



To sum up, through the Marriage Act, RCMA, the Civil Union Act and the Marriage Act, the state sought to give recognition to different marriage rituals by passing a range of different marriage laws. Much like the planetary orbit around the sun, the Marital Property Act is the pivot from which the three Acts revolve around.

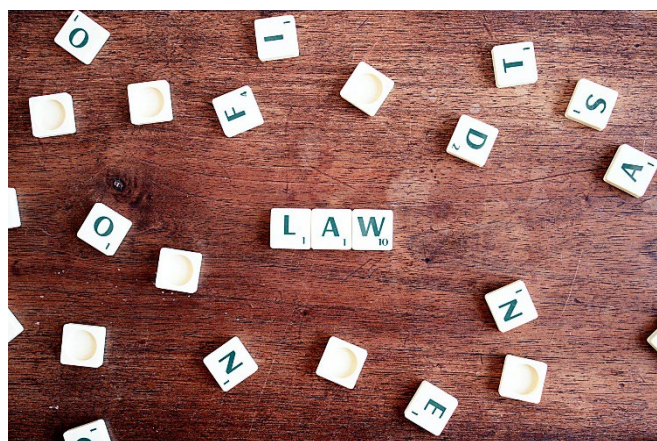
The RCMA and the Civil Union Act have both since been amended in the quest for equality and dignity as set out

²¹ Sections 2(3) and (4) of the RCMA.

²² <https://ewn.co.za/2021/06/21/phumla-williams-what-our-green-paper-on-marriages-means-for-everyone>

²³ Sections 9(1) and (3) of the Constitution.

in the Constitution. Under the new section 7(1) (a) of the RCMA: The proprietary consequences of a customary marriage in which a person is a spouse in more than one customary marriage, are that the spouses in such a marriage have joint and equal ownership and rights of management and control, over marital property.²⁴ Previously, under section 6 of the Civil Union Act, state marriage officers could refuse to solemnise a same-sex marriage. The Act has since been amended.²⁵



The New Legal Framework

Much like the confluence of the rivers Ganga, Jamuna and Saraswathi, and the confluence of the Gariep, Orange and Vaal rivers, the design of a new legal framework flowing from its predecessors is meant to align the country's marriage regime with the constitutional principles of equality, non-discrimination, and human dignity.²⁶ This is because, amongst other things, it will enable marriages between persons of different sexual orientations, or religious or cultural backgrounds to be concluded.

From the standpoint of section 3 of the Constitution, the state may not unfairly discriminate directly or indirectly

²⁴ The *Recognition of Customary Marriages Act* 1 of 2021. See also: *Amended Customary Marriages Act a significant step towards equality for women* available online at <https://www.moonstone.co.za/amended-customary-marriages-act-a-significant-step-towards-equality-for-women/>.

²⁵ *Civil Union Amendment Act* 8 of 2020. *Ramaphosa signs new marriage and civil union laws for South Africa* available online at <https://businesstech.co.za/news/lifestyle/442962/ramaphosa-signs-new-marriage-and-civil-union-laws-for-south-africa/>.

against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.



The policy aims of the Green Paper²⁷ on marriages (Green Paper) are to satisfy the Constitutional rights to equality,²⁸ dignity,²⁹ freedom of religion³⁰ and freedom of culture³¹ within the spectre of marriage regimes, legal or unrecognized.

For example, while the Constitutional right to freedom of culture is infused into the RCMA by recognizing the right of one man to marry more than one woman, there is no corresponding Constitutional right of freedom afforded to a woman to take more than one man (polyandry) in any current legislation.

The policy aims augur well for the recognition of Hindu marriages or the *Vivaah Sanskaar* which are currently not recognized under the laws of the Republic. What remains to be seen are the proprietary consequences for women married in terms of Hindu marriages.

²⁶ Available online at <https://businesstech.co.za/news/lifestyle/488027/when-you-can-expect-south-africas-new-marriage-laws-to-be-introduced/>

²⁷ Available online at <http://www.dha.gov.za/index.php/notices/1449-know-your-green-paper-on-marriages-in-south-africa>.

²⁸ Section 9 of the Constitution.

²⁹ Section 10 of the Constitution.

³⁰ Section 15 of the Constitution.

³¹ Section 31 of the Constitution.



both Principal and Supporting wives which are further regulated.

Conclusion

The creation of a new marriage framework as set out in the Green Paper represent a mammoth task resting upon the Department of Home Affairs. Achieving the utopian ideal of an equal system of marriage requires intense and meticulous planning as well as coordination by other stakeholders and the meaningful views of civil society.



The similarities between the succession laws of the Royal Family in KwaZulu Natal, for which the recognition of those customary marriages is on the agenda for codification by the Green Paper, and that of ancient Hindu succession laws are that both cultures require a male heir.

In the Ramayana, fertility and impregnation founded Daśaratha's rationale for undertaking the aśvamedha and *putreṣṭi* rituals which occurs in the following sargas (14–15): At verse 2, the text transitions: *Iṣṭim te 'ham kariṣyāmi putriyāṃ putrakāraṇāt / 1.14.2ab. – "In order to procure sons for you, I shall perform the son-producing sacrifice."*

We are told only that from the sacrificial fire a great being arose bearing a vessel filled with celestial pāyasa 'porridge' (1.15.8–13), which will impregnate the three women. Daśaratha divides the pāyasa among his three wives (1.15.25–27). The participation of the women, crucial as it is to the success of the enterprise is minimal. They are depicted as passive, serving only as the recipients and consumers of the porridge.³²

Sometimes, the more things change, the more they remain the same. For its attempts to bridge an unequal divide, the Green Paper suggestions on recognizing customary marriages of the Royal Families resemble much the scene in the Ramayana highlighted above. The suggestions are to appoint a Principal wife, or if unable to birth a male heir, then another spouse recognized by law and conditional upon the fulfilment of adoption processes to avoid further inter-family succession wars. In the alternative, the Green Paper suggests the adoption of

Suggestions in the Green paper of just how this can be amalgamated include the creation of a single marriage act, much like a one-size-fits-all approach which will do away with the default position. Other options are to create an umbrella-type act with different chapters following the different marriage formations (viz. monogamous, polygamous, same-sex), or to create further legislation which would run parallel to the three Acts adumbrated above.

The new framework, if appropriately drafted, should be able to be interpreted generously and deliberately and in the spirit of the Constitution. It should balance and calibrate the rights of those previously discriminated against in line with a society founded upon the democratic principles of freedom, equality, and dignity of the Constitution.

³² S J Sutherland Goldman, "Women at the Margins: Gender and Religious Anxieties in Vālmiki's Rāmāyaṇa" (2018) *Journal of the American Oriental Society* Vol. 138, No. pp.

45-72. Available online at <https://www.jstor.org/stable/10.7817/jameroriesoci.138.1.0045>. Accessed 25th April 2022.

Demystifying the Maintenance Act

South Africa is a signatory to the United Nations Convention on the Rights of the Child, 1989, which requires member states to ensure that children are well maintained. In 1999 South Africa enacted the Maintenance Act 98 of 1999. In 1996, Article 18 of the Convention was embedded in section 28(2) of the Bill of Rights of the Final Constitution. This right affirms the principle that in matters relating to children, the “best interests of the child are paramount” and reaffirms the common-law duty of both parents to maintain their children.³³

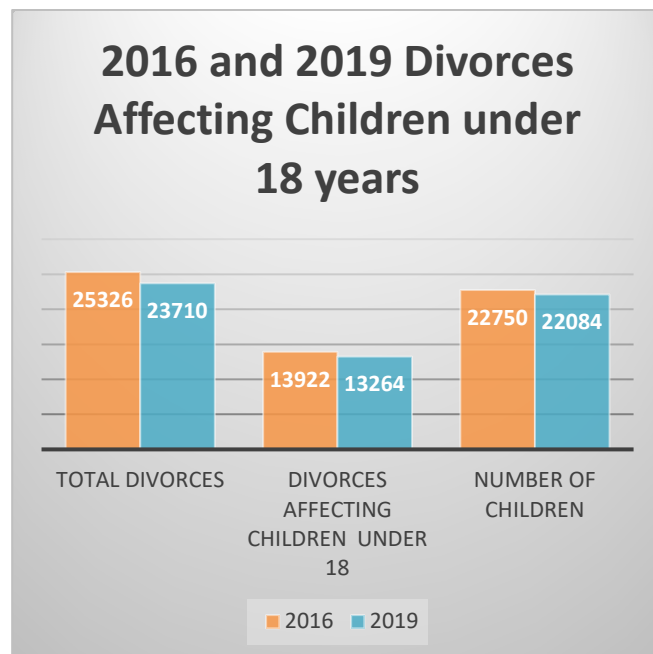


Section 15(3)(a) of the Maintenance Act creates an obligation on both parents to support their children proportionately in accordance with their financial means. However, many parents do not support their children and this failure negatively impacts on the children’s rights to maintenance, which includes the provisions of food, accommodation, education, health, and clothes amongst other things.³⁴

According to Statistics South Africa, in 2016, 13 922 (55,0%) of the 25 326 divorce orders granted noted children younger than 18 years.³⁵ About 22 750 children aged less than 18 years were affected by divorces that took place in 2016.³⁶ This figure rose, and by 2019, 13 264

(55,9%) of the 23 710 divorces had children younger than 18 years.³⁷

Irrespective of the population group, the highest proportion of divorces occurred to couples who had been married between five and nine years. The number of children under 18 years estimated to be affected by divorces in 2019 was 22 084.³⁸



These figures alone reveal why understanding the Maintenance Act is important to parents who, to put it bluntly, are being short-changed. This brief guide will outline the maintenance procedure and its remedies for the defaulting parent.

Commonly asked questions

What is a maintenance order?

A maintenance order is described as a court order for the payment, including periodical payment of sums of money towards the maintenance of any child or legally recognized spouse.

³³ M Mamashela, “The court's interpretation of section 31 of the Maintenance Act 99 of 1998 and its predecessors” (2005) *SALJ* 217.

³⁴ See further: “Failure to pay maintenance: Revisiting the remedies in the Maintenance Act” available online at <https://www.derebus.org.za/failure-to-pay-maintenance-revisiting-the-remedies-in-the-maintenance-act/> Accessed 4th May 2022.

³⁵

<http://www.statssa.gov.za/publications/P0307/P03072016.pdf>. (Accessed 1st May 2022).

³⁶ *ibid*

³⁷

<http://www.statssa.gov.za/publications/P0307/P03072019.pdf>. (Accessed 1st May 2022).

³⁸ *ibid*

Who qualifies for maintenance?

A maintenance order is premised upon the principle of Duty of Support.³⁹ This duty arises from

- (a) Parents who have the means to supply such maintenance,
- (b) The children who are incapable of supporting themselves, and
- (c) the relationship between them is of such a nature that the law recognizes the existence of a duty of support.

The duty of support extends to children who have attained majority but are still in need of support.⁴⁰ This means that children over the age of 18 and who are pursuing tertiary education will qualify for maintenance until they are self-supporting.

How do I apply for maintenance?

Lodge a complaint in terms of Form J101E (the “Form”). This Form is readily available at the courthouses, or online at https://www.justice.gov.za/forms/maintenance/MNT_Form%20A.pdf.

Alternatively, ask your lawyer for assistance.

The person who lodges this complaint is known as the Applicant, or Complainant. It is imperative to note that the Applicant can only open a complaint in the area where the child to be maintained, or the person in whose care the child is to be maintained *resides*.⁴¹ Simply put, the child’s residence determines the jurisdiction of the Court entitled to hear the matter.

Where the Form provides for the expenditure of the person who is the subject matter of the application, it must be completed as accurately as possible. This point cannot be stressed enough! Since the maintenance enquiry is a financial enquiry, receipts for school fees, the school uniform including sports gear, groceries, clothing, electricity, fuel or transport, rent or rates and medical

expenses (if no medical aid exists) is expenditure and must be reflected on the Form.

Food, rent/rates, electricity/gas, fuel or school transport are items which the child’s expenses will reflect as a portion thereof. So, if there are four persons in the household, the child’s expense will be a *pro rata* amount of the monthly bill.

Applicants should not overlook innocuous expenditure associated with grooming (like boy’s haircuts, or girl’s sanitary pads), or ancillary expenditure materially associated with education (like extra tuition, or WiFi).

A good tip is to store financial information in an easily accessible file management system so that they can be produced at Court if necessary. Bank statements are equally handy in proving electronic expenditure. Excel is a powerful tool that can buttress proof of expenditure but cannot be used in isolation.

Insidious as it is, some Respondents delight in becoming untraceable to avoid their maintenance obligations. In this scenario, the Applicant – usually the mother – will have to overcome the additional hurdle of identifying and locating the Respondent before even thinking of filling out any expenditure. The Maintenance Act attempts to alleviate this burden and has done so by carving out a statutory role of a Maintenance Investigator, who is empowered to gather information particularly in locating the Respondent.

In view of the above, the prudent Applicant should store as much information as can be obtained and within the parameters of the law to assist the Maintenance Officer (such as identity documents, bank-related information or last known addresses of residence and/or employment of the Respondent).

What happens after the Form is submitted?

The maintenance officer must cause a subpoena to be issued (Form J126E) for any relevant person to appear before the court and give evidence, or produce any book, document or statement, including what relates to the financial position of the person legally liable (the “Respondent” or “debtor”) to maintain the child under consideration, and/or any other legally recognized person.⁴²

³⁹ Section 15 of the *Maintenance Act* 98 of 1999.

⁴⁰ *Bursey v Bursey* 1999 (3) SA 35 (A): Should a child still require maintenance after reaching the age of 21, for example for tertiary education, or being unable to find a job

through no fault of his own, may bring an application for maintenance in his personal capacity.

⁴¹ Section 6(2) of Act 98 of 1999.

⁴² Section 9(1) of Act 98 of 1999.

Respondents should take note of the following:

If the Respondent has children from other relationships, the Respondent is obliged to tender proof thereof, usually through the production of a birth certificate.

If the Respondent is married in community of property and loss, the spouse's income is relevant and material consideration to satisfy the amount claimed by the Applicant.



The Consent Order

When the parties are at Court and, following consultation with the Maintenance Officer, they reach an agreement for the sum of money to be paid, the Court will sanction it in terms of section 17 of the Maintenance Act as an order reached by consent between the parties (a "final" order).

Note that if no agreement can be reached, the Magistrate is empowered to authorize an Interim Consent Order. An order of this nature obliges the Respondent to make periodical payments of maintenance to the Applicant until the matter comes back to the Court for review or reconsideration later.

No consent, or temporary order? Proceed to enquiry

Where the matter remains unresolved, or on the return date of the Interim Order, the parties will appear before the Court and present their respective cases. This is where the production of those invoices, receipts, and bank statements are powerful pieces of proof.

If the child does not reside with the Applicant but a caregiver, the caregiver should testify at the hearing

regarding inter alia the child's day to day needs. This is to ensure that the expenditure as calculated by the Applicant is a true reflection of the maintenance applied for.

After hearing the evidence and legal argument, the Court will make an appropriate order either to grant the maintenance as applied for, or adjust the figure to an appropriate sum, or dismiss the application. Adjustments can occur for a variety of reasons, notably for want of financial proof quantifying the expense, or a deficiency in the quality of proof submitted to the Court, or simply because the Respondent has other children who also require maintenance.

Where the Respondent proves a lack of financial means, the application may be dismissed.

What happens if the Respondent debtor defaults on maintenance payments?

If the maintenance order remains unsatisfied for a period of ten days from the day on which the relevant amount became due, the Complainant must lodge an application (Form J306E) together with a certified copy of the maintenance order, plus an affidavit setting forth the amount which is outstanding by the Respondent.

Depending on the prevailing circumstances, the Maintenance Act has created remedies to enforce the maintenance obligation. These remedies are:

(a) Attachment of emoluments:⁴³ The Court can order the attachment of the debtor's salary (a "garnishee"). When this happens, the maintenance and/or the arrears are deducted directly from the salary of the debtor.

(b) Attachment of a debt:⁴⁴ In this instance the Court will attach money other than a salary owed to the debtor, which is in the hands of a third person. This will include any pension, annuity, gratuity, or other similar benefit.

(c) Execution against property:⁴⁵ The Court can make an order to attach the debtor's assets and a Warrant of Execution will be authorized against movable property. The Sherriff, acting on the warrant will make an inventory of assets, but the debtor can settle the debts before the assets are sold.

⁴³ Section 28 of the Maintenance Act.

⁴⁴ Section 26 of the Maintenance Act.

⁴⁵ Section 30 of the Maintenance Act.

If the movable property is insufficient to satisfy the order, then the Sheriff will execute against the immovable property of that person to cover the outstanding amount of maintenance. It is not necessary to cite the bondholder in the application for enforcement.⁴⁶

It is good to note that Chapter 5 of the Maintenance Act provides for the enforcement by the Maintenance Court of a maintenance order made by the High Court.⁴⁷

(d) Criminal Sanction:⁴⁸ The debtor can be criminally prosecuted for defaulting on his obligations. If using this procedure, the State should be absolutely sure that it will achieve a conviction.

In the case of *S v Magagula* 2001 (2) SACR 123 (T), overturned on appeal, the debtor admitted that the order had been made, that he had 'wrongfully' failed to comply with it for the period alleged in the charge, and that he was in arrears to the extent of R4 400. When asked to explain why he was in arrears, the accused said: 'I was earning a low salary and I could therefore not pay.'

Conclusion



The creation of the Maintenance Act and its continuing evolution has been a progressive step in line with a democratic society. It has brought life into the Constitutional Right of the Child and inaugurated the doctrine of the child's "best interests" by enacting processes for complainants to lodge a complaint, and outlets to enforce the maintenance obligations upon the delinquent debtor.

It alleviates the pressure on the complainant in many ways. Assuming the debtor has been positively identified as the parent owing an obligation, the creation of a normative order to grant an emoluments attachment against the salary of the debtor frees the monthly worries resting on the shoulder of the complainant who would previously have received sporadic sums of money.

Much like the rose bush carries thorns for its protection, the other civil remedies available in the Maintenance Act serves as a caution to maintenance defaulters to consciously effect their legal obligations towards the child, upon penalty of attachment of the debtor's property.

So serious is the legislature on punishing maintenance defaulters that the Maintenance Act enforces criminal sanction upon the debtor - but solutions like this may outweigh the best interests of the child.

The Maintenance Act recognizes this too and has thus provided an 'escape clause' in which the criminal matter may be converted to an enquiry, thus circulating the matter into a maintenance enquiry.



⁴⁶ *SS v VV-S* 2018 (6) BCLR 671 (CC).

⁴⁷ The Maintenance Act also does not preclude a party from obtaining a writ of execution out of the High Court for

failure to pay maintenance - see *Thomson v Thomson* 2010 (3) SA 211 (W) at 218C-D.

⁴⁸ Section 31 of the Maintenance Act.

Comments from Readers

March Issue

You have helped to revive the APS history. Excellent work on this magazine. Big thank you to the compilers and editors. This newsletter serves as an APS mirror.

What a wonderful document of some incredible women. Well done!

So many inspirational women!

Lovely tribute!

Read the March 2022 issue of Veda Jyoti completely and carefully. I thought this is a splendid effort.

April issue

Excellent publication! Gratitude to you.

Amazing!

Very Impressive!

Veda Jyoti is excellent!

Compliments on the research and dedication put into the April issue. It is much appreciated by all who received it.

May Issue

Very nice magazine. Very good lay-out standards, catchy to the eye. Pictures tell more than 1000 words. South Africa has historically always led the way in *prachar*.

This journal is beautifully written and may we all experience and appreciate its humanitarian message.

Thanks for the beautiful edition.

Well done to you and your team for this brave step with the Veda Jyoti. I loved the socialist leaning in this edition. You should take a policy direction to pursue this approach to make religion more relevant to society. I think that the article about the caste system is misdirected. The Manusmriti projects a dangerous ideology and should be dumped. The focus on climate change, globalisation and labour is well received. Keep up the good work.

Having perused through the very informative content, I was rather impressed. Pertinent and relevant issues were captured so that the reading audience can be better informed and educated – I have learnt aspects that I was not aware of. Congratulations to the editorial staff and may this publication grow in strength and keep us all informed so that we not only improve our lives but to make a better society the world over.

Sanskrit words explained

वेद

Veda

From the root *vid* to know, *Veda* means wisdom, knowledge, revealed scripture.

The *Vedas* are *s'ruti*. *S'ruti* is a word that originates from the root *s'ru* to hear and means that God reveals it. The *Vedas* are thus a reflection of Divine Truth.

There are four Vedas.

The **Rig Veda** contains hymns of wisdom, revealing the meaning of existence and of humans' contributions to the world as well as wonders of creation. The **Yajur Veda** covers rites giving importance to the mechanical aspects of ceremonies. The **Saama Veda** contains liturgical hymns showing how music can elevate one's consciousness to the highest realm of Bliss and Supreme Consciousness. The **Atharva Veda** provides the formulas for healing and dispelling and disease.

Each Veda comprises of four parts. The **Samhitaas** are a collection of mantras that sing praises to God rejecting pantheism and recognising God as one Supreme Being. There are many descriptions of the Supreme Being depicted in different ways.

The **Braahmanas** are concerned with everyday duties and rules of conduct emphasizing love, truth, kindness, and self-control and forbids acts like theft, adultery, and murder.

The **Araanyakas** contain truths that are the basis for the forms of conduct described in the **Braahmanas**. Here a spiritual interpretation of the inner reality of one's actions is the focus rather than the outward symbols of the actions themselves.

This deeper analysis leads to the last part the **Upanishads** which reveal the doctrines of self-realisation, meditation, karma, and reincarnation and the process through which one can achieve liberation through knowledge of the ultimate truth.

The real study is to realise truth through one's own experience. Maharishi Dayanand selected mantras from all four Vedas and produced the *Sanskaar Vidhi*. The third principle of the Arya Samaj states: "His Word, the Veda: The Veda is the Scripture of true knowledge, it is the paramount duty of every Arya to learn and teach the Veda, to hear it read and to recite it to others."

Announcements

You are invited to send articles to the editorial committee for publication. Please email your submissions to admin@aryasamajsa.org

Acceptance conditions:

1. All submissions must be in word for the attention of the editorial committee.
2. All Sanskrit words must be in Italics
3. Photographs submitted must be in high resolution
4. All references must be cited
5. The limits for articles will be as follows
 - 5.1. Short articles & messages 300 words
 - 5.2. Current issues and social justice 900 words
 - 5.3. Feature articles up to 3000 words
 - 5.4. Secondary articles up to 1500 words
6. The acceptance of articles will be considered based on the following criteria:
 - 6.1. Vedic teachings
 - 6.2. Principles of the Arya Samaj
 - 6.3. Social justice and social action
 - 6.4. Relevance to current issues

To contribute to projects of the Arya Samaj contact admin@aryasamajsa.org

Please send your comments and suggestions to admin@aryasamajsa.org

Rig Veda 9.63.5

कृण्वन्तो विश्वामार्यम् "Krinvanto Vishwam Aryam" Make the World Noble

Yajur Veda 36.18

मित्रस्याहम् चक्षुषा सर्वाणि भूताननि समीक्षे mitrasyāham chakṣuṣā sarvāṇi bhūtānani samīkṣe May we all live in friendly cooperation and mutual trust

मित्रस्याहम् चक्षुषा समीक्षामहे "mitrasyaaham chakshushaa sameekshaamahe" May we look at all with an Equal and Friendly Eye

Veda Jyoti Founding Editors were Pt Nardev Vedalankar (1913-1994) and the late Manohar Somera



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