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Changing legal dynamics of marriage in India- A forward move

AUTHORED BY - DR. SONALI ROY CHOUDHURY

Life is full of questions, doubts, insecurities, conflicts, joys, sorrows, ups and downs so ancestors believed that man needs a companionship into these journeys of life, hence marriage as an institution was thought to be an apt answer to meet out this need. Marriage has recognized and acknowledged the basic instinct of human behavior that he can't live in isolation. Marriage is considered to be the union of two souls, for all kinds of futuristic rights and responsibilities to be carried on together. Marriage holds its significance in every country and all the time because it is considered that it completes a person emotionally, psychologically and physically. In India marriage certainly holds more significance than any of the country of the world. Marriage provides surety to futuristic plans. It brings stability of young age, which helps in stable convictions, positions and maintaining legacy.

Marriage is such a relationship whose influence remains forever where both the partner shapes each other's personality both profoundly and substantially. It is also an endurance measure, where both the partners come across with each other's positive and negative aspects for the smooth running of household.

The followers of different religions in India have their different rituals, mandates and different issues arising out of marriages which will be discussed under this chapter.

2.1. CONCEPT AND DEFINITION OF MARRIAGE

Marriage is an institution in which men and women are admitted to family life. The purpose is to live in the intimate personal relationship for a purpose of begetting children. From the social point of view, marriage is an institution that serves to ensure propagation and socialization of children of a particular society. From the individual point of view, it provides assistance in bearing and rising of children with love and affection. Marriage is a socially supported stable and enduring union between individuals. It is the basis for the family and the institution, comprehends few social

functions such as regulation of sexual behavior, reproduction, nurturance, protection of children, socialization.

As Mount observes while reviewing a book *Marriage and Family* “It is the essence of marriage that it is private and apart from the rest of society. Its selfishness or exclusiveness is not its undertone but its heart and soul.”¹

In Mahabharata also while answering one of Yaksha Prashna i.e. “*kimsvin mitram grihesatah?*” i.e. who can be the friend of a householder? Yudhishtir answered “*bhaaryaa mitram grihesatah*” i.e. the friend of a householder is his spouse².

According to sociologist Mazumdar, “*marriage is a socially sanctioned union of male and female for the purpose of establishing (a) household (b) entering into sex relations (c) procreating and (d) providing care for the offspring*”³.

As per George A. Lundberg Marriages has certain set of rules comprising duties, rights, privileges between husband and wife towards each other, there is supposed to be mutual coexisting understanding.⁴

As Vinogradoff asserts marriage has been adopted as an institution primarily for upbringing of off springs and to take care to financial and social aspect, however the regulation of sexual intimacy and conjugal intimacy can't be set aside all together. Hence marriage is the only reason for the existence of *family* which leads to the existence of *society* as a whole⁵.

In the light of current observations, we can't undermine the observation made by The Hon'ble Supreme Court of India in the case of **Shobha Rani v. Madhukar Reddi**⁶ where it was stated that there has to be love, compassion, affection, concern, and epitome of mutual understanding between the partners within the relationship of marriage to make it successful.

As per Hindu mythology man is incomplete until he gets his wife. There is a concept of Ardhana Ishwara which means the combination of Shiva and Shakti. According to this concept a man is

¹ ed. Marvin B. Sussman and Suzanne K. Steinmet, Handbook of Marriage and the Family, Plenum Press, Review Paperbacks, Springer, 2nd edition 1999.

² Available at: http://www.avsrinivasan.com/?page_id=93, last accessed on 1st January 2018.

³ H.T. Mazumdar, Grammar of Sociology, Asia Publishing House 1966, pp502.

⁴ George Andrew Lundberg, Sociology, Harper and Brothers, New York, 1958, pp133.

⁵ Vinogradoff, Grammar of Sociology, Asia Publishing House, 1966, pp 502.

⁶ AIR 1988 SC 121.

spiritually and emotionally incomplete till he gets his soulmate, his wife. The ideal couple is of Shiva and Parvati where they were having responsibility of Grihastya, children and rest of the world so the same is expected from an individual too. Marriage is about the association of two correlative individuals' man and woman.

The famous writer Anita Desai writes a lot about marriage as an institution. She reveals her inner feeling about marriage and relationships in her novel *where shall we go this summer*⁷. In this novel the female lead is not accepting what is happening in marriage soon she gets bored and irritated with the same routine, so she runs away from her marital responsibilities in search of true happiness. Later she realizes the value of family and marriage when even being free she didn't find happiness. Finally, she comes back to her family. This is the importance is marriage that even absolute freedom can also be tarrying. One needs society and family to feel secure and happy. Marriage is the glue which adjoins it.

2.2. MARRIAGE DURING DIFFERENT PERIODS

2.2.1. DURING ROMAN CIVILIZATION

In ancient Roman civilization marriage has been considered as the purest form of human bond where the relationship is unbreakable and free from any subjection. The first evidence of marriage ceremony dates about 2350 B.C. in Mesopotamia. In primitive ages our ancestors lived into a system of 'primal horde'⁸. Primal horde refers a system where man and women stay together without any marital bond without any emotional or social commitments attached to it. Males were neither providers nor protectors⁹.

Precisely 5000 years back the early primitive stage bade farewell to the underdeveloped era. New inventions modified the ways of living in terms of enhancing standard of living for the human civilization. Since it was agrarian economy and increase of production gave opportunity for the growth of other societies, bigger cities and different cultural amalgamations to flourish. This has left a deep impact over families, marriages and over individuals too. With the passage of time marriage is being considered as an association of two people where they work together to have social, economic and emotional bonding with each other. Under this system both the partners work

⁷ Anita Desai, 1982. *Where Shall We Go This Summer?* New Delhi: Orient, pp.139.

⁸ Coontz, S. *Marriage, A History: From Obedience to Intimacy or How Love Conquered Marriage*, New York, 2005.

⁹H.Fisher, *Why We love: The Nature and Chemistry of Romantic Love*. Henry Holt & Co. New York, 2004.

equally for the survival and betterment of the family. There used to be marriage in all the social strata from elite civil class to slaves. It was regarded as a mutual bond or commitment where both the partners commit to live life together irrespective of any social or legal sanctity and this was how marriage in Roman civilization and Vedic civilizations were different. Marriage was regarded as an essential bond to run the society and the civilization.

2.2.2. DURING VEDIC PERIOD

During Vedic period Vedas laid the foundation of Hinduism. Vedas are the ancient scriptures originally written in Sanskrit which doesn't only have religious significance but establishes ideas, aspirations and principles for an ideal way of life. According to Vedas the purpose of life is to have a balance in Dharma, Kama, Artha and Moksha. The whole circle of life has been divided into **four Ashramas**.

2.2.2.1. ASHRAMA SYSTEM OF VEDIC PERIOD



a. BRAHMACHARYA ASHRAM

It refers to the stage where a person is evolved into attainment of knowledge and education under the guidance of some learned person known as Guru. Guru provides him the knowledge not only related to academics but also about the practical aspects of life. During this stage there are certain restrictions over the students such as they have to abide by what the Guru says, religiously follow truthfulness, honesty, self-restraint and control over sexual desires.

b. GRIHASTYA ASHRAM

It is the phase of life which starts once the age of attaining education gets completed; person gets married and begins with his new responsibility as a household having wife and children. At this stage he has to take care to his family, wife, parents and children. He is supposed to earn a decent living to support his family.

c. VANPRASTHA ASHRAM

At this phase of life person has to take partial renunciation from his responsibilities and worldly pleasure in order to attain Moksha.

d. SANYASA ASHRAM

This phase expects person to leave the household completely, serve God and leave all the material pleasures and relationship bonds.

Out of the aforesaid ashramas **Grihastya Ashram** talks about to have a blissful family life where everyone is happy, content and satisfied. It establishes a presumption that under this ashram there are certain responsibilities, duties of the husband and wife towards each other as well as towards the family and the society. So, the whole concept of Hindu marriage rests upon certain prefixed duties and obligations nevertheless rights too.

As per Manu the ancient Indian jurist, “every Hindu must marry. To be mothers, were women created and to be father, men: The Veda ordained that Dharma must be practiced by man together with his wife”.¹⁰

The Marriage happens to be the most essential *sanskara* among the Hindus because Marriage sanctifies the sexual pleasure which is restricted until one enters Grihastya Ashram. The sexual pleasure helps in attainment of *Kama* one of the supreme values to attain during the life cycle and giving birth to upcoming generations. Marriage teaches a person the basic practical lessons, gives him rational prudence to justify his actions and reactions. Evolution of marriage relates to the idea of paternity, sex satisfaction, financial and social co-operation.

Marriage emerged as an institution which controlled over the nomadic behavior of human being. Marriage establishes a strong bond between two human beings for the satisfaction of sexual

¹⁰ Manu Smriti, ix. 96; cited in Dr. Paras Diwan on Hindu law- 2nd edn. 2005, p.547, Orient Publishing Company, Allahabad.

desires otherwise man's astray behavior would lead to several social imbalances in the society. This institution not only fulfills his material desires but also inspires to bring out the best of him, encourages creativity and meant to provide him happiness in lieu of what he does for the family.

2.3. MARRIAGES IN DIFFERENT RELIGIONS

India is a multi-religious country, having different outlook from each other with respect to marriage. The Hindus, Muslims, Christians, Sikhs, Parsis, Buddhists and Jains have their different rituals, customary practices and essentialities attached to marriage. It is very important to discuss them all. So, the chapter discusses the essentials of a valid marriage of all these religions covering the social and legal aspects.

2.3.1. ASPECTS OF HINDU MARRIAGE

Hindu mythology believes in Karma theory followed by the theory of rebirth. Marriage is the 13th sanskar out of 16th sanskar theory which begins from the existence of fetus and ends at the death rituals. Marriage falls in between, which symbolizes the beginning of Grihastya Ashram. Marriage is supposed to be a sanskara which revives birth after birth and follows the theory of rebirth. 'Janam-janmantar ka bandhan' is the slogan generally used which signifies its vicious significance and this is the reason probably why Hindu ancient scriptures do not mention anything about breaking it down. The concept of dissolution of marriage is an alien concept among Hindus. Manu describes marriage as mutual fidelity is to be continued until death¹¹. This can be considered as a golden formula to run the marriage anyhow. But the elite, educated and progressive feminist questions this formula and asks, '*why it has to run any how if it can't run smoothly, why to deliberately pull yourself to reach till the finish line.*' This whole sacred philosophy is being questioned on practical aspects which is an area of research to this thesis. Vedic ancient period has lot more about marriage and its notions which will be addressed in coming chapters.

Manusmriti, is the most authoritative book which laid down the significance of Dharma (set of duties and responsibilities for an individual to perform). It was written by the law giver Manu who establishes the significance of marriage to perform Dharma. For this purpose, he has classified marriage into following categories -¹² :

¹¹ Available at <https://files.instaPDF.in/wp-content/uploads/pdf-thumbnails/2020/06/manusmriti-the-laws-manu-2998.webp>, last accessed on 9th April 2018.

¹² Manu Smritis IX- 101, available at: <http://www.hindubooks.org/manusmriti.pdf>, (verse 3.21 relates to type of marriages) last accessed on 11th April, 2017.

- a. Approved also known as Prashasta
- b. Disapproved also known as Aprashasta

ashasta (Approved)	prashasta (Disapproved)
ahma	ura
iva	ndharva
sha	kshsha
ajapatya	ishach

a. 'Prashasta' Form of Hindu Marriages

These forms of Hindu marriages are the ones which are the approved way of solemnizing marriage. They are having validity in the eyes of society as it includes the presence and blessings of members of society as parents and priests etc. They are first four types, namely, Brahma, Daiva, Arsha and Prajapatya.

i. Brahma Vivah

Brahma marriage is the most sacred way of getting married. Under this form daughter has to be married to a good character person. The daughter is to be blessed with several ornaments along with rich dresses by the paternal side. The legacy of this type of marriage can be traced from Vedic era even as per smritis also it is the most pious form of marriage. The marriages taking place in current times are very much like this however, the gifts have now been replaced with *Dowry* which has become a social evil and has taken a very ugly shape.

ii. Daivya Vivah

Under Daivya Vivah the daughter was being given to the priest by the father as *Dakshina*. Though this comes under approved way of getting married, but it is inferior to Brahma vivah. The girls were supposed to serve as maidens of God and priests. The practice of *Devdasi* was very much close to it except the part of sexual exploitation which has turned up as a social evil afterwards which was not there during Vedic ancient times. This practice must have started with some pure intention of offering girls to the services of the God, temple, and its maintenance but later the practical use of the practice became asocial evil.

iii. Arsha Vivah

In Arsha Vivah the groom can only get the girl if he gives pair of cow or bull to him however this

shouldn't be confused with bride price. This practice was to ensure financial security from the paternal side for the groom as a requirement of *Dharma*. Basically, it was a token of gratitude for the father who gives his daughter and to enable the groom to fulfill the obligations under *Grihastya Ashram*. With the passage of time this practice became obsolete.

iv. Prajapatya Vivah

This type of marriage was being solemnized after the pledge of the Mantra "may both of you perform together your Dharma." It establishes that couple is supposed to perform all the religious and civic duties together to perform the duties of *Dharma*.

The abovementioned four forms of marriages come under the category of approved because there was involvement of parents specifically father of the daughter to get the marriage performed so where this key element is missing the marriage comes under disapproved marriage.

b. "Aprashasta" Form of Marriages

This form of marriages, they have been termed as forbidden in the eyes of society. It includes Asura, Gandharva, Rakshasa and Paisacha.

i. Asura Vivah

This type of marriage was performed by paying something to the father or the guardian of the bride. Basically, there was a consideration for the marriage. Under this customary practice the *Bride Price* was paid officially. So, bride was being purchased. Because of the involvement of money as consideration it is considered as an inferior as compared to the above-mentioned forms of marriage. Learned Manu considers that a father can't receive consideration in lieu of his children that is why such marriages were improper. However, such marriages are not prevalent in India.

ii. Gandharva Vivah

The marriage where boy and girl themselves choose for their partner it was known as Gandharva Vivah. Such marriages are being performed with mutual love and consent of both the parties without involvement of any consideration or guardian. It is named after a tribe '*Gandharva*' who lives at the slopes of Himalaya. The famous and classical example of Gandharva marriage was of Shakuntala and Dushyant. Manu describes Gandharva vivah as "where the bride and the bridegroom meet each other of their own accord and the meeting is consummated in copulation

born of passion, that form is called Gandharva.”¹³ The custom of *swayamvara* among Kshatriyas can also be cited as example of such marriage. However, the contemporary practice of *love marriages* is very much close to it.

iii. Rakshasa Vivah

In such marriages the boy without the consent of girl abducts her and forces her to get married to him. This type of marriage is not in practice rather such act would come under the category of an offence.

iv. Paisacha Vivah

Under Paisacha marriage man seduces an intoxicated or sleeping girl i.e. not in position to give her consent or to understand the nature and consequences of the act. Such type of marriages is also no longer in practice rather such act would be termed as *Rape* and person can be punished under IPC. P.V. Kane¹⁴ thinks that this marriage is called paishacha because in it there is action like that of pishachas (goblins) that are supposed to act stealthily¹⁵. This form of marriage, however, has disappeared altogether in India.

After evaluating the nature of all the above-mentioned marriages, it can be said that *Brahma vivah* was the most pious form of marriage where the merits of the partners, consent of the partners and the blessings of the parents were there to solemnize the marriage. Even in present context the *love cum arrange marriage* fits into the notion. *Kanyadaan*¹⁶ is considered as an essential ingredient of a Hindu marriage which is willfully observed in Brahma vivah. In a nutshell it can be said that an ideal way of getting married is Brahma vivah as it provides social and financial security to the partners along with long life companionship, mutual love and understanding.

After the evaluation of the nature of marriages during Vedic age it is very much evident that even in those times there used to be huge respect for the consent of girl when it comes to marriage. If the consent of the girl was not free, the marriage could come in the category of disproved marriage as in the case of Paisacha and Rakshsha vivah. However, with the change of times the idea of consent for marriage has taken a very shallow meaning and theorem of consent on the part of

¹³ Available at: https://archive.org/details/ManuSmriti_201601, last visited on 10th April 2019.

¹⁴ Renowned Sanskrit scholar of 20th Century who wrote and translated several ancient books

¹⁵ Available at <https://www.yourarticlelibrary.com/marriage/8-traditional-forms-of-hindu-marriage-in-india/47455>, last accessed on 9th July 2021.

¹⁶ Manu Smritis IX- 101, available at: <http://www.hindubooks.org/manusmriti.pdf>, last accessed on 8th April 2017.

women is taken at a superficial level. The decision of marriage is taken over twice or thrice meetings. The pay packages and virginity are the basic criterion to determine the merits of the boy and girls respectively. In ancient times there was far more progressive thought process to take decision over marriage.

2.4. CHANGING DIMENSIONS OF MARRIAGES IN INDIA- A PROGRESSIVE CHANGE

With the rapid growth and advancement in education of women there has been a huge progressive change with regard to the status of women. It gets frustrating when feminism is forced to fit into tradition. In each and every religion now, there is a huge urge to treat men and women equally. Women are no more a chattel of husband now.¹⁷ But still down the lines the concept of Husband superior to wife is not an alien concept in Indian society. From Karwa Chauth to several other practices we Indians don't deny accepting 'Pati' as God and 'wife' as devotee and surprisingly we proudly promote it. Women can't be compelled to stay into marriage if there is domestic violence physical or mental as it is against Article 21 of the Constitution of India. Now women are not ready to be a substitute of maid or compromise their rights or happiness just to run the household anyhow or stick to the label of 'Mrs' with tears in eyes, rather they accept the status of divorcee gracefully to move on from the unhappy or abusive married life. So, the concept of marriage has changed drastically.

There are various points to evaluate changes in the forms of marriage:

a. Change in the Purpose of Marriage

The conventional Hindu marriage considers 'Dharma' concerning execution of strict duties. Earlier the relationships were to play out the sacrosanct obligations and capacities. The prime capacity was to become kinfolks and defenders of the family. With the approach of communication, industrialization and globalization the relations are fading. The points and purposes have changed their importance from regard, dedication, genuineness to less respect, ravenousness, and unfaithfulness and so on.

b. Changes in the Rituals of Marriage

There are various rituals which are subject to several criticism by the pragmatic thinkers of the society such as calling off the customary practice of Kanyadaan has started¹⁸, performing rites by

¹⁷ Joseph Shine v. Union of India, 2018 SCC OnLine SC 1676.

¹⁸ Available at: <https://northeasternchronicle.in/news/kanyadaan-ritual-to-be-questioned/>, last accessed on 5th September 2021.

female priests¹⁹, performing marriages under special marriage Act or court marriages to avoid pomp and show in marriages. All these changes depict a different dimension of getting married in a different way which is more progressive rather than regressive.

c. Change in Process of Mate Selection

In days of yore, guardians used to choose the companion and there was not really any state of the unmarried or delayed marriages. There are various stories which bolster that guardian used to marry their girls as indicated by their own will. Presently because of different reasons such as financial independency among girls, urbanization, and education the role of parents is passive rather active with regard to mate selection²⁰. The relationships which were prior held by mediators are currently supplanted with matchmaking offices, matrimonial sites, Tinder or Facebook and by the Newspapers²¹.

d. Change in the Age at Marriage

After assessing marriageable age in India it comes out that girls and boys used to get married at early age and it was more in the case of girls. In some cases, like Rajasthan girls were married at early age for example age of 3-4 years also, when they didn't have a clue about the importance of marriage. The marriage framework was intensely reliant on orchestrated marriage at an early age in the conventional social orders of India. The sexuality of girls should be deliberately controlled to maintain the respect of the family married couples ought not to be excessively genuinely connected, as this could compromise the solidarity of the man centric family.²² Early marriage works as guarantee for a virtuousness of a girl, it denotes a reasonable break from their natal families, makes them bound to acknowledge the structure of expert in their new family and strengthens the spouse bond²³. Now because of appearance of different components like innovation and awareness among girls there is a major change. Lawfully, the marriageable age of female is 18 years and male is 21 years. Further because of professional studies and jobs the age of marriage is around 25-30 years. The pattern towards late marriage is related with the financial changes that upgrade the status of girls by expanding instructive and work openings. It has assumed a significant job in deciding the development pace of populace through its linkage to conjugal fruitfulness.

¹⁹ Recently a Bollywood celebrity and former Miss Asia Pacific Dia Mirza got married, where she arranged female priest to do the rituals.

²⁰ J Cadwell, "The causes of marriage change in South India," *Population Studies* 3 (1992) pp 343-361.

²¹ Jones, G. (2010). Post-traumatic stress disorder among battered women: Risk and resiliency factors, *J Marriage and Family*, 8:17-28.

²² Supra note 36.

²³ Reddy, V. *Marriages in India-A Psycho-sociological Study*. The Academic Press. Haryana, 1982.

e. Change in timeless bond concept of Marriage

In the times past organization of marriage was very steady and scarcely any separation was noted. Dread of family relationship framework and solid social codes never permitted wedded couples to separate relationships regardless of whether they want to live together or not.²⁴ Presently due to legislations, training, innovation progression and more awareness has changed dependability in the foundation of marriage. Separation is expanding in the public arena over the globe. Love, individual duty and inherent fulfillment are presently observed as the foundation of marriage.²⁵

f. Inter Caste Marriages

Until at some point back, wedding an individual having a place with some other position or religion was not allowed by the families. A report which examined²⁶ inter-caste relationships in India and the information uncovered that more than 50% guardians communicated their eagerness to permit their children wedding outside their own position. The concept of inter caste marriage comes with a lot of negative repercussions, adjustments and compromises even in this 21st century but slowly people are getting accustomed to this change.

g. Change in Economic Aspects of Marriages

Marriage is regularly held in urban communities as a social or a common function than strict service. The idea of Indian wedding has seen extreme changes, in the course of the most recent couple of years. Previously, the function was a family issue, kept to an efficient spending plan, even though the list of attendees was long. Despite what might be expected, in right now, the event is commonly celebrated in an expounded manner, with number of ceremonies that are directed previously, during and after it. A long list if people to attend, bright and excessive setting, extravagant gala and a progression of customs are the key elements of the 'gigantic Indian wedding' that we see today²⁷. Immense money is being spent on function to make it a 'terrific affair'. Cash is spent luxuriously for finishing marriage mandaps, organizing fabulous supper, music symphony, video-shooting, photography, marriage parades and so forth. Some progressive thinkers are stressing over changing these extravagant ceremonies to be economical and eco-friendly.

²⁴ Goody, J. and Tambiah, *Bride wealth and Dowry*. Cambridge University Press, 1973.

²⁵ Allen B. and Grow M, *Anatomy of Love: The Natural History of Monogamy, Adultery, and Divorce*. Simon & Schuster, New York, 2001.

²⁶ K.M Kapadia, *Marriage and family in India*, Oxford University Press, 1982.

²⁷ Miher, '*Status relations in South Asian marriage alliances: Toward a general theory*', *Contributions to Indian Sociology (NS)* 22: 145-69, 1988.

2.5. ILLUSTRATIONS OF CHANGES IN THE INSTITUTION OF MARRIAGE

2.5.1. Restitution of Conjugal Rights

Hindu Marriage Act under section 9 provides for restitution of conjugal rights according to which if one of the spouses withdraws others' company without any reasonable reason to justify then the later gets the right to file petition for restitution. In case where court is satisfied that there is no sufficient reason for staying away from each other's company by the former the court may grant the decree for restitution of conjugal rights.

However, the Andhra Pradesh High Court in the case of *T Sareetha v. Venkata Subbaiah*²⁸ stated that compelling spouse to live together under restitution of conjugal right is not only gross violation of Article 21 of Indian Constitution but also gross violation of Human Rights and human dignity. Moreover, it is often contended that a decree of restitution of conjugal rights which compels wife to stay with husband and to establish a matrimonial bond also expects her to have unwilling sexual intimacy which is undoubtedly violation of bodily autonomy. But Delhi High Court²⁹ dissented with the judgment of Andhra Pradesh High Court and further Supreme Court in *Saroj Rani*³⁰, has put end to this dispute by stating that the objective of the section 9 of the concern act is not to give space to unwilling sexual intimacy but focus over 'Consortium'.

However, the various observations available accuse Delhi High Court and Supreme Court for being so insensitive. Somewhere down the lines both the courts forgot that being a patriarchal society husband holds a dominant position where he can easily force wife to have sex. This can be an easy escape for him from long litigation for domestic violence, cruelty and what not. In matrimonial relations it is impossible to draw a fine line difference between 'just a cohabitation' and 'cohabitation with sexual intimacy'.³¹

In March 2019, the Hon'ble Supreme Court of India admitted a writ petition **Ojaswa Pathak v. Union of India**³² challenging the constitutionality of the remedy of restitution of conjugal rights present under Section 9 of Hindu Marriage Act, 1955. The judgment is still pending by the court. The question of law i.e. constitutionality of the remedy of conjugal rights still remains a

²⁸ AIR 1983 AP 356.

²⁹Harvinder Kaur v. Harmander Singh AIR 1984 Del. 66.

³⁰Saroj Rani v. Sudarshan Kumar AIR 1984, SC, 1652.

³¹Available at: <https://www.firstpost.com/india/compelling-wife-to-cohabit-with-husband-violates-fundamental-rights-time-sc-reviewed-section-9-of-hindu-marriage-act-6200151.html>, last accessed on 9th January 2019.

³² W.P.(C) No. 250/2019 PIL-W.

contentious issue because of the competing interest of protecting individual human rights on one hand and state's interest in protecting the marriage on the other hand. The petitioners cited the reference of **Anuj Garg v. Hotel Association of India**³³, where the court upheld that "a statute although could have been held to be a valid piece of legislation keeping in view the societal condition of those times, but with the changes occurring therein both in the domestic as also international arena, such a law can also be declared invalid."

The arguments against RCR contend that UK, Ireland, Australia and South Africa have abolished it so now India should also follow the footsteps.

2.5.2. Recognizing cruelty against wife

Acknowledging cruelty against wife by husband indeed happens to be a remarkable thing for a patriarchal society like ours. In India there is deep rooted concept of accepting husband as 'Dev' so the realization that even 'Dev' can do something wrong is indeed a sign of pragmatism.

To interpret cruelty, Indian Courts initially took assistance from western cases such as **Russell v. Russell**³⁴, **Buchler v. Buchler**³⁵, **Sheldon v. Sheldon**³⁶. It is significant to discuss the case of **Russell**.³⁷ In this case, Earl Russell and Mabel Scott married in 1890 and then in December 1891, Mrs. Russell filed a petition of Judicial Separation against Mr. Russell. She accused her husband of committing sodomy with a male friend. However, she could not win in the case. Thereafter, Mr. Russell filed a petition for Judicial Separation stating that it was the cruelty on the part of her wife by making false charge of sodomy. And it was granted and then Mrs. Russell made an application for appeal against the decision. The Appeal authority decided cruelty as a conduct of such character as to have caused danger to life, limb or health or as to give rise to reasonable apprehension of such danger. The rationale of this case ruled the Indian matrimonial disputes for a long period of time.

The reason why Indian Courts were taking assistance from western cases was because under the Hindu Marriage Act 1955, cruelty was nowhere defined. Prior to the 1976 amendment in the

³³ (2008) 3 SCC 1.

³⁴ 1897(A.C.) (395).

³⁵ (1947) 1 ALL.E.R. 319.

³⁶ (1966) 2 ALL.ER 257, In this case, Lord Denning MR, Davis L.J. and Salmon LJ. Decided that the husband's refusal to sexual intercourse over a long period without excuse, which is causing injury to his wife's health, amounted to cruelty.

³⁷ 1897 (A.C.) (395).

Hindu Marriage Act, 1955 cruelty was not a ground for claiming divorce under the Hindu Marriage Act. It was only a ground for claiming judicial separation under Section 10 of the Act. By 1976 Amendment, the Cruelty was made ground for divorce.

It began from 1975 that Indian Judiciary had to search for deriving into the meaning of cruelty on Indian moorings. In the case of **Broja Kishore v. Krishna**³⁸, it was held that the cruelty is not necessarily restricted to physical violence but may extend to behaviour which may cause mental pain or injury to mind as well. Various acts of non-physical violence such as harassment, insulting behaviour, cessation of marital intercourse, refusal to provide food, clothing or accommodation by the husband also form a part of the phenomenon of violence against women.

Mrs. Flora Bose v. Suproti Bose³⁹ in this case unemployed husband used to ask money from his wife to spend over liquor and hefty lifestyle. He even used to beat her and abuse her. Court granted divorce considering the scenario as cruelty.

Cruelty is not only a civil offence anymore, but it is also covered under section 498A of IPC⁴⁰. This section recognizes domestic violence against women as a crime. Insertion of Section 498A was done with the idea of curbing cruelty on married women by her husband and in-laws and subsequent amendments were also made in the [Code of Criminal Procedure, 1973](#) and the [Indian Evidence Act, 1972](#) by the same amendment to effectively deal with cases of dowry deaths and cruelty to married women by the husband, in-laws and relatives. The basic essentials to attract Section 498A are:

- a. The woman must be married;
- b. She must be subjected to cruelty or harassment; and
- c. Such cruelty or harassment must have been inflicted either by the husband of the woman or by the relative of her husband.

³⁸ AIR 1989 Cal 327.

³⁹ AIR 2011 Delhi 5.

⁴⁰ Husband or relative of husband of a woman subjecting her to cruelty — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. — For this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

A bare reading of this section highlights that the word ‘cruelty’ covers the occurrence of the following act(s):

- i. Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb, or
- ii. health (whether mental or physical) of the woman; or
- iii. Harassment of the woman where such harassment is with a view to coercing her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
- iv. The offence is cognizable and non bailable in nature.
- v. The punishment may increase upto 3years.

In the case of [Rupali Devi v. State of Uttar Pradesh and Others](#)⁴¹, wherein it was held that, Cruelty shall mean intentional and malicious infliction of mental or physical suffering upon a woman. Cruelty includes physical as well as mental aspects. The impact on the mental health of the wife and mental stress or trauma of being driven away from the matrimonial home are aspects that must be taken into consideration while understanding the meaning of the expression “cruelty” appearing in Section 498-A of the Penal Code.

In addition to the 498A, the [Protection of Women from Domestic Violence Act, 2005](#), is also a linchpin to curtail the immoral and offensive practices against women. The complainant can apply for the reliefs under section 18-22 and interim reliefs can be obtained by the appellant under Section 21 of the Domestic Violence Act.

In the case of **Indra Sarma v. VK Sarma**⁴² Supreme Court highlighted the importance of section 498A of IPC and DV Act for the protection of women against cruelty and made observation as “...when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498-A IPC. The civil law, it was noticed, did not address this phenomenon in its entirety. Consequently, Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act”.

However, it is sheer irony that non availability of sexual intercourse in marriage comes under the

⁴¹(2019) 5 SCC 384.

⁴²(2013) 15 SCC 755.

category of Mental Cruelty but excessive, violent and brutal sexual intercourse in marriage is welcoming and doesn't amount to rape. Undoubtedly acknowledging cruelty as ground of divorce and an offence is a progressive step for a country which has patriarchal culture all together, but it has to go a long way in determining sexual violence as an offence within marriage too.

2.5.3. Decriminalizing Adultery

Section 497 of Adultery is always subject to question because of its being *gender biased*. Under this section women being an auxiliary accused but can't be punished. The law of adultery used to assume that in all cases 'man is the seducer' and the women, who is an equal participant is viewed as a victim. There have been numerous debates about the discriminatory stance of the provision. However, in the case of **Joseph Shine v. Union of India**⁴³ Section 497 of IPC was held to be unconstitutional on the ground of gender bias. Further, Court also observed that wife is not a chattel of husband. This way it is presumed that if the adulterous male has committed an offence against the husband establishes the predominance of patriarchal thought process where wife is considered as a property of husband. Court explained the concept of *expectation of sexual fidelity*. *This expectation of sexual fidelity should be a two-way process, expectation from both the partners not only from one*. All five Supreme Court judges hearing the case unanimously said the law was archaic, arbitrary and unconstitutional. Chief Justice Misra remarked that husband is not the master of wife. Women should be treated with equality along with men. Judge Rohinton Nariman said that "ancient notions of man being perpetrator and woman being victim no longer hold good". Justice DY Chandrachud said the law "perpetuates subordinate status of women, denies dignity, sexual autonomy, is based on gender stereotypes". The judgment specified that the law sought to "control sexuality of woman (and) hits the autonomy and dignity of woman". Many blog writers and social activists remarked it "staggeringly sexist", "crudely anti-woman" and "violative of the right to equality".

The word 'connivance' has been interpreted in a harsh manner. The word connivance is placed to give a reason to husband to sue the third person because matrimonial bliss is devastated. So that the husband has a good reason to sue the man who is responsible for destroying former's matrimonial relationship. On other hand if he would have been consented to this adulterous life, he can't play his victim card. The doctrine of *one who seeks remedy must come with clean hands* applies over here.

⁴³Joseph Shine v. Union of India, 2018 SCC Online SC 1676.

These days when 'wife swapping' and 'open relationship' is trend in matrimonial life in such cases restoring matrimonial relations can't be put over the heads of judiciary. Couples are themselves choosing to be into adulterous life with mutual consent and bringing fake cases of Adultery afterwards, in such a scenario it is better not to give benefit of doubt to one partner as a weaker gender since they are knowingly consented to this lifestyle.

The Supreme Court has argued that the law unfairly considers women as property of men and goes against fundamental rights; adultery is still a legal ground for divorce. It can also be seen as something which places a fair restriction on sexual autonomy, which means that there are legitimate restrictions on sexual autonomy. Therefore, it can be inferred that if one of the two spouses violates the sanctity of marriage, the legal system does not control which one should sleep with, but rather regulate the separation process. In addition, the criminalization of broken faith in a marriage does not lead to a couple returning to a blissful way of life, nor does it alter society's social conduct.

2.5.4. Live in Relationship

Undoubtedly marriages play a very important role in India they hold social, emotional and legal sanctity. However, there are many who do not believe in the significance of marriage. There are quite a few numbers of people who prefer to stay together under one roof without getting hitched socially or legally. Even having pre-marital sex⁴⁴ is quite a common phenomenon. The social morality standards are changing drastically, but the notions of personal autonomy are to be respected as greater social norm.

Live-in Relationship is a voluntary arrangement wherein two people of opposite sex cohabit on a long-term or permanent basis to fulfill their emotional and/or sexual needs. The legal definition of live in relationship is "an arrangement of living under which the couple which is unmarried lives together to conduct a long going relationship similarly as in marriage."⁴⁵ While in a live-in relationship a couple portray themselves as husband and wife while legally there is no solemnization of marriage.

In **Lata Singh v. State of U.P.**⁴⁶, it was observed that a live-in relationship between two

⁴⁴ S. Khushboo v. Kanniammal, (2010) 5 SCC 600 (2010) 2 SCC (Cri) 1299, Para 41.

⁴⁵ Live-in Relationship: Recent Development and Challenges in India by Dr. Kalpana V. Jawale, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2046460, last accessed on 9th February 2018.

⁴⁶ (2006) 5 SCC 475; (2006) 2 SCC (Cri) 478; AIR 2006 SC 2522, Para 17.

consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of “adultery”), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or “live with anyone she likes”.

Until 2010, the rights and legal position of the partners in a live-in relationship was obscure as there was no specific legislation dealing with the subject nor was there any direct decision of the Supreme Court of India. But all the clouds of uncertainty were blown away by the landmark decision in **D. Velusamy v. D. Patchaiammal**⁴⁷, wherein the bench of Justice M Katju and Justice T S Thakur held that the expression “domestic relationship” occurring in the Protection of Women from Domestic Violence Act, 2005 includes not only the relationship of marriage but also a relationship “in the nature of marriage”.⁴⁸ The court held that the parliament had drawn a distinction and in either case the person who enters into either relationship is entitled to the benefit of the Act.⁴⁹ The court ratified the fact that the Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship while drafting the 2005 Act.⁵⁰

The Supreme Court in **Velusamy**⁵¹ opined that the live-in relationships are akin to common law marriages. The court said that merely spending weekends together or a one night stand would not make it a “domestic relationship” and laid down the following requirements of a live-in relationship:

- a. The couple must be spouses in the eyes of society.
- b. Must be major by age.
- c. Must not be already married.
- d. The cohabitation must be voluntarily and has been for a considerably long period of time.
- e. The cohabitation must be in a ‘shared household’.

The court in unequivocal terms held that all the relationships will not amount to relationship in nature of marriage but only those that not only satisfy the above conditions but also prove these by evidence will be entitled to claim benefit under the 2005. If a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our

⁴⁷ (2010) 10 SCC 469; (2011) 1 SCC (Cri) 59; (2010) 4 SCC (Civ) 223.

⁴⁸Ibid. at Para 19.

⁴⁹Ibid. at Para 20.

⁵⁰(2010) 10 SCC 469 at Para 21.

⁵¹ (2010) 10 SCC 469; (2011) 1 SCC (Cri) 59; (2010) 4 SCC (Civ) 223.

opinion, be a relationship in marriage.⁵² This landmark decision marked the beginning of the acceptance of the live-in relationships by the law of land.

Yet another landmark decision with respect to live-in relationships was **Chanmuniya v. Virendra Kumar Singh Kushwaha**⁵³, wherein Apex court upheld the maintenance to woman by a man where both were living together in a shared household for a considerable long duration without undergoing legal or social procedure to get married. The rationale of the court was not to give benefit of doubt to the person who willfully and pleasurably enjoyed the benefits of de facto status of his relation and when the time came to take the burden of responsibilities he is shrinking to his obligations and such situation woman can't be left alone to suffer and victimized. Under Section 125 CrPC such woman can also claim for her due maintenance.

2.5.5. Triple Talaq

Triple Talaq has been the most controversial topic of deliberation not only in the Muslim community but also for the whole country. Triple Talaq pertains to be a subject of personal law, but it is a matter of hue and cry among the people who want change and for those who want to stick with the old school of thought.

The most striking and most prejudicial element of Islamic law of separation is the acknowledgment of the idea of one-sided separation, wherein just the husband can separate from his wife other with no reason, without doling out any reason, even in a joke or in a condition of inebriation and without plan of action to the court and even without the wife, by basically articulating the equation of disavowal.

Under the Islamic law, divorce can be classified into three categories viz. 'talaq': divorce at the instance of husband, 'khula': divorce at the instance of wife, 'mubaraat': divorce by mutual consent. Further, 'talaq' is classified into:

- a. 'talaq-e-ahsan' single pronouncement of 'talaq' by the husband followed by a period of abstinence or 'iddat' for 90 days or three menstrual cycles.
- b. 'talaq-e-hasan' three successive pronouncements of 'talaq' by the husband followed by three periods of abstinence of 30 days each or three successive menstrual cycles.

⁵²Ibid. at Para 32.

⁵³ (2011) 1 SCC 141; (2011) 2 SCC (Cri) 666; (2011) 1 SCC (Civ), Para 24.

- c. 'talaq-e-biddat' this is effective by one definitive pronouncement of 'talaq' and effective forthwith and hence irrevocable the moment it is pronounced.

'Talaq-e-ahsan' and 'Talaq-e-hasan' are the proper forms of talaq while 'Talaq-e-biddat' is considered to be irregular form. Only a few schools recognize this as a form of divorce, most prominently, the Hanafi sect of the Sunni Muslims. This sect also describes 'talaq-e-biddat' 'as a sinful form of divorce'. This form of divorce is also described as "bad in theology, but good in law".

'Talaq-e-biddat' popularly referred to as 'triple talaq' has been supported on the grounds that it is personal law. However, the recent judgment of **Shayra Bano**⁵⁴ the Apex Court struck down such practice as it was violating Fundamental Rights enshrined under Constitution of India. Ms. Bano was the original petitioner in the case she approached the court in 2016 demanding that the talaq-e-biddat pronounced by her husband be declared as void. She also contended that such unilateral, abrupt and irrevocable form of divorce be declared unconstitutional, arguing that the practice of triple talaq violated the fundamental rights of Muslim women. As per her claim, she was often beaten and kept hungry in a closed room for days on not bring adequate dowry. The final cut came in October 2015, when her husband sent her a divorce note by speed post. The letter contained a pronouncement of instant triple talaq. The custody of her two children, 11 and 13 years, was kept by the husband. She filed the petition against this draconian practice. Her legal battle received more coverage after other victims of triple talaq also approached the court, though she was the first petitioner. The judgment reads as

"200. Till such time as legislation in the matter is considered, we are satisfied in injuncting Muslim husbands, from pronouncing 'talaq-e-biddat' as a means for severing their matrimonial relationship. The instant injunction, shall in the first instance, be operative for a period of six months. If the legislative process commences before the expiry of the period of six months, and a positive decision emerges towards redefining 'talaq-e-biddat' (three pronouncements of 'talaq', at one and the same time) – as one, or alternatively, if it is decided that the practice of 'talaq-e-biddat' be done away with altogether, the injunction would continue, till legislation is finally enacted. Failing which, the injunction shall cease to

⁵⁴ Shayra Bano vs. Union of India WP C No. 118 of 2016.

*operate.*⁵⁵

Such a revolutionary judgment not only uprooted the patriarchy imbibed in customary practices but also changed the laws of Sharia about marriages. The judgment directed the legislature to bring a legislation to abolish Triple Talaq. The Parliament in the year 2019 brought Muslim Women (Protection of Rights on Marriage) Act, 2019. This Act under Section 3 and 4 not only abolishes the practice of Triple Talaq but also makes it a punishable offence⁵⁶. Under the Act, bail can be granted only after hearing the victim woman and on reasonable grounds. There is provision for subsistence allowance for the wife and her dependent children as determined by the magistrate. There is also the right of the wife for the custody of her minor children. Significantly, the offence punishable under the Act has also been made compoundable but only at the insistence of the Muslim woman and with the permission of the magistrate on appropriate terms, which the court may determine.

Indeed, such progressive changes are much needed in the society for the better survival as we should not be governed by the people who are in Graves.

2.5.6. Registration of Marriage

As long as Hindu marriage is concerned, marriage registration is not compulsory except in those states where compulsory marriage registration Act has been passed such as Uttar Pradesh, Telangana, Delhi etc. Those individuals who had married but had not registered their marriage are bound by penalty and such penalty being charged at a lesser extent. For Muslims, Christians and Parsi's registration of marriage is compulsory by one or the other way.

In 2006, the Supreme Court in the case of **Seema v. Ashwani Kumar**⁵⁷ laid that different state should come up with laws regarding marriage registration and subsequently several states passed this law. The legislative efforts to make registration of marriages compulsory in India can be traced from the year 2012 when it was tabled for the first time after the observations made by the Apex Court. The bill aimed at amending certain provisions of Births and Deaths Act 1969 and provided for registration of marriage compulsorily for all the religious denominations. However, the Bill couldn't see the day of light as got lapsed on dissolution of 15th Lok Sabha in the year

⁵⁵ Ibid para 200 supra note 32.

⁵⁶ Section 3 - Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Section 4- Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

⁵⁷ AIR 2006 SC 1158.

2014 after getting passed from Rajya Sabha.

The observations made by the panel were not in favor of it as they realized that due to the huge size of population and large diversity of customs in marriages it would be very difficult to come up with a uniform structure of marriage that too without hindering Fundamental Right i.e. Right to religion. The panel pointed out that in India because of its size, population and the sheer diversity of customary forms of marriages; it is a tedious endeavor to register all marriages. However, the difficulty in the path can't defy the benefits of having such a uniform law about registration of marriages.

"It would provide citizens, not new rights but better enforcement of existing rights under various family laws that grant and provide to protect many rights of spouses within a marriage," observed by the Law commission.⁵⁸

Hence to conclude it can be said that marriage is a legally, socially, and religiously recognized interpersonal relationship, usually intimate, sexual and often created as a contract. Marriages are perpetual agreements with legal consequences, terminated only by the death of one party or by formal dissolution processes such as divorce and annulment. It is not just a social convenience or an invention for living together; it is ordained by God and patterned to reflect the loving relationship. Many religions have extensive teachings regarding marriage. With the changing time the role has changed but the basic idea remains unchanged. Since our childhood when children play home -home, the sister takes on the role of the mother and brother becomes the father even if he is younger. The mother packs lunch for the father before sending him to office. She then washes clothes, feeds, and puts her doll children to sleep, dresses up and goes marketing. Sometimes the 'couple' even has mock fights, mostly over minor matters. At that very moment they are only imitating their parents but with every single day of play, the idea of married family life becomes much deep rooted in the minds of the children. The same minds of these children read fairy tales where everybody lives happily ever after. This is the dictum they have been brought to believe in and try to make their marriage successful at every cost. Children are always taught and will always be taught that, there are many paths they will travel in life, but for the greatest self-respect and fulfillment, they are to get but, one traveling companion, keeping their lives warm and fresh by discovering new truths about each other along the way. It is the most common way of life, the path that the majority are called to tread. Fundamentally, marital relations

⁵⁸Available at: https://www.business-standard.com/article/pti-stories/law-panel-wants-marriage-registration-to-be-compulsory-to-117070400893_1.html , last accessed on 9th January, 2019.

regulate human behavior between persons of opposite sex. It is evolved and developed with the socio-economic progress of mankind. Socially, it is an announcement of the new relationship. Since it is a demographic event, it has a great impact on social welfare. Marriage is considered as a main domain of the kinsmen. One of the most important structural sub systems of every society is its kinship system, which is made up of families and other types of kin group. In Indian life, job desires are exceptionally explicit and institutional in marriage; consequently, the life of female is overburdened. Family is complex system of human development and marriage binds it. The culture and traditions of family passes from one generation to another. From primitive Vedic Ages to Medieval and later, there has a been a drastic change with regard to the institution of marriage, even the enactment of laws Marriage among Hindus, Christians and to some extent Muslims have tried to give equal rights to man and woman both under the marital setup but some where they have failed to do so in few aspects. Though there has been lot many changes rather to say transformation in the concept of marriage. With the progress of time the age at marriage, procedure of mate choice, the reasons for marriage, patterns of separation rates and the financial parts of marriage have experienced a gigantic change. There are unquestionably genuine consequences of the changing concept of marriage such as advancement, industrialization, and individualism. These are changing the dimensions of marriage in India. In such a scenario the current inconsistent influence of adopting shortcuts for getting rich rapidly at any cost is giving birth to new conflict issues within matrimonial relations. Clashes in this foundation are additionally developing because of the connection of custom with advancement. With the advent of modernization, industrialization, and urbanization the traditional outlook took a backseat in the society. Traditional marriage is now considered as a loss of individuality, loss of privacy, lack of freedom, lack of individual growth, lack of social and sexual variety, dissatisfaction with spouse, sexual frustration, problem with in-laws etc. All these factors have led to a change in the form and purposes of marriage. At present the new trend of live-in-relationship is emerging in urban Indian society. Live-in-relationship or cohabitation is an arrangement where two people, who are not married, live together in an intimate relationship, particularly an emotionally or sexually intimate one, on a long term or permanent basis. Today individuals have become career oriented. Women are going out for work. This is preventing them to go into the bonds of married life that is full of responsibility. Economic independence of people in urban society also paves way to live-in relations as these people don't want interference in their personal life. These days' young men and women are getting opportunity to know and spend time with each other. This enhances the chances of getting into live-in relationship.

Many people believe that live-in relationship is a good way to test their relationship before

marriage. Besides this many other alternative forms of marriage are also emerging such as the intrinsic marriage, utilitarian marriage, open marriage, two step marriage/multi step marriage, temporary marriage, group marriage, consensual marriage, covenant marriage, commuter marriage, swinging and sexually open marriage. If an analysis is made of need of such relationship, avoiding responsibility would emerge as the prime reason. The lack of commitment, the disrespect for social bonds and the zero-tolerance power in relationship have given rise to find these various alternatives to marriage.

The processes of educational and urban development have, no doubt, created new situations and problems and have upset certain traditional morals and values. Yet the marriage institution continues to be the core of Indian society and has not experienced a general disintegration. People are okay in adopting new changes into marriage as discussed in the present chapter, even the COVID19 Lockdown period has totally changed the *big fat wedding* concept to a normal gathering into wedding but still there are lot many transformations that are still in waiting zone. There remain certain Grey areas where the right to equality is not reached into its black and white letters, Sexual Consent within marriage happens to be one of such areas. The concept of sex in Indian society in each and every religion happens to be talk behind the curtains. Since the convenience or comfort in sex is something that is not a usual thing to talk about though the irony of the country is that in every second house daughter in laws are blessed with the saying ‘Dudhonahao putto fallo’ (May you are blessed with children and grandchildren). So, the consent somewhere down the lines remain to be covered with the blanket of ‘shyness of wife’. The desire of sex and avoidance of sex both by the woman are treated as a curse or a malfunctioning in her feminine portrayal. Marriage is an apparatus for achieving profound flawlessness. It is a blessing, a gigantic Grace from God.

Chaucer writes in his famous essay ‘The Merchant’s tale about marriage specifically about the relationship of husband and wife

***“Thilke blissful lyf
That is betwixean husband and his wyf
And for to live under that holy bond
With which that first God man and woman bond
Non other lyf, sayde he, is worth a bene;
For wedlock is so easy and so clene
That in this world it is a paradys”.***⁵⁹

⁵⁹Available at: <https://docplayer.net/184755179-Social-values-and-society-svs-doi.html>, Kittredge, G.L. Chaucer’s
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