A milestone in Hindu marriage reform in India

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'Suyamariyathai Seerthirutha Thirumanam', or self-respect marriage, in Tamil Nadu, has had to cross hurdles such as judicial and executive interpretations

Nearly 56 years after the enactment of the Hindu Marriage (Tamil Nadu Amendment) Act 1967, young Illavarasan, from Tamil Nadu, never thought that his *Suyamariyathai* marriage that was performed and validated under this Act could be invalidated and criminalised by the same Madras High Court which, in 1953, in *Chidambaram Chettiar vs Deivanai Achi*, had declared such marriages to be null and void since they did not follow the Hindu marriage rituals.

Of course, the ground on which resistance to *Suyamariyathai thirumanam* (marriage) came up is different today than it was in 1953 when Madras did not have a law to support such radically reformed no-ritual marriages among Hindus. On August 28, 1953, quoting *Manusmriti*, the judges observed that solemnisation by a priest and *Saptapadi* was required for a lawful Hindu marriage, and declared that self-respect marriages among professed Hindus were invalid: they were not in conformity with marriages recognised under Hindu Law, and the children born were not legitimate under the law.

In another case, in 1958, when Rajathi, who had a self-respect marriage with Chelliah, sought court intervention for restitution of conjugal rights, a district court in Tiruchi denied her the right on the ground that her marriage was invalid under the Hindu Marriage Act, 1955. Instead, the court castigated the self-respect movement for the plight of young women in such 'illegal' marriages, which, in the judiciary's view, had led to the denial of their conjugal rights. These interpretations were aimed at discrediting reformed marriages, which were typically inter-caste weddings performed with the objective of protecting women's rights and promoting ideals of companionate marriage. These judgments led the judiciary and Brahminic Hindus to demean the self-respect marriage practice, labelling women in such marriages as concubines and children born as illegitimate. They revealed how some in the judiciary mobilised commonly held hegemonic ideals of Hindu marriage practices to counter Dravidian notions of alternative non-Brahminic marriage practices.

A basis of the self-respect movement

One of the important claims of the self-respect movement was that all forms of customary and traditional Hindu marriages, mainly the Brahmanical ones, upheld caste supremacy and the patriarchal rights of men. The movement advocated that a man and a woman should enter a dissoluble contract to form a conjugal relationship without conforming to any religious practices. Further, in the context of widely practised bigamy among Hindu men, the movement advocated the civil registration of all marriages and upheld women's rights to dissolve the marriage, remarry, and claim their rights in property. The court, on the other hand, by denying the validity of self-respect marriage, denied Rajathi her conjugal rights. Subsequently, in 1969, after the Hindu Marriage Amendment Act in 1967 which legalised the *Suyamariyathai thirumanam*, Rajathi successfully claimed the restitution of her conjugal rights after a new trial.

A struggle

The making of this legislation meant a protracted struggle for the Dravidian movement in the Madras Presidency and also at the all-India level at a time when the Hindu Code Bill was drafted. In 1944, when the Hindu Law Committee headed by B.N. Rau was gathering evidence across presidencies to draft the Hindu Code Bill, the memorandums and oral evidence submitted by the leaders and activists of the Self-Respect movement demanded not just a few piecemeal changes to Hindu law but also for women's legal rights over all other concerns of Hindus in general.

Kunjitham Gurusamy of the Self-Respect movement argued that the definition of the 'Hindu' was not comprehensive enough to include all those who did not profess the religion, and that non-religious marriages needed to be recognised under the new Hindu code. Unfortunately, the Rau Committee report of 1947 did not acknowledge these demands. It recognised and affirmed the legal status of Virasaiva, Brahmo Samaj, Arya Samaj and Prarthana Samaj marriages; thus the Hindu Marriage Act 1955 granted legal status only to these reformed marriages.

Clause 7 of the Hindu Marriage Act of 1955 gave importance to 'Hindu' rites and ceremonies including the *Saptapadi* and recognised only customary rites and ceremonies such as *thali* tying, and not the non-ritualistic and anti-Purohit Hindu contractual weddings. The unanimous response of Parliament and the judiciary was that self-respect marriages should be registered under the Special Marriage Act, 1954. This Act was passed in Parliament without giving much thought to the property rights of couples in civil marriage, which meant separation from the Hindu joint family and denial of rights over ancestral property.

In the case of Chidambaram Chettiar vs Deivanai Achi, the Madras High Court suggested to the Congress party-led Madras legislature that it take the initiative to legitimise self-respect marriages and protect the property rights of Hindus who had adopted non-religious marriage practices. In 1953, the Madras government decided to introduce the 'Hindu Non-Conformist Marriage Registration Bill, 1954', but despite it being taken up for consideration, was withdrawn and even rejected by the same government on the ground that the Special Marriage Act 1954 would cover the provisions for self-respect marriages.

In 1959, S.M. Annamalai of the Dravida Munnetra Kazhagam (DMK) introduced the 'Madras Suyamariyathai Marriage Validation Bill' to legalise self-respect marriages with retrospective effect. It was opposed by Congress legislators while the CPI and the Praja Socialist Party remained neutral, leading to the defeat of the Bill. The DMK's introduction of the Bill in 1965 by S. Madhavan aimed to recognise self-respect marriages under Hindu law and validate them as valid Hindu marriages. The DMK argued that the invalidation of these marriages had negative consequences for the wife. By seeking legal recognition for self-respect marriages under Hindu law, the DMK aimed to give women the legal right to seek divorce, or redress in the case of bigamy. But the Bill went nowhere. When the DMK won the election in 1967, the Bill was introduced as Section 7 A, The Hindu Marriage (Tamil Nadu Amendment) Act 1967. This Act, other than validating all non-ritual Hindu marriages, questioned the Brahminic interpretations of Hindu marriage.

There are still blocks

This amendment was radical enough to trouble the Union government (more so in recent years) as much as the judiciary, which was evident in the way they were either rejecting the validity of the amendment or by interpreting the amended Act in such a manner that would discourage non-ritual, consensual inter-caste marriages.

Two examples highlight this. In 2017, the Union Ministry for Social Justice and Empowerment which was rewarding/awarding inter-caste couples refused to recognise the Section 7 Act and rejected applications from Tamil Nadu on the ground that these marriages were not registered under the Hindu Marriage Act, 1955. The Madurai Bench of the Madras High Court had to enlighten the obstinate Union Ministry on the validity of the legislation.

Last month, the Supreme Court of India had to remind the Madras High Court on the validity of *Suyamarithai* marriage in Tamil Nadu as they are performed without any religious practices and without any public ceremony, but through a declaration of marriage in the presence of relatives, friends, and other persons. However, one must remember that the cumulative effect of legal reforms for women in Tamil Nadu had a far-reaching impact in the various adjudications of the Madras High Court which held far more radical perspectives on gender rights in marriage than any other court in India as in a verdict that related to the registration of a transgender wedding under the Hindu Marriage Act.

Reform can address India's kidney transplant deficit

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India's organ shortage when it comes to kidneys is alarming. In 2022, over two lakh patients needed a transplant, but there were only about 7,500 transplants (about 3.4%). Due to the prevalence of diabetes, malnourishment, overcrowding and poor sanitation, there is a high prevalence of Chronic Kidney Disease (CKD) in India, affecting about 17% of the population. CKD often leads to end-stage renal disease (ESRD). A kidney transplant is often the best treatment for ESRD. Specifically, transplant is often better than alternatives on almost all dimensions that matter: quality of life, patient convenience, life expectancy, as well as cost-effectiveness. In contrast to India, the United States and other developed countries could carry out about 20% transplants. Notably, a significant portion of this gap is on account of more stringent regulations in India than a lack of medical facilities.

These are four main ways a patient can obtain a kidney. The first is to get a kidney from a deceased person. This is constrained due to a lack of donations, the particular conditions required on the nature of death, and the infrastructure needed to collect and store kidneys. The second is to request a relative or friend to donate. However, donor and recipient have to be compatible in terms of blood type and tissue type; such relative/friend donors are often incompatible.

A case for changes

Thus, regulations for kidney exchange are needed as kidney exchange must often occur across family units. But we argue that these regulations need urgent reform to unshackle two innovative kidney exchange methods: kidney 'swaps' and kidney 'chains'.

In kidney swap, let us take the example of two strangers, Sunita and Zoya, who need kidneys. Sunita's spouse is incompatible with her, and Zoya has the same problem. However, if Sunita's spouse is compatible with Zoya, and Zoya's spouse is compatible with Sunita, swap donations are possible. In kidney chain, let us look at the case of Sonu who is an altruistic donor donating his kidney with no expectation of a kidney in return. Sonu donates to Sunita (assuming compatibility), Sunita's spouse donates to Zoya, and Zoya's spouse donates to some other compatible person, and so on.

Innovative kidney exchange methods face legal roadblocks, worsening a massive kidney shortage in the country

Our research shows that there are barely any swaps and almost no chains in India. This is because of legal roadblocks. And this is a significant opportunity missed with terrible consequences. Consider swaps. Swap transplants are legally allowed in India with due permission, but only near-relatives are allowed as donor-recipient pairs. Exceptions to this restriction are Kerala, Punjab and Haryana, where High Court judgments have recently allowed non-near-relative donor-recipient pairs after verification. Thus, in most States, if Sunita's donor is not a near relative (such as spouse, parents), she and her donor cannot participate in a swap. By contrast, it is legal for Sunita's non-near-relative to donate to her. These double standards across swaps and direct donations are questionable. Easing the laws for swaps to make them on a par with direct donations is necessary.

Further, unlike national, regional, and State lists for direct transplant from cadavers, there is no national coordinating authority for swaps. This is again a huge lost opportunity, since larger and more diverse pools make it easier to find compatible swaps.

While there are occasional swaps in India, there are almost no kidney chains. First, in all States except Kerala, it is illegal to donate a kidney out of altruism. Thus, one cannot start a chain since one cannot donate without getting a kidney (for a family member) in return. And, kidneys from the deceased or brain dead are only used for direct transplants, not for chains or cycles.

The lack of kidney chains is possibly an even bigger opportunity missed than swaps. While participating in swaps, families demand nearly simultaneous operations of all donors and recipients since no one wants to lose a kidney without gaining one. But in chains, each patient first receives a kidney and only then does their relative donate. Thus, chains, compared to swaps, involve significantly lower hospital resources and uncertainty for participants.

Needlessly harsh laws regulating swaps and chains have contributed to a proliferation of black markets for kidneys. 'Selling a kidney' to relieve financial distress is a mainstream reference. These black markets endanger all their desperate participants since these operations are conducted 'off the books', without due legal and medical safeguards.

At a slow pace

Reforms of kidney exchange laws have been slow. The Transplantation of Human Organs and Tissues Act 1994 set the ball rolling by recognising transplant possibility from brain-stem death. In the 2011 amendment, swap transplants were legalised, and a national organ transplant programme was initiated. But the national network remained underdeveloped initially. According to the Transplantation of Human Organs and Tissues Rules 2014, swap transplants are allowed only for near relatives. The government's recent reforms (February 2023) allow more flexibility in age and domicile requirements while registering to obtain an organ. But these reforms leave the fundamental issue of inadequate kidney supply largely unaddressed. This is why it is beneficial to allow and encourage altruistic donation, non-near relative donation for swaps, and to improve the kidney-exchange infrastructure.

India does not need to innovate in order to reform chains and swaps. Sufficient precedents have been set globally. Australia, Canada, Israel, the Netherlands and the United States (among others) now allow altruistic donations. Spain and the United Kingdom have national-level registries for kidney chains and swaps. The U.S. has especially made progress in facilitating thousands of swaps and chains. Spain even has international collaborations for kidney exchange. India's real challenge, therefore, is to learn from and replicate such existing successful regulations to improve the lives of several thousands of citizens.