

SWAPPING: A HIDDEN PHENOMENON IN INDIAN MARRIAGES

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I. Introduction

Marriage an institution as old as any civilization can be traced, is the greatest phenomenon across societies with similar trends and ceremonies where the bride after the solemnisation of the marriage goes to live with her husband in her matrimonial home. When the father of bride gives his beloved daughter's hand in the hands of bridegroom, he relieves himself of all the obligations he shares right from the birth of his daughter till the time of handing his daughter to the bridegroom. After marriage it becomes the duty of the husband to protect, nourish and maintain his wife as it was done by the father before. After the marriage of the daughter the parents think that now they have been relieved from the duty of protecting their daughter and she is in safe hands of the person who has been chosen to protect her for the rest of her life. But is it so ??? The question needs to be examined in the deepest possible way as today the concept of marriage from sacrament to contract, to live-in-relationships, same-sex marriages have undergone major changes. New concepts have been introduced into the institution of marriage which were not known to the Indian people a decade ago. Such a new phenomenon which have made inroads into Indian marriage institution is that of wife-swapping or wife-swinging at the very foot steps of the western society.

II. Meaning of Swapping and Swinging

Swap or swoop means something for something, to give something to somebody and receive something in exchange. An act of exchanging one thing or person for another³. Swap is different from barter system which was prevalent in the ancient time when the concept of money was not invented. The system of barter has been used for centuries where people exchanged services and goods for other services and goods in return⁴. But in case of

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³ A.S. Hornby, Oxford Advanced Learner's Dictionary, p. 1313 (6th ed., 2000).

⁴ Available at, <http://www.mint-com /barter-system-history-the-past-and-present>, last accessed on 05.09.2013.

swap or swapping the only exchange which takes place between couples is that of physical sexual activities.

Swinging is also related to swapping but unlike swap which has wide meaning, swinging has a narrower meaning where a person has sex with different people⁵. A person who indulges into multiple partnerships for sex is termed as a swinger⁶. The main part of swinging is that it only takes place between couples who are in a committed relationships for example lovers, husband and wife, live-in-partners, engaged to be married, but not among those who are single and not in a committed relationship.

Swinging or swapping is different from rape and prostitution also as in rape the consent of the other party is not taken or if taken that too with fraud, coercion, misrepresentation, undue influence etc. On the other hand, in prostitution majority of the prostitutes are hired by males to satisfy their sexual needs irrespective of the fact that the males are married, single, divorced or in any other form of marital relationship. The prostitutes range between the age group of as low as 12 years to 45-50 years and prostitutes take money from their clients. Whereas, in case of swinging or swapping the age of the couples is somewhat same as it takes place between a group of people of like mindedness and no exchange of money is involved in wife swapping or swinging. It is just done to have sexual pleasure and to spice-up their sexual life.

III. History of Swapping and Swinging

The formal literature regarding swapping can be traced back to the 16th Century when one John Dee⁷ signed a formal agreement alongwith his wife Lynae, his friend and Scryer⁸ Edward Kelley⁹ and his wife Joanna on 22nd April, 1587, whereby conjugal relations would be shared between the men and their spouses¹⁰. But¹¹ wife-swapping was such a hidden

⁵ Available at, en. Wikipedia.org/wiki/swinging, last accessed on 07.07.2013.

⁶ Supra note 1 at p. 1317.

⁷ John Dee, born on 13th July, 1527 was a mathematician, astronomer, astrologer, occultist, navigator, imperialist and consultant to Queen Elizabeth I of England. He served as a tutor and occasional advisor to Queen Elizabeth I. John Dee straddled the worlds of science and magic when they were becoming distinguishable.

⁸ Scryer is a person who has the art of looking into a translucent ball or other material with the belief that things can be seen like fortune-telling.

⁹ Sir Edward Kelley born on 1st August, 1555 was an ambiguous figure in English renaissance occultism and self-declared spirit medium who worked with John Dee in his magical investigations.

¹⁰ Available at, en.wikipedia.org/wiki/swinging, last accessed on 08.07.2013.

¹¹ Available at, www.homerf.org, last accessed on 07.12.2013

phenomenon that till the end of second world war (1938-1945) people did not talk about it in the open. Wife-swapping used to take place in secretly closed places among only confident couples who would not let out their secret in the open. The trend of wife-swapping got publicity during second world war when few military, naval and especially Air force pilots who could keep their wives close to base camps started organizing wife-swapping parties among themselves as due to the circumstances prevailing at that time in the world due to prolonged war nobody knew that they could be able to see the next day so before going into the battle field defence personnel's of U.S.A. would organize parties with their colleagues and senior officers and exchange their partners for sex and if anybody did not return, the other person would look after the needs of the wife of the deceased including sexual needs.

Such activities then spread among other countries soldiers who saw such activities. When the Korean war¹² ended the wife-swapping groups had spread from defence basis of U.S.A. to the newly developed suburb areas. By then there were also "Key Clubs" established where the husband reportedly tossed their house keys into the pile in the centre of the room where they were to draw at random by their wives, owner of selected keys was the sexual partner for that wife-swapping evening.

All this happened very recently among the couples as till that time the marriage was still termed as sacrament and pious union, whereas wives-swapping was against the very norm of marriage.

But in the late 1950's this field was explored by minor men's magazine by the name *MR.*, which in one of its issues in the year, 1957 in New York City published a short article on wife-swapping¹³. This article was a huge hit in U.S.A. and other publication houses also started to publish article related to wife-swapping. Various researches were carried out on this topic. The magazine *MR.*, saw the new market emerging in the form of wife-swapping, hence started an advertisement column so that people interest in wife-swapping could get easy access to other like-minded couples. Over the next couple of years, a large variety of national and local magazine in U.S.A. had started to cater for those in the need of wife-swapping in California, USA the first open wife-swapping club was opened in the year, 1960 which used to organize wife-swapping parties on regular basis. This trend was so successful in U.S.A. that its neighbouring country Canada soon followed the trend of wife-swapping and a similar club was open in Toronto. The nature of these wife swapping-clubs were that of meeting places only and sexual

¹² The Korean war was a war between Republic of Korea (South Korea) supported by United Nations and U.S.A. and Democratic Republic of Korea from 25th June, 1950-27th July, 1953.

¹³ Edward M. Breches, *The Sex Researchers*, p. 283. (1st Printing Feb., 1971)

activities used to take place either at the homes of the swingers or in any hotel rooms¹⁴.

Even the sexual revolution¹⁵ which is also known as sexual liberation from 1960s to 1980s also helped in giving popularity to wife-swapping in the western societies as there was no fear of unwanted pregnancies due to the invention of birth control pills and also because of vast improvement in obstetrics¹⁶, greatly reducing the number of woman who die due to the child birthing, thus increasing the life expectancy of woman.

Even the legalization of the abortions, the concept of wife-swapping got momentum in the western society as there was no risk factor of getting pregnant and even if a pregnancy happened abortion could be carried on. It provided greater freedom to couples to indulge into sexual activities outside their marriage.

With the advancement of internet in the late of 80's and early 90's in the developed countries the concept of wife-swapping got further momentum and encouragement not only in big cities but in the small town also. As people could easily by hiding their identities communicate with others without any middleman, so the risk factors involved of getting exposed in the society because of third party involvement was eliminated by the internet.

IV. Concept of Wife-Swapping in India

The concept of wife-swapping and swinging is relevantly the new concept which has developed in the Indian marriage institution very recently on the footsteps of western society. It has been seen as well as recorded also that in Indian society wives have been used by their husbands to fulfill their ambitions and dreams by asking their wives to cater to the physical needs of their bosses or higher officials to avail professional benefits and promotions. But wife-swapping concept was not known in Indian society. The very first public appearance of wife-swapping in India was seen in the Hindi Movie

¹⁴ Benefits, rules of wife-swapping and wife-swapping slours, available at www.homerf.org, last accessed on 05.01.2014.

¹⁵ Sexual revolution was a social movement in 1960's that challenged traditional code of behaviour related to sexuality and interpersonal relationships throughout the western world.

¹⁶ Obstetrics is the medical specialty dealing with the case of all women's reproductive tracts and their children during pregnancy, child-birth and postnatal period.

*Ajanbee*¹⁷, where one of the lead actor Akshay Kumar asks his friend to swap wives for one night. This movie was a remake of the Hollywood movie *Consenting Adults* which was released in the year 1992. Another movie *Mixed Double*¹⁸ also revolved around the concept of wife-swapping, where the middle class husband living in Mumbai, after completion of 10 years of married life feels that he is not able to satisfy his wife's sexual need and plans to take a swing. In the year 2008, *Zee News* also carried out a sting operation regarding wife-swapping¹⁹. The news reporters interviewed many urban couples in Delhi where they openly admitted that they were holding wife-swapping parties at regular intervals. The couples ranged from doctors, engineers, high government officials and military personnels. Today in India, wife-swapping is being experienced by member of almost all the classes; be it high class, upper middle class or middle class. It is not only the metro dwellers who are interested in the concept of wife-swapping, the residents of small towns and villages are equally willing and enthusiastic about the concept of wife-swapping. In fact in the small towns and cities, wife-swapping has become more of craze and people want to indulge in it out of curiosity and later, for sheer fun²⁰. Even in the remote areas of Ladakh, there is a tribe named Dards and Broghpas which indulge into wife-swapping as a tradition and custom²¹.

Most recently, the concept of wife-swapping came to lime-light in the month of May, 2013, when wife of a senior naval officer alleged that her husband was forcing her to get "sexually involved" with his colleagues. Her husband was posted a Lieutenant commander equivalent to Major in Army posted at Naval Ship Repair Yard (NSRY) in Karwar.

The woman in her complaint said that she found her husband in compromising position with a senior officer's wife and was told that she too would have to be a part of such activities to ensure her husband retained his

¹⁷ Need to be referred, An Indian movie 'Ajanabee', released in 2001, directed by Abbas-Mustan, starring Akashay Kumar, Bobby Deol, Bipasha Basu and Kareena Kapoor.

¹⁸ Need to be referred, An Indian Movie 'Mixed Double', released in 2006 directed by Rajat Kapoor, starring Konkona Sen Sharma, Ranvir Shorey, Koel Puri and Saurabh Shukla.

¹⁹ This was the first ever sting operation done by Prabhakar Shrivastav on wife-swapping activities in India, available at www.youtube.com/watch?v=42fq41AuFCO, last accessed on 11.07.2013.

²⁰ Available at, wife-swapping. Life style. i love India.com/lounge/wife-swapping-324.html, last accessed on 07.07.2013.

²¹ The Times of India, wife-swapping, a tradition in Ladakh. article.times of India.indiatimes.com/2006-03-13/india/27790556_1_wife-swapping-ladakhis-hindu-scriptures, last accessed on 09.08.2013.

job²². She even said that wife-swapping is a common practice in Indian Navy but the thing is that everybody does not dare to file a case but now the girls are coming forward and complaining²³.

In another story a former Maoist women by the name of Shobha Mandi also known as Uma or Shikha in her book called “Ek Maowadi Ki Diary”, has elaborately discussed the concept of rape, adultery and wife-swapping in Maoist camps. According to her book, most women recruits are exploited by the senior Maoists. Senior Maoists women leaders, too have multiple sexual- partners²⁴. In another case one lady by hiding her identity posted on a blog of her experience of wife-swapping for her husband’s promotion in the Army. She said that wife-swapping is a dirty secret that exists among Army Officers. So do it willingly and some do it because they are forced into it by their immediate seniors. She further posted that secret parties are organized for wife swapping and no one opens their mouth about it. Swingers meet once in a month in a secret location, everyone is invited through SMS which only contains the date, time and location of the swinging or swapping party. Everybody choose to have sex inside rooms or in front of everyone else. “After the keys are selected, I watched in shock as they started having physical relations with each other’s husbands and wives²⁵.”

In some cases wife-swapping has lead to prostitution, as in one case a 41 years old Muslim woman from Mumbai in a blog shared her experience of wife-swapping from which she ended in prostitution. She initially started attending wife-swapping parties alongwith her husband and afterwards for money ended up being full-time prostitute²⁶.

With the advancement in technology and spread of internet into the far flung areas of India today wife-swapping has become a routine feature in Indian Marriage Institution. If you go to the Internet sites and search for wife-swapping clubs you will be surprised to know that there are more than

²² Available at, www.Mumbai Mirror.com, May 15, 2013, see also wife swapping and scandal rock Kochi Navy, www.dailypioneer.com/today-newspapers /wife-swapping-scandal rocks-Kochi-navels-base.html, last accessed on 09.07.2013; see also the Tribune May 15, 2013 p. 18.

²³ Wife swapping a common practice in the Navy: Navy Officer’s wife, available at, ibin-in.com/news/wife-swapping-acommon-practice-in-the-navy-officers-wife/391956-62-126.html, last accessed on 06.07.2013

²⁴ Available at, indiatoday.indiatoday.in/story/former-women-maoist-lays-bore-full-of-adultery-naxal-culture/1/279172.html, last accessed on 11.07.2013.

²⁵ Forced into wife swapping for promotion, available at, www.times.com/blog/forced-into-wife-swapping-for-pormotion, last accessed on 09.07.2013.

²⁶ My journey from wife-swapping to prostitution, available at, www.experience project.com/stories/Am-An-Indian-wife/2753711, last accessed on 11.07.2013.

1,000 sites just only dedicated to wife-swapping. Even couples launch their own exclusive sites where one can log into become member of wife-swapping clubs. The interested couples contact each other through such sites and organize group parties and select partners for the night to experience wild fantasies and get sexual pleasures.

V. Laws relating to Wife-Swapping

As such there are no direct laws relating to wife swapping in almost all the countries of the world as this is a very new phenomenon which is gaining firm ground in the marriage institution. Moreover, wife-swapping is such an activity which takes place between people above the majority age. These people are fully aware of the pros and cons of wife-swapping and as such with their own free consent indulge into such swapping of swinging in the western countries.

But in countries like India where religion, custom and culture still holds firm ground, the concept of wife-swapping has to be dealt with seriousness. Majority of women in India still believe in sacramental values of marriage and does not want to indulge into pre or post sex outside the marriage. But because of pressure of the husband and even to save the marriage majority of women indulge into wife-swapping and swinging activities.

The criminal laws in India are also silent over the issue of wife-swapping as it does not strictly fall under the category of rape²⁷, adultery²⁸,

²⁷ *Section 375 of the Indian Penal Code, 1860, as amended by the Criminal Law (Amendment) Act, 2013 runs as under:*

“375. Rape.- A man is said to commit “rape” if he-

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) insert, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

First.- Against her will

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

outraging the modesty of the women²⁹. It is not rape as the consent of women is free as she is doing the act knowingly and knows about its nature. It cannot be called as adultery because the husband is fully aware of his sexual activity of his wife and he equally participate in it with another person's wife and it even does not amount to outraging the modesty of women. It is not even cheating³⁰.

Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reasons of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly .- With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

Explanation 1.- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not be the reasons only of that fact, be regarded as consenting to the sexual activity.

Exception 1.- A medical procedure or intervention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape"

²⁸ *Section 497 of the Indian Penal Code, 1860 runs as under:*

"497. Adultery.- Wherever has sexual intercourse with a person who is and when he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse, not amounting to offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description from a term which may extend to five years, or with fine or with both. In such case the wife shall not be punishable as an a better."

²⁹ *Section 354 of the Indian Penal Code, 1860, as amended by the Criminal Law (Amendment) Act, 2013 runs as under:*

"354.- Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman intending to outrage or knowing it be likely to be that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine"

³⁰ *Section 415 of the Indian Penal Code, 1860 runs as under.*

"415. Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent

The wife if pressurized to do swapping does not complain about it as a social stigma is attached in relation to a sex and sex related talks and activities in India. That is why cases relating to wife-swapping are nominally reported. If a wife goes to police station to file a complaint against her husband then she will have to produce evidence which is not easily available to be produced, as the sex has happened with consent and without any force, medically also it is impossible to establish any use of force over the wife to make it as offence of rape.

Around the world also no major laws have been enacted as such but in the year 2010 in China, a 53 years old college Professor named Ma Yaahoi, was for the very first times sentenced to 3.5 years in prison alongwith 21 other people for the charges of “group licentiousness”, a law enacted in the year, 1997 in China³¹.

The word “licentiousness” comes from ‘licentious’ which means lacking moral discipline ignoring legal restraint, especially in sexual conduct or having no regard for accepted rules or standards. Licentious means the quality of being lewd and lascivious or dissolute indulgence in sensual pleasure³². In India this Licentiousness can be explained under Section 377 of the Indian Penal Code (IPC)³³ which deals with unnatural sex. Wife-swapping is not unnatural sex so Section 377 does not apply here. A detailed study is needed in this area so that new laws can be enacted to safeguard those wives who indulge into such swapping activities for the sake of saving their so called marriage, if they come to court in search of justice after exploitations.

that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation:- A dishonest concealment of facts is a deception within the meaning of this section.”

³¹ Available at, www.loweringthebar.net/2010/05tip-group-licentiousness-still-illegal-in-china.html, last accessed on 10.01.2014.

³² Available at, www.thefreedictionary.com/licentiousness, last accessed on 10.01.2014.

³³ Section 377 of the Indian Penal Code, 1860 runs as under:

“S. 377- Unnatural offences.- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

VI. Conclusion and Suggestions

Wife-swapping is rocking the very basic concept of marriage. The marriage institution was developed by our forefathers so that family system could be established, basic social norms could remain intact and foremost couples could be kept away from sexually transmitted diseases which developed because of multiple sex partners. Whereas, the concept of wife-swapping can be termed as a phenomenon which is used by certain sections of the society to get sexual pleasures and spice up their sex-life. Even the defence of the well-known doctrine “*volenti non fit injuria*” (free consent of the party) taken by the swapping couples is not in good spirits.

In India where numerous wives due to various reasons are still unable to oppose the deviant behaviour of their husbands need protection against wife-swapping³⁴. Just to say that wife-swapping takes place between consenting-adult couples even by knowing the pros and cons of the act of wife-swapping cannot be a good defence as marriage institution is going through new challenges, changes and developments, needs protection. The basic structure for which the marriage institution was created has to be protected. It becomes our bounden duty to save this institution so that we can gift this beautiful, pious creation of our forefather to our coming generation as marriage is a necessary basis of social organization and the foundation of important legal rights and obligations not only between married couples but towards the society also.

³⁴ Meghna, wife-swapping: A Blow to Indian Marriages-An Overview on Adultery as crime, available at www.legaldrift.com/wife-swapping-a-blow-to-indian-marriage-an-overview-on-adultery-as-crime, last accessed on 09.07.2013.