



## Psychological review on Indian Judiciary system

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### Abstract

Marriage is necessarily the basis of social foundation from which important legal rights and obligations emerge in ancient times, marriage was considered to be decided by the god and divinity was associated with it. It is considered to be a sacred social institution. With the ever changing society and human psychology, the concept of marriage and relationship has also evolved. The upcoming generations and considering relationship ever more liberally. One such concept of live-in relationship is being adopted by numerous couples around the world. This concept has slowly paved its way in the Indian scenario as well. On May 22, 2013, the apex court judgement that if a man and a woman in love decide to live together as a couple, it is well within their right to life and by no means can be deemed a “criminal offence”. As well as 27<sup>th</sup> September 2018 in one another judgement of supreme court said “Adultery” can be a ground for civil wrong, a ground for divorce, but not a criminal offence. It’s time to say that husband is not the master of women. Psychology studies the mental aspect that determines effects on human behaviour. A legal system is necessary for the proper functioning of a society since it tries to solve numerous problems existing in the society in today’s time. Psychology can help the present decision makers in making decision by providing more accurate images and pictures of human perceptions and preference. This paper highlights according to Indian culture the controversial judgement of supreme court that it will destroy the sanctity of marriage and it would have an adverse impact on the youths.

**Keyword** :- Indian culture, Sanctity of marriage, Supreme court judgement, Fundamental right, psychological aspect.

### Introduction

A crime is something which is committed on the society as a whole, while a living relation and adultery is more of a personal issue. Treating adultery as a crime would tantamount to the state entering into a real private realm. Adultery doesn’t fit into the concept of the crime as that would otherwise invade the extreme privacy sphere of marriage. However it contuse to stand as a civil wrong.

In the instant case, supreme court struck down sec.497 IPC & living relationship . The court has added its bit to endanger the institution of marriage. Winds have been cast to dilute the institution upon which the strong foundation of the Indian society rests. The deference effect has been outrightly blown. This cessation will lead to rapid profiling in the crimes with absolute rights come consequences. Hence this verdict can lead to sexual anarchy. A moral wrong can never be a legal right. The reasons are unconvincing and hence this cannot become Lex-Loci. If



adultery is not a crime or a wrong then obtaining a divorce and this ground would be an unending chase. Criminal law is a guardian of the historical roots and moral principles of the society.

Adultery and live-in-relationship, though an intervention in the right to privacy, wrecks the life of another person. It doesn't only affect the offending spouses or and a man & woman and the victim spouses but also takes down with it the children and the families associated with rights come duties and absolute rights destabilise a society. India is still a semi-feudal and conservative nation. So adjudication merely on the nations of the western countries is not possible. This aim of this research paper is two fold:-

- 1) To study the concept of "Constitutionalism" in the light of the judgements of the supreme court of India,
- 2) To analyse the judgements of the Supreme Court of India in which the Apex Court has explicated the "idea" of Constitutionalism. The judgements of the Supreme Court of India in the nineteenth and twentieth centuries have been analysed hereunder.

#### Live-in-relationship

The Indian society has observed a drastic change in its living pattern in the past few years. People are slowly and gradually opening their minds towards the idea of pre-marital sex and live-in-relationships. However, thing has been continuously under criticism and highly discussed as such concepts lack legality and acceptance by the society.

#### Judicial response to live-in-relationships

"with changing social norms of legitimacy in every society, including ours, what was illegitimate today."

Honourable Justice A.K. Ganguly in **Revanasiddappa vs. Mallikarjun.**

Indian judiciary has taken a lead to fill the gap that was created in absence of any specific statute relating to live-in-relationships. It may be considered immoral in the eyes of society but it is not at all "illegal" in the eye of the law. 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 going relationship similarly as in marriage.



In landmark case of **S. Khushboo vs. Kanniammal**, (Date of judgement :-May 23, 2013)the supreme court held that a living relationship comes within the ambit of right to life under Article 21 the Constitution of India. The court further held that live-in-relationships are permissible and the act of two major living together cannot be considered illegal or unlawful.

Section 497 of IPC

**Case :- Joseph Shine vs Union of India(Adultery Judgement) writ petition (criminal) no. 194 of 2017.**

Date of Judgement :- September 27, 2018.

Issues advanced

The validity of the section was questioned on three grounds :-

- 1) Sec. 497 infringes article 21(2), “Right to privacy”.
- 2) Sec. 497 violates article 14 and article 15 of the Indian constitution.
- 3) Sec. 198(2) of the cr.pc. which contains the procedure for prosecution under chapter xx of the IPC shall be unconstitutional only to the extent that is applicable to the offence of Adultery under sec.497.

Judgement

Under the current provision the husband is an aggrieved person and the wife is neglected as a scapegoat. Presently, the provision is contemplative of a tripartite complexity. A circumstance may be formulated where uniformity of situation and the justice to file the may be bestowed with the wife. But, in case of adultery the law demands the multitudes to remain faithful and maintain fidelity, and makes the adulterer the criminal. This is by law a rule which gets into the essence of isolation; it is a prejudiced power and a socio-moral issue. Infidelity, in specific circumstances, may not be a problem of an unfortunate matrimony. It is tough to conceptualize of such circumstances in absolute terms. The issue that demands to determine whether the said act should be made a criminal offence, particularly when on certain moments, it can be the result.

Assuming of adultery from the point of view of crime would be a retrogressive step. The court has progressed on the track of transformative constitutionalism and therefore, it is completely inapplicable to sit in a time machine to a different era where the machine proceed on the path of regression. Hence, to treat adultery as a crime would be unfair in law. The supreme court has struck down the 158 years old Victorian morality law on Adultery in its recent judgement in above case. The judgement is one of its kinds and has overruled all the previous judgements upholding the criminalisation of adultery. So, now Adultery has become legal but is still not ethical.

**Discussion**

The Supreme Court controversial observation okaying live-in relationships and adultery has generated a fierce debate across the country the historic observation has frowned many orthodox groups fearing that it will destroy the sanctity of marriage. Abuse violence and juvenile



delinquencies and in the wake of the controversial ruling, the erstwhile objectionable social behaviour gets legalised. It would have an adverse impact on the youths. Metro life that throws floodgates of challenges also supports this kind of an arrangement. The individual should be free to live as they think best, subject only to the limitation that their actions and choices should not cause harm to others. Now even in a country like India bounded by innumerable cultural ethos and rites, the law finds legally nothing wrong in live-in-relationship.

India a country of cultural values and rituals, ceremonies cannot afford to plunge into western society. But since growing economy and people getting more and more aware, India finally has to step ahead and walk with the rest of the world by legalizing live-in-relationship. Yeah it sounds absurd that country like India would allow its citizens to do that. Despite the fact that there are scores of couples who are opting for live-in-relationships, the society still attaches a taboo to such relationships. The majority looks at live-in-relationship as a dilution of morals and more importantly tradition.

The Supreme Court has made a ruling striking down sec.497 of IPC saying that adultery is no longer a crime, it can be grounds for divorce. Several critics made a point that it will affect the sanctity of marriages and it is against Indian culture. They forgot that the 150 year old law was a scaffolding of Victorian morality in India. I don't understand how these right wingers regard the morality imposed by the British regime as part of Indian culture. Several people especially men came on twitter outraging against the verdict, they even went to the extent of saying that it will give way for an increase in an illegal relationship.

*Gandhian view of morality*



The present degeneration of humanity and crisis of character is very much explainable by above Gandhian views. The root of cause lies in the immorality of means adopted by people in general. Ends have become supreme whereas means have become secondary such a mindset rules over peoples thought process and have diluted the path of achieving the never ending aspirations of people in every sphere of life. The moral and ethical boundaries have become permeable by impinging influences of success based upon unethical ways and means.

Freedom of speech and expression has be given a broad canvas, but it has to have inherent limitations which are permissible within the constitutional parameters. We have already opined that freedom of speech and expression as enshrined under Article 19(1)(a) of the constitution is not absolute in view of Article 19(2) of the Constitution. We reiterate the said right as a right of great value of transcends and with the passage of time and growth of culture, it has to pave the path of ascendancy, but it cannot be put in the compartment of absoluteness. There is constitutional limitation attached to it. Freedom of speech and expression cannot be “absolute”, the supreme court today said as it refused. On September 27, 2018 the supreme court said artistic freedom of expression could not be misused to use abusive language against Mahatma Gandhi and Subhash Chandra Bose.

Liberty in political theory is closely associated with the nature of state. In India neither the state nor an individual had the privilege of trespassing the preordained limits which created an altogether different the unique notion of liberty that stood in contrast to the prevailing western notions. Allegiance to the existing pattern of restraints rather than freedom from them became the central theme of oriental thought. But later, loyalty to the established pattern disintegrated with the entry of the western notion of state and other related concepts. The nature of political theory in India was different from that of the west because at no point of history was there any kind of a major fight between the temporal and the spiritual that could balance the existing power structure and power relations. Religion constantly remained a reference point as far as the organisation and functioning of state, individual and group behaviour are concerned.

The excesses of individualism have cost dearly to human society. The individual gets preference over the collectively at a very high social cost which is evident in the present day problems like increase in the rate of broken families, juvenile delinquency, crime, poverty, conspicuous consumption, corruption in all walks of life, and mass production unrelated to demands. All such problems are accentuating the imbalances in the society by diverting man from his social obligation and making him more and more self-centred. Gandhian understanding of the notion of liberty sheds light on the root cause of present day problems and shows a way out of it by upholding social obligation which cannot be taken lightly dismissed without giving a trial. Gandhi denying the western notion of the state and individual liberty, took a different stand and subjected the individual to socio-political and ethico-religious restraints, giving predominance to self-restraint that emanated from the latter and fixed the sphere of state action to the minimum.



Theoretically freedom was perceived as absence of restraints, whether self-imposed or imposed by others. Hence the relationship between liberty and restraints remained proportional. “less the restraints, more will be the freedom” became the dictum of individualism which received more attention in the history of political theory, and individual liberty became a single significant determinant of state’s jurisdiction. Though state intervention reduced personal freedom, it was viewed as an unavoidable and inevitable bargain for freedom by the social contractulists. With this broad outline, let us now proceed to our main pursuit of how Gandhi looks at the concept of liberty that is more western than Indian. Contrary to the western notions of his times that overemphasised individual liberty, Gandhi emphasised restraints on both individual and collective behaviour as a precondition for personal, collective, as well as national liberty. Social concern and social obligation, rather than individual comfort, determined the course of Gandhian thought.

The concept of liberty in the Gandhian framework is interwoven with his socio-political philosophy. Like all his theoretical constructions, liberty too did not remain absolutely a theoretical concept defined and analysed in isolation from life but was closely associated with his life situations in which the metaphysical and the empirical merged. He noticed the drift between the actual and the ideal. Freedom, essentially an abstract notion, was sought to be understood in its concrete aspects. Gandhi’s public as well as private life directed and moulded his perception of liberty. Liberty was an integral part of his view of life. State, which was looked upon either as a source or as an opponent of individual freedom, occupied a secondary playing a marginal and an insignificant role in the Gandhian framework, since the core of liberty remains untouched by this external institution.

Instead of defining liberty positively, Gandhi’s quest began with a critical assessment of the then existing situation to find out the reasons for the loss of individual, group and national liberty. Absence of self-restraint in the case of individuals, primordial social groups, religious sects and notions, he felt, led to the many socio-economic problems that ultimately resulted in loss of liberty for the respective segments. Therefore there emerged a need to restrict individual, collective, institutional behaviour, with an intention to regain the lost liberty. Gandhi reflected on the unhealthy repercussions of restraint-free human action at the individual and collective level that led to many social problems limiting /the area of freedom of action.

### **Conclusion**

Live-in-relationship has always been the focus of debates as it possess threats to our basic societal framework. It is not considered as an offence as there is no law until the date that prohibits this kind of relationship. In order to bring justice to those female who are the victims of live-in-relationships Indian judiciary took a step, brought interpretations and made such arrangements valid. Still India has not legalised it, legalising means having special legislation for it. As of now, there is no legislation or statute that specifically governs matters related to



succession, maintenance, guardianship in regards to live-in-relationship. It has recognised live-in-relationships through various judgements so that individuals of the relationships can be protected from abuse. At the same time, courts frequently declined to make any kind of positive steps towards legalising such practise by allowing any compulsory agreements between unmarried couples as this could conflict with the general society strategy. It ends up plainly obvious that the Indian judiciary is not prepared to treat all kind of living relations as akin to marriage. Only stable and reasonably long period of relations between the couples are given the advantage of the 2005 Act. It is the duty of the judiciary to ensure that law has to accommodate with the changing scenario of the society. Though courts through various judgements and case laws attempted to get a clear picture regarding the status of live-in-relationships, yet it remains unclear on various aspects, where there is an urgent need for having different sets of rules and regulation and codification with regards to such kind of relationship.

Now let us come to the last three concluding paras of this landmark judgment delivered by CJI. Deepak Mishra for himself and justice A.M. Khanwilkar. In para 56, it says “as we have held that section 497 IPC is unconstitutional and adultery should not be treated as an offence, it is appropriate to declare section 198cr.p.c which deals with the procedure for filing a complaint in relation to the offence of adultery as unconstitutional. When the substantive provision goes, the procedural provision has to pave the same path”.

Going ahead, in para 57 it is then observed that, “In view of the foregoing analysis. The decisions in Sowmithri Vishnu (supra) and V Revathi (supra) stand overruled and any other judgment following precedents also stands overruled. Taking his landmark judgment forward, Justice Chandrachud then goes on to say in para 35 that “the hypothesis which forms the basis of law on adultery is the subsistence of a patriarchal order. Section 497 is based on a notion of morality which fails to accord with the values on which the constitution is founded. The freedoms which the constitution guarantees inhere in men and women alike. In enacting section 497, the legislature makes an ostensible effort to protect the institution of marriage ostensible it is, because the provision postulates a notion of marriage. Which subverts the equality of spouses. Marriage in a constitutional regime is founded on the equality of them is entitled to the same liberty which para III guarantees. Each of them is entitled to take decisions in accordance with his and her conscience and each must have the ability to pursue the human desire for fulfilment. Section 497 is based on the understanding that marriage submerges the identity of the women it is based on a notion of marital subordination. In recognising, accepting and enforcing these notion, sec.497 is consistent with the ethos of the constitution. Sec. 497 treats a women as but a possession of her spouse. The essential values on which the constitution is founded-liberty, dignity and equality cannot allow such a view of marriage. Sec. 497 suffers from manifest arbitrariness.



Finally and most importantly Justice Dr. D.Y. Chandrachud in the last para 67 of this landmark judgement sums up by saying that, “criminal law must be in consonance with constitutional morality. The law on adultery enforces a construct of marriage where one partner is to cede her sexual autonomy to the other. Being antithetical to the constitutional guarantees of liberty, dignity and equality, sec,497 does not constitutional master.

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