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Institution of Marriage: The Change in Notions

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This paper attempts to analyze the various profound social changes that society at large has experienced in the institution of marriage. Precisely, from a historical perspective there has been a paradigm shift in the institution of marriage. Reformative policies and legislative initiatives have added to the imperative growth and development in the social environment of marriage. The traditional practices of polygamy, child marriage, and bigamous marriage, to name a few, have created a sense of dissatisfaction, and this throws light on the need for social alteration. It is through social recognition and legislative enforcement that these practices take a backseat in society and transform the lifestyle and opinion of people by significantly not restricting the notion of liberty. It is highlighted through this paper that the requirement of political and economic development along with the radical change in the mindset of people can bring change in notions regarding the practice of marriage in society. This paper also examines the recent trends and prospects of gay or lesbian relations, live-in relationships, open marriage, DINK Syndrome, and the inclination of society toward the acceptance of such emerging phenomena.

Keywords: *marriage, polygamy, syndrome, child marriage.*

INTRODUCTION

The common description of Marriage is a union that is legalized between two parties - one man and the other a woman; and it is a relationship recognized and approved by society¹. In Indian society, marriage has been considered to be a highly sacred institution, where the spouses meet for material and psychological satisfaction through the meeting of minds. It's the collaboration of two families creating a deep bond. Throughout history, the perception and practice of this institution have undergone several changes. Indulging in child marriage is becoming less common as more people turn away from traditional social practices associated with endogamy and exogamy. Many sections of societies used to prohibit inter-caste marriage in the past, and practices like adultery and bigamy were widespread. The social recognition and legislative enforcement of these practices have shifted with the reorganization and reconstruction of society. The common goals for marriage are changing for the whole population, and in particular for the urban and educated sections of the country.

The concept of equality within marriage on a ground of justice ethics has no place in the Hindu conception of marriage. According to the Report of the Committee on the Status of Women in India², only 0.5% of Indian women do not marry in their life. Girls in India, on the whole, believe that marriage is the destiny of a woman. For most of us in India, marriage is desirable, and motherhood is a prized achievement. A very small percentage of men and women in India remain unmarried voluntarily. The elder generations of families with a giant family and a large number of children, especially the preference for sons, were the source of status for parents are being replaced easily by the modern preference for nuclear families. Individual basis, younger couples take marriage as a relationship for fulfillment rather than creating children. The concern of legitimacy is crucial in succession and inheritance. With globalization and liberalization of

¹ Bryan Strong et al., *The Marriage and Family Experience: Intima Relationships in a Changing Society* (11th edn, Cengage Learning 2005)

² Ministry of Education & Social Welfare, *Report of the Committee on the Status of Women in India* (1974) <<https://pldindia.org/wp-content/uploads/2013/04/Towards-Equality-1974-Part-1.pdf>> accessed 03 March 2023

the economy as well as culture, the phenomenon of marriage has become the most visible reference in India.

This research study is also important for understanding the changing trends of human emotional and sexual interaction and requirements, which will ultimately contribute to understanding the direction in which our society is heading, whether it is ideal or hazardous to our society. Furthermore, any law enacted about this new type of commitment must take into account its sociological context. Thus, for a law to determine the rights and liabilities of individuals involved in a relationship, such as a live-in relationship, it must first consider the advancement of society's social needs and goals.

RESEARCH METHODOLOGY

The research method adopted for this paper is Doctrinal i.e., the data for this study was gathered from Secondary sources. Data sources include scholarly and sociological research articles, newspaper reports, and commission reports set up by Indian governments, the UN, and other international reports.

RESEARCH QUESTIONS

- Did Alternate forms of Marriage help in reshaping the structure of society?
- Is the Institution of Marriage considered Universal in India?
- How does the Evolution of Alternate forms of Marriage lead to a symbolic variation in the pattern of society?

RESEARCH OBJECTIVES

- To analyze the changes in the Institution of Marriage through Modernization and Secularisation.
- To conform to the idea of Marriage being a Universal Institution in India.
- To understand the Evolution of Institutions of Alternative forms of Marriage.

CHANGES IN THE INSTITUTION OF MARRIAGE AS A RESULT OF MODERNIZATION AND SECULARISATION

In India, marriage typically involves various ceremonies and rituals. The scale of the wedding ceremony is often determined by the socio-economic status of the families of the bride and groom, with primary and secondary forms of marriage being performed. A secondary marriage, which may be performed by a widow, separated, or divorced woman, typically involves a simpler ceremony to indicate the renewal of her married status. Additionally, the Special Marriage Act 1954 allows for secular and civil marriages to be conducted before a registrar, which applies to all Indian citizens regardless of their religious affiliation.³ Civil marriage allows people to avoid the expenses associated with traditional weddings.

In recent times, inter-caste and inter-religion marriages are gaining acceptance and legal recognition in India. However, marriages in India have traditionally been culturally acceptable only if they follow the norms of heterosexual unions. Alternative forms of marital unions, such as gay or lesbian relationships, and queer or marginalized sexualities, are emerging and gaining recognition in contemporary culture. Although heteronormativity still predominates in marriages, there is growing scope for exploring different forms of relationships.

The concept of the 'New Indian Marriage' is evolving, with the focus shifting from viewing marriage as a natural stage of life to a sphere of life that requires nurturing and configuration to provide emotional fulfillment. This sphere is owned by both partners and not by anyone else, even in arranged marriages. The 'New Indian' tends to be more proactive in the search for a spouse through matrimonial portals and other means, resulting in a sense of ownership of the marriage being generally higher than in the past.

Traditionally, spouse selection has been limited by factors such as religion, caste, class, kinship, and other considerations. Caste endogamy, which used to serve a purpose for society, is no longer necessary and marriages between different castes and communities are becoming more common. Although exogamous rules, such as 'gotra' and 'sapinda' among Hindus, are still

³ Special Marriage Act 1954

widely followed, same-gotra marriages have also occurred. The decision-making process for spouse selection is shifting from parental to joint or even individual in some cases. Middle and upper-class educated youth in urban areas are more likely to have parents involved in the selection process but also allow interaction and getting to know each other before getting married. However, this type of free interaction is still absent in rural areas and among lower-income people in cities. The free choice of spouse is becoming more common than in the past. With the liberalization of the economy and the globalization of culture, the economic dynamics of the marriage relationship have progressed toward greater equality, with the status of women in society gradually improving. Bilateral decision-making in the family has challenged traditional notions and acknowledged multiple responsibilities undertaken by women.

IS THE INSTITUTION OF MARRIAGE UNIVERSAL IN INDIA?

In India, marriages are often arranged by parents or elders with the consent of the boy or girl involved, and this type of spouse selection is commonly referred to as 'arranged marriage'. In contrast, when a marriage is self-chosen, it is known as a 'love marriage'. However, both patterns of spouse selection can coexist, and there are socioeconomic factors that may constrain individuals from making self-choice marriages.

Various cultural norms and expectations, such as endogamy and exogamy rules, influence marriage alliances in different communities in India. With increased legal marriage age and easy access to technology, it is now easier for individuals to find a spouse of their choosing, and traditional restrictions on interaction between boys and girls are now difficult to enforce. Participation in choosing one's life partner varies between groups, with some allowing guardians or elders to arrange the marriage while others emphasize self-choice.

Marriage is considered a culturally universal and socially sanctioned relationship in which two people live together, have sexual relations, and have children. It governs sexual desires by established customs and laws. Sociologists believe that it is important to define marriage so that it has a universal meaning and application. One definition is that marriage is a union between a man and a woman such that children born to the woman are the recognized legitimate offspring

of both partners. Another definition broadens the scope of marriage and includes levirate marriages and same-sex relationships. In India, “Blumberg and Dwarki⁴ discovered the following patterns of spouse selection:

- Marriage by parents/elders without consulting either the boy or girl;
- Marriage by self-choice without consulting parents/elders;
- Marriage by self-choice but with parental consent;
- Marriage by parents' choice but with the consent of both the boy and girl involved in the marriage; and
- Marriage by parents' choice but with the consent of only one of the two partners involved.”

The Universal Declaration of Human Rights of 1948 recognized this right. According to this Act:

- Men and women of full age, regardless of race, nationality, or religion, have the right to marry and start a family. They have equal rights in marriage, both during and after the marriage.
- Marriage shall be entered into only with the free consent of the intending spouses.
- The family is society's natural and fundamental group unit, and it is entitled to both societal and state protection.⁵

It is important to define marriage so that it has a universal meaning and application. Marriage is defined as follows in Notes and Queries⁶ “*Marriage is a union between a man and a woman such that children born to the woman are the recognized legitimate offspring of both partners*”. Gough⁷ defined ‘marriage’ as follows “*Marriage is a relationship established between a woman and one or more other persons, which provides that a child born to the woman under circumstances not prohibited by the*

⁴ Dr. Sushree Panigrahi, ‘CHOICE AND REGULATION IN MARRIAGE’ (Egyankosh)

<<https://egyankosh.ac.in/bitstream/123456789/87357/1/Unit-9.pdf>> accessed 04 March 2023

⁵ Kusum, *Family Law Lectures Family Law I* (2nd edn, Lexis Nexis 2019)

⁶ Dr. Siemen, ‘Definition of Marriage’ (California State University Northridge)

<<http://www.csun.edu/~ss24912/Anthropology308F07/MarriageLeachhandout.pdf>> accessed 04 March 2023

⁷ Kathleen Gough, ‘MARRIAGE’ (Egyankosh) <<https://egyankosh.ac.in/bitstream/123456789/41277/1/Unit-3.pdf>> accessed 04 March 2023

rules of the relationship is accorded full birth-status rights common to normal members of his society or social stratum”.

As you may be aware, levirate is a fairly common practice in some parts of India. Gazetteer of India⁸, for example, mentions the prevalence of levirate alliances among the Ahir of Haryana, some Jaat communities and Girijan and several other castes in Uttar Pradesh, and among the Kodagu of Mysore. Levirate marriages are those in which a man is obligated to marry the widow of his brother.

EVOLUTION OF INSTITUTIONS OF ALTERNATIVE FORMS OF MARRIAGE

Marriage has undergone significant changes in recent times, with society moving away from the traditional notion that only arranged marriages are acceptable. Instead, there has been a shift in attitudes towards different forms of marriage, with people looking for ways to enjoy the benefits of marriage without being tied down by the duties and obligations that come with it. This has led to the development of alternative forms of marriage. Today's youth prioritize their careers and personal freedom over the stability and obligations of traditional marriage, which is seen as outdated and prone to cheating and harassment. The high divorce rates and instability in marriages have contributed to this shift in perception. Financial stability and independence are also seen as key factors in achieving liberation and happiness in one's personal life.

Children born from a voidable or void⁹ marriage have legal status under the Hindu Marriage Act of 1955.⁹ The Protection of Women from Domestic Violence Act of 2005¹⁰ provides security to women who face atrocities in a relationship in the character of marriage. This act defines an 'aggrieved person' as any woman who is living or has lived with a man and is subjected to any atrocities in terms of violence by the man.

Using the concept of relationships like marriage, this Act broadens the scope of recognizing a live-in relationship. It acknowledges such relationships while also protecting the interests of

⁸ 'Marriage and Its Changing Patterns' (Egyankosh)

<<https://www.egyankosh.ac.in/bitstream/123456789/27189/1/Unit-11.pdf>> accessed 04 March 2023

⁹ Hindu Marriage Act 1955

¹⁰ Protection of Women from Domestic Violence Act 2005

women in such relationships. Article 14 of the Constitution of India¹¹ guarantees the Right to Equality to its people before the law. Consequently, the Decriminalization of Section 377 of the Indian Penal Code¹² in 2018 gave the individuals of the LGBTQ community a ray of hope and a sense of equality before the law and in the eyes of the people. Since then, people belonging to the community have embraced homosexuality as a sexual orientation more than ever before. The Indian judiciary does not take a strong stance on accepting or rejecting the concept of live-in-relationships or gay or lesbian relationships but it does ensure that the aggrieved receive justice in every case. The judiciary's primary concern is delivering justice and deciding cases while keeping social and constitutional factors in mind. In a case, the Supreme Court ruled that mutual cohabitation between two people for an extended period is equivalent to marriage, and the child born as a result of such a relationship is legitimate. However, the question that somehow still arises is whether the societal setup will readily accept this type of relationship and what the consequences of accepting such a relationship will be.

In India, the emergence of gay and lesbian relationships may come as a surprise to traditional society there are millions of such individuals in metropolitan cities. These relationships involve two people of the same sex getting married and enjoying the same constitutional rights as married couples under the Civil Partnership Act 2004.¹³ Although this emerging form of the institution may not align with traditional societal norms, contemporary marriages follow a different pattern. Young people view marriage as less important and may engage in premarital sex, and cohabitation has become more socially acceptable. Cohabiting couples have had the same adoption rights as married couples since 2002. The Law Commission and the Malimath Committee (2003)¹⁴ were instrumental in suggesting that a woman should benefit from the legal status that is provided to the wife if she lives in a live-in for an extended period.

¹¹ Constitution of India 1950, art 14

¹² Indian Penal Code 1860, s 377

¹³ Civil Partnership Act 2004

¹⁴ K. DEEPALAKSHMI, 'The Malimath Committee's recommendations on reforms in the criminal justice system in 20 points' (*The Hindu*, 28 November 2021) <<https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article61493071.ece>> accessed 04 March 2023

Alternative forms of marriage have evolved considerably in recent times, including the emergence of one-person households where individuals seek to establish their own identities by starting their own families. 'Coexisting apart' is also becoming common in Western nations where married couples choose to live apart from each other for reasons such as privacy and independence. The trend towards living apart together is evident, with a 2008 survey in the UK showing that 1 in 10 adults were LATs. The DINK Syndrome (Double Income No Kids) also emerged in the 1980s, and today, more couples are delaying having children or opting not to have them at all. These trends are no longer considered stigmatizing and are increasingly accepted by society. The law has played a significant role in defining and shaping this change.¹⁵

CONCLUSION AND SUGGESTION

Marriage, like everything else, is subject to change and evolving circumstances. Numerous factors contribute to this, including advancements in technology, changes in economic and educational opportunities, and shifts in lifestyle choices. With these changes come alterations in age at marriage, partner selection, marital goals, divorce rates, and the financial aspects of marriage. However, there are also consequences to these changes, such as the lowering of fertility rates due to the increasing age gap between spouses. The shift in marriage institutions is the result of various factors such as social, economic, psychological, technological, and legal factors. The rise of consumerism has led to unrealistic expectations and increased the gap between aspirations and their fulfillment. This has created a desire for quick wealth, often achieved through exploiting unequal power dynamics within families. Conflicts arise due to the interaction of tradition and modernity. Emerging trends, such as gay marriage and cohabitation, may have a greater impact in the future. However, despite these changes, marriage is still widely practiced and continues to hold psychological significance for both Hindu men and women. While its sanctity may have diminished, it remains more than a mere civil contract.

¹⁵ Kanailal Motilal Kapadia, *Marriage and Family in India* (1st ed, Oxford University Press 1966)