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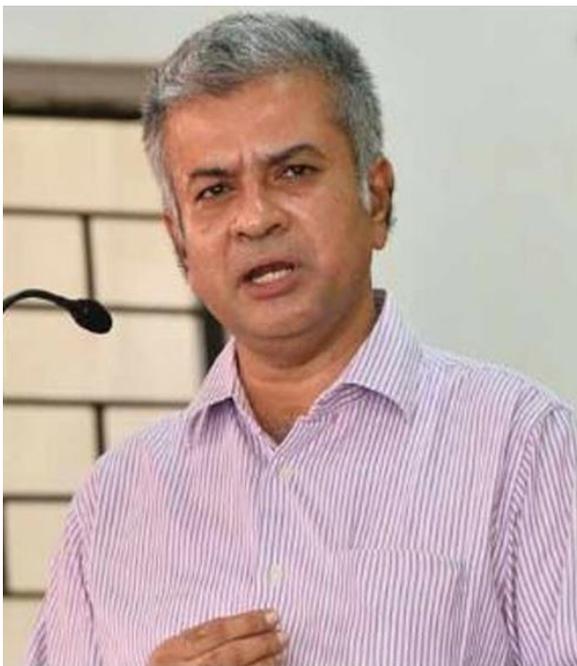
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



LEGAL STATUS OF LIVE-IN RELATIONSHIPS WITH A FOCUS ON THE SOCIO-LEGAL ISSUES - A COMPARATIVE ANALYSIS OF USA AND INDIA

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ABSTRACT

"While live-in relationships may be considered immoral by society, they are not illegal in the eyes of the law. Morality is subjective, and the law cannot dictate the moral fabric of society."

-Justice M. Katju

How did the marriage institution change its bands to accommodate the liberal concept of live-in relationships too, in a nation such as India is there a chance of true societal acceptance of the idea or is there just a pretend acceptance such as we have seen with the decriminalisation of same-sex relationships or is it only possible for such a concept to be accepted and integrated into legislations in a liberal country such as the USA where there is legislation running on the societal opinions with very little influence of ancient rituals cultures and many religions. The question is mainly if a culture-driven country has turned towards protecting the culture and growing towards inclusivity with the liberal turn of events in the global world.

A question also arises if there is a true mention in ancient scriptures and we all have been turning a blind eye towards it because of popular conception or if should it be understood as a mass misconception. India has such a varied palate of especially religious cultures and scriptures and their understanding in some being almost in pace with modern times and some staying in their conservative sense the legislation is inclusive of all these opinions and having such a varied opinion even within the same political parties makes it extremely difficult to come to common consensus, we can see this evidently with the stagnation of legislation regarding same-sex marriage even though the judgment was passed 7 years ago. This paper will attempt to look further into these exact questions through the lens of precedent and provide a comparison of the understanding and acceptance of the concept of live-in relationships with

an Indian lens which would be more conservative and the United States too which would again have a comparatively liberal approach.

RESEARCH QUESTIONS

Are there any mentions in ancient Indian scriptures regarding live-in relationships or of any similar concept?

Do precedents in India pave the way towards formulating legislation that addresses the concept of live-in relationships?

Do multi-culturally driven countries stop in the way of integration of modern liberal concepts in their legislations?

Research Problems

1. Identification of references to live-in relationships or similar practices is difficult because ancient Indian scriptures come in a myriad of texts, interpretations, and cultural contexts that have evolved across history.
2. Indian judicial precedents have recognized live-in relationships under certain conditions, but the lack of specific legislation leaves ambiguity around rights, duties, and societal acceptance.
3. Deep-rooted traditional values, religious beliefs, and regional diversity of multicultural societies often create resistance to integrating modern liberal concepts into legislation in countries, such as India.

ANALYSIS

RELIGIOUS ANALYSIS

HINDU

Vedas are the holy scriptures of the Hindu religion and their understanding nowadays has been construed as popular understanding rather than a true understanding of the same, even though not with the same name we can see the mention of the concept of life in relationships in the Vedas in the different types of marriages.

There are mainly 8 types of marriages that are mentioned in the Vedas which are

- 1) Brahma – where the parents of the boy find a suitable bride or the case of the boy picking his bride too
- 2) Prajapatya – this refers to the parents of the girl choosing her groom or the case of the svayamvara tradition where there is a showcase of skills chosen by the bride between

prospective grooms to showcase their virtues in which the bride chose the victor as her groom, we can see this tradition, especially in royal rituals

- 3) Daiva and the Marsha type refers to the girl's parents giving their daughters to priests
- 4) Gandharva marriage was where a man and woman mutually consented to get married.

These were the approved types of marriage; however, the Vedas recognised other types of marriages that they did not support or condone.

- 1) Asura marriage – in this type of marriage there is a huge sum of money provided to the bride's parents in exchange for marrying her
- 2) Rakshasa marriage – in this type of marriage the groom fights with the bride's parents and ends up abducting the girl with no regard for her wishes
- 3) Paischa marriage – in this type of marriage the girl is seized by the boy against her wishes and even her parents are harassed

All through the unapproved types of marriage existed ancient lawmakers and thinkers attempted to ensure that dignity is maintained even in the cases of polygamy where one man marries multiple women or a woman marrying multiple men this can be associated with the modern world where there are mistresses present for men without the name of a wife, much like an ancient time it was and still frowned upon keeping the holiness of wedlock.¹

We can see the similarity present between Gandharva vivaah and the concept of live-in relationships such as a man and woman only have to consent to enter into Gandharva vivaah and in the aspect of live-in relationships only the man and woman in the relationship mutually choose to live together. There is no intervention by family in any sense and there is no particular ritual to per se solemnise marriage in Gandharva marriage, and in a relationship, it is too a completely private affair, especially with the sense of no official or set ritual to be completed to established to declare that one is in a live-in relationship.

We can see a perspective that is per se liberal opposing the popular notion of a strict religion with much instruction being provided in the scriptures by our ancients with humans being polyamorous and sex being an inevitable requirement of all beings, many scholars emphasized procreation and increasing population of the species. Wean see the same where even the rishis and risks are that they tried to bring such relationships in the purview of dharma and even were

¹ Our Vedas Permitted Live-In Relationships, DailyO

open to accepting.² Many things which have been considered taboo such as pre-marital sex prostitution sex outside marriage divorce homosexuality and even widow remarriage, acceptance of the act was only based on whether the act adhered to the path of dharma and even a simple act was against or not in furtherance of dharma would be considered as a grave mistake.³

ISLAM

In Islam, relationships that are cohabitation without a formal marital contract are generally prohibited, Islamic jurisprudence emphasizes the sanctity of marriage being agreed upon as the sole legitimate framework for intimate relationships, the Qur'an and the hadith emphasize the importance of marriage being the means of establishing family units and also preserving societal morals thus fulfilling spiritual responsibilities. There are various nuances and discussions within the Islamic tradition that have provided insights into the related practices and contemporary challenges.

The Quran states that⁴ "*And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way.*" Islamic law has discouraged pre-marital relationships which include living arrangements that stem from several Quranic verses too as mentioned above, there might be encouragement to immoral activities such as zina which is adultery or fornication. Pre-marital cohabitation is often criticized for leading to instability lack of commitment and potential harm to children being born out of such arrangements Islamic scholars argue that live relationships can undermine the institution of marriage thus disrupting social harmony and societal stability.

There is however an exception to the traditional marital practices that exist in Shia Islam through the concept of mut'ah or temporary marriage.⁵ Mut'ah has certain similarities with modern live-in relationships which is the temporary nature and the flexibility present in them, but we can draw the distinction where there must be a formal contract and there must be adherence to Islamic legal principles, mut'ah is again not recognised in Sunni Islam where it is considered as impermissible as it is based on hadith which prohibits the practice entirely, critics

² Law and Live-In Relationships, Enroute Indian History,

³ Back to the Future: Marriage and Live-in Relationships in Ancient India, Hindustan Times,

⁴ Surah Al-Isra (17:32)

⁵ "Temporary Marriage in Islam: Necessities and Advantages of Mut'ah," Al-Islam.

argue that mut'ah may have been misused as a loophole to justify otherwise inappropriate relationships, but there is support also provided as it will serve as an exception to individuals unable to enter into long term marriage.

There are however instances where Muslim couples do cohabit before formalising their relationship or marriage through nikah, we can see these practices arising in non-Muslim majority countries or in urban areas where there is an influence of Western lifestyle on behaviours, however, this change is overwhelmingly disapproved and also emphasises on living together without marriage opposes Islamic law and also leading to spiritual and social risks, an instruction such as darul ifta and other fatwa councils reinforces the prohibition on pre-marital co-habitation, this urges the Muslims to prioritise marriage to be the proper avenue for forming relationships.⁶

In the modern world, there are unique challenges to traditional Islamic views on relationships, we can see this in Muslim-majority countries too because changing social norms furthering and evolving attitudes towards attaining individual freedoms have certainly led to debates about the age-old traditional marital practices.

CHRISTIANITY

In Christian theology, any intimate relationship is supposedly and ideally confined within the bounds of marriage which is the sacred covenant ordained by god and any couple living together without being in the bounds of marriage is considered to be inconsistent with the biblical teachings, bible also provides emphases sexual purity and maintaining the sanctity of marriage there is a verse.⁷ states, "*Marriage should be honoured by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral.*" This verse again emphasises the importance of confining sexual relations within the bounds of marriage, the Bible⁸ Advises, "*But since sexual immorality is occurring, each man should have sexual relations with his wife, and each woman with her husband*" highlighting marriage as the appropriate context for such relations.

Several denominations have interpreted cohabitation as being the opposite of God's idea and design of relationships. Living together before marriage is very many times associated with

⁶ Najmeh Bozorgmehr, In Iran, White Marriage Challenges the Institution of Matrimony, Financial Times

⁷ Hebrews 13:4

⁸ Corinthians 7:2

fornication and we can see its mention in several biblical passages as also provided above and in the bible. ⁹Urges believers to avoid sexual immorality and to control their bodies in holiness and honour. ¹⁰

We can see that the Lutheran church of Missouri Synod provides that almost 57 % of the couples have lived together before they are tied in the holy union of marriage but still maintains that cohabitation before marriage is wrong for Christians. For couples who have chosen a live-in option, there are often Christian leaders counselling them and emphasising how marriage reflects a commitment ordained by God, they also stress that god's forgiveness is available to all and encourages individuals to seek a relationship with God and live-in line with his teachings. ¹¹

Even though of these traditional teachings, there are several modern Christians who have taken the idea of live-in relationships as acceptable especially when the couples have a plan to get married. There was research by the ¹²Pew Research Study that 50 per cent of evangelicals approve of live-in relationships if there is an intention to marry. But again, many Christian leaders have maintained that cohabitation does not align with the teachings of the bible and provide advice against it.

CASE ANALYSIS

TULSA& ORS v. DURGHATIYA ¹³

There are cases addressed the legitimacy of children who are born out of a live-in relationship, a woman and man cohabited for an extended period without any formal marriage there was an issue arising of the question of the existence of inheritance rights for those children's main issue arising from this case was if a children who was born from a live-in relationship would be considered a legitimate child under the Indian law and if there is a legal assumption that prolonged cohabitation would establish a presumption of marriage.

The Supreme Court of India held that if a man and woman cohabit for a significant duration, they would be assumed to be married under section 114 of the Indian Evidence Act of 1872,

⁹ Thessalonians 4:3-5

¹⁰ "What's Wrong with Living Together Before Marriage?" Before the Cross.

¹¹ "Should We Live Together Before Getting Married?" Fierce Marriage.

¹² Pew Research Centre, "Changing Attitudes on Cohabitation and Marriage Among Christians."

¹³ Tulsa & Ors. v. Durghatiya, (2008) 4 S.C.C. 520 (India).

thus making their children also legitimate. There is great emphasis on the protection of the rights of children which would have stopped short of fully recognizing live-in relationships. Still, given the legitimacy of a presumption of marriage, the court highlighted the societal reluctance, especially with the reluctance to accept live-in arrangements as it exists independent of live-in arrangements as independent of traditional marital norms.

This case was one of the first that contributed to reducing the stigma faced by children who are born from non-marital unions this judicial reliance on presumed marriage showed a conservative approach which did indicate that the judiciary hesitated to directly validate the live-in relationships but again it is based on traditional marital norms.

BHARATHA MATHA v R. VIJAYA RENGANATHAN¹⁴

In this case, there was a child who was born from a live-in and sought an inheritance to ancestral property, however, he was opposed to the claim that children born outside wedlock are illegitimate and would equally lack inheritance, the main issues arose if the children would have rights in the ancestral property and if Indian law addresses such property rights of children born outside of marriage.

The Supreme Court ruled that children born from living in relationships are legitimate and can only inherit the parent's property and not the ancestral property. This distinction showcased the aim to balance the meeting for child protection and the focus on adherence to traditional inheritance norms. This highlighted the judiciary's cautious advancements towards recognizing live-in relationships. Keeping the children's rights in focus and the limited inheritance scope showcases the societal biases in favour of traditional family structures.

INDRA SARMA v. V.K.V. SARMA¹⁵

In this particular case the woman who was in the live-in relationship sought under the Protection of Women from Domestic Violence Act of 2005 with the allegation of domestic violence, the respondent has argued that their relationship did not entirely qualify as a relationship in nature of marriage. Here the main issues that arose were the understanding of how wide a "relationship in nature of marriage" can be given, should women actually who have

¹⁴ Bharatha Matha v. R. Vijaya Renganathan, (2010) 5 S.C.C. 603 (India).

¹⁵ Indra Sarma v. V.K.V. Sarma, (2013) 15 S.C.C. 755 (India).

chosen to stay in live-in relationships

The Supreme Court outlined the criteria for determining if a live-in relationship qualifies as like marriage, which is based on these 3 factors, the duration of the relationship, the household responsibilities being shared and the public social acknowledgment of the relationship. According to these 3 factors, we can see how the court extended legal protection to women who are in qualifying relationships but again excluded casual or transient arrangements and this judgment also sought to protect vulnerable women while preventing misuse of the law itself. This judgment showcases the judiciary's effort to safeguard women's rights, especially in non-traditional relationships. However, the restrictive parameters did leave many women ineligible for legal remedies, showcasing the cautious approach to live-in relationship arrangements.

NANDAKUMAR v. STATE OF KERALA ¹⁶

The fact young live-in couples faced societal and familial opposition. They approached the Supreme Court for protection under their fundamental right to stay together and cohabit as adults, the issue raised was whether the Indian constitution protects live-in relationships under Article 21, with the live-in couples seeking protection against societal interference.

The judgment was given by the high court with the progressive acknowledgement of personal liberty in India's conservative societal context. By prioritizing constitutional rights over traditional norms, the court empowered individuals to make autonomous decisions about their relationships. The ambit of liberty also reaffirmed that living in relationships falls within personal liberty under Article 21 of the constitution there was an assertion of the primacy of individual choice.

USA CASES

MARVIN v. MARVIN

Michelle Marvin sought financial support from her partner, Lee Marvin after the end of the live-in relationship. She claimed they had an oral agreement for lifetime support. The main issues are cohabitation agreements enforceable in the absence of a formal marriage and the 2nd issue is if non-marital partners claim financial support after separation. The California Supreme Court held that express or implied, and there were any cohabiting adults are enforceable if not based on sexual services. This judgement introduced the concept of alimony with allowing

¹⁶ Nandakumar v. State of Kerala, (2018) 16 S.C.C. 602 (India).

economic remedies for partners in non-marital relationships. The case marked a significant shift in U.S family law in addressing the economic realities of modern relationships with it being recognized as the rights of habiting partners while maintaining fairness and equity, setting a precedent for other jurisdictions.

OBERGEFELL v. HODGES ¹⁷

There was a same-sex couple who challenged the state ban on same-sex marriage and then argued that this ban also violated the Fourteenth Amendment which guarantees the following due process and the provision of equal protection. There issues that arose were whether marriage was considered a fundamental constitutional right under U.S law and whether same-sex couples have a right to marry or not.

The US Supreme Court recognized marriage as a fundamental right and then again upholding this right to same-sex couples will violate principles of liberty and equality. The judgement emphasized that

"The Constitution promises liberty to all within its reach, a liberty that includes specific rights allowing persons to define and express their identity. This primarily addressed same-sex marriage with the judgment reinforced the principles of quality and personal liberty applicable to non-traditional relationships, this exemplifies the judiciary's willingness to adapt legal norms to evolving societal values.

LITERATURE REVIEW

Temporary Marriage in Islam: Necessities and Advantages of Mut'ah

This paper offers an in-depth analysis of the concept of Mut'ah, a temporary marriage practised in Shia Islam. It covers theistic, social, and ethical dimensions to determine its legitimacy as a form of union under specific conditions. The paper traces the origins of Mut'ah in Islamic jurisprudence and relies extensively on Quranic verses, Hadiths, as well as the opinions of Shia scholars to establish its legitimacy.

The article starts with an analysis of the theological justification of Mut'ah. The verses of the Quran, specifically Surah An-Nisa (4:24), are cited to prove this tradition. It goes on to present the academic agreement among Shia Islam scholars that Mut'ah was practised in the time of the Prophet Muhammad and was prohibited by Caliph Umar in the Sunni faith. This variation

¹⁷ Obergefell v. Hodges, 576 U.S. 644 (2015).

in jurisprudence is evidence of the sectarians' different interpretations of Islamic law.

One of the major arguments in support of Mut'ah is its function in meeting social and personal needs. The article presents an argument that Mut'ah is a legal way to have sexual relations in situations where permanent marriage cannot be entertained. It puts more emphasis on the flexibility and practicality of Mut'ah in dealing with challenges facing individuals who cannot commit themselves to permanent unions because of financial constraints, career ambitions, or personal reasons.

The advantages of Mut'ah, as outlined in the article, include its potential to reduce societal vices such as adultery and fornication by offering a regulated alternative. Mut'ah is also portrayed as a means of preserving individual dignity and respecting personal autonomy within the framework of Islamic law. Additionally, it provides women with financial compensation and legal recognition, thereby safeguarding their rights.

The article recognizes that the practice of Mut'ah is not without controversy. Inside and outside the Islamic faith, it attracts various criticisms often labelled as a form of prostitution. However, this piece has shown that there are differences, and Mut'ah is characterized as a legal relationship based on mutual agreement in which both parties mutually agree on their terms, thereby making the relation legitimate.

While the article does draw up a detailed account of Mut'ah, it mostly gears itself to a predominantly theological and practical justification without creating concerns towards the misuse of this practice. A critical analysis of how Mut'ah is manifested in the contemporary world, especially where gender disparity exists, would raise new connotations of the discourse. The article concludes that Mut'ah is a flexible and pragmatic solution for certain social circumstances that support the broader goals of Islamic law in serving justice and averting harm. With a nuanced comprehension of what Mut'ah entails, this article contributes to a broader discourse on marriage, personal autonomy, and morality in Islamic law.

"In Iran, White Marriage Challenges the Institution of Matrimony"

This article explores the phenomenon of "white marriage" in Iran, where young couples choose to cohabit without formalizing their relationship through traditional or religious marriage. Bozorgmehr situates the rise of this practice within the broader context of shifting social norms,

economic challenges, and legal constraints in Iranian society. The article highlights how younger generations in Iran are increasingly questioning traditional norms surrounding marriage and relationships. Factors such as urbanization, exposure to global culture, and higher levels of education have contributed to a more individualistic approach to personal relationships. Bozorgmehr emphasizes that white marriage represents a significant departure from the deeply ingrained cultural and religious expectations surrounding matrimony in Iran. Economic hardship is identified as a major driver of white marriage. The high costs associated with traditional weddings, dowries, and starting a family make formal marriage unattainable for many young Iranians. Furthermore, the article discusses how legal frameworks in Iran do not recognize cohabitation, leaving couples in white marriages vulnerable to legal repercussions and social stigma. Bozorgmehr explores the gendered implications of white marriage, noting how women in such arrangements are subjected to greater condemnation by society than men. Nonetheless, many women see white marriage as a way to assert independence and reject patriarchal norms. The article presents the tension between individual aspirations and societal expectations, especially within a country that constrains the rights of women under law and custom.

The article talks about the great resistance against white marriage from religious and cultural authorities in Iran. Critics claim that this practice undermines the holiness of traditional marriage and even encourages moral decay. Bozorgmehr illustrates how this backlash manifests in increased surveillance, legal crackdowns, and public campaigns to discourage cohabitation. White marriage is presented here as both a symptom and a catalyst of wider societal change in Iran. It is a manifestation of growing discontent with the rigid structures of traditional matrimony but also a challenge to the state's ability to regulate personal relationships. According to Bozorgmehr, this phenomenon has very wide-ranging implications for gender relations, family structures, and the interplay between individual freedoms and societal norms. Whilst the article throws much light on how socio-economic and cultural factors propel white marriage, the depth to which the psychological impact on the subjects might be attempted would do. Comparative insights into other societies that might share similar trends would enrich the discussion even more. Bozorgmehr article sheds light on a transformative trend in Iranian society, offering insight into how economic, cultural, and legal factors intersect to determine personal relationships. By focusing on white marriage, the piece helps to contribute more broadly to our understanding of how traditional institutions are adapting or resisting change in the face of modern challenges.

CONCLUSION

It's evident that through the lens of ancient Indian scriptures, legal precedents, and multicultural dynamics, the relationship between live-in relationships and historical, legal, and societal contexts is complex. Ancient texts provide insight into social arrangements of yesteryears, but since relationships are in a constant flux, a modern legal framework has to be adopted that addresses ambiguity in rights and responsibilities. Third, integration of the liberal concepts is in multicultural society such as in India. Its incorporation needs cautious handling between respect to cultural heritage and embracing changes through progressive reformation. Ensuring inclusiveness while achieving harmonious society regarding live-in relations will require integrated steps involving historic knowledge, clarification on legal concerns, and communication within society at large.

