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LIVE-IN RELATIONSHIP IN INDIA: ITS SOCIO - LEGAL STATUS

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INTRODUCTION

*"With Changing Social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today"*¹

The concept of live-in relationship in India what is known as 'cohabitation' in other countries is not a very old one. It is a practice in which two individuals who are of opposite sex live together like a married couple but are not married. It is not necessary that both enter into an intimate relationship. The main reason behind having such a relationship could be that a couple wants to test their compatibility before marriage or it could also be that they want to avoid the hassles of a marriage. There could be many more reasons behind entering into such a relationship. The point to be noted remains that a lot of new generation Indians prefer to opt for live-in relationship than marrying. On the other hand a number of people in Indian society do not approve of such a relationship as it is considered unacceptable under Indian culture for one male and female to live together without marrying each other. It still remains a taboo for Indian Society. Therefore, there are several social limitations associated to it. Another topic for moot is its legal status. Although there is no law which prohibits live in relationship, there is no law even to regulate it. In many countries registration is required if a couple wants to practice live-in relationship. However, in India there is no need of any such requirement. A couple can easily live with each other. The question arises as to what will be the future of such a relationship. It can bring down the whole institution of marriage which might result in crumbling the society brick by brick. This is because family is the basic unit of society and marriage binds people and provides stability. On the other hand, live-in relationship in an unstable practice as it provides people to walk out of relationship at any time they feel like. The question also arises as to the hereditary claim and maintenance of the children born out of such a relationship. All these concerns were looked into by the Supreme Court of India in various cases. The current study discusses the legal status of live-in relationship and rights and

¹ Justice AK. Gaunguly, 'Revanasiddappa vs. Mallikarjun' (2011) 11 SCC 1.

obligation of both the partners, the paper also looks into the status of woman in such a relationship and her right to maintenance, the paper also tries to find out legitimacy of the child born out of such relationship.

Although live-in relationship has been recognised by the courts in India there are many problems associated with this practice. Firstly, the society is not ready to accept such a relationship. This practice is only prevalent in big cities like Delhi and Mumbai. In these cities also a lot of people do not hold a good opinion about unmarried persons living together. People think it as a derogatory practice and the girls who live in such relationships are considered to be of a questionable character. In short the society although has become liberal is not yet ready to accept such a relation. Secondly, the problem arises as to the legal status of such a relationship. There is no set rule validating such a relationship. A person can come out of such a relationship at any time as it does not bind two persons. The courts have although given many judgments with regards to the fact that when a live-in relationship acquires status of marriage, there is still no clarity with regards to it. For example in case if a married male is living with an unmarried female then can such a relationship be considered as live in. In the case of “*Indra Sarma v. V.K Sarma*”² the court denied maintenance to the appellate on the ground that she does not fall under the category of live in partners as during her cohabitation with the respondent she was fully aware that he is married. In the above case the woman was aware about the marriage but what if the woman is not aware about the marriage. Third problem arises as to the maintenance. Whether such a woman is entitled to any maintenance under section 125 of Cr.Pc as only wife is entitled to the maintenance? Live-in relationship is nothing like marriage so can the live-in relationship partners be given the status of spouse. In the case of “*Chanmmuniya v. Chanmuniya Virendra Kumar Singh*”³ the supreme court of India allowed maintenance to the woman. The Court held that if a man lived with a woman for a long period of time then if he walks out of such a relationship has to pay her maintenance and there is no need for them to be married. However, the court has failed to provide what is the “long period of time” when live-in partners could be considered as spouses for the purpose of maintenance. Fourth problem arises as to the legitimacy of the child. The question is whether the child born out of the long-lived relationship will have any claim over the ancestral property of the father or he will have same treatment as that given to the children born out of void or voidable

² *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755

³ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141

relationship. The researcher proposes to look into the abovementioned socio and legal problems of live-in relationship. The researcher will try to analyze the perception of society which includes opinion of different generations with regards to live in relationship. The researcher will also try to find out whether live-in relationship can be given the status of marriage, and if not given then to what extent both the partners can exert their right over each other. The researcher will look into the rights of the child born in such relationship.

LIVE-IN RELATIONSHIP AND ITS NEW ADAPTIVE ASPECT IN INDIA

Marriage is both a religious event and a legal affirmation of status, with both civil and religious implications. Nowadays, weddings are solemnized for legal reasons instead of religious holiness, yet it cannot be denied that the status of marriage has its historical and traditional roots as a religious entity. In today's society, a "live-in relationship" is defined as a non-ceremonial marriage in which two heterosexual people reside together but are not forbidden from marrying. Yet, such live-in arrangements are frowned upon by Indian Culture for a variety of reasons. If the woman is economically dependent on her partner in a live-in relationship, she might develop a subservient role. Individuals in a living arrangement may opt to live together through a myriad of factors. In many circumstances, the partners cohabit instead of marry as one or both are wedded to a 3rd person and are pending divorce proceedings. In other cases, partners choose to live in relationship rather than marry because such a connection corresponds more precisely to their underlying system of beliefs. The Parliament, through the "Protection of Women from Domestic Violence Act, 2005, has made note of this new relationship, namely, the live-in relationship.

Section 2(a) of the Act states “*aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.*”⁴

Section 2(f) provides: “*Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family*”⁵

⁴ Section 2(a) Domestic Violence Act, 2005.

⁵ Section 2(f) Domestic Violence Act, 2005.

As a result, the term "domestic relationship" refers to both a married relationship and an alliance "in the nature of marriage." However, the Act does not define this terminology. The notion of live-in relationships also isn't new in India; in fact, it was acknowledged and approved in certain regions of Gujarat and Maharashtra as early as 1993. There was a system named 'Maitri Karar' wherein a man and a woman may sign a 'friendship agreement' before a Magistrate and legitimize the arrangement the objective was to offer the stated woman a sense of security the *Justice Malimath Committee Report 2003*, suggested that "if a man and a woman are living together as husband and wife for a reasonable long period, the man shall be deemed to have married the woman"⁶

The Malimath Committee also proposed that the term "wife" in Section 125 of the Indian Penal Code be revised to include "a woman living with the man like his wife," so that even a woman in a live-in relationship with a man would be allowed to maintenance.

Live in Relationship And Judicial Attitude Toward It

Although 'Live in Relationship' is typically considered unethical in India, it is not unusual to encounter individuals in major cities living with each other as husband and wife with no marital union. Neither of the statutes dealing with marriage⁷ officially acknowledged 'Live in Relationships' until the PWDA 2006, which is regarded as the first legislation that recognized and also included live in relationships within its ambit.

By adopting the presumption of marriage where the couple been living together for a long time, Indian courts have established significant proponents of live-in partnerships.

In 'A Dinohamy v. W L Blahamy' The Privy Council laid down "Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage"⁸

Further in Mohabbat Ali Khan Case⁹ the Privy Council held "the law presumes in favour of

⁶ Justice Malimath Committee 2003

⁷ Hindu Marriage Act 1955 , Special Marriage Act , 1954

⁸ AIR 1927PC 185

⁹ Mohabbat Ali Khan v. Md.Ibrahim Khan, A.I.R. 1929 P.C. 135 (India)

marriage and against concubinage when a man and women have cohabited continuously for number of years”¹⁰

It has to be noted that this presumption finds its support further in section 114 of the Indian Evidence act.

In ‘Gokal Chand vs Pravin Kumari’ The SC held “continuous cohabitation of man and women as husband and wife and their treatment as such for number of years may raise the presumption of marriage but the presumption which may be withdrawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption the court cannot ignore them”¹¹

In “Badri Prasad vs Deputy Director”¹² Court observed “*If man and woman who live as husband and wife in society are compelled to prove, after half-a-century of wedlock by eye-witness evidence that they were validly married fifty years earlier, few will succeed. A strong presumption arises in favor of wed-lock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy*”¹³

In Mohan Singh v. Rajnikant court reiterated that “There is presumption of marriage in Live in Relationships and these cannot be termed as Walking In and Walking Out Relationship”¹⁴

So from such a continuous list of judgments it can be inferred that judiciary has been leaned in favour of live In Relationships rather than concubinage.

In Khushboo vs Kanaimmal and another the SC observed that “Though the concept of live-in relationship is considered immoral by the society, but is definitely not illegal in the eyes of the law. Living together is a right to life and therefore it cannot be held illegal”¹⁵

¹⁰ id

¹¹ Gokal Chand v. Pravin Kumari AIR 1952 SC 231

¹² 1978) 3 SCC 52

¹³ id

¹⁴ Mohan Singh v. Rajnikant AIR 2008 SC 324

¹⁵ Khushboo vs Kanaimmal and another in 2010 (5 SCC 600 2010).

Indra Sarma vs VKV Sarma a further key case on the subject of live-in relationships in which the consequences of various forms of relationships were investigated Court held that “*all live-in relationships are not relationships in the nature of marriage. In this particular case, it was found that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage, because it has no inherent or essential characteristic of a marriage, but a relationship other than in the nature of marriage*”¹⁶

Court Further Held That

“*Such relationship may endure for a long time and can result in a pattern of dependency and vulnerability, and increasing number of such relationships calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship. Legislature, of course, cannot promote premarital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against. Thus, the Parliament has to ponder over these issues, bring in proper legislation, or make a proper amendment of the Act, so that women and the children born out of such kinds of relationships are protected, though such relationship might not be a relationship in the nature of a marriage*”¹⁷

Before the Judgement in *Joseph Shine Case*¹⁸ Adultery was an offence under section 497 IPC which meant a married or unmarried man was punished for having sexual intercourse with a married woman. It applied to only man as only man was liable to be prosecuted for adultery but in *Joseph shine case* SC has annulled section 497 IPC and held it to be violative of article 14. It is still a ground for divorce. Similarly consensual sex between two adult homogenous persons was punishable under section 377 IPC, it was repealed in *Navtej Singh Johar Case*¹⁹. So it has to be noted that although although such practices are not criminal offence now but these are not covered under the scope of “*Relationship in the Nature of Marriage*”

In the case of *D. Velusamy and D. Patchaimal* (5 SCC 600) the SC established specific prerequisites for recognition as “in the nature of marriage” These conditions are:

“*1. The couple must hold themselves out to society as being akin to spouses. 2. They must be of legal age to marry. 3. They must be otherwise qualified to enter into a legal marriage,*

¹⁶ *Indra Sarma vs VKV Sarma* (15 SCC 755). 2013.

¹⁷ *id*

¹⁸ *Joseph Shine v. Union of India*, 2018 SCC OnLine SC 1676.

¹⁹ *Navtej Singh Johar vs Union of India* (5 SCC 1)

including being unmarried. 4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time”²⁰

Recent Developments

Recently in *‘Chinmayee Jena v. State of Odisha’*²¹ The Orissa HC upheld a transgender person and woman's right to be in a live-in relationship. It observed “*love knows no bound has expanded its bounds to include same-sex relationships*”²²

Despite the fact that same sex relationships are not legally able into marriages, the Indian judiciary has expanded the rights to cohabit in live-in relationships to same-sex couples, albeit to a limited level.

Bombay HC in *‘Reshma Begum v. the State of Maharashtra’* held that “*to constitute a domestic relationship’ under Section 2(f) of the Act, the possibility of a legal marriage is a sine qua non. In the case, the Court asserted that the impugned provision could not be interpreted excessively to promote adulterous relationships. Thus, the Court held that the relationship between the parties was not in the nature of marriage. Therefore, the applicant was not entitled to any relief under the Act*”²³

The Allahabad High Court in “*Smt. Aneeta and another v. State of U.P.*”²⁴ while dismissing a petition for protection to a married women living in relationship with other man other than his marriage observed that “*live-in relationships cannot be at the cost of the country’s social fabric*”²⁵

The Punjab & Haryana High Court in *Paramjit Kaur and another v. State of Punjab*²⁶ Contrary to the view of Allahabad HC Observed “*if two adult people are in a live-in relationship with each other, even though they are already married to someone else, it would not amount to an offence*”²⁷ Whereas on the other hand The Punjab And Haryana HC Had itself rejected a plea filed by a unmarried couple for grant of protection from girl’s family by observing that “*if such*

²⁰ . D. Velusamy vs. D. Patchaiammal (10 SCC 469). 2010. [https:// www.indiankanoon.org/doc/1521881/](https://www.indiankanoon.org/doc/1521881/)

²¹ Chinmayee Jena v. State of Odisha, W.P. (Cri) No.: 57 of 2020.

²² id

²³ Reshma Begum v. State of Maharashtra, (2018) 3 AIR Bom R (Cri) 482.

²⁴ WRIT - C No. - 14443 of 2021

²⁵ id

²⁶ Paramjit Kaur and another v. State of Punjab CRWP-7874 of 2021 <https://lawbeat.in/sites/default/files/2021-09/Paramjit%20Kaur%20and%20another%20v.%20State%20of%20Punjab%20and%20others.pdf>

²⁷ id

protection as claimed is granted, the entire social fabric of the society would get disturbed”²⁸

So there is inconsistency among the HCs on the issue of Live in relationships despite the clear-cut guidelines of SC on the issue as discussed above.

Live in Relationships and Right to of Women and Child of Such Relationship:

Malimath Committee²⁹ suggested change in the definition of the “wife” in Section 125 CrPC so as to include women who was living with the man as his wife for a long period of time so as to make women able to claim maintenance in ‘Live in relationships’. “Section 125 of the Cr. P.C. provides for claiming maintenance by wives, children, and parents from a person on which they are dependent and are unable to maintain themselves.”³⁰ Despite the fact that the modification was not included into the Cr. P.C., such connections were brought within the scope of domestic relationships. Section 2(f) of Prevention of Domestic Violence Act, 2005 defines domestic relationship as “a relationship between two persons who live or have lived together, at any point of time, in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”³¹

According to this definition, live-in relationships which are in a nature of marriage, that is, the couples are living for a long period of time and presenting themselves as husband and wife come under the ambit of the PDV Act, 2005. Therefore, the woman in live-in relationship can take protection under Protection of Women from Domestic Violence Act, 2005 and can claim for maintenance also³²

The SC considered the subject of the applicability of the PWDV Act, 2005 to live-in relationships in the decision of "Lalita Toppo versus State of Jharkhand. It was held that the estranged wife or the live-in partner would be entitled relief under the Act in a shared household it is only the woman who can claim maintenance under the PDV Act, 2005. Relief under the

²⁸ "Entire Social Fabric Of Society Would Get Disturbed": P&H High Court Refuses To Grant Protection To A Live-In Couple <https://www.livelaw.in/news-updates/entire-social-fabric-of-society-would-get-disturbed-ph-high-court-refuses-to-grant-protection-to-a-live-in-couple-174131>

²⁹ Dr. Justice V.S. Malimath Report. Committee on Reforms of Criminal Justice System. Government of India, Ministry of Home Affairs. Report Vol I; March 2003. https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf

³⁰ Section 125 Code of Criminal Procedure 1973

³¹ 2(f) PWDVA 2005

³² D. Velusamy vs. D. Patchaiammal (10 SCC 469). 2010

PDV Act, 2005 is not available to men in live-in relationships”³³

In *Tulsa vs Durghatiya* The SC Granted right to property to a child born out of live in relationship, it observed that “children born from live-in relationship would not be treated as illegitimate if their parents would have lived under one roof and cohabited for a considerably long period of time so as to be recognized as husband and wife and it must not be a walk in and walk out relationship”³⁴

Section 16 of the Hindu Marriage Act, 1955 and Section 26 of the Special Marriage Act, bestow legitimacy to children born out of void and voidable marriages by providing that children born out of marriage, which is null and void or where a decree of nullity is granted in respect of voidable marriage, shall be legitimate or deemed to be legitimate, respectively. But according to Subsection (3) of the same sections of the Act, right of inheritance of such children is limited to the property of the parents only. Therefore, such children do not have the coparcenary rights in the property of the Hindu undivided family (HUF) if their parents were not legally wed to each other. Thus, the provisions of these sections of the Act have been applied to provide right of inheritance to the children born out of live-in relationship in the self-acquired property of the parents. But if their parents are not legally married to each other, they cannot claim the coparcenary rights in the property of the HUF of their father. Claiming maintenance under the Section 125 of the Cr. P.C is well within the rights of a dependent children born out of the live-in relationships, as the section itself expressly mentions both legitimate and illegitimate child. In the matter of deciding for the guardianship, mother is regarded as the natural guardian for such children³⁵

Supreme Court in *Revanasiddappa Case* held that “nevertheless of the relationship between parents, birth of a child out of such relationship has to be viewed separate of the relationship of the parents. It is as plain and clear as sunshine that a child born out of such relationship is completely innocent and is entitled to all the rights and privileges open to children born out of valid marriages”³⁶

³³ *Lalita Toppo vs State of Jharkhand* (2019) 13 SCC 796

³⁴ *id*

³⁵ Choudhary Laxmi Narayan, “Live-In Relationships in India—Legal and Psychological Implications” *Journal of Psychosexual Health*, 3(1) 18–23, 2021

³⁶ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1

Hence a child born out of such a relationship can claim inheritance in self acquired property of his father but it must be proved that the relationship of his parents was such as can be read into 'Nature of Relationship' section 2(f) of PWDVA 2005.

CONCLUSION

Live-in relationships allow couples to get to understand one other better while also giving them the option to leave the commitment whenever they choose. They must, however, overcome several social and legal obstacles. Women are often put in a negative position as a result of such relationships. The SC has set rules to regulate such unions as well as to safeguard the women's rights participating in the relation and kids born from it, as previously detailed. For the modern trend, social values and standards have shifted. In certain cases, a live-in relationship is acceptable, but the institution of marriage is critical to sustaining social order, it is more vital to get into a good, beloved, and meaningful connection than to stay lonely imprisoned in an unpleasant, toxic, and bothersome marriage. "Live-in relationships" can't be regarded as sacred, but rather as a connection in the form of a contract that protects both parties. The Parliament must enact legislation that recognizes Live in Relationships with a law. The notion of living in relationship has been partly recognized in law by proclaiming it to be morally objectionable rather than an offense or sinful in India. Yet, owing to the absence of an exclusive law or any update to current personal laws to recognize live-in relationships, it is imperative that the matter be resolved with a comprehensive response.

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