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An Analysis of the Changes in the Institution of Marriage in India

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ABSTRACT

Family is one of the most important primary social institutions. Study of family and their behaviour has been extensively studied by sociologists for an extremely long period of time. The study of marriage is an extremely essential aspect during the study of family by sociologists. Marriage is a reflection of societal, traditional and religious norms which makes it imperative to study marriage.

In India, marriage and its customs has been greatly analysed by Indologists. Study of marriage brings to light certain important aspects such as the position of women in the society, the importance of religion and customs in the Indian Society and the importance of having children among Indian families. But with social, legal and scientific development; the institution of marriage has drastically changed as compared to ancient and medieval India. The contemporary outlook of marriage is much more liberalised which also entails empowerment of women and emphasis on personal choice and liberty. Studying these changes is important especially for law-makers as matrimonial and family laws are made based on the contemporary outlook of marriage.

This paper would first discuss the perception of marriage in ancient and medieval India in order to compare it with the modern times. It would then go on to highlight some major changes that the institution of marriage has been witnessed in the Indian Society and the causes of such changes. The paper would further highlight how the Indian legal system has also transformed in order to incorporate such changes by way of certain case laws. Finally, the paper would highlight certain aspects under marriage that still need to undergo changes in order to improve the institution of marriage as a whole.

Keywords: Marriage, changes, India, law.

I. INTRODUCTION

The institution of marriage holds immense importance in the Indian Society. As compared to its history; the customs, traditions, values and beliefs in a marriage have undergone immense changes due to various social reforms, expansion of education and improvements in

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technology. The Indian Legal System has also given a legal backing to several reformative changes in the matrimonial system of India. The Indian Society has perceived some changes in a very positive manner whereas it is reluctant to accept others such as homosexual marriages. Such changes in the institution of marriage in India shall be discussed below.

(A) Research Objectives

- To understand the history of marriages in India
- To analyse the changes in system of marriages in India.
- To understand the reasons for the changes for the attitude towards marriage among Indians.
- To discuss the legal support provided to facilitate the changes in Indian matrimony.
- To discuss several aspects that still require changes to improve the institution of marriage in India.

II. HISTORY OF MARRIAGE IN ANCIENT INDIA

The custom of marriage has existed since time immemorial. It holds an extremely important position in every society of the world. The concept of marriage has existed from the primitive times, way before its recognition and the coinage of this term. The historical records of marriages in India go way back to the Vedic period where it was initially recognised as a ‘*samsakar*’ in the ancient Hindu scriptures.² Once seen as a sacred alliance and a means to fulfil the need of a male offspring in particular³, marriage is now viewed from a completely different viewpoint of it being a contract that can be broken by the intervention of the Indian Legal system. Thus, the concept of marriage in India, its customs, its objectives have constantly been evolving.

As per the *Shastras*, the role of women in marriage was defined where she was recognised as the *grihalaxmi or patni* who devoted her entire life in subordination to her husband and his family. In the Vedic period, the patriarchal system of society persisted and marriage was viewed as a means of procreation and continuing the male progeny. Several customs such as polygamy and dowry existed. Historical records such as the *Manusmriti* forbade widow remarriages. The ancient practice of *sati* used to be an important custom of marriage and its evidence can be found in the *Mahabharata* where *Madri* burnt herself on the pyre of *Pandu*,

² Ajai Kumar, *Changing attitude towards marriage under various personal Laws in India A socio legal study*, Shodhganga, 6 (2001)

³ *Id* at 6

her husband.⁴The caste system was extremely prevalent during that period and became one of the strongest grounds to decide who could marry one. The marriageable age of both boys and girls were very low. Child Marriage was extremely frequented during ancient and medieval India. Girls were married of before they even attained puberty due to which they had no or very limited opportunities of attaining education. Due to the prevalence of the Dowry system, an older woman was married to a young boy of 12-13 years of age and young females were married off to old- middle aged males. This became a common practice during the Mughal Empire, So much so that Akbar came out with a law stating that a marriage of a male to another female who was more than 12 years older to him would be nullified and would cease to exist.⁵

In Medieval India, polyandry was highly practiced. Instances have been recorded among the Toyals of Madurai where brothers, nephews and uncles married the same woman.⁶Other practices that defined the institution of marriage in Ancient India included *Swayamwara*, polygamy etc.

With the incoming of the British, some of the key practices of the Hindu marriage were completely denounced and the system of marriages in India started undergoing a massive transformation in the 19th and 20th century.

The concept and practices of marriage in India today differ greatly when compared to its Historical Background. The institution of marriage is constantly changing and evolving. The researcher believes that many of these changes have had a great benefit in improving not only the institution of marriage but also the society as a whole as it has denounced various regressive practices and adopted many reformative ones.

The paper would discuss various changes in the institution of marriage in India. It would then go on to analyse its causes and the legal framework of India that supports such changes. Lastly, the paper would discuss various aspects of the Indian matrimonial system that still need to undergo changes and suggest certain measures for the same. The researcher will confine the concept and practices of Marriage as practiced under the Hindu Law.

III. CHANGES WITNESSED IN THE SYSTEM OF MARRIAGES IN INDIA

As mentioned earlier, the institution of marriage has undergone a massive transformation in the recent times. There are various aspects where the newly accepted norms and traditions are in contrast with the norms and traditions followed earlier. Some of these aspects that have

⁴ *Id* at 16

⁵ A Majid, EMPEROR AKBAR'S VIEWS ON WOMEN AS RECORDED BY BADAUNI AND ABUL FAZL, IHC, 75, 289-294

⁶ *Id* at 35

changed the attitude of especially the youth towards marriage and its norms in India are described as follows.

(A) Decline of Arranged Marriages

The system of marriage in India is characterized with arranged marriages and the intervention of parents and family members in choosing the spouse for the children. Marriage in India has progressed from children seeing their spouses for the first time at the wedding hall during their marriage to eloping together for love. Arranged marriage is a system whereby parents or family members choose a spouse for their children basing the choice primarily on similarity in caste, religion, family values, economic status and social standing. Children had little or no say while choosing their spouse and the choice was based mainly on the discretion of the Elders of the house. There was a limitation of choice especially for the girls as her parents coerced her to marry the boy who was economically superior to her. Caste was given pre-dominance and inter caste marriages were considered dishonourable to the family.

In contrast to this, the Western system of marriages has predominantly characterized by love marriages where people meet their spouse, interact with them and know them well before they decide to get married to each other.

With the advent of globalization and influence of the West, Indian families have now forwarded to adopt a hybrid model, amalgamating the Indian practices with the practices of the West in choose the spouses for their children. Though there has been a considerable increase in the number of adults opting for love marriages in a country, the more common practice adopted in India is the combination of the systems followed in India with the West. In such a system, people do not necessarily fall in 'love' before getting married but the parents do consult the children, take their opinion and incorporate their choice while deciding a suitable mate for them during arranged marriages. Conversely, children who have found a mate for themselves do talk to their parents about it, understand their viewpoint and marry the mate of their choice after involving their respective families and taking their blessings.

Such system has led to many benefits in transforming and minimising the role of caste and religion while deciding marriage between two people. A study conducted in the village of Darjeeling Hills have reported the decline of arranged marriages in the village. While conducting the study, several villagers were also interviewed and a 26-year old woman was reported having said “ *If we choose and marry according to our own desire that is good for us. If our parents search the girls for marriage, we (the married couple) may not understand the*

*feelings for each other. Doing love marriages is to understand the feelings for each other.*⁷

The villagers who were a part of the study also emphasised on the need for parents to understand and respect their children's choices in marriage as they believed that self-choices led to better understanding among partners which in turn led to more successful marriages.

The Indian Legal System has also recognised the need to grant adults complete autonomy in choosing their spouses and has time and again emphasised on the fact that adults have the complete liberty to choose their own spouse. In the case of *Laxmibai Chandaragi B Vs The State of Karnataka*⁸, the Supreme Court held that the consent of the two individuals who agree to marry each other should be given primacy and the consent of family, clan and community is not necessary when there is willingness between the adults to marry each other. The change highlighted in this point was also accepted by the Supreme Court in this case when the Court was quoted saying '*Educated younger boys and girls are choosing their life partners which, in turn is a departure from the earlier norms of society where caste and community play a major role.*'⁹

Thus, we note that this is one of the most important and beneficial changes that has been brought about in the institution of marriage in India as it upholds active involvement of the candidates in choosing their partners, maintains harmony between parents and children as the viewpoints of both groups are accommodated, benefits the society as it reduces the role played by caste and religion in choosing a partner, promotes the acceptance of inter-caste and inter-religious marriage in the society and most importantly; gives the adults the liberty to exercise their choice in a decision that has the capacity to change their entire life.

(A) Live-In Relationships and Conjugal Relations before Marriage

From the ancient system of society in India, a chastity in a marriage especially from the woman was an essential and a requisite social behaviour. There was utmost importance laid on the physical chastity of a woman towards her husband and that primarily became the base for challenging and discouraging widow remarriage in Ancient and Medieval India.¹⁰

Even today, the perception of the society especially that of the older generation remains unchanged. Marriage is termed as 'holy matrimony' and conjugal relationships before marriage

⁷ Keera Allendorf, *Schemas of Marital Change: From Arranged Marriages to Eloping for Love*, Vol. 75 No. 2 Journal of Marriage and Family, 461 (2013)

⁸ *Laxmibai Chandaragi B Vs The State of Karnataka*, (2021) SCC 85

⁹ *Supra Note 8*

¹⁰ *Supra Note 2*

remain unaccepted among most of the Indian population as physical loyalty is necessitated to uphold the morality and sanctimony in a marriage.

The concept of Live-in Relationships is a step away from this belief. It is a new-age norm that aims to change the social order to a very great extent. It is gaining a lot of popularity especially in the last decade among the current youth who have voiced out support for such a system of co-habitation. To support the above viewpoint; a study in the village of Guntur, Andhra Pradesh was conducted whereby a sample of 60 students (30 males and 30 females) between the age group of 25-30 years were interviewed and were asked to give their viewpoints regarding the idea of live- in relationships.

It was concluded that 73% of the males and 40% of the females had a positive attitude towards live-in relationships and they believed that living together would inculcate better understanding among partners before marriage.¹¹ 93% of the males and 83% of the females believed that live-in relationships is the best way of knowing ones partner before engaging into one of life's biggest commitment.¹²

As to the concept of pre-marital conjugal relations in India, the practice is much more prevalent and much less talked about. A study conducted way back in 1991 among the school students (9th -11th Std) in the schools in both urban as well as rural areas of Delhi, Rajasthan, Uttar Pradesh and Haryana revealed at merely 51% or an extremely small majority believed that “unmarried people should not engage in sexual intercourse”.¹³

The concept of pre-marital sexual relations in India has not been greatly discussed due to the social stigma, expected social norms and a moral code of conduct in a marriage. But, the concept of live-in relationships though nascent in India, not only has the power of transforming one of the most important essence of marriage as per the Indian society but also has the potential to lead the formation of new gender relations, one where the purity of a woman is not equated to her chastity before marriage.

Thus, this newly developed concept majorly accepted in urban India is extremely pre-dominant in understanding the changes in the system of marriages in India.

(C) Changing attitudes towards having children

¹¹ Amruta Malatesh & K Dhanasree, *Perceptions of Youth toward Live in relationship*, 7, J Krishi Vigyan, 121 (2018)

¹² *Id* at 121

¹³ Lekha Subaiya, *Premarital Sex in India: Issues of Class and Gender*, Vol. 43 No. 48, EPW 55 (2008)

There has been a recent advent in the last 10-20 years whereby there has been an advent among couples either to have lesser kids, kids at a later age or to not have kids at all.

A colloquial slang meaning 'Double Income No Kids' has paved its way into the matrimonial system of India and now is gradually changing the entire objective of the establishment of this institution in the first place. According to a survey conducted by the United Nations Population Fund, India's fertility rate dropped from 4.97 per woman from 197-80 to 2.3 per woman in 2015-20.¹⁴ There has been an immense change in the attitude of couples towards children, so much so that it is changing the entire objective of Marriage in India. Having children was considered to be the next logical step after every marriage and it is very common among Indian parents and family members to expect couples to start with family planning soon after marriage. But this trend is changing in India especially in the urban areas. Millennials are now more focused on their careers and do not consider marriage as their ultimate goal. A study conducted concluded that between 1980 to 2010, the mean age of marriage for women moved from 18.7 to 20.5 years while for men it shifted from 23.4 years to 24.9 years.¹⁵ The youth is now opting for late marriages as they prefer pursuing Higher Education and attaining job stability first. This is in complete contrast to the trends observed in Ancient India, especially in Akbars era where it was considered to be a lucky omen if girls were married by the age of 9 years.¹⁶ A similar trend has been observed among adults who are having children at a later stage. Adults now wish to attain financial independence and have saved enough before they have children. An article published in *The Times of India*, an Indian who had her first child at the age of 39 who gave the following reasons for having late children, "I got married when I was 29 but we were both busy in our careers. My husband was also keen on investing in a property, which we eventually did five-six years into our marriage before we started thinking of having a child."¹⁷ Another phenomenon that has recently become more common in India is something more colloquially known as the DINK Syndrome. It means Double Income No Kids, much common among the urban youth among India whereby people are not wanting to have children. They believe that children are becoming an additional financial liability among parents who are now more focused on their careers and inter-

¹⁴ Dharendra Tripathi, "What Are India's Challenges as Its Fertility Rate Falls?," LITEMINT (July 23, 2019), <https://www.livemint.com/news/india/what-are-india-s-challenges-as-its-fertility-rate-falls-1563907229812.html>.

¹⁵ Baishali Goswami, *An Investigation into the Pattern of Delayed Marriage in India*, ISBN (2012)

¹⁶ Supra Note 2

¹⁷ Ipsita Bhattacharya, *Couples want to take their time before becoming parents*, THE TIMES OF INDIA (Nov 23, 2019), <https://timesofindia.indiatimes.com/life-style/parenting/pregnancy/couples-want-to-take-their-time-before-becoming-parents/articleshow/72183271.cm>

personal relationships. In another study conducted by the Times of India reported various interviews conducted and concluded that since many adults do not wish to give up on their current lifestyle or their 'freedom' of not being responsible for a third member in their family.¹⁸

Thus, the attitude of adults about having or not having children is another reality that is very evident, more in urban India that describes the change in perception of the youth regarding marriage.

(D) Divorce and Pre-nuptial Agreements

Marriage in India has transformed from 'till death do us apart' to 'till dispute do us apart'. Once recognised as an un-breakable bond, marriage can now be deemed as a contract; a way out of which can be sought for with the intervention of the Court. The divorce rates in many parts of the world, including India are on the rise. Though in absolute terms the divorce rate in India is very low; in relative terms the current rate of divorce in India is higher than the rate of divorce a few decades ago. A report titled "Progress of the World's Women 2019-2020: Families in a Changing World" stated that India's divorce rates are one of the lowest in the world, at 1.1% of the total population¹⁹. While this may seem to be a very low number, but the divorce rate has increased from 0.5 per 1000 in 1988 to 13 per 1000 in 2019.²⁰ Moreover, the data revealed by the 2011 census shows that the number of people who have been divorced have almost doubled in two decades.²¹ Though, the practice of divorce is most extensively seen in metropolitan cities such as Mumbai where the number of divorce petitions filed in 2014 has seen a two-fold increase since 2010²²; the attitude towards the permanence of marriage is changed greatly in the youth as compared to the older generations. It is now easier for people to get out of toxic marriages where there is an unsolvable dispute in the marriage or where unfavourable situations of cruelty, physical abuse, adultery or alcohol problems exist.

Another novel custom that has recently developed among the rich and elite is the exist of pre-nuptial agreements. Though they have not been formally recognised in the *Hindu Marriage Act, 1955*, it has been held valid under the ambit of a regular contract and is regulated by S.10

¹⁸ Spardha Pandey, *Why these Indian Couples are Opting not to Have Kids?*, THE TIMES OF INDIA (Dec. 3, 2019), <https://timesofindia.indiatimes.com/life-style/parenting/getting-pregnant/why-these-indian-couples-are-opting-to-not-have-kids/articleshow/64135670.cms>

¹⁹ Neetu Chandra Sharma, *Non-marriage very rare in India but divorces doubled in past two decades: Report*, LIVEMINT (Jun 25, 2019) <https://www.livemint.com/news/india/non-marriage-very-rare-in-india-but-divorces-doubled-in-past-two-decades-report-1561486297890.html>

²⁰ Akhilesh Pathak, *Crimes against women as a correlate of incidents of Divorce in India*, Vol. 8 IJMCR (2020)

²¹ Id at 397

²² Id at 397

of the *Indian Contracts Act, 1872*²³. A pre-nuptial agreement helps in clarifying various custodial and financial issues much before marriage and helps to clarify certain issues that are not covered under the *Hindu Marriage Act, 1955*.

Thus, these two are extremely novel but extremely important changes in the system of marriages in India.

IV. CAUSES FOR THE CHANGE IN THE INSTITUTION OF MARRIAGE IN INDIA

(A) Education

Education has played an extremely important role in changing the dimension of customs, role of women in a marriage and decline in the rigidity of caste and religion while choosing a mate for marriage. Overall, education helps in changing the mindset of the youth who become more open-minded as compared to the earlier generations. A survey conducted in the village of Darjeeling, India interviewed several villagers who discussed the impact of education on the minds of the young generation and how it affected their decisions regarding marriage. A 51-year-old man, when interviewed said the following, “*The young children are educated due to which they do not care about castes. They say that all castes are equal.*”²⁴ Moreover, higher education among the youth paves the way for better employment opportunities that in turn makes them more financially independent due to which they have the power and freedom to exercise their choice in selecting a mate for themselves. They are not compulsorily bound by their parents’ choices. Thus, education expansion has unsettled the generational hierarchy and thus has changed the aspect of parental control in spouse selection.²⁵ Education also increases avenues for love marriages as the exposure of youth due to colleges etc, increases which in turn increases their interaction with others.

Education especially among women has changed several dimensions of marriage in India. It has greatly contributed in breaking stereotypes of gender roles in a marriage. From the ancient times, women were made solely responsible for domestic care work, taking care of the family and they remained under the full command of their mother-in-law²⁶. Since the men were the primary bread earners of the family, women were financially dependent on them and this reduced their position to that of a subordinate to their husband. Women were made to follow several age-old customs such as not having her meal until her husband had dined etc²⁷. But as

²³ Indian Contract Act, 1872 § 1

²⁴ Supra Note 9

²⁵ Id at 12

²⁶ Supra Note 3

²⁷ Id at 28

education among women increased in India, more specifically in urban India; the role of a wife has seen a change from management of the household to employment and earning for the house. Women in rural areas are also now undertaking work in the agricultural fields, basic textiles and handlooms etc. This in-turn promotes equality in a marriage and also helps in increasing the financial position of a household to meet the increasing expenses as the husband as well as the wife are now working.

Education also shifts the primary goals of women from marriage, family and children and places career aspirations before them. This in turn increases the employment of women in various sectors and makes them financially independent. Thus, it is now easier for a woman to move out of a bad marriage and seek a divorce as well as the custody of her children as she is no longer under the financial dominance of her husband and is capable to maintain herself along with her children.

(B) Technological Advancements

The effect of technological improvements can even be seen on marriages in India. Technological advancements have acted as an agent in majorly changing the process of choosing a spouse for marriage. In the past decade, India has seen a rise in the use of online dating apps which is an influence of the West, but a novel use of technology to suit the Indian system of match-making is the use of matrimonial websites whereby singles can update their bio-data on them and can find suitable matches for themselves. As technology is not inhibited by boundaries, these websites can provide way more connections as compared to the traditional process of socialisation. They provide singles with various opportunities to mate beyond the existing network of friends, educational institutions, workplaces, places of worship and the neighbourhood.²⁸

With the spread of internet and the availability of cheap broadband services, there has been a surge in the users of these matrimonial platforms. The Senior Vice-President of *Jeevansaathi.com*, Rohan Mathur explained the same during an interview. He said that with Jio providing cheaper internet services, their penetration in the Jio Markets have increased.²⁹ He was also quoted saying, “This huge increase in internet penetration has led to a large number of users coming online.”³⁰

²⁸ Nainika Seth and Ravi Patnayakuni, *Online Matrimonial Sites and the Transformation of Arranged Marriage in India*, IGI (2009)

²⁹ Binita Jaiswal, *Lockdown boosts India's online matrimony websites as usage surges*, THE INDIAN EXPRESS (Apr 25, 2020) <https://www.newindianexpress.com/business/2020/apr/25/lockdown-gives-a-boost-to-indias-online-matrimony-websites-as-usage-surges-2135057.html>

³⁰ Id

With the imposition of lockdown during the COVID 19 pandemic, various matrimonial websites such as Bharat Matrimony, has seen a 30% increase in its user base.³¹

During the COVID 19 pandemic, technology has also changed the way a marriage is performed in India. A matrimonial website, *shaadi.com* has provided the facilities of a “*Wedding from Home*” for the couples who wish to get married during the lockdown. This website helps in organising online sangeets to the priest performing the marriage rituals via video call. This is one of the most important change observed in the system of marriages in India in the current year.

Thus, abovementioned are the two most important causes of the Changes brought about in the system of Marriages in India.

V. WAYS BY WHICH THE INDIAN LEGAL SYSTEM HAS BEEN INSTRUMENTAL IN SUPPORTING THE CHANGES OF MARRIAGE IN INDIA

The social progress made by the Indian Society with regards to matrimony has been solidified by the Indian Legal System through various statutes and case laws that solidify and codify such changes and ensure its compliance throughout the Indian Society. The new reformative norms have found a lot of support through statutes such as the *Dowry Prohibition Act, 1971* which abolishes the ancient system of Dowry in India and penalises its practitioners; the *Prohibition of Child Marriage Act, 2006* that lays down the marriageable age for consenting adults and states the punishment for those solemnise, promote or permit Child Marriages and the *Hindu Marriage Act, 1955* that regulates Hindu Marriage and divorce in India.

Aside from these statutes, there are various case laws that have ensured the effective implementation of such statutes, upheld individual liberty in marriages and have made an attempt is swaying away from stereotypes surrounding marriages and reforming the age old and regressive customs of marriage followed in India.

Such case laws shall be discussed below.

(A) Baldev Singh v State of Punjab³²

The abovementioned case discusses the mental agony that a woman faced as result of dowry demands from her husband and in-laws that ultimately led to her committing suicide. It brings

³¹ Id

³² Baldev Singh v State of Punjab, (2008) SCC 13 SCC 233

out the dark side of the matrimonial custom or dowry that has now transformed into an evil due to the greed of the groom and his family members for 'easy money' from the bride.

The case highlights the story of one Satwant Kaur who was married to Baldev Singh in 1991. Within 3 days of marriage, Baldev Singh and his family members started making demands for several expensive commodities such as a television and a refrigerator. Their demands were initially met with but even after this, their desire for money remained unsatiated and Satwant was again being harassed and demands for cash were made to her family members multiple times and even this was met when a sum of Rs. 40,000 was paid to them.

Post the death of Satwant's father, her husband Baldev Singh demanded his share in the property his father-in-law and the his family made a demand of additional Rs, 1,00,000.

Satwant Singh had mentioned instances of cruelty and harassment to her brother via the letters she sent to him. When her brother did come to visit her, he found her unconscious with her in-laws surrounding her. She has consumed poison in the form of organo phosphorous insecticide that led to her untimely and unnatural death.

Baldev Singh was held guilty by the Trial Court under S- 304 B³³ (Dowry Death) of the Indian Penal Code, 1860 which was upheld by the High Court.

An appeal was filed by him in the Supreme Court of India challenging his conviction by the High Court. The bench upheld the conviction and mentioned that the demands for dowry were the ultimate reason of Satwant's untimely death and thus imposed a sentence of imprisonment of 7 years on Baldev Singh.

Multiple judgements such as these develop the faith in the Indian Judicial System that aims to get rid of the deep-rooted social evil that has crept its way into the Marriage System of India. While discussing the importance of legislations and judicial decisions regarding the eradication of the system of Dowry from the Indian Social system, the comment made by Pt. Jawaharlal Nehru regarding the issue is worth noting.

*"Legislation cannot itself solve deep-rooted social problems, but it is necessary and essential so that it can give that push and have the educative factor and the legal sanctions behind it that help public opinion to be given a certain shape."*³⁴

³³ Indian Penal Code, 1860 § 304 (B)

³⁴ Supra Note 3

Thus, such decisions and legislations are extremely important in moulding the public opinion and supporting the social transformation that aims to improve the institution of marriage by letting go of such age-old customs.

(B) Joseph Shine v Union of India³⁵

One of the most important judgements passed in 2018, *Jospeh Shine v Union of India* was a landmark case that de-criminalised adultery in India. It set pathbreaking reasons that upheld the equality of both men and women in a marriage which in turn preserved the true sanctity of a marriage in India. Since long, a woman's purity before marriage has been equated to her dignity in the society and many members of the society still consider sexual relations outside marriage as a moral wrong. But the irony is that the societal norms are not stringent for men. There have been innumerable instances of extra-marital affairs of men and their wives have been asked by her family members to overlook such instances and continue her marital relationship with her husband. Such irony was promoted by a pre-independence law in the IPC, 1860 that sought to punish a man who had conjugal relations (not amounting to rape) with another man's wife without his consent. But the same act had no punishment whatsoever for the act of adultery committed by a man.

In this case, S. 497 of the IPC was held unconstitutional on various grounds, most important ones being that it was against Right to Equality (Article 14 of the Indian Constitution); it promoted discrimination on the grounds of sex and thus it was against Article 15(1) of the Indian Constitution and it inhibited the Right to Privacy and the Right of Choice of the woman and hence was against Right to Life and Liberty under Article 21 of the Indian Constitution. The judgement discussed the original reasons of why the law was inserted in the first place in the pre-constitutional era and held that one of the major reasons of doing so was the perception of women as the *property* or chattel of men and such an offence was regarded as an injury to the husband as it amounted to the *theft of his property*; a view that has no place in India today.

The Supreme Court also decriminalised the offence as it was extremely unfair to women who had no power whatsoever to prosecute their husbands for the same offence. The offence was also de-criminalised as it gave a married woman's husband complete power over her sexual agency. The law explicitly stated that if a man having sexual relations with another man's wife *without the consent of her husband* was to be held liable for the offence of adultery. The power of consenting was solely left to a woman's husband which inhibited her freedom and choice in

³⁵ Joseph Shine v Union of India, (2018) SCC 783

deciding who she wishes to share physical intimacy with, a matter that should solely reflect personal choice.

Justice D Y Chandrachud was quoted saying in the judgement, "Section 497 is founded on the premise that a woman entering a marriage loses, so to speak, her voice, autonomy and agency."

³⁶ *This perception of a husband's superiority over his wife and a wife's subordination to her husband is changing in India and such a judgement is legally supporting this important a social change and hence is very important in understanding the change in the dynamics of Marriage in India.*

(C) Kamini Devi and Anr v State of Uttar Pradesh and Ors. ³⁷

A very recent judgement of the Allahabad High Court that has found its roots in many of the Supreme Court judgements such as Lata Singh v State of Uttar Pradesh³⁸ and Indira Sharma v V.K.V Sharma re-enforces the fact that there is nothing illegal about live-in relationships in India and they are legally valid though they may be viewed as socially immoral.

In this case, a woman named Kamini Devi (aged 24 years) fell in love with a man named Ajay Kumar and started living with him by her own free will, without any coercion or compulsion.

Kamini Devi's parents were not happy with her decision and were trying to solemnise her marriage to an older person against her will due to which they began harassing her. As a result of this, she approached the High Court of Allahabad to request that necessary protection be given to her and her live-in partner. The High Court ruled in her favour and stated that the Supreme Court of India, from time to time have held that consenting adults have the right to co-habit with each other and are *legally entitled to stay in Live-in relationships* notwithstanding its moral implications as perceived by the society.

Not only this, the Indian Legal System via the statute of *Protection of Women from Domestic Violence Act, 2005* has extended the definition of *domestic relationship* from marriage to "relationship in the nature of marriage" to include the ambit of live-in relationships within its purview and to extend the benefits of the Act to the women who are not necessarily married but are in a live-in relationship with their partners.

Another provision that gives a legal sanction to live-in relationships is that a recommendation given by the *Malimath Committee* that was acted upon to include a woman in a live-in relationship with her partner for a considerable period of time would be accorded the status of

³⁶ Supra Note 35

³⁷ *Kamini Devi and Anr v State of Uttar Pradesh and Ors.*

³⁸ *Indira Sharma v V.K.V Sharma*, (2013) 15 SCC 755

a 'wife' and would be eligible to maintenance under S.125 of the Code of Criminal Procedure if her partner abandons her.

Moreover, in the case of *Tulsa v Durghatiya*³⁹ the Supreme Court of India held that a child born out of a live-in relationship will not be regarded as an illegitimate child and in the case of *Bharatha Matha v. R. Vijaya Renganathan*⁴⁰, *the Supreme Court held that a such a child shall be eligible to inherit the property of his parents and thus it solidified such legitimacy in the eyes of law.*

Thus, we see that the Indian Legal System has supported the changes in the institution of Marriage in India by way of various statutes and judicial decisions and therefore enabled many reformative changes in this social institution.

VI. SUGGESTIONS TO IMPROVE THE INSTITUTION OF MARRIAGE IN INDIA

There are various suggestions that the Indian government as well as the society can act upon to make further improvements in the institution of Marriage in India.

(A) Criminalisation of Marital Rape

As mentioned earlier; marriage is regarded as a sacred, unbreakable bond with the blessings of the Divine. But its sanctity is lost when there is no respect for the personal choice and privacy of the spouse. This crime not only is a personal abuse to a woman but it also breaks the marriage. Since, the offence is not recognised as a crime; women find it all the more difficult to find any sort of remedy for this act of grave violence. Statistics revealed by the National Family Health Services (2015-16) stated that it is 17 times more likely for a woman to face sexual abuse from her husband.⁴¹ What needs to change in India is the attitude of the Central Government who claimed that criminalising the act would “de stabilise the institution of marriage” while maintaining a stance against criminalisation of act when answering a petition in the Delhi High Court in 2017.

There are several countries of the world such as Australia, China, Bangladesh, Pakistan and various Asian and African countries. India is one of the 36 countries that have not criminalised marital rape. The Indian law makers can take reference to the laws and cases of these countries and make a basic framework for criminalising such an act.

³⁹ *Tulsa v Durghatiya*, (2008) 4 SCC 520

⁴⁰ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483

⁴¹ Shalini Nair, *Don't criminalise marital rape, may disturb institution of marriage: Government*, THE INDIAN EXPRESS (Aug 30, 2017), <https://indianexpress.com/article/india/dont-criminalise-marital-rape-may-disturb-institution-of-marriage-government-4819707/>

(C) Legalisation of same-sex Marriages in India:

India had given a historical judgement that signified its progress from believing in the ancient stigmas to upholding freedom of choice and personal liberty in *Navtej Singh Johar v Union of India*⁴² where it de-criminalised sexual relations between homosexual couples. After this, the next step for India is to legalise same-sex marriages, which albeit is a difficult task keeping in mind the social mentality of marriages in India, is not impossible as various countries such as the United States have already done it before. It may take time to formulate the legislations, but what again needs to change is the governments attitude while addressing the issue at hand. While opposing a very recent petition for the legalisation of marriage among homosexuals in the Delhi High Court, the Centre gave into the societal stereotypes that should no longer be accepted while stating that this concept “*is not comparable with the Indian Family unit concept.*”

There needs to be more open-mindedness among the members of the society as well as the government to extend the scope of marriage to homosexual couples too. There is a greater need to understand that marriage can no longer be known as a “*companionship between a man and a woman*”, it needs to be recognised as an institution that upholds and respects the relationship between two consenting individuals who decide to live together.

VII. CONCLUSION

Marriage in India is one of the most important social institutions. The system of marriages in India is extremely unique and different from the systems found in the West, it is a culmination of families, cultures, traditions and values that hold utmost importance and sentimental value to the Indians. But have been various regressive customs and practices in the Indian System of Marriage that have led to forms to violence and misery and have tainted the beauty of the institution. The Indian society needs to apply logic and rationality to get rid of such customs. Quite a few of these customs such as abolition of Sati and allowance of Widow Rem had already been repealed by social reformation during the British Era and others such as increasing inter-caste and inter-religious marriages; prohibition of Dowry, promotion of divorce as a way out of a bad marriage etc. are being replaced by evolution, education and technological advancements in India.

But of the other hand, certain stereotypes surrounding marriages have continued to rigged the society. One of the most important one being regarding a successful marriage as a main goal of ones life. It is very difficult for the society to recognise the will of children to not get married

⁴² Navtej Singh Johar v Union of India, (2018) 10 SCC 1

at all. Unmarried boys face various stigmas such as being reckless, rash and immature as a whereas with unmarried girls, several questions arise as to why they are not getting married. Society needs to accept that marriage is a choice and not a compulsion.

Various other stigmas surrounding marriage that need to change in the society are giving importance to a persons looks while deciding a marriage, considering a male to be the head of the family and superior in the marriage, shifting the responsibility of children entirely to the woman, raising questions whether a woman can manage both a successful career as well as a child, expecting her to give up her career after marriage and take over the responsibilities of the household. Though, there has been progress in each aspect, it is limited majorly to the urban areas and among the educated. There needs to be an overall transformation in the attitudes of people to be more accepting to various choices that people make in marriage and only then can marriage in India transform in its best system and prove to be an institution that is respected by its members. The Indian Society has come a very long way in adopting various changes in the matrimonial system, but there is a requirement of conscious efforts from all other social institutions to make conscious effort to further bring about positive changes in the system of marriages in India.

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