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# Evolution of Marriage

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## ABSTRACT

*The institution of marriage as a human civilization, is a combination of culture, traditions, love, care, affection and understanding which goes beyond simple legal commitment. This Paper talks about the evolution of marriage tracing from the point of view of olden people and also its modern view where people in the society adapt to it accordingly. As the trends and expectations of people change, the institution of marriage has also changed its actual meaning, which goes beyond mere relationships as husband and wife.*

*“Live-in or marriage like relationship is neither a crime nor a sin, although socially it is unacceptable in this country”*

*- Justice K S Radhakrishnan.*

*The above-mentioned was one such example of the transition that has happened in the institution of marriage but there are so many changes that are happening in this modern world which seems to deviate from the cultural and traditional ideas of marriage.*

*This paper examines History of evolution of marriage institutions, Legislation enacted to protect the rights on marriage, institution of marriage in modern society.*

## I. INTRODUCTION

Marriage is ever-present in our society. Marriage as a social and legal contract between two individuals that legally and emotionally unite their lives. The definition of marriage also known as wedlock which may vary between cultures and religions. Such varying definitions give way from polygamy to same-sex marriages. Hindus consider such marriages as a purifying ceremony marking importance in one's life and the wife gets an honour position in the husband's house as she is the source of dharma, Artha and kama. Hindus consider marriage to be important, especially for women for begetting a son necessary for salvation. Muslim consider marriage or nikkah as a religious and social institution that aims to create a bond between two individuals based on mutual respect, love and understanding. The main aim of Muslim marriage is procreation of children. They also believe that marriage brings spiritual satisfaction and brings people closer to the god. Marriage plays a crucial role in forming the social fabric. Marriage plays a crucial role in lawful transfer of inheritance, property, and wealth. This marriage is said to be the pillar to form a family such a family is created or United through the

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ties of marriage. Family in Latin word familia which means household. Notably, the process of finding a life partner has gone through a significant change. This change includes various factors like rise in technology, change in socio-cultural values, etc. All these factors contribute to the evolution of marriage.

## **II. HISTORY**

The ancient evidence suggests that the institution of marriage is 4350 years old. The first union of a man and a woman was traced back to 2350 B. C. Over next years, the marriage was recognised by ancient Hebrews, Romans and Greeks. At that point of time, the institution of marriage has nothing to do with love or religion or with mutual understanding. During that time, the primary purpose of marriage is to give recognition to the child that he/she is the legitimate child of the man i.e. That man is the biological father of the child by binding a woman to such men. As procreation of children and satisfaction of sexual urges are the main aim of marriage, The ancient Hebrews could take multiple wives or can satisfy their sexual urges through concubines or prostitutes meanwhile their wife has to live with them. If they refused to have sex or procreate offspring, the husband can very well send her back to her house and marry another.

In Europe, the church is considered to be a powerful institution, where the marriage can be legalized by getting blessings from the priest and recognising it to be sacramental (18th century). They taught so many things to the husband in such a way to respect the wife and to be sexually faithful. But still, men are considered to be the head of the family and the wife should act accordingly.

The concept of marriage had a transition from mere union for satisfying sexual urges and for procreation, to union of two people with mutual understanding and love. It ensures that the woman is no longer to serve a man. But, mutual attraction and love in marriage wasn't that much important until about a century ago.

Then, the concept of gay marriage is very rare, but not unknown. In second and third century Rome, homosexual marriage became very common. Once marriage was not legally based on gender-based role, people started accepting homosexual marriages and also seems to be a logical step towards societies changes. By the early 21st century, several jurisdictions, both at the national and subnational levels, had legalized same-sex marriage. In 1989, Denmark became the first country to establish registered partnership for Same sex couples.

The institution of marriage has taken into another step that is, the union of two people without even tying knots i.e., termed as Live-in-relationship. They share the same household, share

expenses, have sex with each other, but they are not married. They don't get into commitment but merely live with each other without getting married. The only condition in India is that there must be rebuttable presumption regarding marriage between them both. Long cohabitation as husband and wife makes such presumption.

The institution of marriage has gone through drastic change from ancient times to modern times. As society's expectations and preferences changes, the meaning of marriage as a whole will also keep evolving to the changing nature.

### III. LEGISLATIONS

After independence India has witnessed a tremendous change in legal aspects of marriage. The family law system in India is distinct that it is based on personal laws. personal law applies to persons who profess a particular religion. Each community has its own set of laws and customs that govern things like marriage, divorce, and inheritance. Parliament has enacted number of acts to protect, modify and harmonize family laws. The **Hindu Marriage Act of 1955** (HMA) administers Hindus regarding the conditions for a legitimate marriage under section 5, ceremonies of Hindu marriage under section 7, the grounds for divorce under section 13, inheritance of property under section 16 and welfare of the children under section 28. Under **section 7** of HMA *Santi Deb Berma vs Smt. Kanchan Prava Devi*, Supreme Court held that Saptapadi is said to be an essential element in ceremony of a marriage. Under **section 13** HMA *Dastane v. Dastane* is said to be a landmark case where Dr. N.G. Dastane and Mrs. S.D. Dastane were married in 1956 and had three children. Disputes arose between them, and Mrs. Dastane exhibited hostile behavior towards her husband. She insulted him publicly, showed disrespect towards his parents, and made threats and abusive statements. She also engaged in various actions, including Cutting the mangalsutra. Locking him out of the house. Using chili powder on their child's tongue. Beating a child mercilessly. Nagging him persistently. Dr. Dastane filed for divorce on the grounds of cruelty, alleging that Mrs. Dastane's behavior made cohabitation intolerable. The Supreme granted a divorce in favor of Dr. Dastane. The Court observed: The behavior described by Dr. Dastane, including public insults, physical abuse of the children, and other aggressive actions, was deemed to create a reasonable apprehension that living with Mrs. Dastane was harmful to his well-being. Therefore, it constituted cruelty under the Indian standard. Christian community is governed by the **Indian Christian Marriage Act 1872**. Divorce Act, 1869 deals with the dissolution of marriage between a man and a woman in the Christian community. Apart from personal laws **Special Marriage Act, 1954** was enacted for people of different religious origins to marry without converting to another religion. The **Family**

**Courts Act**, 1984 was enacted on September 14, sought to create specialized family courts for handling disputes related to marriage and family affairs with a focus on conciliation, informal procedures, and lower costs.

This Family Court function on all days even on Saturdays to facilitate the working couple to conduct the case at the earliest possible means. In *Seema vs Ashwini Kumar*, Supreme Court held that all persons who are citizens of India must compulsorily register their marriage irrespective of various religion.

The **Muslim Law (Shariat Act)**, addresses marriage life which administers the Muslim community. In Pre-Islamic Arab society, women's rights were highly suppressed in the socio-legal context, particularly to suit male dominated or patriarchal systems. Child marriage was also prevalent, and it was open to contract marriage with any woman without any restrictions. Divorce was quite simple and seemed like a masculine affair, and men had the exclusive privilege to end a marriage without the consent of the woman. While men enjoyed their limited rights and owned property, and some passed over inheritance, women did not have any rights at all and were considered to be the property of their male kinsmen. The status and rights of women changed significantly with the rise of Islam, influenced by the Prophet Muhammad. Islam treats women with respect and values them, giving them legal equality with men in many areas of civil law. In Sharia law, marriage or *Nikah*, is seen as a civil contract that recognizes the woman's identity and rights, even after she is married. The main goals of this contract are to ensure that no one is forced into marriage, to address the legal aspects of having children, and to provide stability and respect within the marriage.

In *Shayara Bano vs Union of India*, triple talaq was banned by SC stating it to be a violation of Article 14 of the constitution. The government's view that talaq-e-biddat is against constitutional morality, women's dignity, and gender equality. After the verdict of SC, The Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed by the Parliament. Any Muslim husband who pronounces talaq upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

*Sarla Mudgal v. Union of India*, the Supreme Court ruled that a Hindu husband got converted to Islam and marries again without divorcing his first wife. Here the Hindu husband commits bigamy, which is punishable under Section 494 of the Indian Penal Code.

#### **IV. CURRENT SCENARIO**

The present scenario of marriage has become changing due to cultural and societal expectations and individual preferences. In olden days marriage between other religions, caste and country

considered to be disrespect for the family as a whole, as they considered such a type of marriage to be sin. But nowadays inter-caste, inter-religion and inter-country marriage have become very common. Contractual marriage has led to a rise in intercaste and interreligious marriages, though their percentage remains low. People are moving away from traditional marriages, and new criteria have emerged for selecting a partner. These include factors like dowry, high salaries, wealth, inheritance, and shared responsibilities like cooking. Many working women now prefer husbands who help with household chores, and some women avoid living with their in-laws.

These changes have created challenges for the current generation in fulfilling traditional roles, leading to social gaps. The focus on individual happiness over family and societal responsibilities has disrupted traditional practices like dharma and the concept of Grihasthashrama (householder life). As a result, artha (wealth) and kama (desires) have become more important than dharma (duty), impacting societal harmony and the nation's overall progress.

#### **(A) Live-In Relationships:**

Indians considered marriage to be a sacrament. But nowadays even in India, people started living with each other without tying knots (Live-in relationship). Live-in relationships are very common worldwide. In India live-in relationships are not illegal but still not legalized. There is no specific legislation that has been enacted for the protection of those couples. But, The National Commission for Women recommended to the Ministry of Women and Child Development on 30th June 2008 that the definition of 'wife' under S.125 CRPC should be amended to include women involved in such relationships. This is to ensure the protection of such women from domestic violence equal to that of married couples. Malimath Committee also supported that view and stated that if a man and woman live together as husband and wife for a reasonable period of time, the relationship is deemed to be a marriage. The women in live-in relationships are also entitled to maintenance. Relationship in the nature of marriage also called live-in relationships is as equal as a common law marriage. Some world countries recognize common law marriages. Such marriage or relationship is still not accepted in the society in India, but it is legal.

*Chawali v. State of U.P.*, In this case, the Allahabad High Court expressed concerns about the potential negative consequences of live-in relationships. The Court acknowledged that not all live-in relationships result in adverse consequences. However, it noted that such relationships may sometimes lead to situations involving criminal activities or deportation. The Court

emphasized the lack of legal parameters to ascertain the intentions of individuals entering into live-in relationships. The Court stated that fundamental rights securing individual liberties should be interpreted from an "Indian perspective," suggesting a cultural context for legal interpretations.

a. *S. Khushboo v. Kanniammal & Anr.* (2010), Live-in Relationships Are Not an Offence

Supreme Court held that a man and a woman living together without being married cannot be construed as an offence.

b. Recognition Under Article 21

The Court rooted its reasoning in Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty as a fundamental right. It declared that "living together" is an aspect of the right to live with dignity and personal liberty, a core element of Article 21.

c. No Law Prohibiting Live-in Relationships

The Court stated that there is no legislation in India that prohibits live-in relationships or pre-marital sexual relationships. This decision reinforced the idea that consensual relationships between adults are outside the purview of criminal law unless otherwise regulated by specific statutes.

In *A. Dinohamy v. W.L. Balahamy*, the Privy Council for the first time laid down the proposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and in a state of concubinage.

**(B) Same-Sex Marriage:**

As the Indian legal system recognized the institution of marriage only as the union of two individuals that is a man and a woman. But due to changing individual preferences and desires, the union of two individuals who are of the same sex is becoming common throughout the world. Almost 36 world countries including Argentina, Australia, Canada, Denmark etc. have recognized the Same-sex marriage.

But in India, still it is not legalized even though The Supreme court has reiterated the rights of LGBTQ+ under the Indian constitution. Even though such a union is not acceptable by society, it is not considered illegal. They are also entitled to limited social and legal protection. However, in 2018 Supreme court decriminalised homosexuality which was seen as a major step towards the recognition of LGBTQ+ rights. *Supriyo vs Union of India*, The Supreme Court of India

unanimously held that: There is no fundamental right to marry. The Special Marriage Act (SMA) and the Foreign Marriage Act (FMA) cannot be interpreted to include non-heterosexual marriages. The court cannot enact laws, and it is the legislature's duty to amend or enact laws. The court cannot create a new category of civil unions for same-sex couples. The definition of marriage varies based on law, religion, and culture.

The purpose of marriage includes emotions and association, not just procreation or sexual relations. The matter falls outside the court's jurisdiction and Parliament is the appropriate forum. *Supriyo vs Union of India*, The Supreme Court of India unanimously held that: There is no fundamental right to marry. The Special Marriage Act (SMA) and the Foreign Marriage Act (FMA) cannot be interpreted to include non-heterosexual marriages. The court cannot enact laws, and it is the legislature's duty to amend or enact laws. The court cannot create a new category of civil unions for same-sex couples. The definition of marriage varies based on law, religion, and culture. The purpose of marriage includes emotions and association, not just procreation or sexual relations. The matter falls outside the court's jurisdiction and Parliament is the appropriate forum. In *Navtej Singh Johar v. Union of India*, The Indian Supreme Court decriminalized same-sex relations, striking down Section 377 of the Indian Penal Code.

## **V. CONCLUSION**

Marriage is an institution where men and women live together to form a family and men will be the head of the family whereas women will be under the control of men. In ancient days, a question was raised whether women will be given equal treatment like men. When days are passing both men and women are being treated equally and given equal rights. In some families women are given more power than men and they run the family. In the current scenario there are various forms of marriage like the same sex, live in relationships where both are being responsible for a shared household. Still, In India such a type of union is not acceptable by the society. The rate of marriage is declining nowadays as cohabitation and other forms of relationship is gaining popularity. Marriage is no longer seen as a forever commitment rather than as a personal choice with varying forms and interpretations. Overall, the institution of marriage reflects a dynamic shift influenced by evolving cultural norms, societal expectations and economic conditions. So, legislation must recognise these types of marriage through enacting various laws by giving respect to individuals' changing preferences to bring a social transformation as a whole.

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