



Hindu Marriage no More Left Sacramental & Ceremonial, It's totally Became Contractual

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Abstract:

Traditionally, the Indian society might have frowned upon live-in-relationship. But the growing numbers of couples are opening its doors for western ideas and lifestyle and one of the most crucial episodes amongst it, is the concept of live-in-relationship, which accords the status of marriage. In present scenario marriage is more a result of mutual consent than sacramental, ceremonial or contractual. Issue like live-in-relationship that was taken up by the western society is gradually percolating in to our social norms. Does with the changing time our Indian society is ready for this trend? Or does it need our conscious attention so as it helps us our society from disorganizing?

Keywords: Contractual marriage, Hindu marriage, live-in-relationship

1. Introduction

“Let there be faithfulness to each other until death. This, In short, should be known as the highest duty of husband and wife. So let husband and wife ever strive doing all their duties, that they may not be separated from each other, wander apart”.

-Manu Dharma Shastra

Marriage is one of the oldest institutions of Hindus. It occupies a very important place in their social life. It is regarded as one of most-important ten sanskars (sacrament) for them. Marriage is a religious injunction intended to fulfil religious duties and to achieve the higher ends of life, namely Dharma, Artha, Kama and Moksha.

In the very part, civilised societies recognised the most basic instincts of all i.e., the need for companionship and founded an honorable Institution known as marriage. Hindus refined the institution of marriage and idealized it. In this process, hindu ancestors laid down detailed rules covering practically all aspects of marriage and provide 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.

A/c to Hinduism Marriage between two souls is a very sacred affair that stretches beyond one lifetime and may continue up to at least seven lives. Thus the Hindu Marriage connotes the idea of permanence which is essentially a sacrament, a Hindu Marriage is said to be a sacrament because the marital relation between the spouses are created not on account of any contract but by virtue of a gift of the girl by her father to the bridegroom. The gift is holy and accompanied with the religious ceremony of Saptapadi because in the ceremony of Saptapadi the bride and the groom hold hands and take seven steps together as husband and wife as they walk around Agni, the God of fire and pledge to each other their eternal friendship. Procreation of male offspring is one of the reasons behind Marriage. Male issue was prized for it helped a Hindu to pay off pitiriri i.e., debt to his father. Also a Hindu achieves Moksha only when upon his death his funeral rights are performed by his son. Thus,

the Vedas declare “Endless are the world of those who have sons, there is no place for the man who is destitute of male offspring”.¹

2. Marriage under the Hindu Marriage Act, 1955

The concept of Hindu marriage, like any other institution, did not remain unaffected in modern times owing to social changes. Hindu Marriage which was considered to be a religious duty and a sacrament has undergone a change and it has lost its religious sanctity under the Hindu Marriage Act, 1955.

It no longer remains a pure sacrament and a binding religious duty. In the sacred texts marriage created an inseparable tie between the husband and wife, which could not be broken, in any circumstances whatsoever.

But the Hindu Marriage Act of 1955 by providing several matrimonial remedies including mainly divorce and nullity of marriage has seriously evaded its sacramental character. In this regard, the Marriage Laws (Amendment) Act, passed in 1976 made another onslaught upon the sacramental character by providing remedies like divorce by mutual consent.

Section 10 of Hindu Marriage Act deals with judicial separations. A degree of judicial separation does not terminate the marriage but on the other hand it puts the obligation of conjugal duties to an end. Previously divorce was unknown to the laws of Dharmashastra as marriage was regarded as an indissoluble union of husband and wife. Manu declared “a wife cannot be separated from her husband either by sale or by abandonment because marital tie could not be severed under any condition whatsoever. It, therefore follows that the Hindu law does not recognize a divorce.

But the provision of divorce in the existing marriage law has brought about a radical change in the legal concept of Hindu Marriage. Generally, the entire structure of divorce has been built on “fault theory”. But somewhere all were forgetting that divorce was provided for a real matrimonial wrong not for trivial ups and down of married life.

In the present age of materialism when the old values of marital relationship are being shattered, the entire philosophical background of marriage needed reconsideration. Thus the liberalization of divorce enables the parties to marriage to get rid of marriage bond at their sweet will. [By the virtue of the amendment the concept of marriage has undergone such a drastic and fundamental change that a system of marriage, known for its uniqueness and unparalleled tenets in the world has come to an end]²

Another important change is the age factor of parties to marriage. The Child Marriage Restraint Act, 1978 enhanced the lower age limit of the bride and bridegroom. Under this Act, they must have attained the age of 18 and of 21 years. Since there is now left no question of marriage below such given age, the provision for the consent of her guardian or her own competence to consent has met its natural death. In this circumstance the consent of her guardian in marriage would be meaningless; if she exercises this power of her rights and the resultant marriage would be entirely contractual in nature and not sacramental.

Hence it can be very well concluded that the sacramental character of marriage has been left behind but ceremonial character of marriage has been retained by Hindu marriage Act, 1955.

3. Evolution of live-in-Relationship in India

In Ancient India, though the marriage was a general norm, the Hindus scriptures describe and admit the existence of premarital relationship as well. According to Manu, premarital relationship existed both in Vedic period and afterwards, but was a rare occurrence. This concept of live-in-relationship is not new in India. In ancient times it was known as ‘Maitri-karar’ is which a written agreement was made between the two opposite sex that they would live together as friend and look after each other.³

Also, Gandharva Marriage i.e., one of the eight- hindu marriage, has incidents which and quite similar to the found in a live-in-relationship. The concept of live-in- relationship is nowhere defined neither is dictionary nor in law. Live-in-relationship means a woman living with a man as husband and wife for a reasonable period, without marrying him. These relationships are called and stigmatized as socially ambiguous and sexually exploitative relationships. But the issue is that to deem live-in-relationship as marriage, is the way it trivializes the role of marital customs which are mandatory in law for valid marriage.

The judgment of Justice C.S. Karnan of Madras High Court equating live-in-relation with marriage has made global news. This is how the Washington Post-[18.6.2013] has headlined the judgment “Indian Court rules that any couple who sleeps together is considered married”.⁴

To state Justice Karnan’s judicial thesis in his own words, “If a couple choose to consummate their sexual cravings, then the act becomes a total commitment with adherence to all consequence that may follow”. This is, mating means marriage.

If mating would be considered as marriage then it may be sanctioned by an increasingly destabilized and demoralized society. In major cities we see motherhood is crumbling. While in live-in-relationship the maternity is certain while paternity is uncertain. Some ultra modernist girls are crossing all norms of decency and morality. And the things, which are immoral and against public policy, do not have force of law.

In S.P.S. Balasubramanyam vs Sruttayan [AIR 1992 SC 756] the apex court had said, “If a man and a woman are living under the same roof and cohabiting for a number of years, there will be presumption under section 114 of The Evidence Act, 1872 that they live as husband and wife and the children born to them will not be illegitimate”.⁵

But if I ask, “is intention to live as husband and wife enough?”

In Hindu law as in most other system of law, it is the solemnization of marriage by performance of certain ceremonies and rights prescribed or recognized by law that confer the status of husband and wife provided the parties have capacity to marry.

Mere intention or agreement of parties to live together as husband and wife is not enough .⁶

It is submitted that intention alone can neither confer nor take away the status of marriage.⁷ A/c to the Indian contract Act, 1872, the law does not allow an agreement tainted with immorality to be enforced or an agreement is unlawful if the Court regards it as opposed to public policy. If parties have undergone necessary ceremonies of marriage they cannot be heard to say that they merely intended to be man and concubine. If requisite ceremonies are not performed, they cannot claim to be husband and wife whatever might have been their intention, unless the presumption of long cohabitation applies to them.⁸

So, if recognizing the freedom of choice available to adults, and a boy of 21 years and a 18 years old girl decide to consummate their sexual cravings” then either of them could go to the nearest family court with proof of their sexual act and claim to be married to the other, this really sounds very odd and somehow playing with dignity and cultural integrity.

The family is the primary institution that socializes individuals with time-tested mix of duties and rights. Marriage is the foundation of conventional family and society. Traditions and customs which have the force of law legitimize a marriage in the society’s eyes. So, the point is that when a Court

renders a judgment, it set legal precedent for all cases so they should exercise high judicial wisdom and do justice without harming the matrimonial law which sustains stable families.

4. Legalization of Live-in-Relationship in India

At present there is no special law in India to deal with the concept of live-in-relationship and its legality. However the Courts in India through their decisions in various cases, have laid down the law in respect of such relationship. Some of the land mark decision of the court in this regard are-

1. In Payal Sharma V. Superintendent, Nari Niketan Kandari Vihar, the Allahabad H.C. has held that a lady of the age of majority has a right to go anywhere she wants and both can live together even without getting married. As live-in-relationship may be immoral in the eyes of the conservative Indian society but it is not illegal in the eyes of law.

This is so uncalled for and even dangerous for society as it would become its disorganising factor for Court. Society is an invisible mechanism and still it oversees the individual and the family.

1. In Radhika v. State of Madhya Pradesh, It was held that in the case of a live-in-relationship, not only does the law presume in favour of a valid marriage but also it deems the child born out of such a relationship to be legitimate. And such children will have the right in there parent's property.

But the children that result from such relationship and also to be kept in mind what would be there status in the society. Even the PWDVA [Protection of Women from Domestic Violence Act, 2005] is silent on the status of children out of a live-in-relationship. But the question is that if a man live-in-relationship with a woman and cohabiting from a long time and also had children with them and side by side he also had a married life running. Then which relationship will prevail in the eye of law?

Because according to the current judgment, these all ceremonies and rites are formalities for the satisfaction of the society, they are not must for valid Hindu marriage given under the Act 1955 like monogamegs, age of marriage will remain dormant or ineffective, so, in present if mating is considered as marriage, so the Section 7, marriage ceremonies and Section 8 proof of marriage, which work for the ceremonial character in marriage will remain dormant. Instead of them physical attractions intention to sleep together and ceremonial character and to proof that they had sex with their mates by crossing all their limits of dignity would considered to be as marriage.

According(A/c) to Srimad Bhagavatam describes the advent of 'Kali Yuga' he says that in Kali Yuga mutual attraction will become the sole consideration in marital relationship and skill is love-making will be recognised as the chief excellence in man and woman [S. K. Anda XII 2.3]

Mating will be looked upon as marriage [XII 2.5] At the peak of the dark age, it says sexual relationship will be recognized as the only relationship. Dr. Epstein says in West Physical attraction is important in marriages, but warns people must distinguish lust from love.⁹

5. Conclusion/Suggestion

The law traditionally has been biased in favor of marriage. Public policy supports marriage as necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Cohabitation does not carry such rights and privileges. It has been said in the context the cohabitation has all the headaches of marriage without any of the benefits.¹⁰

There are no strings attached to it nor the same creates any legal bonding between the parties. Such relationship is a contract of living together which is renewed every day by the parties, In live-in-relationship a/c to the sweet will of the parties they will walk in and walk out of such relationship and can be terminated by either without consent of the other party.

The judgment mentioned above has caused great furore and were subjected or severe public anger, they were seen as a step to demolish the culture and tradition of India and to encourage the western concept of live-in-relationship. But an analysis shows that the characteristics of live-in-relationship which attracts people towards it are lack of responsibility, freedom and lack of commitment.

A lawful marriage can be enforced by asserting conjugal rights. It cannot be terminated unilaterally by either party [except in Islamic Shariat law by the husband]. But live-in-relationship is voluntary sexual union founded on mutual attraction, not on mutual agreement. Neither partner can enforce the live-in-relationship but either of them can unilaterally walk out of it with ease. Marriage is a mutually enforceable bond but live-in-relationship is unilaterally terminable affair. Then how could indulging in sex and begetting children alone make live-in-affairs equal to marriage?

So the Court ensures alimony to the deserted lady who is good for her, but the Court wrongly equated her non binding live-in-relationship to binding legal marriage. Next, to recognise long live-in-mating as equal marriage, he declared the rituals which validate marriage under diverse religious laws as irrelevant. And in upgrading live-in-relation to the status of legal marriage, the Court has actually downgraded legal marriages to live-in-mating by erasing the legal difference between the two. In the process he has outlawed all laws of marriage for doing apparent justice. So at last to suggest that what could be the best and concluded with that what could be the next?

So, if mating will be looked upon as marriage then the Hindu Marriage will totally lost its sacramental, ceremonial and even contractual nature and it will turn into a use and throw process and the things are to be governed by use & throw theory in such kind of live-in-relationship.

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