

Marriage as an Institution: Gender Fluidity and Homosexuality

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Abstract

Marriage, as a primary institution, faces many challenges and poses many questions due to rapid social transformation. Cohabitation which is popularly known as ‘live-in-relationship’ is becoming common nowadays. The emergence of urbanization, globalization along with industrialization not only makes a sharp change in the economic structure of the society but also generates individualistic thought and liberty among the masses. As a result, a new emerging community ‘LGBTQIAH’ has been coming in force to get their equal right in the existing ‘marriage institution’.

Basically gender is socially constructed which is multidimensional and fluid in nature. Society generates many ideas about the notion of gender which is crystallized in human mind and soul through socialization. The idea of sexuality is still treated as a taboo to discuss in public sphere. The Supreme Court of India de-criminalized homosexuality in the year 2018. But till now, heterosexual marriage is accepted but homosexuality is stigmatized in the society. They have to struggle in their everyday life to access their fundamental rights along with other social and legal recognition.

In these circumstances, the present paper tries to analyze the concept of gender, sexuality and marriage theoretically through sociological and anthropological understandings.

Key words: *Gender, Sex, Homosexuality, Marriage, LGBTQIAH+*

Introduction

India is a country of diversified social phenomena. In this country family and marriage are two inseparable part of social life. Though in present day’s modern world the role and importance of marriage has been questioned rigorously but there is no contradiction that it is accepted as the most beautiful relation between couples. Marriage is universal in nature and plays fundamental role to form the familial bond. It is a socially accepted institution in which the sexual union of man and woman flourished. It is also lawfully approved relationship, which crafts the social

and legal form of inheritance, succession and many more aspects. It is an amalgamation of interpersonal relationship of the married couple having social, legal, biological and cultural aspects along with certain rules, regulations and rights associated with their conjugal life.

Various sociologists and anthropologists describe marriage from different aspects. These reflect the importance of mate selection, social control over sexual promiscuity, socially and legally approved rights and sexual relationship between husband and wife, duties towards each other, social stability etc. Rivers (1914) describes marriage as an institution which contains socially constructed meaningful moral ethics related to sexual relationship between male and female within the tie of marriage. According to Majumdar and Madan (1956) marriage reflects a systematic way of socially approved conjugal behavior. It is a set of religious customs or/and public ceremony which has social sanction to authorize two persons of opposite sexes to engage in sexual and socio-economic relation with one another. Malinowski described marriage as a contract for the production and maintenance of children. Basically he emphasizes on parenthood. In his words marriage is ‘...that constitute the family life: mode of living, economics of the household, and above all the relation of the parents to their children’ (Malinowski 1913: 90).

Generally marriage plays a crucial role in regularizing sexual urges of the individual of society in a systematic way and creates a stable equilibrium for living. At the same time, another primary function of marriage is caring and rearing of the children born out of the union. Every human children starting from their birth need a familial attachment to take care of them. Marriage provides the necessary parental bonding of the children for having a secure childhood.

Leach (1961), recognizes marriage as ‘a bundle of rights,’ He identifies several rights associate with it, such as, legal fatherhood and legal motherhood; the right of sexual monopoly between the married partners; right to domestic services and other forms of labor; property right; and rights to property for the children of the spouses. But from this bundle of rights, no single right or set of rights might be defined as central to the universal definition of marriage.

Anthropologists have viewed the institution of marriage from an evolutionary perspective. Classical evolutionists have demonstrated the evolution of marriage in sequences. Every single society has its own social statute and regulations concerning the context of marriage. Starting from the beginning of the civilization the connotation of marriage has evolved through various stages. Marriage is the key to formation of family. Morgan (1982) was of the opinion that, in the beginning, primitive human society did not possess family life because at that time the concept of marriage was not formed. Primitive society represented promiscuity. It did not have

any restriction in sexual relation. Though there is no evidence for the assumption but still it is generally thought that initially no such restriction for sexual contract. After that the concept of group marriage appears. In case of group marriage, all males of a group marry all females of another group. Morgan argues, group marriage is the first stage of marriage institution. But many thinkers have critically argued that, group marriage is merely a hypothetical perception. There is no evidence of such marriage in primitive society or in modern. Apart from Morgan, other prominent thinkers like Taylor, Maine, McLennan etc. have also discussed evolution of the institution of marriage. Through the passage of time marriage changed from promiscuous group marriage to polygamy, including polyandry and polygyny. Finally it reached the stage of monogamy (Majumdar 1956; Brown 2020; Garetto 2018).

According to Hoebel (1972), marriage has a cultural complex that defers based on time-space dimension and the sharing of responsibility on the part of husband and wife gives the human marriage a unique stability and magnitude. Society is not static but it is dynamic in nature. Marriage, as a primary institution, faces many challenges and poses many questions due to rapid social transformation. In contemporary societies it becomes more liberal with the phrase 'living as married' and can be interpreted in various ways. Cohabitation which is popularly known as 'live-in-relationship' is becoming common in city life and increasing day by day. Not only the definition but the rights, rules, forms of marriage are also changing depending on social transformation.

Social constructionist approach is relevant in this context. The approach emphasizes how the context of marriage has been constructed by society in different social milieu. Based on time-space dimension, the meaning of marriage and the associated social factors i.e., power relation, conjugal understanding, concept of parenthood along with the preference of sexuality have changed (William 1993).

Previously, society sanctioned arranged marriage, where both the families became dominating factors in mate selection process. The compatibility of the husband and wife did not have an important impact on marriage. Presently with the increase of love marriage the connotation of marriage has shifted its paradigm. Now, intensification of partners' choice turns out as one of the prominent factors of marriage. Simultaneously, marriage breaks the idea of gender dichotomy. Same-sex marriage becomes the emerging social trend in last few decades in India.

Earlier, homosexuality treated as an offensive action in India. In colonial India, the Criminal Tribes Act, 1871 identified *Hijras*, that is the people who were hermaphrodites, transgender, eunuchs and of other sexual minorities, as dangerous criminals. These people were attached

with kidnapping and castrating of children. According to the Act, police had the right to arrest the cross dressers, the *Hijras* and transgender who dressed like women in public. Punishment for such activities was up to two years of imprisonment or a fine or both. They were also not allowed to adopt children (Reddy 2005; Saxena 2011).

After Independence, government had taken various plans and programmes for the development of the marginal sections of society. But still Section 377 of the Indian Penal Code, criminalized homosexual activity as it is 'unnatural' (Talwar 1999). People were afraid to disclose their identity in public forum. Previously homosexuality was treated as an offensive action in India. But with the de-criminalization of homosexuality by the Supreme Court of India, in 2018 and with abolition of the law 377, sexual minority groups feel comfortable to disclose their sexual orientation in public sphere (Chakraborty 2018). With these changing social situations the notion of marriage has become more liberal.

In this regard, Habermas' (1985) perception of cultural knowledge is quite related where he opines that, the human knowledge is culturally constructed and reconstructed through the understanding of its participants. Communicative action plays crucial role to craft human knowledge and the process of identity formation is also correlated with it. The functional aspect of the society synchronized by communicative actions led social solidarity in right way. It may be said that marriage is not a one dimensional reality rather it has multi-dimensional facets which need in-depth understanding.

In the paper, the writer tries to analyze the context of marriage beyond gender dichotomy, crossing the limitation of heterosexual perception to non-normative ways of life. The paper is theoretical in nature and applies subjective perspective through sociological and anthropological understanding. As regards, methodology, the paper is theoretical in nature and subjective perspectives are applied through sociological and anthropological understanding. Two case studies were carried out for in-depth study.

Notion of Gender and Sexuality

Human individuals are social in nature. Without the existence of society the survival of individuals are not possible. Talcott Parsons defined society as '....a total complex of human relationships...' (Singh,1983:53). Each society has its own *sui-generis* cultural background, social rules, regulations, customs, moral ethics and traditional ethos. All these elements of society create significant impression on the ways of life of the people.

In this world of social construction, the idea of marriage is interrelated with the notion of gender and sexuality. Natures of all these concepts are changing on the basis of socio-cultural dimensions. Identity formation is a process which has diverse situational circumstances.

Individuals born in this society may have some biological features with which their 'sex' or sexual identity, as male or female are determined. Through the process of socialization, they come in contact with the norms of society and are socialized. This process starts from the birth of the child and continues till the last breath of the life of an individual. The self of an individual has been built through socialization which is necessary for identity formation. When sex is a biological creation, gender identity is constructed and reconstructed by the society. Through the process of socialization gender identity of an individual is formed either as masculine or feminine. Society makes sure how an individual maintains his or her life. From the ways of communication to the dressing sense; meaning of body for every detailed movement; using names for occupational choices; society imposes various stereotype idealizations based on gender identity. In general, majority of the common people follow these gender rules of the society. But some people are always there who enjoy their life, crossing the boundary of male-female binaries. They are known as transgenders.

Basically gender expression is not dependent on the physical condition of the person rather it is the inner self of the individual. Gender identity of a person can match with his or her assigned sex, generally recognized as gender-congruent. Simultaneously, when the self-identity or self-expression of individual's gender does not reflect his or her assigned sex and gender, the person is labeled as gender-variant.

Transgender is an umbrella term which includes different types of sexual minority groups, namely, lesbian, gay, bisexual, transgender, trans-sexual, queer, intersex, a-gender and *hijra*. These people experience a sharp dissimilarity between their assigned sex and their own understanding of gender identity (Chakraborty 2018). They express their gender identity, crossing the binary division of male-female. Their mode of communication, dressing pattern and physical presence make a noticeable difference from the rest of the heterosexual or normative society. Sometimes they desire to go through multiple surgical procedures to achieve their desired body. At the same time, there are a large number of trans-persons, who never go through any sex change procedures in their life. For them gender is not confined into their body, it is fluid in nature.

Beyond the binary division of gender, some people are there, who classify themselves neither as male nor as female or in any other way known as a-gender people (Agius 2012). Actually LGBTQIAH+ community is not a homogeneous group. The group includes a diverse variety of individuals who have distinct sexual lifestyle. They defer from the mainstream heterosexual population of the society. Their *sui-gener* is kind of sexual orientation make them distinct from heterosexual population. At the same time, they have different ways of gender expression and sexual orientation distinct from each other in their own community

(Fisher 2002; Graham 2011). Sexual orientation of transgender people can be heterosexual, homosexual or bisexual (Kalra, 2012). An in-depth thoughtful vision is necessary to understand the reality of the LGBTQIAH+ community.

Presently, there is a wide spread belief in society that homosexuality and gender fluidity is a new western concept. But in academic domain prominent sociological and anthropological studies are there which demonstrate the evidence of non-normative gender in various ways. Eminent anthropologist Malinowski has documented various forms of sexuality in his studies of Trobriand Islanders between 1915 and 1918. In his book, '*The Sexual Life of the Savages in North-Western Melanesia*' Malinowski (1929) depicted that, the terminologies like 'homosexual intercourse, bestiality, exhibitionism, oral and anal eroticism' are all 'psycho-analytic' terms and has been treated as inadequate and alternative form of proper sexual impulse (Malinowski 1929: 382).

Foucault in his book '*The History of Sexuality*' has recognized 'homosexuality' as an 'identity'. He has mentioned that in the last part of nineteenth century homosexuality became visible as an act which was punishable (Foucault 1979). Queer is another most important theoretical development in the mid 1980s. It was influenced by the work of Michel Foucault. Foucault's theory discussed the perception of crossing the binary of gender and critically examined heterosexuality as mainstream sexual orientation.

The concept of gender fluidity is prominently evident in the history of Indian society and culture. Indian classical literatures and mythological texts like Rig-veda, Natyasastra, Kamasutra, Manu Smriti, Ramayana, Mahabharata and many others have documented several stories of gender fluid characters. Indology portrays the presence of transgender and homosexual people in different historical era and it may be considered as Indian heritages (Michelraj 2015; Nanda 1999; Pattanaik 2000; Roscoe 2013; Scholtz 2001; Sharma 2009).

A variety of sexuality is demonstrated in Indian temple architectures like in the temples of Khajuraho in Madhya Pradesh, in Ellora caves in Maharashtra and Sun Temple in Kornak. There are various sculptures of homosexual activity at Khajuraho temple. The sculptures in the temples are carved with illustrations of same-sex relations, including sculptures of men and women erotically embracing each other with sexual fluidity. The Ellora caves which depict the life of Gautam Budha, the founder of Buddhism, also have such paintings portraying men and women in same-sex intercourse (Ray 2018). The Sun temple in Konark also exhibits similar images. These exemplify the historical image of liberal India.

As per advanced medical research, homosexuality is as normal as heterosexuality. There is nothing abnormal in it. It is not immoral and should not be stigmatized. The human rights

activists talk in favour of personal dignity, privacy and human rights of the transgender community. Before 2018, Indian constitution labeled homosexuality as a criminal offence (section 377 IPC). But the landmark judgment of the Supreme Court of India has removed the criminal stigma and recognized their gender identity as well as sexuality (Chakraborty 2018).

It has an immense impact on transgender people. Transgender people are breaking their shell and discussing their needs openly in public sphere. Basically marriage signifies companionship of two persons having their *sui-generis* sexual orientation. It can be heterosexual, homosexual or bisexual. It is primarily a person's private life. Everyone has the right to select his or her own life partner without any gender based discrepancy. According to the Constitution of India (Article 21), the right to marry is a fundamental right. So that denying the marriage beyond gender binary divisions is a violation of their rights. Indian Constitution stands against discrimination based on sex, caste, belief or religion (Basu 2006). It also tries to secure civil rights and other benefits to every citizen. But the transgender are still facing stigma and struggling to ensure their civil rights in this age of twenty-first century. The Constitution affirms equality in all spheres but the moot question is whether it is being applied or not.

Case studies

In order to understand the real crisis of marriage and gender fluidity, two separate case studies are made. The first legal marriage of transgender in West Bengal had taken place between Shree Ghatak Muhury and Sanjay Muhury in the year 2017. If we focus deeply in this case, Shree was born as a male and changed himself as female. This was a case of male to female transgender and or transsexual. Primarily though being a male he was a gay effeminate male. On the other hand Sanjay was born a biological male. He could be heterosexual, bisexual, homosexual or queer in nature. After completion of sex change surgery Shree married Sanjay socially and legally. Now socially it was a conjugal relationship between a male and a transsexual female, but legally it was not a transgender marriage rather it was treated as a basic heterosexual marriage union. Because of the fact that after sex change procedure, Shree become a female legally.

In another case of Tista Das and Dipan Chakraborty, Tista was born as a male and changed himself to a woman. Dipan was born as a female and changed herself as a male. They both have a journey and long struggle to achieve their gender which they dream about. But when they decided to get married legally, again the marriage law considered it as a heterosexual union. They wanted to register their marriage as a 'Rainbow Marriage' but there is no such provision.

Discussion

The symbolic meaning of 'Rainbow' is interesting. According to the opinion of the writer, a rainbow is not always visible. It needs specific environment to be visible and its beauty lies in its spectrum of varied colours. It contains seven colours which are pole apart from each other but together create the mesmerizing view of rainbow. Just like rainbow, the transgender community has diverse people under its horizon, who are non-normative of gender. They are different from each other but together they fight for their rights. Together they echo for their survival. They need the proper social upbringing in which they can have a prestigious life with all the basic requirements to develop themselves.

Actually, transgender community has to face tremendous social stigma. It continues throughout their life. At the same time sex change surgery is a complicated one and one has to go through so much pain, sacrifice, social pressure, financial issues, as well as physical difficulties in this journey. After that if the legal systems refused to recognize their real identity it becomes pathetic for them and increases their identity crisis rigorously.

Same sex marriages have been legalized in many countries. Society, social law and the legal system are interconnected to each other. With the changing notion of the society the laws are always changing according to the social needs. The Supreme Court of India has already decriminalized homosexuality but does not recognize homosexual marriages or marriage beyond gender binary. There are many same sex marriages taking place in Indian society, but all of those are socially conducted. Basically marriage is related with other legal rights like adoption, inheritances, maintenance, etc., therefore it may take time for formulating a strong verdict for legal marriages beyond gender and for enactment of law, governing various issues related to that.

Conclusion

Basically India is a country of diversity, liberal mindset combined with traditional ethos. A little segment of this society rejoices individualism in their private life. Majority of the people are still in the dilemma of tradition and modernity. Traditional patriarchal value system is prevalent in Indian society. The birth of a male child is celebrated and marriage is treated as an approved mode of producing a child. In this context individual's choice becomes secondary and child procreation is a fundamental requirement to continue inheritance and the society. In that case heterosexuality is treated as a natural condition, whereas homosexuality is considered as a stigma and deviance. Presently Indian society sanctions monogamous nuclear family life emphasizing on the traditional role of family and marriage. However, the situations are changing rapidly. Many people enjoy their sexuality in their own ways, breaking away from

the stereotyped binary division of gender. At the same time numerous heterosexual families are there, who decided not to be parents biologically. It appears that the connotations of marriage with gender identity are drastically changing its paradigm in twenty first century. We can be optimistic that in near future the LGBTQIAH+ community will get their all citizenship rights in a humanistic manner. They will achieve the right to choose the partner and experience marriage not only in social platform nor in the shed of heterosexual marriage but also with all legal privileges along with other legal aspects in the domain of rainbow marriage.

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