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# Changing Dimensions of Institutions of Marriage in India: A Socio-Legal Evaluation

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## ABSTRACT

*Traditional Personal law in India had kept a no. of restrictions attached to the marriage. However, with the advancement of technology, the concept and dimension of marriage is gradually changing. An attempt has been made in this article to discuss, examine, evaluate and critically analyze different provisions of the enacted laws, national and international conventions, Law books and periodicals, ancient texts as well as judicial decisions related to changing dimensions of marriage in India. This paper is an effort to discuss the changes observed towards the institution of Marriage in India. Live in Relationship, Adultery, Same sex relationships which were considered as a taboo few decades ago are being widely practiced in the cities. If people are getting more influenced with these concepts, then ethical and legal communities of the world must take some necessary steps to keep the concept original and rational.*

**Keywords:** Marriage, Live in Relationship, Adultery, Same sex relationships

## I. INTRODUCTION

Marriage is a culturally recognized union between people that establishes rights and obligations between them, as well as between them and their children, and between them and their in-laws. The definition of marriage varies with various cultures and over time. Several competing definitions of marriage have been proposed in an attempt to encompass the wide variety of marital practices observed across cultures.

Edward Westermarck<sup>2</sup>, an anthropologist, defined marriage as a relation of one or more men to one or more women that is recognized by custom or law. Gough<sup>3</sup>, a sociologist, defined marriage as a relationship established between a woman and one or more other persons wherein a child born to the woman under circumstances not prohibited by the rules of relationship is accorded full birth-status rights common to normal members of his society or social stratum.

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<sup>1</sup> Author is a Superintendent of Customs at Indian Customs, Mumbai, India.

<sup>2</sup> Edvard Westermarck: The History of Human marriage, Macmillan, London (1891)

<sup>3</sup> Gough, EK: The Nayers and the definition of marriage, The Journal of the Royal Anthropological Institute of Great Britain and Ireland (1959), Volume 89(1):23-34

Gough<sup>4</sup> disregarded sexual access as a key element of marriage and defined it in terms of legitimacy of offspring alone. Edmund Leach<sup>5</sup> criticized Gough's definition for being too restrictive in terms of recognized legitimate offspring and suggested that marriage be viewed in terms of the different types of rights it serves to establish. Economic anthropologist Duran Bell<sup>6</sup> has criticized the legitimacy-based definition on the basis that some societies that do not require marriage for legitimacy. He argued that a legitimacy-based definition of marriage is circular in societies where illegitimacy has no other legal or social implications for a child other than the mother being unmarried. Duran Bell<sup>7</sup> describes marriage as a relationship between one or more men (male or female) in severalty to one or more women that provides those men with a demand-right of sexual access within a domestic group and identifies women who bear the obligation of yielding to the demands of those specific men.

It is an institution in which sexual relationships are acknowledged or sanctioned. In some cultures, marriage is recommended or considered to be compulsory before pursuing any sexual activity<sup>8</sup>. Marriage usually creates normative or legal obligations between the individuals involved and any offspring they may produce or adopt.

When a marriage is performed by a religious institution, it is a religious marriage. Religious marriage recognizes and creates the rights and obligations intrinsic to matrimony. When a marriage is performed and carried out by a government institution in accordance with the marriage laws of the jurisdiction, without religious content, it is a Civil marriage.<sup>9</sup> Civil marriage recognizes and creates the rights and obligations intrinsic to matrimony in the eyes of the state. Some countries do not recognize locally performed religious marriage on its own and require a separate civil marriage for official purposes.

## **II. FUNCTIONS OF MARRIAGE**

Individuals may marry for several reasons, including legal, social, emotional, financial, spiritual, and religious purposes. In 1955, Leach<sup>10</sup> offered a list of ten rights associated with marriage. Those rights included:

- To establish a legal father of a woman's children.
- To establish a legal mother of a man's children.

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<sup>4</sup> Ibid

<sup>5</sup> Edmund Leach: *Social Anthropology*, Oxford University Press, 1982

<sup>6</sup> Duran Bell: *Defining Marriage and Legitimacy*, *Current Anthropology* (1996)

<sup>7</sup> Ibid

<sup>8</sup> Mishra, US and Hasnain, Nadeem: *Introducing Social and Cultural Anthropology*, Jawahar Publication (2017)

<sup>9</sup> Majmudar, DN and Madan, TN: *An Introduction to social Anthropology*, Mayur books (2018)

<sup>10</sup> Ibid

- To give the husband a monopoly in the wife's sexuality.
- To give the wife a monopoly in the husband's sexuality.
- To give the husband partial or monopolistic rights to the wife's domestic and other labour services.
- To give the wife partial or monopolistic rights to the husband's domestic and other labour services.
- To give the husband partial or total control over property belonging or potentially accruing to the wife.
- To give the wife partial or total control over property belonging or potentially accruing to the husband.
- To establish a joint fund of property – a partnership – for the benefit of the children of the marriage.
- To establish a socially significant 'relationship of affinity' between the husband and his wife's brothers.

### III. LEGAL/SOCIAL SIGNIFICANCE OF MARRIAGE

Article 16 of the Universal Declaration of Human Rights<sup>11</sup> declares that the men and women of full age without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses.

Rights and obligations: A marriage bestows rights and obligations on the married parties, and sometimes on relatives as well. These may include

- *Giving one spouse control over the other spouse's sexual services*
- *Division of labour between the spouses*
- *Giving legitimacy to children born out of wedlock*
- *Establishing a joint fund of property for the benefit of children.*
- *Establishing a relationship between the families of the spouses.*

In many countries today, each marriage partner has the choice of keeping his or her property separate or combining properties. In the latter case, when the marriage ends by divorce, each owns half. In the absence of any will or trust, property owned by the deceased is

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<sup>11</sup> Universal Declaration of Human Rights, 1948

generally inherited by the surviving spouse.<sup>12</sup>

In some legal systems, the partners in a marriage are jointly liable for the debts of the marriage. This has a basis in a traditional legal notion called the Doctrine of Necessities whereby a husband was responsible to provide necessary things for his wife. Where this is the case, one partner may be sued to collect a debt for which they did not expressly contract. The respective maintenance obligations, both during and eventually after a marriage, are regulated in most jurisdictions.

- **Restrictions:** Marriage is an institution that is historically filled with restrictions. From age, to race, to social status, to consanguinity<sup>13</sup>, to gender, restrictions are placed on marriage by society for reasons of benefiting the children, passing on healthy genes, maintaining cultural values, or because of prejudice and fear.
- **Age restriction-**Most jurisdictions set a minimum age for marriage i.e. a person must attain a certain age to be legally allowed to marry. Although most age restrictions are in place in order to prevent children from being forced into marriages, child marriages remain common in parts of the world. Child marriages can have negative education and health related consequences.
- **Gender restriction-** Most sovereign states and other jurisdictions limit legally recognized marriage to opposite-sex couples.
- **Social restriction-** In many societies, marriage is performed among the same communities and marriage outside one's own community is considered to be immoral.
- **Monogamy-**Most of the legal systems prohibit polygamy. In many of them, polygamy is criminalized and a ground of divorce.
- **Extra marital relations-** Many of the world's major religions look with disfavor on sexual relations outside marriage. A married person's sexual relationship with someone other than his/her spouse is known as adultery. Almost all cultures that recognize marriage also recognize adultery as a violation of the terms of marriage. Adultery is considered in many jurisdictions to be a crime and grounds for divorce. In some parts of the world, women and girls accused of having sexual relations outside marriage are at risk of becoming victims of honor killings committed by their families.

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<sup>12</sup> Indian Succession act, 1925

<sup>13</sup> Muslim marriage is prohibited on the ground of consanguinity.

- **Pre Marital relations-** Pre marital relations are considered a taboo among the various societies. There are non-secular states that sanction criminal penalties for sexual intercourse before marriage.
- **Prohibited marriage among close relatives-**To prohibit incest and eugenic reasons, marriage laws have set restrictions for relatives to marry. Direct blood relatives are usually prohibited to marry.

#### **IV. RESEARCH METHODOLOGY**

The current study is descriptive and analytical study. The legal literature for the study has been collected from various resources. The current work depends heavily on the book reviews, ancient text of Hindu and Muslim law, articles of law journals and periodicals and judicial decisions. The researcher has also used various internet websites to collect the information related to the subject of study. Secondary sources include books, law journals, magazines, newspapers and newsletters. To make the findings of the study to reach at the meaningful conclusion, attempt has been made to discuss, examine, evaluate and critically analyze different provisions of the enacted laws, national and international conventions.

#### **V. MARRIAGE LAW IN INDIA**

Hinduism considers marriage as a sacred duty that entails both religious and social obligations. Hindu Marriage is a sacrament. It is one of the 16 sanskaras approved in the vedic traditions. It is eternal, permanent, indissoluble and holy union. The only purpose of Hindu Marriage is not to beget children and get them legitimized but it is also a holy union to perform religious duties. However, under modern Hindu law, Hindu marriage has no more remained an indissoluble union. The Hindu marriage act, 1955 has introduced the concept of divorce in Hindu law. To a great extent, Hindu marriage has ceased to be a sacramental union. It has become a semblance of a contract as well as a sacrament.

Traditional Hindu law did not prescribe any age restriction for marriage. Further, Polygyny was an accepted form of marriage. The provisions of child marriage restraint act, 1929, fixed the age of marriage to girls at 14 years and boys at 18 years which was later amended to 18 for girls and 21 for boys. Hindu Marriage Act, 1955, which is also applicable to Sikh, Jain and Buddhist, has prescribed the minimum age of marriage (21 for boys and 18 for girls). Polygamy in any form (i.e. Polyandry or polygyny) has not been allowed under the act.

However, several restrictions such as Gender restriction, Social restriction, Prohibition of marriage among close relatives were recognized under traditional Hindu Law. Pre marital sex

and extra marital sex were prohibited under traditional Hindu law. The ancient text prescribed that if the parties did not belong to the same caste, the marriage was invalid unless sanctioned by the custom. These texts prohibit a marriage between a male of lower caste and a female of a higher caste (Pratiloma Vivaha). However, a marriage between a male of higher caste and a female of lower caste (Anuloma marriage) was permitted. Under the Hindu Marriage Act, 1955, any two Hindus, whether domiciled in India or not, whether Indian citizens or foreigners, can perform their marriage. Inter caste marriages are valid under Hindu Marriage Act, 1955.

In Muslim law<sup>14</sup>, marriage is defined to be a contract, which has for its object the procreation and the legalizing of children. Marriage among Muslims though solemnized generally with recitations of certain verses from the Holy Qurran, yet the Muslim law does not positively prescribe any service peculiar to the occasion. However, Muslim marriage is both in the nature of ibadat, devotional act, as well as, muamalat, a dealing among men. It is not only a contract, but it is also a sacred covenant. Muslim law is not yet codified in India and it is yet governed by formal sources of Muslim law i.e. Koran, Hadis, Ijmaa and Kiyas. Every Muslim of Sound mind who has attained puberty may enter into a contract of marriage. In Muslim law, age of majority is understood with reference to attaining the age of puberty.

The age of puberty is presumed, in the absence of evidence, on the completion of 15 years. Lunatics and minors who have not attained puberty may be validly married by their guardians. A marriage contracted by a minor is a nullity. Thus, under Muslim law, the parties to the marriage should have either the capacity to marry or the capacity to be married. The Indian Majority Act, 1875 does not apply to the Muslims in respect of marriage, dower and divorce. The provisions of child marriage restraint act, 1929 though penal and punitive, do not render marriages between minors invalid. Merely because a Muslim has the capacity to marry and all the essentials of Muslim marriage are fulfilled does not itself make a Muslim Marriage valid. Muslim marriage is prohibited on the ground of consanguinity, affinity, fosterage and plurality of husbands.

Indian Christian Marriage Act, 1872 governs the law related to marriage in India when one of the parties is a Christian. The act has prescribed the minimum age of marriage as 21 for boys and 18 for girls. Special Marriage Act, 1954 governs the law related to inter-religious marriages in India. The act has prescribed age restriction and prohibited marriage similar to Hindu

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<sup>14</sup> Fyzee, AA: *Outlines of Mohammadan law*, 5<sup>th</sup> edition (2009)

Marriage act, 1955.

## **VI. CHANGING DIMENSIONS OF MARRIAGE IN INDIA**

Opposite-sex marriage is an institution traditionally accepted in our society. Historically, married women had very few rights of their own and they were considered as the property of her husband. They could not own or inherit property, or represent themselves legally. Feminist theory asserts that marriage promotes male superiority and power over women. It conceptualizes men as the provider operating in the public sphere and women as the caregivers operating within the private sphere. Traditional heterosexual marriage imposed an obligation of the wife to be sexually available for her husband and an obligation of the husband to provide material/financial support for the wife. The performance of dominant gender roles by men and submissive gender roles by women influence the power dynamic of a heterosexual marriage.

Since the late 19th century, in some countries, marriage has undergone gradual legal changes. The patriarchal dynamic is contrasted with a conception of egalitarian or Peer Marriage in which power and labour are divided equally, and not according to gender roles. Various factors such as sex, legitimacy of children, division of labour etc. which used to be the ingredients of marriage is no more regarded as indispensable for the marriage. Traditional Personal law in India (Hindu law, Muslim law) regarded sex outside of the wedlock or before the marriage as taboo. Similarly legitimacy is given only to those children who were born out of the marriage. Those who are born before the marriage or outside the marriage are called bastards. No property rights were conferred to the illegitimate children. The various restrictions of marriage which were considered as taboo e.g. pre marital relationships; relationships without marriage (Cohabitation or Live in relationship) are being practiced widely. The legal/social implications of these changing relationships are as follows:-

### **(A) LIVE IN RELATIONSHIP**

Live-in relation i.e. cohabitation is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married.

Today, cohabitation is a common pattern among people in the Western world. People may live together for a number of reasons. These may include wanting to test compatibility or to establish financial security before marrying. It may also be because they are unable to legally marry, for instance, if they are of the same sex, some interracial or inter-religious marriages are not legal or permitted. Other reasons include living with someone before marriage in an



effort to avoid divorce, a way for polygamists or polyamorists to avoid breaking the law, a way to avoid the higher income taxes paid by some two-income married couples (in the United States), negative effects on pension payments (among older people), philosophical opposition to the institution of marriage and seeing little difference between the commitment to live together and the commitment to marriage. Some individuals may also choose cohabitation because they see their relationships as being private and personal and not to be controlled by political, religious or patriarchal institutions.

In India, cohabitation has been a taboo since British rule. However, this is no longer true in big cities, but is still often found in rural areas with more conservative values. Female live-in partners have economic rights under Protections of Women and Domestic Violence Act, 2005. The Maharashtra Government in October 2008 approved a proposal suggesting that a woman involved in a live-in relationship for a ‘reasonable period’, should get the status of a wife. Whether a period is a ‘reasonable period’ or not is determined by the facts and circumstances of each case.

The Malimath Committee had also suggested that the word ‘wife’ under Cr.P.C. be amended to include a ‘woman living with the man like his wife’ so that even a woman having a live-in relationship with a man would also be entitled to alimony. The Supreme Court in *Abhijit Bhikaseeth Auti v. State Of Maharashtra and Others*<sup>15</sup>, observed that it is not necessary for a woman to strictly establish the marriage, to claim maintenance under section 125 of Cr.P.C.. A woman in a live-in relationship may also claim maintenance under section 125 Cr.P.C.

In *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others*<sup>16</sup>, the Allahabad High Court ruled out that “a lady of about 21 years of age being a major has the right to live with a man even without getting married, if both so wish”. The Supreme Court observed that a man and woman, if involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be considered as legitimate. In *D. Velusamy v. D. Patchaiammal*<sup>17</sup> reflecting upon live-in relationships becoming frequent in India, the Court has pointed out that no legal entitlements occur by such relationship. The Supreme Court was dealing with the claim of maintenance by a woman claiming to be a wife in view of a live-in relationship for some year (about which we have already written noting a High Court decision). The Court ruled that the concept of alimony which applied to such relationships was not recognized in India and even though the Domestic Violence Act

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<sup>15</sup> *Abhijit Bhikaseeth Auti v. State Of Maharashtra and Others*

<sup>16</sup> *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others*

<sup>17</sup> *D. Velusamy v. D. Patchaiammal* [AIR 2011 SC 479]

recognized live-in relationships to some degree, not all such relationships were entitled for maintenance unless they satisfied the conditions stipulated by the Court.

The Supreme Court also commented on such relationships described as common-law marriages and the popularity of live-in marriages as a social phenomenon and even recognized by the Parliament in terms of the Domestic Violence Act, 2005.

### **(B) DECRIMINALIZATION OF ADULTERY**

Adultery is an incursion on the right of the husband over his wife. It is a misdemeanor against the sanctity of the wedlock and, an act, which is done by a man. It is a standoffish and illicit act. Section 497 of Indian Penal Code provides the law relating to adultery. It provides as below:

**Adultery** - Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such a case the wife shall not be punishable as an abettor.

This is an offence against marriage. Adultery is an offence committed by a third person against a husband in respect of his wife. A married man having sexual intercourse with (a) an unmarried woman, or (b) a widow, or (c) a married woman whose husband consents to it, or (d) a divorced woman, Commits no offence under this section.

The previous stand of higher judiciary was that Section 497 of IPC is not paradoxical of Article 21 of the Indian Constitution. The Apex Court previously considered that it cannot be said that in construing the offence of adultery, any constitutional provision is encroached by curbing the class of wrongdoer to men only. But, recently, the Supreme Court has acknowledged the 150 years old law on adultery as unlawful, which treats the husband as the master of his wife. It antagonizes the dignity of a woman. The Court held that the husband is not the master of the wife. Section 497 of IPC is categorically and conspicuously arbitrary and absurd because it provides unlimited rights to husband to deal with the wife as he likes which is very much disproportionate.

In *Yusuf Aziz v/s State of Bombay*<sup>18</sup>, the adultery law first came under challenge in 1951 in this case. Petitioner contended that the adultery law violated the fundamental right of equality guaranteed under Articles 14 and 15 of the Constitution.

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18 Yusuf Aziz v/s State of Bombay, 1954 AIR 321

Three years later in 1954<sup>19</sup>, the Supreme Court ruled that Section 497 is commonly accepted that it is the man who is the seducer, and not the woman. The Court stated that women could only be a victim of adultery and not a perpetrator of the crime under Section 497. The Supreme Court held that the section is not discriminatory between man and woman, i.e. an under inclusive definition is not necessarily discriminatory. It does not offend either Article 14 or 15 of the Constitution. The Court held that men were not allowed to prosecute their wives for the offence of adultery in order to protect the sanctity of marriage. For the same reason, women could not be allowed to prosecute their husbands.

In *V.Revathi V/S Union of India*<sup>20</sup>, the Supreme Court held that not including women in prosecution of adultery cases promoted social good. It offered the couple a chance to make up and keep the sanctity of marriage intact. The Supreme Court observed that adultery law was a shield rather than a sword.

Besides, these above judgments, there were two more important views in connection with adultery law. The Law Commission of India Report of 1971 (42nd report) and the Malimath Committee on Criminal Reforms of 2013 recommended amendment to the adultery law. Both argued to make Section 497 of the IPC gender neutral.

The offence of adultery reflects discrimination. It rests in larger part on the idea that a woman is the property of the male. An analysis of Section 497 along with various observations by the Supreme Court and High Courts, bring us to the conclusion that only a man can commit adultery. The married woman who is involved in the conduct is not punishable as the adulteress, because she is treated as a victim, not as the author of the crime, because she has no entity and she is a non-person. The section negates the free will of the woman in adulterous conduct and does not concern itself with the intentions behind her act. This is probably because the woman is looked down upon as an object, as an inanimate property, whose rights are almost transferable.

In *Joseph Shine V/S Union of India (2017)*<sup>21</sup>, the Supreme Court has acknowledged 150 years old law on adultery as unconstitutional, which treats husband as the master of his wife. The then Chief Justice of India declares, the adultery law is arbitrary and offends the dignity of a woman. In December 2017, Joseph Shine filed a petition challenging the validity of Section

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<sup>19</sup> Sowmithri Vishnu v/s Union of India, 1985 AIR 1618

<sup>20</sup> V.Revathi V/S Union of India 1988 AIR 835

<sup>21</sup> Joseph Shine V/S Union of India 2018 SC 1676

497. The three-judge bench, headed by the then-Chief Justice of India, Dipak Mishra, had referred the petition to a five-judge Constitution Bench, which comprised of Dipak Mishra, and Justices R F Nariman, A M Khanwilkar, DY Chandrachud and Indu Malhotra, admitting that the law seem to be archaic. While hearing the matter previously, the Court had observed that the law seemed to be based on certain societal presumptions. In four separate and concurring judgments, the Court struck down the law and declared that the husband is not the master of his wife. However, adultery still remains a civil offence. It can be a ground for divorce. The judgment directly blows the archaic and patriarchal law in our country. The Judgment held the following things:-

### **1. SECTION 497 IS ARCHAIC AND IS CONSTITUTIONALLY INVALID**

Section 497 deprives a woman of her autonomy, dignity and privacy. It compounds the encroachment on her right to life and personal liberty by adopting a notion of marriage which subverts true equality. Sexual autonomy is a value which is an integral party and falls within the ambit of personal liberty under Article 21 of India Constitution. Respect for sexual autonomy is established only when both the spouses treat each other with dignity and equality. This section is a denial of substantive equality in that it reinforces the notion that women are unequal participants in a marriage, incapable of freely consenting to a sexual act in a legal order which regards them as a sexual property of their spouse. In this way, it is violative of Article 14. It is based on gender stereotypes and violates the non-discrimination clause of Article 15. Besides, the emphasis on the element of connivance or the consent of the husband tantamount to the subordination of the women. Therefore, it clearly offends Article 21 of the Constitution.

### **2. SECTION 497 TO NO LONGER BE A CRIMINAL OFFENCE**

A crime is something which is committed on the society as a whole, while adultery is more of a personal issue. Adultery doesn't fit into the concept of the crime as that would otherwise invade the extreme privacy sphere of a marriage. However, it continues to stand as a civil wrong and a ground for divorce. What happens after adultery is committed should be left to the husband and wife to decide as it is something which should only involve their personal discretion. Hence, declaring adultery as a crime would somehow creep injustice into the system.

### **3. A HUSBAND IS NOT THE MASTER OF HIS WIFE.**

The judgment places reliance on the fact that women should not be considered as the property of their husbands or fathers, for that matter, anymore. They have an equal status in society and should be given every opportunity to put their stance forward.

#### **4. SECTION 497 IS ABSOLUTELY AND MANIFESTLY ARBITRARY**

It is absolutely and manifestly arbitrary and irrational because it confers a license on the husband to deal with his wife, as he likes which is extremely excessive and disproportionate. The provision of Section 497 of IPC does not enable the wife to file any criminal prosecution against the husband.

In this recent landmark judgment, the Apex Court directly blows the archaic and patriarchal law in our country. The women cannot be considered as a property of men in the modern progressive jurisprudential parameters and expansive constitutional vision. It further lays down that when there is consent of the man to develop a relationship outside the wedlock then there is no offence. The Apex Court declares that autonomy, desire, choice and identity are the important aspects of the dignity of woman.

#### **(C) SAME SEX MARRIAGES**

Same-sex marriage is the marriage of two people of the same sex or gender, entered into in a civil or religious ceremony. There are records of same-sex marriage dating back to the first century. In the modern era, the first same-sex marriage law took effect in the Netherlands on 1 April 2001. As of January 2021, same-sex marriage was legally performed and recognized in 29 countries.

The introduction of same-sex marriage has varied by jurisdiction, and came about through legislative change to marriage law and court rulings based on constitutional guarantees of equality. The recognition of same-sex marriage is considered to be a human right and a civil right as well as a political, social, and religious issue. The most prominent supporters of same-sex marriage are human rights and civil rights organizations as well as medical and scientific communities, while the most prominent opponents are religions like Islam, Catholic Church, Orthodox Churches.

In 1989, Denmark became the first country to recognize a legal relationship for same-sex couples, establishing registered partnerships, which gave those in same-sex relationships "most rights of married heterosexuals, but not the right to adopt or obtain joint custody of a child".

While few societies have recognized same-sex unions as marriages, the historical and anthropological record reveals a large range of attitudes towards same-sex unions ranging from praise, through full acceptance and integration, sympathetic toleration, indifference, prohibition and discrimination, to persecution and physical annihilation. Opponents of same-sex marriages have argued that same-sex marriage, while doing good for the couples that participate in them and the children they are raising undermines a right of children to be raised

by their biological mother and father. Some supporters of same-sex marriages take the view that the government should have no role in regulating personal relationships while others argue that same-sex marriages would provide social benefits to same-sex couples. The debate regarding same-sex marriages includes debate based upon social viewpoints as well as debate based on majority rules, religious convictions, economic arguments, health-related concerns, and a variety of other issues.

The Section 377 of the Indian Penal Code makes sex or marriage with persons of the same gender punishable by law. However, on September 6, 2018, the Supreme Court of India decriminalized Section 377 making gay sex legal.

On 2 July 2009, in *Naz Foundation v. Govt. of NCT of Delhi*<sup>22</sup>, the Delhi High Court held that provision to be unconstitutional with respect to sex between consenting adults. In 2018, in the landmark decision of *Navtej Singh Johar v. Union of India*<sup>23</sup>, the Supreme Court of India decriminalized consensual homosexual intercourse by reading down Section 377 of the Indian Penal Code and excluding consensual homosexual sex between adults from its ambit.

## VII. CONCLUSIONS

We people move towards 'Modernization. Today many traditional communities are heading up in the world who opposes these emerging concepts of live-in relationships, same sex marriage and sexual autonomy. They found it against their religious concerns and social foundations. But it has to be understood that the emotional bindings and relationships can never be pressed by power.

Live-in concept is not a problem, it is just thinking and it has to be entertained rationally. If youth is getting more influenced with the concept, then ethical and legal communities of the world must take some necessary steps to keep the concept original and rational. In spite of threatening people about live-in relationships, the need is to support and help the couples who are living together. This will help them to go in for some healthier and more social relationship.

Sexual autonomy is a value which is an integral party and falls within the ambit of personal liberty under Article 21 of India Constitution. Respect for sexual autonomy is established only when both the spouses treat each other with dignity and equality. A crime is something which is committed on the society as a whole, while adultery is more of a personal issue. Adultery doesn't fit into the concept of the crime as that would otherwise invade the extreme privacy

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<sup>22</sup> Naz Foundation v. Govt. of NCT of Delhi, 160 DLT 277

<sup>23</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

sphere of a marriage. However, it continues to stand as a civil wrong and a ground for divorce. What happens after adultery is committed should be left to the husband and wife to decide as it is something which should only involve their personal discretion. Hence, declaring adultery as a crime would somehow creep injustice into the system.

Similarly, the exclusion of homosexuals from marriage stigmatizes and invites public discrimination against them, with research also repudiating the notion that either civilization or viable social orders depend upon restricting marriage to heterosexuals. Opposition to same-sex marriage is based on claims such as that homosexuality is unnatural and abnormal and that children are better off when raised by opposite-sex couples. These claims are refuted by scientific studies, which show that homosexuality is a natural and normal variation in human sexuality, and that sexual orientation is not a choice. Many studies have shown that children of same-sex couples fare just as well as the children of opposite-sex couples; some studies have shown benefits to being raised by same-sex couples.

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