
UNIT 9: CHOICE AND REGULATION IN MARRIAGE*

Structure

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9.0 OBJECTIVES

After going through the unit you would be able to:

- Define the institution of marriage in India;
- Discuss the various legal aspects related to marriage and its dissolution;
- Discuss variations in the pattern of selection of spouse;
- Examine the issues of divorce and remarriage.

9.1 INTRODUCTION

The word marriage conjures up an images of rituals and festivities. In India, marriage is considered essential for both men and women, so much so that the presence of an unmarried son or daughter in a family can become a point of discussion among relatives and friends. It is not uncommon to hear of families planning and saving money for a daughter's marriage from the moment she is born. Marriage, as an institution, has been of academic interest due to its universality, commonality of certain characteristics and also the diversity of types and patterns. You have read about the institution of marriage in unit where we have introduced to the concept of marriage, types of marriage and rules governing marriage. Some aspects will be brought out again to refresh your memory.

9.2 VARIATIONS IN CONCEPTION OF MARRIAGE

As with most institutions related to kinship, scholars have devoted much time to defining marriage. Not every society has a similar pattern of marriage as there are several types of marriages. There are as many forms of marriage as there are different types of family system. The form of family may influence the marriage

pattern. For example, in societies where the extended family is the norm we find decisions regarding marriage being made by the elders and often determined by economic considerations. Arranged marriages were the norm among royalty across the world, dictated by political and economic considerations. While the most commonly known type of marriage is the monogamous marriage where one man and one woman enter into matrimony, some societies may have polyandry and polygyny. In societies, where polyandry is the norm, a woman is married to more than one man at a given time. In case, the woman marries a man and his brothers then it is known as fraternal polyandry. Some examples of societies where polyandry is the norm are : Toda, Kota and Khasi. Polygyny, on the other hand, refers to a marriage type when a man marries more than one woman at the same time. If the man marries a woman and her sisters then it is known as sororate polygyny. Examples of societies where polygyny marriage is the norm are the Gonds and Baigas in India. Lewis Morgan writes about the various stages of evolution of the institution of marriage. According to him, these stages are :

- i) Consanguinous Marriage: endogamy among blood relations
- ii) Group Marriage: Several males married several women within a group.
- iii) Syndesmian Marriage: Temporary pairing of men and women without rules and regulations
- iv) Patriarchal Marriage : A type of polygamous marriage, with one man marrying several women
- v) Monogamy : The most prevalent form of marriage in contemporary society, where a man and woman enter into a marital bond.

Although many specific aspects of Morgan's evolutionary theory on marriage have been rejected by many subsequent anthropologist. But his contribution in making the connection between material culture and conditions and the social structure it produced has inspired and informed many theories.

As pointed out by Kathleen Gough in her article on marriage (1959), it has not been an easy task for anthropologists to define marriage. A particular definition may be appropriate for a society but not for another. She gives the example of a 1951 definition of marriage which says, "Marriage is a union between a man and a woman such that the children born to the woman are recognised legitimate off spring of both parents"(Notes and Queries, 1951). According to Malinowski, marriage is a contract for the production and maintenance of children. Westermarck defines marriage as " a relation of one or more men to one or more women which is recognised by custom or law and involves certain rights and duties both in the case of the parties entering the union and in the case of the children of it. As is evident, this definition includes both polyandry and polygamy (Sharma, 322-323 1993) Jacobs and Stern, " Marriage is a term for social relationship of husband and wife or of plural males; also used for the ceremony of uniting marital partners." This definition places emphasis on the ritualistic aspect of marriage.

By 20th century enormous variety of marriages were documented by anthropologist. We have discussed some of these marriage types in our unit I and the various prestations associated with marriages such as dowry or bride wealth.

While most societies prescribe or expect a certain form of marriage, the reality shows a certain flexibility. Thus, caste endogamy may be the prescribed form of marriage from the point of Hindu tradition there is prevalence of inter-caste marriage which is legally sanctioned according to secular laws of our country. Many marriages ceremonies are conducted according recognised traditions and rituals and such marriages solemnised by traditions are recognised as marriage even if they are not registered in the administrative set up; such marriages he are known as common law marriage and one of the most common ways people get married across cultures. In India the Supreme Court has also acknowledge the presence of marriage like relationship, so that women may have legal recourse in case ill treatment etc.

Cultures that openly accepted homosexuality, of which there were many, generally had nonmarital categories of partnership through which such bonds could be expressed and socially regulated. Conversely, other cultures essentially denied the existence of same-sex intimacy, or at least deemed it an unseemly topic for discussion of any sort.

9.3 DIVORCE AND REMAARIAGE

The concepts of family and marriage are intertwined. One of the terms with regard to family, you may have come across is a dysfunctional family. As the term suggests it refers to a family that is not able to perform the functions it is supposed to. One of the reasons for this could be that the family breaks up due to a failed marriage. Another term that is related to marriage is remarriage we look at both these aspects of marriage in this section

9.3.1 Divorce

When partners in a marriage decide to part ways it is referred to as divorce. There is a strong link between religion and divorce as in many societies, marriage is sanctioned by religious rituals and sanction. For this reason dissolution of a union governed by religious regulations is seen in negative light. For example, Roman Catholicism does not allow divorce. The growth of industrial society, nuclear family and associated economic independence, changing roles of women have been seen as some of the causes of increasing rates of divorce. Divorce requires a legal sanction and follows certain legal proceedings. Examples of such laws in India will be discussed a little later.

For Durkheim the increasing rate of divorce was a cause of concern. In his book *Suicide*, he links divorce and suicide and in a decade later he writes about the impact of divorce on the individual, family, marriage and society. He did not look into the causes of divorce but concentrating on how divorce by mutual consent has a negative impact on the institution of marriage and also represented the loosening grip of moral authority in society. For him it was important to protect the institution of marriage rather individual interests. This was because he saw marriage as the institution that regulates social life, sexual relations and brings a certain social order. Durkheim writes that passion and love need to be regulated by society – that regulation is through institution of marriage. He went to say that the chances of divorced people committing suicide was higher. He countered the argument that marriage is a contract. In his opinion it was more than a contract and within a marriage there are several elements which are non-contractual in nature – the relationship that develops between the two

families when a couple gets married, the children born in a marriage and so on. Therefore the married couple has to think beyond their own interests and divorce especially by mutual consent will lead to a breakup of families and increase unhappiness.

The grounds for divorce have been spelt out both by custom and by law in different communities. During 1940-48, several provinces and states passed laws permitting divorce for Hindus. The Special Marriage Act of 1954 introduced and 'clarified the grounds for divorce'. It has been available to all Indians who have chosen to register their marriages under this Act. The Hindu Marriage Act of 1955 was Amended several times since 1955 (the next one being in 1976 and later 2012) to incorporate a wide range of grounds for divorce available to both men and women coming under the purview of this Act.

Among the Muslims, marriage is a contract and divorce is allowed. However, before 1939, a Muslim wife had no right to seek divorce except on the ground of false charges of adultery, insanity or impotency of the husband. But the Dissolution of Muslim Marriages Act 1939 lays down several other grounds on the basis of which a Muslim wife may get her divorce decree passed by the order of the court. Public attitude to divorce in India is still not yet very liberal in spite of the legal permission for divorce.

The possibilities and mechanisms of dissolving a marital union have varied through time, between and within communities.

9.4 LAWS REGARDING MARRIAGE

In all societies, marriage is governed by certain rules and regulations. These rules may be traditional rules governed by societal norm or legal rules set by the State. One of the first rules of marriage was made regarding the age of marriage. The first legislation in this direction was the Sharada Act, also know as Child Marriage Restraint Act, 1929, which fixed age of marriage for boys at 18 and for girls at 14 years. Today the legal age of marriage for women is 18 years and men 21 years. The legal and traditional rules of marriage also include rules regarding widow remarriage and divorce. In many instances, traditional rules on marriage, remarriage and divorce may be based on religious traditions. Both marriage and divorce involve and a legal process. The Hindu Marriage Act (1955), Special Marriage Act (1954), Indian Divorce Act (1869- amended in 2001) are examples of the legislations related to marriage and divorce in India. When we speak of rules regarding marriage it includes norms regarding exclusion and inclusion. Let us go through some of the basic rules.

Check Your Progress 1

- 1) What according to Lewis are the different stages of evolution of marriage ?

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- 2) Give any two definitions of marriage?

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3) What is the legally prescribed age at marriage for boys and girls in India ?

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9.5 RULES REGARDING MARRIAGE

Every society lays down certain rules to select their life-partners or not allowed to marry whomsoever they want. Members have to abide by the prohibitive and prescriptive rules of marriage while selecting their marital partner. Some such rules are discussed in this section

9.5.1 Incest rules

One of the core norms regarding choosing of spouse is based on incest rules in almost all societies. The rules of incest decide who is outside the category of those one can marry. Incest refers to sexual union of near kin. This obviously includes the immediate family – siblings, parents, grandparents and so on. In many societies, parallel cousins are also included in this category.

9.5.2 Prohibitive Rules

Prohibitive rules are those which put restriction on men and women from entering into marital alliance with a certain category of people. Some of such rules are as follows:

1) **Endogamy:** Endogamy is a social rule that requires a person to marry within a defined social group of which he is a member. Endogamy is a rule of marriage in which the life-partner outside the group is prohibited. Marriage is allowed only within the group, and the group may be caste, class, tribe, race, village, religious group, etc. The purpose of endogamy are for example, to maintain racial purity, geographical separation, religious differences, cultural differences, sense of superiority or inferiority, the policy of separation, the desire to keep wealth within the group, etc.

2) **Exogamy:** Exogamy is a social rule that prohibits a person from marrying within a defined social group of which she or/ he is a member. It is the opposite form of endogamy rule. Exogamy is the practice of marriage in which an individual has to marry someone outside his or her own group. Every community prohibits its members from having marital relationship within the group. Exogamy marriage assumes various forms in Hindu of India such as *gotra* and *sapinda*. Gotra refers to a group of families which share or a common mythical marital ancestor and common blood relatives from the parental side. One marrying outside one's own 'gotra' is called gotra exogamy. Sapinda means that persons cannot inter-marry of seven generations on the father's side and five on the mother's side. In some areas of India, such as, Uttar Pradesh, Bihar etc. a girl and boy from the same village are not permitted to marry because the village is considered to be one unit and they have practice of marrying outside their village

It was mentioned earlier that the rules of marriage regarding selection of spouse can be classified into exogamous and endogamous rules. There are positive and negative rules of marriage to determine the unit within which one should marry and the unit within which one must not marry. The positive rules pertain to the unit of endogamy within which one can marry. Caste/Sub-caste endogamy

is an example of this rule. Rules do not permit people to marry outside their religion. While religious exogamy is ruled out, legal provisions have been made to sanction marriage of people belonging to different religions. It is for this reason that the Special Marriage Act was enacted.

The negative rules pertain to the unit of exogamy within which one must not marry. Among the higher caste Hindus, this unit is one's gotra, within which one is not allowed to marry. The reason for gotra exogamy is that those belonging to the same gotra are seen as brother and sister. Do you remember reading in the newspapers reports about marriages between persons of the same gotra? Local caste panchayats have reportedly taken action against such couples though the courts have upheld their marriages. Such cases are indicators of changes in the perceptions of people about rules of marriage. Even the unit of endogamy is no longer a universally accepted unit of positive rules of marriage. The sapinda rules also exclude marriage alliances between three maternal and five paternal generations. Some villages also follow the practice of village exogamy, whereby one can marry only outside the village and breaking this rule may lead to violent consequences.

9.5.3 Preferential or Prescriptive Rules

The rules of exogamy and endogamy may be preferential or prescriptive which give preference to certain types of alliances over other. In certain cases, the individual may choose a marriage partner within a particular kin group or he may be bound to choose only one such kin. Such type of custom which prescribe as to whom one should marry or prefer to marry are called prescriptive rules. Some of these prescriptive rules are as follow:

1) Cross-cousin marriage: The marriage of two individuals who are the children of siblings of opposite sex i.e. a man marries his mother's brother's daughter or his father's sister's daughter it is called a cross-cousin marriage. Such type of marriage is practiced among the Gonds of Madhya Pradesh and the Oraon and the Kharia tribes of Jharkhand. Such type of marriage are also found in the Southern part of India.

2) Parallel-cousin marriage: The marriage of two individuals who are the children of siblings of the same sex i.e. a man marries his mother's sister's daughter or his father's brother's daughter it is called parallel cousin marriage. Such type of marriage is seen among Muslims.

3) Levirate marriage : Levirate is the practice of custom in which a widow marries her deceased husband's brother. It is also known as Natal or Nantra. Such type of practice is prevalent among the Toda of Nilgiri Hills. It is also known as a Natal or Nantra, marriage. It was also found in some parts of Panjab.

4) Sororate: Sororate is the practice of custom in which a widower marries his deceased wife's sister

9.5.4 Rules Applicable to Married Adults

Besides the above issues, we need to also consider those rules, which regulate the conduct of already married persons. The negative rules are those of adultery that restrict sexual access to those already married. You may observe the positive side of rules in polygamous and the levirate or sororate or Islamic short-term marriage (mut'a), whereby already married persons have sexual access to specified married persons.

Check Your Progress 2

- 1) What do you understand by the terms exogamy and endogamy in relation to marriage?

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- 2) What is cross-cousin marriage?

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9.6 Breaking Rules of Marriage

Discussions of rules of marriage throw better light on basic structures and processes when we study them in the context of the rules being broken. For example effectiveness of caste or sub-caste endogamy can be judged only by looking at the number of inter-caste marriages and their 'sooner or later' acceptance by the kin group. The interface between caste and class gains relevance and the relative class status of the spouse is often a sufficient condition to render an inter-caste marriage more acceptable in due course.

In India we find the commonly listed forms of marriage such as monogamy (marriage of a man to a woman at a time), and polygamy (marriage of a man or woman to more than one spouse). The latter, that is polygamy with its two forms, namely, polygyny (marriage of a man to several women at a time) and polyandry (marriage of a woman to several men at a time) is also prevalent in different parts of the country.

9.6.1 Inter-caste/inter-religion/same sex marriages

You must have noticed many inter-caste and inter-religion marriages taking place in modern times. In legal terms all such marriages are valid and in social terms too they are fast gaining full recognition. Though every now and then one hears of severe reaction to such intercaste marriages through honor killing of both the girl or boy or one of them.

As long as marriages follow the norms of heterosexual unions, society in India is culturally accepting such marriages. Even though homosexuality is decriminalised, the Indian society is yet to entertain the idea of same sex marriages. But many countries across the world have legalised same sex marriages. As of today 25 countries across the world accept same sex marriage legally. Some examples are New Zealand, USA, Norway, Sweden and South Africa.

Inter-religious marriage is frowned upon, especially between Hindus-Muslims. You may have heard of the term love-jihad in the news.

Activity

Initiate a discussion with your friends whether they are open to inter caste/inter-religious marriage.

9.7 ARRANGED MARRIAGE AND MARRIAGE BY SELF CHOICE

It is a general perception among all of us that most marriages in India are fixed or arranged by parents or elders on behalf of and/or with the consent of the boy or the girl involved in marriage. We give this pattern of selecting a spouse, the label of 'arranged marriage'. In contrast to marriage by self-choice, this pattern of spouse selection is deemed to be an arranged process. In popular usage a marriage by self-choice is known as 'love marriage'. You may also find in some cases both patterns of spouse selection. There seems to be some arbitrariness about the usage of the two terms. Shah (2005: 22) has made a perceptive observation about arranged marriages.

We presume that there was no choice in arranged marriages in traditional India. Of course, in a regime of child marriage a child did not have a choice. This does not, however, mean that the child's parents and other elders did not have alternatives to choose from. Conversely, in the so-called love marriages among adults in a certain section of society today choice is restricted by a number of social factors.

9.7.1 Marriage by Self-choice

In the light of raised age at marriage, prescribed by law, and easy access to information technology for finding a spouse, it is relatively easy for the concerned boy/ girl to find a spouse by self-choice. The traditionally placed restrictions on free interaction between a boy and a girl in India are now almost impossible to enforce and this is yet another factor which has given impetus to marriage by self-choice.

The measure of participation in choosing one's life partner shows variations between different groups. For example, among the Muslims, by and large, the parents, elders or wali (guardian) arrange a marriage (Gazetteer of India 1965: 547 and CSWI 1974: 62). But owing to forces of modernisation along with the spread of education in minority communities, self-choice in selecting one's spouse is equally prevalent in their cases too.

Blumberg and Dwarki (1980: 139) found the following patterns of spouse selection in India.

- i) Marriage by parents'/elders' choice without consulting either the boy or girl
- ii) Marriage by self-choice without consulting parents/ elders
- iii) Marriage by self-choice but with parents' consent
- iv) Marriage by parents' choice but with the consent of both the boy and the girl involved in the marriage
- v) Marriage by parents' choice but with the consent of only one of the two partners involved.

There have been changes in the past few years regarding parents/ elders consult the boy and obtain his consent in the choice of spouse. Often, parents/elders do not consider it important to ask the girl whether she approves of the match. Among the urban educated classes arranged marriage with the consent of the

boy and the girl appears to be the most preferred pattern. Very often the parents and sometimes the boy/ girl concerned arrange the marriage through newspaper advertisement.

A recent survey by Lokniti- CSDS Youth Studies in 2016 on the attitude of the youth towards marriage brings to light interesting data. A similar study was carried out in 2007. Let us see whether there have been changes in attitudes and preferences while making marriage choices.

- Higher number of men (61%) were unmarried in comparison to women (41%)
- In the 2016 survey, 84% of married youth said that marriage decisions were primarily taken by the family; only 6% opted for self choice.
- 50% of the unmarried youth also opted for arranged marriage; only 12% opted for self choice. It was surprising to note that only about 3% of the youth had registered themselves on matrimonial websites.
- It did not come as a surprise to see that more women than men said that family had a greater influence on decision of marriage.
- Shift from the previous survey of 2006, has been a greater acceptance of remaining single/unmarried. In 2006, 8 out of 10 said that it was important to get married. In 2016, 5 out of 10 Indian youth said that it is important to get married.
- Marriage across caste has risen significantly from 31% in 2007 to 56% in 2016. Inter-caste and inter-religious marriages are not accepted within arranged marriages norms.
- Inter-religious marriage has low acceptance with 45% of the youth saying it was wrong to go in for inter-religious marriage.

(Lokniti CSDS Youth Studies 2007)

Remarriage brings into existence a variety of step-relationships. It is important to pay attention to the sociological aspects of such relationships. The data to collect is to be with reference to terms of referring to and terms of addressing such relatives as well as the rights to inheritance of stepsiblings. Children born and brought up in a nuclear family setting have been reported to find it a welcome extension of close relatives to socialise with. These impressions need to be explored in in-depth sociological studies.

9.8 LET US SUM UP

At the end of this unit, you should be able to define marriage and also have a comprehensive idea about how spouse selection takes place in India. It also familiarises the reader with the changing patterns of spouse selection especially in connection to same sex marriage, choosing across caste and religion. Marriage is a combination of both religious and legal sanction. For this purpose, several laws have been enacted which are religion specific. Marriage breakdown either through divorce or due to death of spouse brings with it certain consequences.

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9.10 SPECIMEN ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. Lewis Morgan writes about the various stages of evolution of the institution of marriage. According to him, these stages are :
 - i) Consanguinous Marriage: endogamy among blood relations
 - ii) Group Marriage: Several males married several women within a group.
 - iii) Syndesmian Marriage: Temporary pairing of men and women without rules and regulations
 - iv) Patriarchal Marriage : A type of polygamous marriage, with one man marrying several women
 - v) Monogamy : The most prevalent form of marriage in contemporary society, where a man and woman enter into a marital bond.
2. Kathleen Gough defines marriage as “Marriage is a union between a man and a woman such that the children born to the woman are recognised legitimate off spring of both parents”. And Jacobs and Stern definition of marriage is: “Marriage is a term for social relationship of husband and wife or of plural males; also used for the ceremony of uniting marital partners.”
3. 21 years for boys and 18 years for girls.

Check Your Progress 2

1. Endogamy: A rule of marriage whereby an individual is required to marry within a specified group of which he/she is a member. Exogamy: A rule of marriage whereby an individual is required to marry outside the group of which he/she is a member.
2. The marriage of two individuals who are the children of siblings of opposite sex i.e. a man marries his mother's brother's daughter or his father's sister's daughter it is called a cross cousin marriage. Such type of marriage is practiced among the Gonds of Madhya Pradesh and the Oraon and the Kharia tribes of Jharkhand. Such type of marriage are also found in the Southern part of India.



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