

CHANGING SCENARIO IN MARITAL RELATIONSHIPS: A CRITICAL STUDY IN INDIA

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Abstract: Traditional Indian personal law imposed a number of prohibitions on marriage. But as technology develops, marriage's definition and significance are constantly altering. The evolving nature of marriage in India has been the subject of discussion, study, evaluation, and critical analysis in this article. These sources include historical writings, legal texts, journals, national and international agreements, and judicial decisions. The goal of this essay is to examine the changes made to the Indian marriage institution. In urban regions, behaviours that were once taboo, such as live-in relationships, adultery, and same-sex relationships, are now widespread. The world's ethical and legal societies must take the necessary steps to protect the concept's originality and rationalism if it is to avoid becoming increasingly popular.

Keywords: Marital Relationships, India, Law, Marriage Act, Family Law

1.0 Introduction

Marriage is a socially accepted union that creates duties and responsibilities for the parties involved, as well as for the parties' offspring and in-laws. Marriage is defined differently in different cultures and over time. To account for the great range of marital customs seen in different cultures, a number of opposing definitions of marriage have been put forth.

Marriage was defined by anthropologist Edward Westermarck as a partnership between one or more males and one or more women that was recognised by law or tradition. According to sociologist Gough, marriage is a union between a woman and one or more other individuals in which a child born to the mother under conditions that do not violate the terms of the union is granted complete birth-status rights that are usual for persons in his social class or society. Gough's definition of marriage simply took into account the legality of kids, omitting sexual access as a critical element. Edmund Leach advised that marriage be seen in terms of the numerous rights it establishes and questioned Gough's definition for being overly restrictive in terms of the number of children who qualify as children under the law. Economic anthropologist Duran Bell has criticised the legitimacy-based idea because not all tribes view marriage as a requirement for legitimacy. He argued that a definition of marriage based on legitimacy is circular in societies where the only social or legal consequences for a child of illegitimacy are that the mother is single. The relationship between one or more males (male or female) in severalty to one or more women that gives the men a demand-right of sexual access within a domestic group and identifies the women who are expected to submit to those particular men's demands is known as marriage, according to Duran Bell. It's a setting where having sexual relations is encouraged or accepted. In certain cultures, getting married before having any sexual activity is suggested or seen as necessary. Marriage often puts moral or legal obligations on the parties and any biological or adopted children they may have.

A marriage performed by a religious institution is referred to as a religious union. The essential rights and obligations of matrimony are recognised and established through religious marriage. A marriage that is performed and carried out by a government body in accordance with the jurisdiction's marriage laws and has no overt religious connotations is referred to as a civil marriage. According to the state, formal marriage respects and enshrines the innate rights and duties of matrimony. Some countries prefer separate civil marriages because they do not acknowledge locally performed religious marriages on their own for official purposes.

2.0 India's Marriage Law

Hinduism regards marriage as a sacred obligation that entails both social and religious duties. Hinduism views marriage as a sacrament. One of the 16 sanskaras recognised by the Vedic traditions. It is a divine union that is enduring, unbreakable, and permanent. Hindu marriage is a holy union that fulfils religious obligations rather than just being a way to have kids and legalise them. However, Hindu marriage is no longer an irrevocable relationship under contemporary Hindu law. The 1955 Hindu Marriage Act made divorce legal under Hindu law. Hindu marriage is no longer primarily a sacred bond. It has developed into a ritual and a loose pact.

There was no set age limit for marriage in traditional Hindu law. Additionally, polygyny was a legal type of matrimony. The Child Marriage Restraint Act of 1929 set a 14-year-old minimum age for girls and an 18-year minimum age for boys before changing those age limits to 18 for girls and 21 for boys. The Hindu Marriage Act of 1955 established the minimum age for marriage as 21 for boys and 18 for girls. This law also applies to Sikhs, Jains, and Buddhists. The statute forbids polygamy in any form, including polyandry and polygyny.

Nevertheless, traditional Hindu law recognised a number of constraints, including those based on gender, society, and the proscription of inter-relative marriage. Traditional Hindu law forbade both extramarital sex and premarital sex. According to an old book, a marriage was void unless it was recognised by custom if the couples did not share the same caste. These texts forbid the union of a higher caste woman with a lower caste man (Pratiloma Vivaha). Anuloma marriages, on the other hand, allowed a man of a higher caste to wed a woman of a lower caste. Any two Hindus, whether they have their primary residence in India or not, whether they are Indian residents or foreigners, may get married under the Hindu Marriage Act of 1955. According to the Hindu Marriage Act of 1955, intercaste marriages are legal.

Muslim law defines marriage as a contract with the purpose of allowing for procreation and the legalisation of offspring. Despite the fact that Muslims typically solemnise marriage with the recitation of a few verses from the Holy Qur'an, Muslim law does not expressly mandate any special rituals. However, Muslim marriage has elements of both muamalat, a pact between men, and ibadat, a devotional act. It is a sacred covenant in addition to being a contract. The Koran, Hadis, Ijmaa, and Kiyas are the official sources of Muslim law that are still in effect in India because Muslim law has not yet been codified there. Every Muslim who has reached puberty and is of sound mind is eligible to engage into a marriage contract. According to Islamic law, reaching puberty age is the definition of becoming of legal age of majority.

In the lack of proof, the age of puberty is presumptively 15 years old. Lunatics and children under the age of 18 who have not reached puberty may be legally wed by their guardians.

Marriages that minors enter into are null and void. Therefore, according to Islamic law, both parties to a marriage must be able to marry or be married. Marriage, dower, and divorce are not permitted for Muslims per the Indian Majority Act of 1875. The prohibitions of the Child Marriage Restraint Act of 1929 are illegal and punitive, but they do not invalidate marriages between minors. Even though a Muslim has the legal right to wed and all requirements are met, that does not indicate that their union will necessarily be viewed favourably by the law. Islam outlaws marriage based on affinity, fosterage, consanguinity, and having several husbands. When one of the spouses is a Christian, the Indian Christian Marriage Act, 1872 covers the legal aspects of marriage in India. According to the law, males must be 21 years old to get married, while females must be 18 years old. The Special Marriage Act, 1954 is the law that governs interreligious weddings in India. Similar to the Hindu Marriage Act of 1955, the act prohibits marriage and prescribes age restrictions.

3.0 Changing India Marriage Dimensions

Contrary-sex marriage is a common and accepted institution in our society. Married women used to have few rights of their own and were thought of as her husband's property. They were unable to possess or inherit property, or speak for themselves in court.

3.1 Engaged in a Relationship

In a relationship and sharing a home. As an illustration, cohabitation is when two individuals decide to live together for an extended period of time or permanently while continuing to have a close emotional and/or sexual relationship. Unmarried couples are the most common group to use the phrase to describe.

There are many different reasons why people might cohabit. These can include the desire to determine financial security or to gauge compatibility prior to marriage. They may not be able to legally marry if they are of the same sex, for example, because some interracial or interreligious unions are illegal or forbidden. Other reasons include cohabiting before marriage to try to avoid divorce, as a way for polygamists or polyamorists to avoid breaking the law, as a way to avoid the higher income taxes paid by some two-income married couples (in the USA), as a way to avoid the negative effects on pension payments (among older people), as well as a philosophical opposition to the institution of marriage and the conviction that there is little difference between the commitments made before and after marriage. Because they think their relationships should be private and unrestricted by any governmental, religious, or patriarchal organisations, some people may want to live together.

Cohabitation has been frowned upon in India ever since the British gained control. Even if this is no longer the norm in large cities, it is nevertheless typical in rural communities with traditional beliefs. Female live-in spouses are given recognition for their economic rights under the 2005 Protections of Women and Domestic Violence Act. The

Maharashtra Government adopted a proposal that suggested a woman should be given the status of a wife after being in a live-in relationship for a "Reasonable Length" in October 2008. Depending on the unique facts and circumstances of each situation, a period may be deemed "reasonable" or not.

The Malimath Committee had also suggested amending the Criminal Procedure Code's definition of "wife" to include "a woman living with the man like his wife," making it possible for a woman living with a man to get alimony. The Supreme Court stated that a woman does not need to firmly establish the marriage in order to request maintenance under section 125 of the Cr.P.C. in *Abhijit Bhikaseth Auti v. State of Maharashtra and Others*. A woman in a live-in relationship may also request maintenance under section 125 of the Cr.P.C.

In the case of *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others*, the Allahabad High Court rejected the claim that "a lady of about 21 years of age who is a major has the right to live with a man even without getting married, if both so choose"¹⁶. The Supreme Court stated that if a man and woman produce a child together and live together for an extended period of time, they would be regarded as a married couple. In the case of *D. Velusamy v. D. Patchaiammal*, the court noted that although live-in partnerships are growing more common in India, they do not give rise to any legal rights. A woman who claimed to be a wife filed a support claim with the Supreme Court due to a live-in relationship that lasted for about a year (about which we have already written, noting a High Court judgement). Although the Domestic Violence Act to some extent recognised live-in relationships and that the concept of alimony that applied to such relationships was not recognised in India, the Court found that not all such relationships were eligible for maintenance unless they met the criteria set forth by the Court.

The prevalence of live-in marriages as a societal phenomenon, even acknowledged by Parliament in terms of the Domestic Violence Act of 2005, and such relationships as common-law marriages received commentary from the Supreme Court.

3.2 Adultery Decriminalization

An infringement on the husband's authority over his wife is adultery. It is a misdemeanor for a man to commit an act that violates the sacredness of matrimony. It is an enigmatic and illegal deed. The Indian Penal Code's Section 497 contains the adultery legislation. It offers the following:

Adultery is described as having sex without the agreement or knowledge of the husband of another man with someone he knows or has reason to think is the wife, provided that the behaviour does not amount to rape. A five-year term for either sort of jail, a fine, or a combination of the two is possible for the criminal offence of adultery. In this case, the wife's complicity won't result in punishment.

This violates the law about marriage. A spouse is guilty of adultery if a third party disrespects his wife. A married man does not violate this provision if he engages in sexual activity with any of the following: (a) an unmarried woman; (b) a widow; (c) a married woman whose husband approves; or (d) a divorced woman.

In the past, the higher judiciary held that Section 497 of the IPC did not violate Article 21 of the Indian Constitution. When interpreting the crime of adultery, the Supreme Court has previously ruled that limiting the group of wrongdoers to solely men does not contravene any constitutional prohibitions. The 150-year-old adultery statute, which regards the husband as the master of his wife, has been ruled unconstitutional by the Supreme Court. A woman's sense of dignity is insulted. The husband is not the wife's master, the judge declared. Section 497 of the IPC is absolutely and obviously arbitrary and unreasonable because it grants the husband the authority to treat the wife anyway he sees proper.

The first legal challenge to the adultery legislation was in 1951 in *Yusuf Aziz v. State of Bombay*. The petitioner argued that Articles 14 and 15 of the Constitution's guarantee of equality were infringed by the adultery legislation. The Supreme Court determined that Section widely acknowledged to state that the seducer is a man rather than a woman three years later, in 1954. According to Section 497, the Court decided that women could only commit adultery as a victim and not a perpetrator. The Supreme Court ruled that the provision does not discriminate between men and women, i.e., that a definition that excludes some people does not necessarily amount to discrimination. Neither Article 14 nor Article 15 of the Constitution are broken. The court concluded that husbands could not accuse their wives of adultery in order to protect the sanctity of marriage. Women could not bring legal action against their spouses for the same reason.

The Supreme Court ruled in *V.Revathi v. Union of India* that it was for the greater benefit of society to exclude women from prosecution in adultery cases. It gave the couple an opportunity to patch things up and maintain the marriage's integrity. The Supreme Court noted that adultery statute acted more as a shield than a weapon.

In addition to the judgements mentioned above, there were two other significant viewpoints about adultery law. The Malimath Committee on Criminal Reforms of 2013 and the statute Commission of India Report of 1971 (42nd

report) both proposed amending the adultery statute. Both argued in favour of gender neutralising Section 497 of the IPC.

Adultery is a crime that expresses prejudice. It mostly based on the notion that a woman is a man's property. We get to the conclusion that only a man can commit adultery after analysing Section 497 and considering different observations made by the Supreme Court and High Courts. Because she is considered as a victim rather than the perpetrator of the crime because she lacks an existence and is a non-person, the married lady who participated in the action is not punished as an adulteress. The section disregards the woman's free will and her motivations for engaging in adulterous behaviour and does not address them. This is likely a result of the woman being despised as an object, inanimate property, and almost having transferable rights.

The Supreme Court of India acknowledged the constitutionality of a 150-year-old legislation on adultery that treats the husband as the wife's master in Joseph Shine V/S Union of India (2017). The adultery legislation, according to India's then-Chairman of the Supreme Court, is arbitrary and insults a woman's dignity. Joseph Shine submitted a petition contesting the legality of Section 497 in December 2017. The petition was submitted to a five-judge Constitution Bench, which was made up of Dipak Mishra and Justices R F Nariman, A M Khanwilkar, DY Chandrachud, and Indu Malhotra, after the three-judge panel, led by the then-Chief Justice of India, Dipak Mishra, acknowledged that the statute appeared to be antiquated. The Court had noted during a prior hearing of the case that some cultural presumptions appeared to constitute the foundation of the law. The Court overturned the statute and ruled that the husband is not the wife's master in four distinct but concurring judgements. Adultery is still a civil offence, though. It may serve as a basis for divorce. The ruling immediately challenges our nation's outdated and patriarchal legal system. The judgement upheld the following:

3.2.1. Section 497 is Illegal Under The Constitution and Archaic: A woman loses her independence, dignity, and privacy under Section 497. By embracing a concept of marriage that undermines actual equality, it further encroaches on her right to life and personal liberty. According to Article 21 of the Indian Constitution, sexual autonomy is a virtue that is an essential component and falls under the purview of personal liberty. Only when both partners treat one another with respect and equality can there be sexual autonomy. This paragraph undermines the idea that women are unequal partners in marriages and are unable to freely consent to sexual acts in a system of law that views them as the sexual property of their partner. It goes against Articles 14 and 15 in this way. It breaches Article 15's non-discrimination rule and is based on gender stereotypes. In addition, putting too much emphasis on the husband's agreement or complicity amounts to subordinating the ladies. It obviously violates Article 21 of the Constitution as a result.

3.2.2 The Abolition of Section 497 As a Criminal Offence: Adultery is more of a personal matter compared to crimes, which are acts against the public at large. Adultery is not considered a crime because doing so would violate a marriage's intensely private space. But it still counts as a civil wrong and a basis for divorce. The husband and wife should decide what occurs when adultery is committed since it should only include their personal judgement. Therefore, criminalising adultery would introduce injustice into the legal system. The court's decision is based on the idea that women shouldn't be viewed as the property of their husbands or fathers any longer. Since they are on an equal footing with everyone else, they need to have the chance to express their opinions.

3.2.3. The Arbitrary Nature of Section 497 is Absolute and Manifest: The husband is given carte blanche to treat his wife anyway he wants, which is absolutely excessive and disproportionate, making it evident that it is arbitrary and nonsensical. According to Section 497 of the IPC, the wife cannot file any criminal accusations against the husband.

In a recent landmark decision, the Apex Court sharply criticised our country's outdated and patriarchal judicial system. Women cannot be considered as the property of males under the expansive constitutional vision and current progressive jurisprudential framework. Additionally, it specifies that it is not offensive when a man consents to a relationship developing outside of marriage. According to the Supreme Court, an important part of a woman's dignity is her autonomy, desire, choice, and individuality.

3.2.4. Same-sex marriages: Marriage can occur in a civil or religious ceremony between two people who are the same sex or gender. Records of same-sex unions go all the way back to the first century. On April 1, 2001, the Netherlands enacted the nation's first same-sex marriage law. As of January 2021, 29 nations had legalized and recognised same-sex unions.

According to each jurisdiction's laws, same-sex marriage has been legalised. This shift resulted from legislative amendments to the marriage act and legal decisions based on equality protections provided by the constitution. In addition to being a human right and civil right, same-sex marriage recognition is seen as a political, social, and religious problem. The most outspoken supporters of same-sex unions are human rights and civil rights organisations, as well as the medical and scientific fields, while the most outspoken opponents are the Catholic Church, the Orthodox Church, and Islam.

The first nation to establish registered partnerships for same-sex couples was Denmark in 1989. These partnerships granted same-sex couples "most rights of married heterosexuals, but not the right to adopt or seek shared custody of a child."

The historical and anthropological record reveals a wide range of attitudes towards same-sex unions, from admiration to complete acceptance and integration, sympathetic toleration, indifference, prohibition and discrimination, to persecution and physical annihilation, despite the fact that only a small number of societies have recognised same-sex unions as marriages. Same-sex marriage opponents assert that it breaches children's constitutional right to have their biological parents raise them, even when it is advantageous to the couples involved and the children they are parenting. Some proponents of same-sex unions argue that the government shouldn't regulate private relationships, while others assert that same-sex unions would benefit same-sex couples socially. The discussion around same-sex marriages encompasses a range of topics, such as social perspectives, majority rules, religious beliefs, economic reasons, health-related concerns, and a number of other difficulties.

The Indian Penal Code's Section 377 makes it illegal to have sex or get married to someone of the same gender. However, the Supreme Court of India decriminalised Section 377 on September 6, 2018, making gay sex legal.

On July 2, 2009, the Delhi High Court ruled in *Naz Foundation v. Govt. of NCT of Delhi* that this clause was unconstitutional with regard to sex between consenting adults. Section 377 of the Indian Penal Code was repealed by the Supreme Court of India in its landmark decision in *Navtej Singh Johar v. Union of India* and declared it to be no longer applicable. This resulted in the decriminalisation of consensual homosexual sex between adults.

4.0 Conclusion

We as a people strive for modernization. Many traditional societies that oppose the new ideas of same-sex marriage, live-in partnerships, and sexual autonomy are growing today. They discovered that it went against both their social and religious beliefs. However, it must be realised that power can never be used to press the emotional ties and relationships.

Living in is not an issue; it is just a concept, and it needs to be given careful thought. If the idea is having a greater impact on young people, ethical and legal organisations around the world must take the necessary steps to protect the idea's originality and logic. Despite threats against cohabitation, it's crucial to help and encourage couples who are already cohabitating. They will be inspired to pursue more social and healthy relationships as a result.

According to Article 21 of the Indian Constitution, sexual autonomy is a virtue that is an essential component and falls under the purview of personal liberty. Only when both partners treat one another with respect and equality can there be sexual autonomy. Adultery is more of a personal matter compared to crimes, which are acts against the public at large. Adultery is not considered a crime because doing so would violate a marriage's intensely private space. But it still counts as a civil wrong and a basis for divorce. The husband and wife should decide what occurs when adultery is committed since it should only include their personal judgement. Therefore, criminalizing adultery would introduce injustice into the legal system.

Restricting marriage to heterosexuals stigmatises and encourages public prejudice against gays in a similar way. Research also refutes the idea that civilization or enduring social structures depend on this restriction. Arguments against same-sex marriage include those that homosexuality is deviant and unnatural and that it is preferable for opposite-sex spouses to raise children. Scientific research disproves these beliefs and demonstrates that sexual orientation is not a choice, but rather a natural and common variation of human sexuality. Numerous research have demonstrated that children of same-sex couples fare no worse than children of opposite-sex couples, and some studies have highlighted advantages of growing up with same-sex partners.

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