



# The Indian Journal for Research in Law and Management

Open Access Law Journal–Copyright©2025

Editor-in-Chief–Dr. Muktai Deb Chavan;Publisher– Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## EXPLORING THE LEGAL AND SOCIAL DIMENSIONS OF EVOLVING MARRIAGE NORMS: A FOCUS ON SOLOGAMY AND SAME SEX MARRIAGE

- *Shikha Kumari*

### ABSTRACT:

This research paper inquires about marriage from social as well as legal dimensions. Marriage being the universal social institution, it forms the most basic part of the society. However, with the evolving society, the marriage institution is also witnessing new trends, in form of sologamy and same sex marriage. However, in India, the traditional marriage norms fail to recognise these new trends in marriage and continue to hold its conventionally rooted constructs. Therefore, it is imperative to explore the marriage laws in India with reference to the evolution nature of relationships and contemporary societal values.

This paper uses doctrinal methodology approach which undertakes detailed analysis of statutory provisions and case laws to evaluate the adequacy of existing marriage laws. This paper also evaluates the evolving social norms with reference to Indian society.

The paper proceeds to explain the contemporary challenges being faced by India in legally recognising the new forms of marriages and concludes with an affirmative note by summarising the whole research outcome.

Keywords: Marriage laws, Same sex marriage, Sologamy, Indian legal framework

### INTRODUCTION:

Marriage is an institution that is firmly rooted in every society and religion. This is opted by the society itself to run its most basic unit – “family” – by giving life to new individuals who contribute in the continuous functioning of the society. This conjugal relationship connects two families with each other in order to create a new family. Marriage practices may differ from society to society, religion to religion or culture to culture, however the primary objective

remains same. Traditionally, marriages are performed between two individuals – one male and one female. In India, marriages are regulated through Hindu and Muslim personal laws and the Special Marriage Act, 1954. This codification has been done in order to regulate and manage the institution. However, with the evolving society paralleled with evolving thoughts, the marriage institution is also showing up with new trends. The objective of marriage is no more limited to just creating a family and giving birth to young ones. For this generation, marriage means living your life with your love ones, which has become more important than the above stated traditional objectives. The definition of “love ones” is beyond any gender or individual, which has led to the emergence of sologamy and same-sex marriages. In India, the marriage laws do not recognise these new forms of marriages which has led to a continuous demand from a section of the society for amendment of the traditional norms. The traditional marriage norms making it difficult to cope up with the evolving society. Therefore, it is needed to inquire into the existing norms regulating marriages in order to explore the marriage institution in India and finding its scope in relation with Indian society.

### **MARRIAGE IN RESPECT TO SOCIAL DIMENSION AND ITS EVOLUTION :**

Marriage as a social institution:

Every society has its own norms and values with which they are traditionally and culturally rooted. Marriage is one of these norms that is accepted and followed in every society due to which marriage is also considered as “universal social institution<sup>1</sup>”. Marriage as a social institution implies that it has some specific purpose, objectives and practices that places it at most significant place in every society. Marriage practices form the basic unit of the society i.e. “family” by forming a conjugal relationship between a male and a female and entrust them with the responsibility of continuing the society by giving life to new individuals. It connects the members of the society through conjugal relations.

According to Malinowski,

*“Marriage as a contract for the production and maintenance of children<sup>2</sup>.”*

---

<sup>1</sup>GEORGE PETER MURDOCK, SOCIALSTRUCTURE (Macmillan, 1949)

<sup>2</sup> Marriage as a social institution- changing nature and emerging trends, available at: <https://ebooks.inflibnet.ac.in> (last visited on 5<sup>th</sup> July 2025)

The definition of marriage given by Malinowski reflects the orthodox and conservative views of society towards the marriage. This directly defines the prime objective of the marriage i.e. production and maintenance of children, which makes the society to function continuously.

According to Robert O' Blood,

*“Marriage is perceived by sociologists as a system of roles of a man and a woman whose union has been given social sanction as husband and wife. The equilibrium of the system requires adjustment between the two partners so that the role enactment of one (partner) corresponds to the role expectations of the other<sup>3</sup>.”*

As defined by Robert O' Blood, marriage maintains equilibrium between the two individuals who have entered into the conjugal relationship and now being called as 'husband' and 'wife'. This definition highlights the role of marriages in building respectful and supportive relationship.

Different philosophers and academicians have tried to define marriage in different ways; however, the prime objective remains same. In India, marriage holds a significant position. India in itself is full of diversities in religions, cultures, norms and so does in marriage practices. Different groups perform different practices in marriage which contain their own significance. In Indian culture, marriage is utmost important and strictly followed by each and every Indian family

This shows that marriage is deeply rooted in Indian societal construct. This rigidity prevents India from incorporating new trends in the contemporary marriage institution.

### Evolving trends in marriage in India:

With the evolving society, the marriage institution is also being redefined. From the primitive times till today, marriage institution has seen vast changes. In India, marriage is the oldest social institution and is considered as an important part for the fulfilment of dharma<sup>4</sup>.

The marriage institution has been evolved from conservative practices towards more intellectually flexibility. Earlier, polygamy was practiced by the kings which was the symbol of power and strength and was limited among the noble classes. With time, the practice of polygamy sharply declined and shifted towards monogamy. Presently, such practices are

---

<sup>3</sup> Ibid

<sup>4</sup>Harsimran Kaur, The concept of marriage under Hindu Law and its changing dimensions, ILILJ 4(2022)

considered as crime in India under section 82 of BNS<sup>5</sup> (in addition with some exceptions). With time, the practice of marriage being restricted to the same cast or religion has also changed. In modern India, through, caste system still dominates, yet there has been seen liberal attitude towards inter caste marriages. The reason for the same can be the inclination towards love marriages and evolving thoughts of the new generation. Taking the contemporary situation in India into concern, marriage still holds paramount importance and still adhered to its traditional practices. In contrast, the urge to recognise the new forms of marriage is strongly increasing from the section of a society.

On June 2022, India saw its first sologamy marriage, when a 24yearsold woman from Gujarat married herself by undergoing traditional marriage rituals<sup>6</sup>. This event sparkeded many debates in the country, some favoured this idea as a means of supporting oneself in this hyper- real world which is full of simulations and others opposed this practice for not fulfilling the prime objective of marriage that may lead to drastic impact upon society if supported by large mass. Sologamy is a practice of marrying oneself. It sharply contrasts with the prime objective of the marriage. Sologamy gives way to isolation and fails to fulfil the responsibility of producing offspring, rather than integration and producing young ones which is the basic purpose.

In the same way, the demand for same sex marriage was also raised by the LGBTQ+ community. Same sex marriage is practice of marrying an individual of same gender i.e. marriage between two women or two men. The demand to recognise same sex marriage in India has taken a strong movement during the proceeding of Supriya Chakraborty & Anr. V. Union of India<sup>7</sup> that deals with the question of legalisation of same sex marriage. Though, the court judgement didn't give validation to same sex marriage, the demand, however, remains consistently elevated. Like sologamy, same sex marriage also fails to produce young ones.

In India, marriage is a holy sacrament, which makes a vast majority in India to vehemently opposed any such new trends that violates the prime objective of the marriage.

### **MARRIAGE IN RESPECT TO LEGAL DIMENSION:**

Recognising the societal importance of marriage, it becomes necessary to regulate it through appropriate legal framework. On one hand, marriage is a social institution that plays a vital role in social framework, on the other hand, marriage is also considered as a legal contract between

---

<sup>5</sup>Bharatiya Nyay Samhita, 2023, §82

<sup>6</sup>India's first case of sologamy, available at: <https://www.indiatoday.in> (last visited on 5<sup>th</sup> July 2025)

<sup>7</sup>Supriya Chakraborty & Anr. V. Union of India (2023 INSC 920)

two parties. This legal contract provides both the parties with certain obligations and rights (such as property rights). The main intent behind the codification of the marriage laws is to regulate this vast institution in such way that upholds the freedom of the Individual without hindering the religious beliefs. This makes Indian marriage laws vibrant and diverse in nature. In India, there is no single document that governs the marriage institution. The marriage laws are classified on religious basis, which was introduced by the first Governor General of British India, Warren Hastings and even after the Independence; India continued to have the same stance. Therefore, in order to understand marriage from legal dimension, it is needed to explore the different legislations that regulate this institution.

#### LAWS REGULATING MARRIAGES IN INDIA:

The multifaceted marriage laws in India represents its uniqueness. The religion-based marriage laws in India can be understood on the basis of following classification:

- **HINDU MARRIAGE LAWS:**

In Vedas, marriage is considered as religious duty for Hindu. It is a considered as one of the most important *samskar*. The Hindu Marriage Act, 1955 governs the matrimony of the Hindu, Sikh, Buddhist, Jain community and those who proselytize themselves to any of this religion. This act takes the other three communities within the ambit of 'Hindu' under section 2 of the Act. The act specifies the certain conditions that must be fulfilled for marriage under section 5.

*According to section 5 of the HMA, 1955, the conditions for the solemnization of marriage are: -*

*\* Neither of the parties should be already married and have existing spouse alive at the time of marriage.*

*\* If any party is incapable of giving consent due to unsound mind or is suffering from mental disorder or has been subject to recurrent insanity.*

*\* The bride has completed the age of 18 years and the groom has completed the age of 21 years.*

*The parties should not be within the degree of prohibited relationship.*

*\*The parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.*

The solemnization of Hindu marriage should be performed under the section 7 of the Act that highlights the importance of 'saptapadi' in marriage. This holds an important significance, particularly for the Hindu couples.

CASE LAW: -

Reema Aggarwal v. Anupam<sup>8</sup>

The apex court held that the saptapadi forms the necessary ceremony which must be performed for the completion of marriage.

- **SIKH MARRIAGE LAWS:**

Though, Sikh marriages are also regulated under the Hindu Marriage Act, 1955, however, there has been frequent demand by them for a separate marriage legislation.

CASE LAW:

Birendra kaur v. Union of India<sup>9</sup>

The appellant filled a PIL in Punjab and Haryana High Court, demanding to change the name from 'Hindu' to any secular name of the four Hindu codes including HMA, 1955 as it also includes other three communities. The PIL gets dismissed by the High Court and was appealed in the Supreme Court in the year 2012. In response, the apex court questioned the Indian government regarding the same. Resulting to the same, the Anand Marriage Act was introduced by the British to give legal validity to the 'Anand Karaj' wedding of Sikhs.

- **MUSLIM MARRIAGE LAWS:**

The Muslim marriage laws are regulated through their personal laws. There are no specific codified norms for governing the muslim marriage in India.

The essential conditions to be fulfilled for valid Muslim marriage are:

- 1) Presence of proposal (ijab) and subsequent acceptance (qubool) is required as it is believed to be a contractual relationship.
- 2) Presence of free consent by both parties.
- 3) Consideration (Mehr) must be there for fulfilment of the contract.
- 4) There should not be any legal obstruction for the culmination of marriage.

---

<sup>8</sup> Reema Aggarwal v. Anupam (2004 CR LJ 892 (SC))

<sup>9</sup> Birendra kaur v. Union of India (1992 criLj 1436)

- 5) Presence of witness is important. The number of the same differs according to the belief system of Sunni and Shia.
- 6) Existing capacity to marry individuals.

In India, the registration of Muslim marriages is governed under the Muslim Marriage Registration Act, 1981. Section 3 of the Act necessitates the registration of Muslim marriages. This legal contract is also known as 'nikahnama'. It is prohibited for Muslims to marry outside their religion. However, according to Shariat principles, marriage between a Muslim man and a non-Muslim woman is not void and can be validated by the conversion of the woman to Islam religion.

#### CASE LAW:

Shafin Jahan v. Ashokan K.M.<sup>10</sup>

This case is also known as 'Hadiya Case'. The Supreme Court overruled the judgement of the Kerala High Court and upholds the rights of adults to marry out of their free will.

- **CHRISTIAN MARRIAGE LAWS:**

The marriage of the Christian couples is governed under the Indian Christian Marriage Act, 1872 which mandates the presence of priest of the Church of minister during the marriage.

The conduct of the Christian wedding is provided under section 4 of the act. This act also gives valid to the marriage between a Christian and a non-Christian.

The marriage age is similar to that given under Hindu Marriage Act, 1955 i.e. 18 years for women and 21 years for men. In addition to the same, the neither of them should have existing spouse.

The registration of the Christian Marriages is provided under Part IV of the act that gives the legal validity to their bond.

#### CASE LAW:

Subhashchandra Ishudas Parmar v. State of Gujarat<sup>11</sup>

In this case the High Court stated that the non-Christian who marries a Christian need not to undergo proselytization.

---

<sup>10</sup> Shafin Jahan v. Ashokan K.M. (AIR ONLINE 2028 SC 1136)

<sup>11</sup> Subhashchandra Ishudas Parmar v. State of Gujarat (SCA/18287/2011)

### THE SPECIAL MARRIAGE ACT, 1954:

This is a secular legislation governing both inter- caste and inter- religious marriages in India. It incorporates provisions for solemnisation as well as registration of marriage between two adults. Section 4 of the act consists of necessary conditions that are must to be fulfilled for validation of the marriage that is similar to that of the section 5 of the Hindu Marriage Act, 1955. It is also applicable when an Indian marries a foreigner.

### **CHALLENGES RELATED TO SOLOGAMY AND SAME-SEX MARRIAGE IN INDIA: -**

As discussed above, Indian legal framework for marriage is firmly connected through its culture and traditions. The majority of Indian vehemently stands against any such new forms of marriages that violates the core object of the marriage. Therefore, sologamy and same-sex marriages neither finds place in societal values nor under legal framework.

Earlier, even the homosexual relationships were considered as unnatural act and was punished under section 377 of IPC. It is after the judgement of Navtej Singh Johar v. Union of India<sup>12</sup>, that the supreme court decriminalises the homosexual relationships. However, the marriage rights are still pending.

In every religion, the marriage is a union between two individuals. The same is considered under the marriage laws. Under the legal framework, the marriage is recognised as a contract between two individuals. Thereby, invalidates the new trend of sologamy. Also, the marriage laws consider this contract to be entered by a male and a female in order to produce offsprings, which is neither possible in sologamy nor in same sex marriage. Also, these new forms of marriages do not specify who will perform the role of husband and wife, which becomes important as both have their own duties and responsibilities to fulfil.

India is unique in itself. Its values and traditions are embedded in its legal framework. This makes India to resist the new trends in the marriage institution, which is valued and given prime importance in Indian society. The marriage norms, though, evolved from time to time, nevertheless, the objective remains the same. While, the same sex marriages and sologamy directly contrast the main aspiration of marriage. Therefore, the debate to give recognition is not yet concluded.

---

<sup>12</sup> AIR 2018 SC 4321

## **CONCLUSION:**

The paper concludes that marriage institution, in India, is seen as holy and sacred, which can be reflected through the laws regulating the marriages. From ancient times till present era, this institution has evolved many times, while the objective of the marriage remains same, however, the new forms of marriage such as sologamy and same-sex marriage do not confirm with the same. After exploring the Indian society and the contemporary legal norms, it is observed that it would be challenging for the vast majority to accept sologamy and same-sex marriages and, at the same time, to frame such legal framework in order to regulate such marriages. Laws persisting in a society reflects the nature of the society itself. Therefore, it cannot be said that India will never be able to acknowledge these new forms of marriages. The increasing demand of a section of people regarding the recognition is at peak, thereby shaping the thoughts of the society and thus reframing its values. This may give chance for the recognition of sologamy and same sex marriage in coming future.