
Live-In-Relationship And Personal Laws: A Contemporary Study

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Abstract

It is the duty of every nation to secure the social values as well as individual liberties. The enduring debate on live-in-relationship can never have a conclusive viewpoint as it keeps varying from time to time and new issues observance up. It creates chaos and conflict with religious and social ethics and legal lenience. The author analyses the position of live-in-relationship in the light of Hindu Personal Laws and Muslim Personal laws; and also discusses the status of persons involved in such relationship and legal effects and consequences of adopting such relationship in Indian social and legal system.

Keywords: *Social Values, Individual liberty, live-in-relationship, religious ethics, Personal Laws legal lenience.*

“Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law and without justice”

-Aristotle

Introduction

Live-in-relationship is a relationship with an informal arrangement between two heterosexual persons to live together without entering into the formal institution like marriage. Live in relationship is a western concept and famous there. This is not a new concept in India though the name is imported

to India also. Live in relationship means, two persons of opposite sex live together with each other and perform marital activities without any religious sanctity means without proper marriage. The legal definition of live in relationship is “an arrangement of living under which the Couples which are unmarried live together to conduct a long term relationship similarly as in marriage”. Live-in-relationship is the arrangement in which a man and a woman live together without getting married. This is nowadays being taken as an alternative to marriage especially in the metropolitan cities. Currently the law is unclear about the status of such relationship though a few rights have been granted to prevent gross misuse of the relationship by the partners. Legalizing live in relationship means that a totally new set of laws need to be framed for governing the relations including protection in case of desertion, cheating in such relationships, maintenance, inheritance etc. Litigation would drastically increase in this case. The *Cambridge dictionary* defined it as; two people cohabit in the same house and have sexual relationship, but are not married. They often referred as live in partners. Though it is not a sin or crime in the eyes of the law but it is not acceptable in the society. The moral values and societal ethics are dominated and regulated mostly by religious tagging, so the personal laws having no scope to allow any theme

which is against the religious philosophy. The present article has analysed the position of live-in-relationship in Muslim Law and Hindu Law with contemporary study of present Indian legal system.

Status Of Live -In- Relationship Under Hindu Law

Centuries ago, civilized societies recognized and acknowledged the most basic instincts of all – i.e., the need for companionship – and founded an honourable institution known as marriage. Hindu ancestors set out some guidelines to make sure that the institution is a permanent one capable of not only bringing happiness to two young people but also providing a delicate balance so that the family enjoys the fullness of life within the framework of what they called Dharma, the Hindu code of right conduct.

This may sound like a newly discovered concept by modern psychologists but an ancient Hindu prince known as *Yudhishtira* revealed this “secret” about 4000 years ago. In an episode known as *Yaksha Prashna*, in the *Aranya Parva* of the great epic, the Mahabharata, one of the questions the *Yaksha* asked *Yudhishtira* was: “*kimsvinmitramgrhesatah?*” i.e. who is the friend of a householder? To which the prince answered “*bhaaryaamitramgrhesatah,*” i.e., the friend of a householder is his spouse. “The wife is half the man, the best of friend, the root of the three ends of life, and of all that will help him in the other world with a wife a man does mighty deeds, with a wife a man finds courage, a wife is the safest refuge. Evolution of Live-In Relationship in India marriage among Indians was quite low. A person was married at a very tender age and, her to enter into a live-in relationship. But marriage, there is abundant

opportunity for a person to live-in more and more economically independent.

The concept of live-in relationships is relatively new in India. In fact, India is still looked by the world as a country where marriage occupies a sacramental position both philosophically and practically. However, in the last five decades India has slowly opened its doors for western ideas and lifestyles and one of the most crucial episodes amongst it, is the concept of Live-in relationships. In ancient India, though the marriage was a general norm, the Hindu scriptures describe and admit the existence of premarital relationships as well. According to Manu, premarital relationships existed both in the Vedic period and afterwards, but was a rare occurrence.

According to *Dharmashastras* there are four goals of Human life, *Artha*, *Dharma*, *Karma* and *Moksha*, i.e., salvation is the ultimate goal. Prior to attainment of *Moksha* man has belong three other stages of human life, as a matter of fact; *Artha* and *Karma* are connected with this world, whereas *Dharma* and *Moksha* are connected with the next world. A life according with *Dharma* and *Moksha* are connected with the next world. A life according with *Dharma* leads to happiness and pleasure in this life also. To attain salvation Hindu Philosopher has divided the whole life into four *Ashramas*¹ as- *Brahmacharaya*, *Grihastha*, *Vanaprastha* and *Sanyas Ashram* and it has been considered that the average life of a human being was of hundred years and for each *Ashram* twenty-five years have been given. An individual can get salvation from this physical world by

¹ Patrick Olivelle (1993), *The Ashrama System: The History and Hermeneutics of a Religious Institution*, Oxford University Press, OCLC 466428084, pages 1-29, 84-111

performing the prescribed duties under these four Ashrams.²

The *Grihastha Ashram* is the second stage when an individual was expected to be married and to experience the pleasure of life through social participation. The two objects provided by the *Purushartha* theory³ as *Artha* and *Karma* were to be acquired in this Ashram. *Artha* means the acquisition of wealth and prosperity while the *Karma* means action, work or deed and it also includes enjoyment and pleasure, including the sexual enjoyment. These two objectives, *Artha* and *Karma* must be acquired simultaneously. In the *Shanti Parva* of the *Mahabharat* it is provided that: “of all the *Ashramas* however the *Grihastha-Ashram* is given a very high place of honour”.⁴

In *Grihastha Ashram* is subject to the condition that there should be a marriage and not illegal sexual relations without the marriage. The sexual relation without marriage is a sin and serious action against it has been taken by the Hindu philosophers. *Apasthamba* put marriage as was meant for doing good deeds and attainment of *Moksha*.

There are number of *Samskaras* that are to be performed during the course of human life, with the earliest being the *Pumsavana* and the last being the *Antyasamaskara*. According to *Manu*, the *Vivaha Samaskara* is the most important one.⁵

²RK Sharma (1999), *Indian Society, Institutions and Change*, ISBN 978-8171566655, page 28

³ M Hiriyanna (2000), *Philosophy of Values*, in *Indian Philosophy: Theory of value* (Editor: Roy Perrett), Routledge, ISBN 978-0815336129, pages 1-10

⁴S. Garg, *Political Ideas of Shanti Parva*, *The Indian Journal of Political Science*, Vol. 65, No. 1 (Jan.-March, 2004), pages 77-86

⁵*Manusmriti*, III: 20

Darmasastras prescribe marriage for the attainment of three objectives in life i.e. *Dharmasampatti*, *Prajya* and *Rati*, and according to *Manu* the main aim of marriage was not the satisfaction of vernal desires but it was considered that a man as an individual only after he got married and his wife was described as other half of man. Apart from the attainment of the three objectives, the *Mahabharata* speaks of a fourth objective that is *Samajaruna* that is the discharge of one's duty towards the society which requires the presence of a wife.

The Supreme Court of India in *Kamesh Panjiyer V. State of Bihar*⁶ held that marriages are made in heaven, is an adage.

However in Live-in relationship usually refers to an arrangement whereby two people of opposite sex decide to live together on a short-term or long-term or on permanent basis in an emotional and or sexual relationship. In Hindu law no man and woman can have sexual intercourse outside the institution of marriage and these types of relations have been strongly condemned and serious punishment has been mentioned in the classical Hindu law. For instance adultery, *Manu* prescribed severe punishment for committing adultery with the wives of others: “Men who indulge in committing adultery with the wives of other, the King shall cause them to be marked by punishment such as cutting of nose and lips which cause terror, and afterwards banish them.”⁷

Further, *Manu* justified severe punishment for the offence of adultery: “Adultery carried mixture of

⁶ (2005) 2SCC 388: 2005 SCC (Cri) 511

⁷*Manusmriti IX : 9.*

castes among men; hence follows sin which cuts up even the roots and cause the destruction of everything.”⁸

In case a wife become habitual offender and had a sense of pride in indulging in illicit sexual activities repeatedly, the punishment is severe: “A woman who neglects her husband and goes over to another man through pride consisting in the idea; I have several relations who are powerful and wealthy and I myself possessed of all the excellent qualities of a woman, such as beauty and love, why should I then mind my character, such a woman the king shall get devoured by dogs till she dies.”⁹

Presumption Of Marriage In Live-In-Relation Under Hindu Law

There is an extremely strong presumption in favour of marriage and legitimacy of its offspring. From the time of the alleged marriage, the parties are recognized by all persons concerned as husband and wife and are so declared in important documents and on important occasions. There are numerous cases to provide presumption to the living relationships as a marital tie in some circumstances for that the researcher analysed the cases they are:

Delhi High Court in *Ashok Kumar v. Smt. Usha Kumari*¹⁰ held that if the parties are recognised as husband and wife, there is a strong presumption in favour of the validity of marriage and from ceremonies of the marriage and legitimacy of its offspring. After all, the rites and ceremonies

⁸Manu Smriti VIII: 353.

⁹Medhatih on Manu VIII: 371.

¹⁰ AIR 1984 Del.347

only serve to provide proof of marriage as registration does.

In *Madan Mohan Singh & Ors v. Rajni Kant & Anr*¹¹ Supreme Court held that the courts have consistently held that the law presumes in favour of marriage and against concubinage. So when a man and woman have cohabited continuously for a number of years it is presumed as marriage. However, such presumption can be rebutted by leading unimpeachable evidence.

Maintenance Right Of Live-Partner In Hindu Law

There is no right of maintenance to a woman living in live-in relationship with a Hindu man unless and until it has been proved or presumed that the man and woman living together are husband and wife. The obligation of maintenance of woman is only in the relation of marriage and not in any other relation in Hindu Law.

Status Of Live-In-Relationship In Muslim Law

Live-in relationship frequently applied to couples who aren't married. In Islamic law this type of illicit sexual relation is an evil per se, as it opens doors for other evils and this type of illicit relation is known as *zina*. In Arabic terminology, *zina* means any sexual intercourse outside the marriage which stands for both adultery and fornication, as Islam prohibits all sexual intimacy other than between husband and wife within marriage. Legally the term *zina* means: a man and woman are said to commit *zina*, if they wilfully have sexual intercourse, without having validly married to each other¹ it is in *Holy Quran* that;

¹¹ AIR 2010 SC 2933

“Assuredly, the command of Allah (subhanawata'ala): And come not near unto adultery.

Lo! It is an abomination and an evil way.”¹²

The prophet (Peace Be upon on Him) said: “No adulterer is a believer at the time when he is committing adultery”¹³; it is just and true that Islam prohibits steps and every means leading to Haram. Accordingly every illicit sexual relation is Haram. Indeed, it is not only a sin but also a heinous crime. Therefore punishment is prescribed not only to protect man and woman but also for the respect of marriage.

It is noteworthy that in modern penal system voluntarily sexual relationship out of the purview of matrimonial relationship are not considered crime, while such sexual liberty is foreign to all the sacred laws. Sacred laws not only forbid but also render harsh and exemplary punishments for all kinds of sexual relations outside the marriage. It is one of the greatest sins. Punishment is provided because it is a crime against honour and generations.

The *Holy Quran* says:

*Nor come nigh to adultery: for it is a shameful deed, and an evil, opening the road to other evils.*¹⁴

The woman and the man guilty of adultery or fornication - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe

¹² *Quran* 17: 32

¹³ *Al-Bukhaari*, 2475; *Muslim*, 57

¹⁴ *Quran* 17:32

*in Allah and the Last Day: and let a party of the Believers witness their punishment.*¹⁵

“ And those who cry not unto any other any God along with Allah, nor take the life which Allah hath forbidden save in (course of) justice, nor commit adultery and who so doeth this shall pay the penalty”¹⁶

Prophet Mohammad (Peace Be upon on Him) has condemned *zina* to the greatest sin after shirk. There is no sin after association is much greater in the eye of Allah (*Subhana WaTa'ala*) than a drop of semen which a man places in the womb which is not lawful for him.

Prophet Mohammad (Peace Be upon on Him) has said, “Allah has ordained a way for those women. When an unmarried male commits adultery with an unmarried female, they should receive one hundred lashes and banishment for one year. And in case of married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death”¹⁷

Presumption Of Marriage In Live-In Relationship In Muslim Law

The question of marriage is one of fact, and has to be proved by direct evidence, e.g., calling witnesses present at the time of marriage or producing of *Nikahnama* (marriage deed) signed by the parties. Thus the direct evidence is the best evidence. Sometime direct evidence is not available as a Muslim marriage often takes place without any ceremony.¹⁸ And the man and woman from the time of the alleged marriage living

¹⁵ *Quran* 24:2

¹⁶ *Quran* 25: 68

¹⁷ *Sahih Muslim*, 17:4191

¹⁸ I.A. Khan, *Mohammedan Law*, (Central Law Agency, Allahabad 23rd ed.2010, P-135

together as husband and wife and this relation in the absence of direct evidence can further inferred as marriage from the circumstances and conduct of the parties.

In the case of *Rashida Khatoon v. S.K. Islam*,¹⁹ the Orissa Court held that in the instant case there was no acceptance of the offer to marry, but there was only assurance to marry in future and therefore, mere cohabitation with such an assurance does not constitute the factum of marriage to give the status of a validly married woman.

Islam strictly prohibit and severely punish this type of relation as discussed earlier and it evident from the above discussion that continuously doing the *zina* will not give any presumption to the marriage, because continuous repeating the sin will not turn out to be a virtuous deed as there is one hadith saying that, "one who marry completes half of his religion"³

However, if the parties to such immoral activity wants to marry, they can do it subject to the condition that they repent and the woman followed *istibra* (wait for one menstrual cycle) to establish that she is not pregnant before doing the marriage contract with her. If she is pregnant the *iddat* period should be followed till delivery of the child.

The Allah (*SubhanaWaTa'ala*) says in the Holy Quran that:

"The adulterer shall not marry save an adulteress or an idolatress, and the adulteress

*none shall marry save an adulterer or an idolater. All that is forbidden unto believers"*²⁰

Shaykh Muhammad ibn Ibrahim (May Allah has mercy on him) said that it is not permissible to marry a woman who has committed *zina* until she repents. If a man wants to marry her then he must wait for one menstruation cycle (*istibra*) to establish that she is not pregnant before doing the marriage. If she is pregnant; it is not permissible for him to do the marriage contract with her until after she gives birth.²¹

Ibn Qudaamah (May Allah have mercy on him) said that if a woman commits *zina* it is not permissible for the one who knows of that to marry her unless two conditions are met:

1. That her *istibra* (determining that the woman is not pregnant) has ended. If she is pregnant as the result of *zina* then her *iddat* ends when she gives birth, and it is not permissible to marry her before she gives birth.
2. That she repents from committing *zina*,

And he said that if both conditions are met, it is permissible for the *zaani* (adulterer) or anyone else to marry *zaanyah* (adulteress). According to the majority of the scholars, including *Abu Bakr, Umar and his son, Ibn Abbas, Jaabir, Sa'eedibn al Musayyab, JaabiribnZayd, Ata, Al Hasan, Ikrimah, Al Zuhri, Al Thawri, Al Shaafa'I, Ibn al Mundhir and Ashaab al ra'y* (May Allah have mercy on all of them) view that the marriage of

¹⁹AIR 2005 Ori.57

²⁰ Quran 24: 3.

²¹Al-Fataawa al-Jaami'ah li'l-Mar'ah al-Muslimah (2/584)

the *zaani* and *zaaniyah* is valid, even if they have not repented.²²

The *Hanbali* are of the view that the marriage of a *zaaniyah* is not valid unless she does not repents but they did not stipulate that the *zaani* has to repent in order for the marriage to be valid.

Child born out of illicit relation is illegitimate and is not permissible for him to be named after his illegitimate father, rather he/she should be named after her mother and he/ she have no right in property of his illegitimate father. It was narrated from *Amr ibn Shu'ayb* from his father that his grandfather said that the *Prophet (Peace Be upon on Him)* ruled that “whoever was born to a slave woman his father did not own or to a free woman with whom he committed adultery, then he cannot be named after him and he does not inherit from him, even if the one whom he claims is his father acknowledges him. So he is the product of *zina*, whether his mother was a free woman or a slave”.²³

Maintenance Rights Of Live-In-Partner In Muslim Law

Live in relationship has no legal effect and does not create any legal and moral obligation towards each other as like in marriage in Islam. The woman is not entitled to the privileges which are given to the wife in marriage like dower, maintenance and sometime separate residence and the right of inheritance in the husband's property after husband's death. The offspring's of the live in relation are illegitimate. And to claim the

²²*Al-Mughni* (7/108, 109)

²³Narrated by *Abu Dawood* (2265) and *Ibn Maaajah* (2746) classed as hasan by al-Albaani in *Saheeh Abu Dawood*

maintenance it is necessary that there should be a marriage between the parties.

Conclusion

Islamic law forbids sexual relation before or outside marriage. *Sharia* considers consensual premarital sex as *hudud* crime (Crime against Allah) and requires public punishment. *Islam* explicitly forbids all sex outside of marriage, both premarital sex and sex outside marriage (*zina*). Beyond being a crime requiring punishment in worldly life, fornication is a sin leading to chastisement in after-life in Islam. Hindu law condemns the relations outside marriage and declares marriage as a socio-religious institution, which is connected with so many religious obligations. And it is not permitted to make such relations which are immoral or against the social norms and there is no doubt that a Hindu marriage is a religious ceremony and the one prescribed to purification of the soul. However the judicial response to the live-in-relationship is somehow makes it cloudy. It gives the presumption of marriage for the long durational live-in-relation unless and until it is proved contrary. Live-in-relationship is included under Domestic Violence Act 2005 as domestic relationship. However live-in-relationship is not a marriage. It is harm to the legally wedded wife and her children if the husband is in live-in-relationship and also to the woman who by circumstances living under such unrecognized relationship. So as the personal law is the principal law governing to the relationship eminence which recognizes the status and right to inherit the property, it needs to be cleared and certain to circumvent the above consequences.

With the change in the society it is needed to ascertain the issue with meaningful and practical solution. Though the parliament and judiciary trying to recognize this concept but in our society it is unacceptable as a whole and also against the religious ethos.

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