



# Emerging Trends vis-à-vis Family Law

*No man is above the law and no man is below it -*

*Theodore Roosevelt*

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## **ABSTRACT:**

As time goes by, new changes occur everywhere and people tend to move on with the changes. It's remarkable how flexible humans can be when it comes to accepting changes. At the same time, we tend to choose the areas in which we need changes and areas where we are ready to be flexible. Living in the 21st century with the mindset of being open to changes is indeed invited and well-appreciated. Although, in light of the new changes in society and its practice which is popular among the youth, it's time we think about the effects that these changes possess on our society in the long run. When legislation or orders are made, it's time for them to be made to not just solve the problems that occur at that moment but it should also be made in a way that its applicability in the future will not cause any unintended chaos. Given some recent orders, the mere role or the main objective of personal laws, in general, is under real concern. It's time that we question whether these changes are healthy for our society or whether human qualities remain the same as we are supposed to in the future at this rate. This paper is all about it. Two main topics relating to personal laws are discussed and further analysed to understand the impact that these changes have on our society and the status of our future overall.

## **KEYWORDS:**

Trends, short-term and long-term effects, live-in relationships, decriminalisation of adultery, lead to an unhealthy society in the future.

## **INTRODUCTION:**

**FAMILY.** What a wonderful word! This word that holds deep meaning has its root lie in the Latin word *famulus*, which means 'servant'. This is one such word which had its meaning evolve through the years. It was introduced to the English language, in the 15th century and had its first meaning equivalent to the current meaning of the word 'household' i.e., a group of individuals living under one roof. Its evolution has been in ways unlooked-for and it surely is very fascinating in a way. When we go through the past years, we understand that there was a concept called *joint family* where not just parents, kids and grandparents lived together but even aunts, uncles, and cousins lived together under one roof. Then came a family just with grandparents, parents

and kids. Slowly this concept was changed into what practice in the present world called the *nuclear family* which includes just the parents and their kids.

## **EVOLUTION OF THE LAW:**

The world has always been governed by certain rules and regulations, right from the Adam and Eve era. There were social rules and moral rules for that matter. Slowly, legislations were made to regulate society, punish the wrongdoers, provide justice to people and thereby, kept people within their respective demarcations. We have laws for nearly everything and we are certainly obliged to abide by them as well.

## **PERSONAL LAWS:**

In India, the Parliament legislates the laws and the intention behind them becomes the true purpose or the object of the law that is enacted subsequently. Now, these legislations and judge-made laws are intended for people to not just have a disciplined life in society but also in their personal lives as well. Resultant, certain Acts evolved that dealt with personal matters like marriage, divorce, adoption, child marriage, guardianship and so on. At first, these Acts served the best of their purposes but as time passed by, many amendments were required due to the emerging trends in society. However, there are certain grey areas in some personal laws even today, like the Christian Marriage Act of 1872, that are left unamended, making it much more difficult for people to seek their rightful remedies. Given some latest judgements relating to personal laws, though the object of the Act is well practised, in the long run, there seem to prevail some complications, about which the society seems to be unaware or rather simply ignorant. This paper will focus on such issues and for further discussions, two main areas of concern are chosen namely, the concept of live-in relationships and the decriminalisation of adultery as an offence.

## **LIVE-IN RELATIONSHIPS:**

It is also known as ‘Cohabitation’ and it can be defined as an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and sexually intimate relationship<sup>1</sup>. It is to be noted that this arrangement does not infer that the two people are ‘married’ in any manner. This is one such relationship concept, that might be a newly coined term in post-modern India but it is gaining popularity rapidly. When we study its origin, we notice that it is traced right back to the Adam and Eve era, the first non-married couple in history which is actually an interesting fact! If this is a concept that has its roots buried in the ancient past, why does its adaptation in India is not being completely accepted?

Well, it is a notable fact that India is a country that is immensely rich in culture and tradition. Though we are open to changes, in some matters we prefer to preserve our traditions and customs and stay unchanged. One such area is Cohabitation. Though we are gradually accepting this change, like accepting pre-marital sex, it is still considered taboo and is being subjected to heated debates as well. Though our culture respects and idolises the concept of marriage per se, the youths are afraid of the idea of getting committed to someone. As the proverb goes, *past experiences lead to a better future*, by witnessing our parents, grandparents and ancestors, the youth currently prefer to just stay in a relationship where they need not worry about commitments or satisfaction of in-laws or even disagreements between oneself and the partner that might even lead to divorces. Many moral and legal issues have arisen as a result of this new change. For instance, if a married couple wants to get a house, it's comparatively easier than in the case of people in a live-in relationship because society is more comfortable, acceptable, or adaptable to married couples.

Let's keep the ideologies of society aside for a while and see through the legal and moral impacts. All the personal laws provide conditions relating to the validity of a marriage in consideration of their respective religion. For instance, section 5 of the Hindu Marriage Act of 1955, section 4 of the Special Marriage Act of 1954, section 3 of the Parsi Marriage and Divorce Act of 1936 and so on provide conditions for a valid marriage under their law and those who come under that specific religion are required to fulfil all those conditions for a valid marriage.

An overview of the conditions makes it clear that in no personal law, there is a concept of a ‘live-in relationship’. That being so, where comes the point of recognizing this concept as a marriage? Even if it is so recognized then what is the necessity of defining the actual concept of marriage and establishing conditions to make it valid? Anything left unattended to or anything that lacks law or rules will lead to chaos. This is a

<sup>1</sup> <http://www.legalservicesindia.com/article/211/Live-in-Relationships.html>

Universal fact. Therefore, when live-in tends to be a concept that is not recognised in any law nor has any provision that could be applied to it efficiently and effectively, is it for sure, that there would be peace in society if this concept is further practised? Isn't it the need of the hour to have a check over our personal laws?

Orders passed by the Supreme Court are the laws of the land. Though no legislations prevail on the concept of live-in, due to the rise in cases, the Hon'ble Courts have passed judgements in the area of live-in, based on the facts of each case. Following are some judgements that have recognized the concept of live-in relationships;

- **S. Khushboo v. Kanniammal**<sup>2</sup>

The Hon'ble Supreme Court held that live-in relationships are well protected under Article 21 of the Indian Constitution and also ruled that it is legal and not unlawful. It was also observed that there exists no legal provision where adults are voluntarily associated with sexual relationships other than marriage, and therefore it does not violate any law<sup>3</sup>.

- **Dhannu Lal v. Ganeshram**<sup>4</sup>

The Hon'ble Supreme Court held that the couples in a live-in relationship would be presumed to be legally married. Hence, women in such relationships would be eligible to inherit the properties after the death of their partner.

- **Alok Kumar vs State**<sup>5</sup>

It was held that live-in relationships do not create any legal bond among the parties and it was referred to as a *walk-in, walk-out* relationship.

- **Lalita Toppo vs The State Of Jharkhand**<sup>6</sup>

The Hon'ble Supreme Court of India held that women in live-in relationships come under the jurisdiction of the Protection of Women from Domestic Violence Act of 2005 and are also allowed to relieve more than bestowed under Section 125 of CrPC, 197.

All these judgements show that the judiciary has come forward in protecting the interests of the concerned citizens by providing enough remedies for those in a live-in relationship as of now. But in the long run, what is its stand? It is inevitable to note that the orders pronounced by the judiciary are based on the facts of each case. Therefore they would at first provide the remedy for issues of each case based on its facts but when we see its application in the future, it is only then that we will be able to observe all the complications that prevail due to the trends of society.

It is well appreciated that live-in relationship status is being recognised and protected but this is in a way only encouraging the youth to continue this practice. It is also cardinal to note that the laws or the orders that the judiciary has pronounced are due to the rise in the issues relating to live-in relationships, day by day. The orders were just to keep them under control and clearly not to encourage this practice. Let's study this further.

If this practice is continued in the upcoming future, there would prevail some uncertainty in the concept of marriage in itself. People might even forget the original idea of marriage which is in no way healthy for our society. There would be no moral obligations and the mere nature of humans would be altered as a result of this change. People would lose all of their moral responsibilities and obligations and there would be no *one man one wife* concept, abuse rate would increase and since this concept is based on the reason that the parties or the youth are not ready for commitment, we can also expect less procreation of children which is not just affecting the society morally but it also has its effects in the economy of our country as a whole.

Let's view this trend from a different aspect. Hypothetically, if a man 'A' who is in a live-in with a woman 'B', wants to have a relationship with another woman 'C', he can continue to have one because the concept of live-in per se does not make the partners as 'husband and wife'. Here the personal right of B will be violated and she would not be able to obtain any efficient remedy because of the very fact that A and B are merely in a live-in relationship and that they don't come under the institution of marriage as such. Further, when the issue of succession or inheritance comes, there would prevail an unsettled issue concerning who would be recognized as the live-in partner of A for that matter. On the other hand, what would be the status of the live-in partner C? These types of situations indeed trigger our thoughts and help us to understand the impact of continued practice of live-in.

<sup>2</sup> (2010) 5 SCC 600

<sup>3</sup> <https://blog.ipleaders.in/landmark-supreme-court-judgments-concerning-legal-standing-live-relationships/>

<sup>4</sup> (2015) 12 SCC 301

<sup>5</sup> (2019) 2 SCC (Cri) 64, 2019 SCC Online SC 23

<sup>6</sup> CRIMINAL APPEAL NO(S). 1656/2015



It is also to be noted that the intention behind this illustration is not to propagate the washout of the concept of live-in relationships per se. It is to create awareness of the effects of continued, large-scale live-in relationships which currently is not observable but certainly, in the long run, it would contribute to larger and more complicated issues in the society and for the country as a whole in various manners. When we study its effects on the concept of marriage and so on, we see that the need for Family Law as such is diminishing. Is this just, fair and proper? Can this prevail? Is it a healthy practice as such? Can we allow this Western trend to influence our culture when our country is acclaimed internationally and well-known for its rich culture and traditions?

### **DECriminalISATION OF ADULTERY:**

The word adultery is derived from the Latin term, *adulterum*, which means sex between a married person and somebody else who is not his/her spouse. The dictionary meaning of the word 'adultery' is voluntary sexual intercourse between a married person and someone other than that person's current spouse or partner<sup>7</sup>. In legal terms, Adultery is defined under Section 497 of the Indian Penal Code of 1860. It states that "Whoever has sexual intercourse with a person who is and whom 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 the offence of rape, is guilty of the offence of adultery."<sup>8</sup>

When we study its origin in India we understand that this was a practice that existed right from its inception. Though it is a practice that was followed years together, by means of Section 497 of the Indian Penal Code of 1860, this act was made as an offence. According to the section, the offender is punished with imprisonment of either description for a term which may extend to five years or with a fine or with both.

The concept of adultery was further discussed from various perspectives in several cases. Some of these are as follows;

- **Yusuf Aziz V. State of Bombay**<sup>9</sup>

This is considered to be the first case to question the validity of adultery.

It was contended that adultery was violative of Articles 14 and 15 of the Indian Constitution because Section 497 of IPC discriminated against men by not penalising women for adulterous relationships. The Supreme Court held that it was not violative of the Constitution and the rationale behind the offence of adultery is that in most cases it was the women who were the victims and were not the perpetrators.

It is to be noted that though the objective behind making adultery an offence under IPC was to protect women, ironically women were not provided with the right to file a complaint in the first place.

- **Sowmithri Vishnu V. Union of India**<sup>10</sup>

In this landmark case the Supreme Court observed that if an unmarried woman indulges in a sexual relationship with a married man, she would not be held liable for the offence of Adultery under Section 497 of IPC but if an unmarried man indulges in a sexual relationship with a married woman, he would be held liable for Adultery under Section 497 of IPC.

- **V Revathy v. Union of India**<sup>11</sup>

It was held in this case that the rationale behind the non-prosecution of women for adultery was *to protect the sanctity of marriage*. It was also held that this provision was to be considered as a *shield rather than a sword* and that it provided the path for the couples to *make up*.

Later in the year 2018, by dint of a landmark case, *Joseph Shine v. Union of India*, the 158-year-old Adultery law, was decriminalised as unconstitutional and all the aforementioned observations were subsequently nullified.

- **Joseph Shine v. Union of India**<sup>12</sup>

In this landmark case the then Chief Justice of India, Justice Deepak Misra, held Section 497 of IPC to be unconstitutional and the Section was struck down. It was held that the adultery provision was

<sup>7</sup> <https://www.merriam-webster.com/dictionary/adultery>

<sup>8</sup> <https://indiankanoon.org/doc/1833006/>

<sup>9</sup> 1954 AIR 321, 1954 SCR 930

<sup>10</sup> 1985 AIR 1618, 1985 SCR Supl. (1) 741

<sup>11</sup> 1988 AIR 835, 1988 SCR (3) 73

<sup>12</sup> 2018 SCC OnLine SC 1676

gender-stereotypical and hence violative of Articles 14 and 15 of the Indian Constitution. Through this Judgement Section 198(2) of the Criminal Procedure Code was also struck down. The justification provided by the court was that any provision making the husband the master of his wife and treating women with inequality is to be considered unconstitutional. It was also observed that Section 497 “institutionalises discrimination” and therefore, such a provision needs to be struck down and that decriminalisation was indeed necessary to free women from the shackles of “patriarchal control.” In the words of our present Chief Justice of India, Justice DY Chandrachud, “Autonomy is intrinsic in dignified human existence and Section 497 denudes women from making choices and held adultery as a relic of the past.”<sup>13</sup>

All these justifications prove the good intention of our judiciary to protect women in society. Yet, what about its effects in the long run? Is it healthy for our society? When we look at it in the long run we get to understand that this act of decriminalising the offence of Adultery, apart from providing equality in society as intended, also encourages this act in the very end. One of the observations of the court while decriminalising adultery was that ‘when there is sexual intercourse with another without consent it would amount to rape but if the same is done with the consent of both persons, it would not amount to any offence’<sup>14</sup>.

Adultery was criminalised in the year 1860 but adultery as a ground for divorce was enacted first by the Hindu Marriage Act of 1955. Section 13(1) of the Hindu Marriage Act, Section 2 (viii)(b) of the Dissolution of the Muslim Marriage Act of 1939, Section 22 of the Indian Divorce Act of 1869 and Section 27 of the Special Marriage Act of 1954 makes adultery either as a ground for obtaining a divorce or as a ground for judicial separation. Though adultery as an offence under the Indian Penal Code was later decriminalised, to date, it continues to remain a valid ground for obtaining a divorce under Personal Laws.

The observations made in *Joseph Shine v. Union of India* were bona fide to invoke equality without gender bias. Provided if it is in any manner misused, it would result in chaos, an unhealthy society and other complexities that would ultimately lead to jungle law.

## **FINDINGS:**

Based on the study of the impacts of the two trends in our society, it is of the findings that these changes are indeed fascinating to people and are out for experimentation by the youth but what we fail to understand is that these changes are unhealthy for society as a whole. It affects society in various ways scilicet;

- ❖ The morality in humans will be diminished
- ❖ The sense of obligation or responsibility that as humans we possess towards our society will be faded
- ❖ The advantage is taken over the loopholes existing in personal laws. For instance, live-in relationships are not marriages and therefore the laws relating to marriages may not be effectively applied to those live-in relationship couples.
- ❖ The main objective or aim of Personal Laws is degraded or in other words, merely forgotten.

## **SUGGESTIONS:**

As a part of this paper, I would like to suggest that laws should be framed keeping in purview the future inclusions and evolutions in society i.e., the emerging trends. Laws are not short-term in nature and they shouldn't be. They are intended to protect and achieve their objectives, from the start of their enactments. Given some latest orders, it has become a real concern about the fact that the current or *hot issues* of society are solved by the orders but when rationally considering its future impacts we would be able to understand that it destroys society rather than protecting it per se. As Sophocles stated, *All men make mistakes, but a good man yields when he knows his course is wrong and repairs the evil.* Therefore, I suggest being *good men* might do some good to society in the upcoming years.

<sup>13</sup> <https://www.thehindubusinessline.com/news/sc-declares-penal-provision-on-adultery-unconstitutional/article25055821.ece>

<sup>14</sup> <https://timesofindia.indiatimes.com/blogs/legallythinking/failed-live-in-relationship-is-it-rape-or-breach-of-promise/>

**CONCLUSION:**

As rightly quoted by Henry Adams, who was an American historian;

*Chaos was the law of nature; Order was the dream of man.*

Laws are made to control or prevent this *chaos* that is prevailing in society and it was never intended to encourage them. This paper is mainly to suggest that laws are to be made with their futuristic effects in view and it does not suggest that the changes should not be accepted or that we should not support the trends. It merely recommends maintaining the limits as everything in this world has its pros and cons. We should also note that not just the institution of marriage is affected by these trends but it also affects the other concepts of family law like divorce and other disciplines like Economics, Sociology and so on. As rightly quoted by Arthur Conan Doyle, *The world is full of obvious things which nobody by any chance ever observes*. Hence, it's time we commence to understand the fact that the trends merely provide short-term satisfaction and enjoyment but in the long run, it leads to a situation where the need for family law is under real concern at this rate.

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