

ADAPTING TO A CHANGING SOCIETY: DO WE STILL REGARD MARRIAGE AS A SACRAMENT?

Aanandita Aneja*

ABSTRACT

Mahatma Gandhi¹ in his saying, “Where there is love, there is life”, has explained the importance of the existence of love in a person’s life. Marriage as a social institution is regarded as extremely important as it unites two souls and forms a connection between the two individuals involving certain expectations in the form of obligations towards one another. It is the oldest social institution and is the foundation for civilization and human relationships. It is an unconditional ritual in which the husband and wife submit to one another for their lifetime. This institution has been subject to multiple restrictions placed by various personal laws, as the need to have a proper set of rules has been felt for ages. Still, with the diversification of life through globalization and due to the increased influence of technology, there have been quite a few changes in this institution and because of the shift in the traditional outlook of marriage, certain undefined relationships like live-in relationships, gay marriages, adultery, etc have been in practice at the moment. So, it is important to understand, analyze and examine the prospects of the changing notions of marriage in the nation and this paper is an attempt to shed light on the various aspects of this concept as per the Hindu Law in India.

Keywords: Marriage, Social institution, Live-in relationships, Gay marriages, Adultery, Hindu Law, Constitution, Right To Life.

INTRODUCTION

Due to the increasing modernization and globalization spreading in the entire nation, the people of one nation are well versed with the practices of other nations, which in turn provides them the opportunity to gaze across the globe and pick and choose the practice of their choice, based on its own merits of suitability to them. Marriage is the most crucial institution of all human relationships, as it is regarded as a socially approved and legally acceptable connection between two individuals, as it can be rightly said that marriages have defined and formed human

*B COM LLB, SECOND YEAR, UILS, PANJAB UNIVERSITY, CHANDIGARH.

¹ Indian revolutionary

relationships. Marriage represents the most complex connection known to humanity since it joins the male and female parts of society. Social transformation is a natural occurrence. New situations exist, and a civilization absorbs, learns, and evolves to meet new problems. India as a country, is gradually but surely expanding its horizons to Western ideals and ways of life, and it is a forerunner in this regard. Love is an engaging sensation that unites two individuals regardless of gender, color, caste, or socioeconomic level. People have moved beyond the restrictions placed on them by their personal boards and chosen to live with their partner in the manner they wish to, whether society regards it as morally correct or not, which has posed problems to the existing and traditional laws of marriage. The importance of marriage can be expressed by Dr. Radhakrishnan², who says that "Marriages are an underlying condition of human civilization, not just a ritual. It is an institution designed to foster the expression and growth of love. Its objective is not just the generation and raising of children, but also the enrichment of the husband and wife's personalities via the fulfillment of their need for a constant togetherness, in which each may enrich the life of the other and both may reach fulfillment".

To satisfy new wants and expectations, the rural and normative rules governing marriage are bound to evolve. Many variables, juridical, governmental, sociological, and societal, all have an impact on the structure of marriage in the urban family. Many people are affected by the obligations that come with marriage. As a result, every civilization has created a model for regulating marriages. Thus, the most critical phase in marriage is the selection of partners. Though there are no set criteria for selecting a spouse, guidelines have been established from time to time to manage the selection of partners. Every citizen of our country has the right to choose their partner and marry the person they wish to, as per the Article 21³ of the Indian Constitution. The changing notion of the concept of marriage and relationships 'in the nature of marriage' or homosexual marriages have big implications for the institution of marriage and attempts to modify the traditional understanding of marriage.

MEANING AND DEFINITION OF MARRIAGE

Marriage as a practice brings with itself a set of responsibilities and obligations to one another and also grants certain rights to the individuals who are a part thereof. There exists no well-defined meaning of the term marriage, as different meanings have been assigned to this concept

² Former President of India

³ Constitution of India 1950, art. 21

by different scholars and religions, with the upgradation in the culture and the advancement of time. Marriage as a concept is vast and has expansive meanings, which have been developed over time in consistence with traditions, cultures, and global acceptance. Marriage, as a term, has been explained by various British anthropologists as, “Marriage is a relationship between a man and a woman such that children born to the woman are the recognized legitimate offspring of both parties”⁴. The marital relationship between two individuals leads to a lot of consequences in the social outlook of the children born out of such relationships, so it has also been defined from the perspective of the legitimacy of children, by Red Cliffe Brown, as “Marriage is a social arrangement that grants a kid a legitimate standing in society, which is decided by parentage in the social sense”⁵. Western social anthropologists have highlighted the role of the intimate interaction between man and woman in the function of husband and wife. This is due to the fact that individuals are given more value in these communities. Sexual and economic functions must be performed to continue the marital relationship between the individuals. This link will represent parts of the two groups' conventional notions in the local society. Marriage is more significant compared to any other organization anybody can build in this life since it affects not only the individual's pleasure but also the happiness of others. It was established to safeguard society against filthy and immoral activities on the other hand and to ensure the continuation of society's chain on the other. However, in Indian origin, people have extensively stressed relationships based on sociological, cultural, and religious obligations. People value their religious obligations more than their sexual or economic obligations toward each other. *Manu*⁶, the most important and authoritative book of the Hindu Code, has defined marriage as a social institution for regulating appropriate sex relations, as the need for being accepted at large by the people around them was greatly felt. Cohabitation is an essential element of any marriage, since earlier times, people have deeply felt the need to have each other's company, as it is a proven fact that humans cannot live in isolation, so in the words of Murdock, “Marriage entails domestic cohabitation, and it is the foundation of the nuclear family in all of them.”⁷ It is well said that Marriage is the formalization and public acceptance of your connection with your chosen partner. It establishes a legal relationship bond that binds the two people for the rest of their lives.

⁴ Notes and Queries In Anthropology, 1951

⁵ “African Systems Of Kinship And Marriage”, Oxford University Press, 1975, P 5.

⁶ Pandya, P.H., (Ed) Manusmriti, 1913, IX, 25

⁷ Murdock, G.P., “Social Structure”, Collier Macmillan, New York, 1949, P 8.

PURPOSE OF MARRIAGE

Marriage has been the strongest and most significant institution in human civilization since ancient times. It has historically existed in some form or other throughout every society, generating social approval for a biological union between a man and a woman and establishing the groundwork for the formation of the household - the basic unit of society. Marriage entails more than simply living together. It is called cohabitation. It does not indicate that neither party exists independently of the other, but rather that their union generates entire reorganization. It is a well-established fact that humans cannot live in isolation and therefore they need the company of each other to survive, which makes marriage a social necessity. Other than this reason, there are multifold psychological, legal, social, cultural, economic, and emotional reasons which convince a person to marry and have a cohabiting partner. Marriage, as a concept, provides the partner's assurance and the sole right over each other's sexuality. It also grants certain rights and duties to one another for social fulfillment reasons. Giving birth and proper upbringing of legitimate children is another important feature of a marital relationship, and its relevance is highlighted by Malinowski that marriage is a "contract for the creation and nurturing of offspring."⁸ The significance of children is such that people have believed since time immemorial that men were made to become fathers and women were made to become mothers, as the continuance of society and mankind is extremely important. When a couple marries, they are required to keep their family names by remaining devoted and truthful to each other and by carrying out their individual tasks. Marriage is perhaps the most significant event in a man's life, and it entails plenty of obligations toward one another and the family. It can be established that marriage increases wealth and assets, lengthens the life expectancy of both men and women, increases men's productivity at work and income, and gives women access to a more active and fulfilling marital life, which adds a lot of purpose to it.

LEGAL POSITION OF RIGHT TO MARRY IN INDIA

Marriage is an essential part of every person's life and it should be guaranteed by some Statute/ Provision of the Supreme law of the land, so that it can be acceptable by everyone and be adequately enforceable, to make it largely applicable. The Universal Declaration of Human Rights⁹, of which India is a signatory and whose provisions are binding upon the country since 1948, declares expressly under Article 16, that every person, including men and women of full

⁸ C.N. Shankar Rao, *Sociology, Principles of Sociology with an Introduction to Social Thought* p.327

⁹ Universal Declaration of Human Rights, 1948

age, enjoy the right to marry and have children without regard to race, ethnicity, or religion. They are subject to equal rights in marriage, during the marriage, and after marriage. Marriage may be formed only after obtaining the free and unrestricted consent of the prospective spouses. So, it can be concluded that every person in the country is entitled to marry the person of their choice, without any interference from society. Though there are certain restrictions placed on the carrying capacity of the intending parties historically, by their religion, on the basis of caste, creed, sex, economic capacity, age, wellness, etc in order to carry forward cultural values, ensure healthy children, and transfer healthy genetics to the children. These restrictions have no legal basis, these are solely placed by their respective religions, out of fear and lack of acceptance of modern practices. Marriage is practiced within the same community in many civilizations, and marriage outside one's own society is considered sinful and looked down upon by the practitioners and promoters of the community. Certain legal restrictions are also placed on the intending parties of the marriage, like following the minimum age requirement of the parties provided by law and that their relationship should not fall under the degrees of relationships prohibited by law. However, in India, the Right To Marry is not expressly mentioned in the Constitution, yet through the past judicial decisions in various cases and precedents, it is implied to be a part of the Article 21¹⁰ of the Indian Constitution, which concerns the right to life and personal liberty, is a broad provision that includes the intrinsic right to marry anyone of one's own choosing without any external interference. The Supreme Court in the case of *Lata Singh v State of Uttar Pradesh and Anr*¹¹ stated that because the petitioner was a major, she was free to marry whoever she pleased, and no rule prohibited an inter-caste marriage. The verdict, however, was limited to the facts of the case, and there wasn't a "statement of the law" by the Court. However, the Court explicitly recognized the petitioner's ability to pick her own spouse. Eventually, through judgments, the Supreme Court in the famous judgment of *KS Puttaswamy v Union of India*¹², held that every citizen has the right to protect his own space and nobody from the outside environment can interfere in his right to enjoy his freedom of space and choice.

MARRIAGE AS PER THE PROVISIONS OF THE HINDU LAW

Marriage under Hindu Law is considered the purest and the most sacramental of all human relationships. Marriage is considered not just a life-long relationship between a husband and

¹⁰ Ibid

¹¹ *Lata Singh v State of Uttar Pradesh & Anr* (2006) 5 SCC 475

¹² *KS Puttaswamy v Union of India* (2017) 10 SCC 1

wife, but it also binds both couples for seven births. Certain rituals form the basic foundation of Indian marriage, specifically Hindu marriages. According to Hindu beliefs, marriage is a sacred partnership, sacrament, and according to Hindu beliefs, is a sacred partnership, a sacrament, and a spiritual covenant intended for procreation and the continuity of family lineage. The Vedic era was regarded as the golden age of Hindu society. Marriage, according to Hindus, is the most significant of all Sanskaras and the sole Sanskara for a woman. It is among the 16 sanskaras recognized by Vedic traditions. It is an eternal, permanent, irreversible, and divine relationship. The accomplishment of the Sanskaras is regarded as the primary goal of Hindu society. There are several Sanskaras that must be performed throughout one's life, the first being Pumsavana and the final being Antyasanskara. The most important, according to Manu¹³, is the Vivah Sanskara. The sole aim of a Hindu marriage is not to have children and legitimize them, but it is also a sacred union to execute religious tasks. However, in contemporary Hindu law, Hindu marriages are no longer an irreversible bond, due to the introduction of various ways to get out of this sacred partnership, such as the introduction of Divorce Laws in the Hindu Marriage Act, of 1955 which is why Hindu marriage is no longer a sacramental relationship. It has taken on the appearance of both a contract in addition to being a sacrament. Divorce was traditionally not easily granted or recognized in Hindu society. The prohibition of divorce made the family and marriage system of family and marriage more secure and long-lasting. Divorce rates in India have been progressively rising as a result of family and marriage policies, among other causes. As per Hindu law, there is an interdependence of the marriage's partners on one another. The wife is a 'Grihaspstni' as well as a 'Dharmpatni' and a 'Sahadharmini.'¹⁴ A woman is regarded as the 'Ardhangini' (better half), implying that a man is empty without his wife. A wife brings purpose to a man's life. Similarly, a woman is incomplete without a man.

FOLLOWING ARE THE AIMS OF A HINDU MARRIAGE

- The first and foremost aim of a Hindu Marriage is the fulfillment of the religious duties of a Hindu, which is the fulfillment of the sanskaras, and as per Manu, marriage is the most important sanskara of all. It was stated "Marriage being thus essential for the accomplishment of obligations, the basic objective of marriage was Dharma," writes

¹³ Ibid

¹⁴ Ibid

K.M. Kapadia¹⁵ Marriage is thus essential for the accomplishment of obligations, the basic objective of marriage was Dharma.

- Another essential aim of Hindu Marriage is the procreation of children as the child holds a special place in the Hindu family. As per Rigveda¹⁶, the spouse accepts his wife's palm in order to have a superior breed of children.
- The attainment of sexual pleasure is an essential aim of any marriage, therefore, Sexual pleasure has been likened in Hindu scriptures to the achievement of celestial bliss.

CHANGING SCENARIO OF THE HINDU MARRIAGES

Social transformation is a natural occurrence. New conditions occur, and a civilization adopts, adjusts, and changes to meet new problems. One cannot imagine Indian society staying stagnant and fully traditional even after 76 years of independence. Marriage and family are two of the most critical entities which have shaped human civilization. These, combined, not only create the foundation of our futuristic society, but as well as the center of people's social lives. Marriage, like other societal institutions, has undergone steady alteration and adjustment in many historical contexts and epochs. The path of change in modern India began with the arrival of British colonial control. Later, the introduction of Western education, as well as the processes of urbanization, modernization, and industrialization, hastened these developments. To satisfy new wants and expectations, the rural and normative rules governing marriage are bound to evolve.

Many variables, juridical, political, socioeconomic, and cultural, all have an impact on the structure of marriage in the urban family.

Some of the changes that have taken place in the dimensions of Hindu Marriage are¹⁷-

- Child marriages have now been abolished and are considered void by the provisions of the Hindu Marriage Act. The practice of children getting married was popular in medieval India. Child marriages were outlawed after the Sarada Act was passed. Another element influencing child marriage restrictions in Hindu society has been the significant increase in women's education. Because of their late job advancement, the boys don't really marry young.

¹⁵ K.M.Kapadia, *Marriage and Family in India*, p.168

¹⁶ Sacred canonical Hindu texts

¹⁷ Rajendra.K.Sharma, *Indian Society, Institutions and Change*.

- In earlier times, marriage was considered an important and necessary ritual of Hindu families as it was considered one of the vital sanskaras. Previously, marriage was regarded to be extremely necessary both for male and female Hindus. A person who does not have a son after marriage cannot enter heaven, according to Hindu scriptures. Without a wife, no man could do yajna. Marriage was thus required, even for religious reasons. However, due to the impact of Western culture, both males and females nowadays do not regard marriage to be vital. Some people avoid marriage because of financial concerns. The contemporary educated Hindu female is not willing to accept male enslavement. Because informed men and women don't really rely on ancient religious ideals, they do not believe marriage is necessary.
- The provision of breaking the ties of marriage through divorce. It is yet another biggest change in the outlook of Hindu marriages in India because Marriage was viewed by Hindu shastras as an indissoluble life connection. The wife was supposed to honor her husband as if he were a deity. Divorce was introduced by the Hindu Marriage Act, 1955 in Section 13 of the said Act.
- Inter-caste marriage was once deemed improper in Hindu society. It is now legally permissible, which is still looked down upon by many critics of society. But, Inter-caste partnerships are now regarded as indicators of progress, as co-education, women's education, and thus the liberal concept of liberty and fairness have grown in popularity.
- The practice of polygamy was very common in medieval India. Previously, a male may marry multiple women in order to have a son. With the advancement of women's education, women started demanding equal rights in marriage. Polygamy is prohibited under the Supreme Law of Hindus, the Hindu Marriage Act of 1955. While another former spouse is still alive, nobody is permitted to marry again without dissolving the already existing marriage.
- Earlier, in the Hindus, the widow was not allowed to remarry after the death of her husband. The practice of Sati involved the sacrifice of the wife, and she was burnt down alive with her dead husband. But with the constant efforts of social workers, it is now made illegal and now, there exists a provision for the widow to remarry, as nobody can live in isolation and requires a soul mate to sustain their life.

CONCLUSION

Marriage is seen as a tradition in the country. It is a 'sanskara or purificatory ceremony that every Hindu must perform. Marriage has been prescribed as a responsibility in Hindu religious texts because an unmarried couple cannot execute some of the most significant religious activities. In our country, there are numerous sorts of marriages, with monogamy being the most common. Hindu marriage has undergone numerous transformations as civilization has progressed. Even the values associated with it have shifted dramatically. Individuals are now choosing their mates based on their own needs. Many people are avoiding marriage connections owing to various issues. With the onset of modernization, industrialization, and urbanization, traditional perspectives in society took a back seat. Traditional marriage now is viewed as a loss of identity, privacy, freedom, self-growth, absence of social and sensual diversity, discontent with a spouse, sexual frustration, in-law problems, and so on. The practice of live-in relationships, same-sex marriages, and the decriminalization of adultery are some of the crucial changes that have also changed the entire outlook of marriage in the country. Though these practices are frowned upon by traditional and conservative people, these practices have become common and are regarded as constitutionally granted under the provisions of Article 21¹⁸, which talks about the right to have personal liberty without any external bothering. So, there is a need to accept these changes, but with keeping in mind the principles and the intentions that were kept in mind, while formulation of the traditional customs and practices.

¹⁸ Ibid