



RIGHT TO MARRIAGE IN INDIA: ISSUES AND CHALLENGES

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ABSTRACT

Live-in relationships are on the rise in India because they are a convenient alternative to marriage. It's when two adults choose not to get married but live together in the same house. It may seem like a stress-free way to spend time with someone, devoid of any legal duties or liabilities, but in reality, there are several. Some recent efforts have been made to legislate it. It is no longer illegal in India, and the Supreme Court has imposed several regulations concerning child support, property rights, and the kid's official status. In India, this is still up for debate. Documentation, culture, property, will and gift rights, anti-religion status, the LGBT community, and many other ambiguous areas all need careful consideration. The major goal of this essay is to use secondary resources to better understand what a live-in relationship is. Since then, researchers have used descriptive and analytic methods to examine the difficulties experienced by couples. Finally, the paper argues for the necessity to create a new legislation that is gender-neutral and secular for couples who want to cohabit.

Keywords: complications, responsibilities, couples, descriptive.

INTRODUCTION

The term "live-in relationship" describes a cohabitation arrangement between an unmarried couple. Numerous countries worldwide have already made the concept legal. According to a Supreme Court decision, a man and a woman who are romantically linked may live together as long as they are together since it is a basic human right and cannot be criminalized. The Law Commission laid the foundation for these innovative recommendations in 2003. It is important to remember that its main contribution was to define "wife" and to include a woman who is part of a domestic relationship in that definition. It is well acknowledged that the Protection of Women from Domestic Violence Act (PWDVA) of 2005 was the first legislation to define "relationships 'in the nature of marriage,'" meaning relationships other than marriage. Numerous attempts have been made to codify the dynamics of this new social order, especially in the areas of property, domestic violence, maintenance, and children's legal status. For ethical and societal grounds, it is still frowned upon in India, however opinions on it are continually divided. Indian culture has revered marriage as a holy relationship since the Vedic era.

Over the ages, the institution of marriage has progressively advanced. As human psychology and society have advanced, so too have the concepts of marriage and partnerships. Regarding cohabitation, today's age is more welcoming and open-minded. Although cohabiting may



seem like an easy, stress-free way to spend time together, with neither partner having any obligations or legal responsibilities, the reality is sometimes significantly more difficult.

India is the home of several ethnic and religious communities. The Indian Constitution guarantees marriage to all Indian citizens and acknowledges it as a fundamental right. Indian marriages are not as simple as they may seem. Numerous social, cultural, and religious factors make marriage in India challenging. In India, there has been a great deal of debate and controversy around the right to marry.

In India, the custom of marrying off minors is a major barrier to marital equality. Despite being illegal, child marriage is still frequent in many parts of the country. According to the UN, India has the highest percentage of child brides worldwide, with over 27 percent of girls being married before turning 18. Young girls' basic human rights are violated by the practice of marrying them off, which also has detrimental impacts on the bride's community, finances, and health. The practice is linked to higher incidence of poverty, mother and infant mortality, and domestic violence.

The issue of discrimination against couples of the same sex poses a danger to the Indian legal right to marry. Same-sex couples are still not recognized by the Indian legal system as genuine, which prevents them from getting married or living together. The LGBTQ+ community in India has cause for optimism after the Delhi High Court's recent decision to recognize same-sex marriages performed outside of the nation. However, there is still a long way to go before same-sex marriages are accepted by law in India.

In India, a significant barrier to the right to marry is the issue of unions between members of different classes or faiths. In India, religious affiliation and caste are significant factors. In many parts of the country, marriages between individuals from different castes or faiths are still socially taboo, and those who get into them sometimes face physical abuse, harassment, and even honor killings.

In India, there are a lot of barriers that prevent individuals from getting married. There are still several significant barriers to this fundamental human right, such as child marriage, prejudice against LGBTQ+ people, and marriage between different castes and religions. More focus, education, and legislative reforms are needed to safeguard the right to marriage in India and guarantee that everyone is free to marry anyone they want without facing discrimination.

OBJECTIVE

1. To study the issues and challenges of right to marriage in India.
2. To study the issue of right to inter-caste and inter-religious marriage in India.



WEDDING AND RESIDING IN

Marriage has been regarded as a sacred institution in India ever since the period of the Vedas, which dates back to the ancient Indian scriptures. In India, a couple who is intending to wed has the choice of conducting the ceremony in accordance with either the Special Marriage Act or the couple's own individual religious standards. Both of these options are available to them. A man and a woman make a pact at marriage to take care of one another financially and emotionally for the rest of their lives. This commitment is known as matrimony. This is the definition of marriage that is recognized by the law.

The institution of marriage as we know it now is the product of historical evolution. After the ceremony, it is traditional to talk about marriage in terms of a fundamental human right. When it comes to matters like the succession of property and other similar things, it anticipates a great deal of responsibilities and carries weight in the legal system. As a direct consequence of this, each and every one of the legal ramifications of a marriage, including custom, exposure, and selectivity, are seen as being an essential component of the relationship itself.

In contrast to the norms of the societies of a great number of other countries, the Indian culture does not yet recognize the validity of the notion of live-in partnerships. But as time goes on and marriage becomes more difficult, an increasing number of individuals are choosing unorthodox routes in order to form enduring relationships, such as cohabitating with their partner before getting married. One example of this trend is that people are moving in together before getting married.

IN-PERSON RELATIONSHIPS ARE NOT ILLEGAL

The Supreme Court has made it quite clear, through a number of different cases, that single individuals who live together in a committed relationship and raise their children as if they were married are required to comply by the same regulations that apply to married couples. This is the case even if they do not get married. The Allahabad High Court accepted the existence of a live-in relationship in the case Payal Sharma v. Nari Niketan¹ when a bench consisting of Justice M. Katju and Justice R.B. Misra remarked, "In our opinion, a man and a woman, even without getting married, can live together if they wish to." This statement was made in reference to the fact that a man and a woman can live together even if they do not get married. It is not against the law to do this, despite the fact that many people consider it to be immoral. There is a distinction to be made between morality and the law. Later on, in the case of S. Khushboo v. Kanniammal & anr², the Supreme Court came to the conclusion that a connection between two adults that does not include marriage is permitted under the law.



WHY MARRIAGE RIGHT IS IMPORTANT

In most cases, marriage serves three distinct purposes:

- There is a symbolic connotation between the partners when one considers themselves married to the other person and vice versa. It is not necessary for a couple to get legal recognition in order to live together in the same manner as married couples do (for example, sharing residence and avoiding sexual interactions with those who are not in the couple).
- For the community to recognize the link as such - Marriage has a vital significance in traditional Indian civilizations as a socially acceptable form of intimacy. Without marriage, heterosexual couples find it difficult to move in public together, express affection, acquire housing and hotel accommodations, and even to be considered as "normal," respectable members of society. Social and legal acceptability may not always match. But one surely directs the other. According to the bulk of regulations, marriages in India are deemed to be legitimate provided they are presented as such and have been acknowledged by the society as such for a fair length of time. However, most weddings are not recorded. Sixteen A step toward cultural acceptance would be the acknowledgment of same-sex marriage.
- to recognize and embrace the rights and responsibilities that come with marital status. Married people have some privileges that unmarried people do not, including the ability to inherit from their spouse's family, the right to receive support from their spouse, and the right to be protected from domestic violence.

Members of the LGBTQA+ community will be able to express their love in a way that many find more meaningful; they will be eligible for protections designed to protect married couples; and they will gain a higher level of social acceptability as a result of being able to marry whoever they choose, including someone of the same sexual orientation.

CHALLENGING PERSONAL LAWS ON THE BASIS OF THE CONSTITUTION

Not only does religious practice include religious doctrine and ritual, but also the observance of religious holidays and other events. In India, the "personal laws" that apply to Jains, Buddhists, and Sikhs are different from those that apply to Muslims, Christians, Parsis, and Hindus. Examples of such procedures include marriage, divorce, and the succession of property (and, in the past, maintenance). However, the origins and essence of these norms are not always religious.

Several Indian kingdoms prior to the foundation of British colonial control had legal systems based on Islamic scripture, which included the sastras and sutras. However, they varied from place to place and were based on local customs. The Warren Hastings Regulations of 1772 established the separate personal laws, which stipulated that "law of the Koran with respect to Mahomet Ans and those of the Shuster with respect to Gentoos" would be applied to issues of inheritance, marriage, caste, and religious customs and institutions. The origin of the special



individual laws may be traced back to these rules. Minimum Age: 18 There were two possible results from this. Although Hindu and Islamic law eventually expanded to include what we now call "personal law," this partition initially limited its applicability to that area.

INDIAN LAW ON MARRIAGE

Marriage in Hinduism is considered a sacred commitment having moral and spiritual implications for both partners. In Hinduism, marriage is considered sacred. This is one of the 16 samskaras acknowledged by Vedic thought. This oneness is holy, undivided, unending, and unchanging. Hindu marriage is more than just a legal contract that allows a couple to have a family and enjoy certain rights and responsibilities as adults in society. However, in modern Hindu law, marriage is no longer considered to be an irrevocable commitment. The Hindu Marriage Act of 1955 is the first piece of legislation in Hindu law to address the topic of divorce. Modern Hindu marriage is seldom seen as a sacred bond. It is now more like a contract than a sacrament.

Under old Hindu law, there was no minimum age requirement for marriage. Polygamy was legal and accepted in society. Marriageable ages for girls were lowered to 14 and for boys to 18. This was mandated by the Child Marriage Restriction Act of 1929. Later, this changed to 18 for females and 21 for males. The Hindu Marriage Act of 1955, which also governs Sikh, Jain, and Buddhist weddings, establishes the legal age of consent at 21 for men and 18 for females. Both polyandry and polygyny are illegal under this law.

Traditional Hindu law, however, recognized a number of constraints, including as the taboo against marrying within one's own kin, as well as societal and gender norms. Both premarital and extramarital sexual activity were illegal under traditional Hindu law. If the bride and groom were not from the same caste, the marriage was considered invalid in the ancient texts. Marriage between a man of a lower caste and a woman of a higher caste is banned under these beliefs. However, when a man of a higher caste weds a woman of a lower caste, this union is known as an Anuloma. The Hindu Marriage Act, 1955 allows for the marriage of any two Hindus, regardless of whether they are Indian citizens or not. Inter-caste marriages are legal in Hindu society because of a law passed in 1955.

CONCLUSION

The Supreme Court's recent decision that marriage must consist of "one man and one woman" is clearly unlawful. NALSA interprets the term "person" in Article 14 to encompass persons of both sexes, and the term "sex" in Article 15 to include "sexual orientation." Navtej Johar also affirmed the two-prong test for legal sex discrimination, which requires a rational nexus and understandable differentia, and welcomed the "manifest arbitrariness" norm. There is no justification for discriminating against same- and opposite-sex couples, hence it should be banned under Articles 14 and 15. In addition, the minority opinion in Navtej Johar recognized the importance of constitutional morality as a framework for understanding public morality as a constraint on fundamental rights. A strict understanding of marriage goes against the concept of tolerance that the Constitution and morals require of its citizens. Navtej



Johar further held that sexual orientation and partner choice are components of the right to life with dignity under Article 21 based on recent cases involving opposite-sex relationships such as *Shafin Jahan v. Asokan K.M.* ('Shafin Jahan'), *Shakti Vahini v. Union of India* ('Shakti Vahini,' and *Shaara Bano*. The right to freedom of speech has been extended to include expressions of sexual orientation, much like those of gender identity and expression. Navtej Johar came quite close to accepting the right to marry of same-sex couples.

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