



LIVE-IN RELATIONSHIP IN INDIA: A JUDICIAL APPROACH

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ABSTRACT :

Live-in relationship has been one of the most controversial legal topics in the instant past. The aspects of Live-in relationship was not very clear in India until the Hon'ble Supreme Court gave its landmark judgment in D. Veluswamy Vs. D. Patchaiammal on 21st October, 2010 about 'relationship in nature of marriage' under Protection of Women from Domestic Violence Act, 2005. Although, there is no legislation on this subject matter, the Indian Judiciary has thrown much light into the issue on live-in relationships and has cautiously and sensibly tried to balance the general expectations of the society and the individual rights of people. This article seeks to gauge the current legal status of live-in relationship in India. It also tries to look into recent developments in the attitude of the Courts in granting various rights to live-in partners in India through judgments.

KEYWORDS : *Live-in relationship, Malimath Committee, relationship in the nature of marriage, Judicial Approach towards live-in.*

INTRODUCTION

Marriage is one of the most important institutions of any society. In all societies, whether proletariat, underdeveloped and developed-social anthropologists discovered some form of mating, some degree of social regulation over sex relationships. Every society regulates the sexual behaviour of its members. Therefore, in every society we find norms governing the sexual relationship between male and female. These complex norms constitute the institution of marriage. In the institution of marriage we have the relationship between a man and a woman. Such relationship being culturally defined and socially approved is established through some religious or social rules.¹

R N Sharma defines Hindu marriage as, "a religious sacrament in which a man and a woman are bound in permanent relationship for spiritual, social and physical purposes of dharma, procreation and sexual pleasure."²



India is a country having rich values, traditions, customs and beliefs which are the important sources of law. Marriage is a sacred union, a social institution and one of the important part of Indian culture, which has strong cultural roots, focuses on morality and social ethics. But with changing times, we have started, especially the youth, to follow the western culture, which is totally different than Indian culture. Thus India is slowly opening its doors for western ideas and

¹Puja Mondal, Concept of Marriage in Hinduism, available at <http://www.yourarticlelibrary.com/marriage/concept-of-marriage-in-hinduism-essay/4366>

²www.coursehero.com/file/24081912/Family-Kaw-Assignment-Autosaveddocx/

lifestyles and one of the most crucial episode amongst it is the concept of live-in relationship.³

MEANING OF LIVE-IN RELATIONSHIP

Live-in relationship finds ample support in Hindu Mythology. Bhima lived in with Hidimba, the sister of Hidimbatur. They were blessed with a son namely Ghatotkach, who was always considered a legitimate son of Bhima. Furthermore, there are eight forms of Marriages as per Manusmriti that gives rise to a valid marriage. One of them is Gandharva Vivah, which does not involve any ceremony other than voluntary physical union of the maiden with lover arising from desire and culminating in sexual intercourse.⁴

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 marriages".⁵ Live-in relation which can also be referred to as cohabitation, in essence, is an arrangement whereby two people agree to live together on a permanent or long term basis in a sexually and/or emotionally intimate relationship. However, that name is typically used to denote unmarried couples who live under the same roof. Cohabitation or live-in relationships have turned into a common pattern amongst people across the Western World. In India, live in relationships have been a taboo right since the British raj. However, this is no longer entirely true amongst young couples in big cities like Bangalore, Mumbai, Delhi, etc. But, one cannot deny that maintaining such relationships in most of the country's rural areas would be nothing but to invite lots of unwanted attention, or maybe even trouble.⁶

In 2003, Malimath Committee Report on Reforms in the Criminal Justice System, suggested amendment of the word 'wife' in Section 125 Cr.P.C. to include a woman who is living in with a man for a "reasonable period". In October 2008, the Maharashtra Government approved such an amendment to the Cr.P.C, suggesting a woman involved in such a relationship for a 'reasonable period' should get status of a wife. The National Commission for women has also made a similar recommendation, to protect the rights of such women. However, the Protection of Women from Domestic Violence Act, 2005, provides protection and alimony to an aggrieved live-in female, if she complains.

PWDV ACT, 2005⁷ AND "RELATIONSHIP IN THE NATURE OF MARRIAGE"

Live-in relationship is neither recognized by the Hindu Marriage Act, 1955 nor by the Criminal Procedure Code, 1973, nor by the Indian Succession Act 1925. However, the expression 'relationship in the nature of marriage' which is included within the definition of 'domestic relationship' has been defined in the Protection of Women from Domestic Violence Act, 2005 (PWDVA) as follows:⁸

Section 2(a) "Aggrieved person"⁹ 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."

Section 2(f) "Domestic relationship"¹⁰ 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,

³ Mr. Yuvraj D. Patil, Socio-Legal Perspective of Live-in relationship in India, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1926477

⁴ Hemraj Raj, Live-ins: Legally valid, Culturally well-endorsed, available at, <https://hemrajsingh.wordpress.com/2010/05/31/live-ins-legally-valid-culturally-well-endorsed-2/>

⁵ Blogs.rediff.com and <http://legal-dictionary.thefreedictionary.com/live-in-relationship>

⁶ <https://www.vakilno1.com/legalviews/live-relationship-india-closer-look.html>

⁷ Protection of Women from Domestic Violence Act, 2005

⁸ Sonali Abhang, Judicial Approach to „Live- In-Relationship“ In India- Its Impact on Other Related Statutes, available at, https://www.academia.edu/12038966/Judicial_Approach_to_Live-_In-Relationship_In_India-Its_Impact_on_Other_Related_Statutes

⁹ Section 2(a), of the PWDVA,2005

¹⁰ Section2(f) of PWDVA,2005

or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

Giving recognition to Live-in Relationship, the Supreme Court in the case of *D. Veluswamy Vs. D. Patchaiammal*,¹¹ has held that, a relationship in the nature of marriage under the Protection of Women from Domestic Violence Act 2005, must fulfil some basic criteria. The essential of common law marriage have been laid down by the Judiciary in the following manner:

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of a legal age to marry.
- (c) They must otherwise be qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.¹²

The judgment further clarified the essentials of a ‘Common Law Marriage’ and stated that not all ‘live-in relationship’ will amount to ‘a relationship in the nature of marriage’. The judgment notes by way of illustration that - merely spending weekends together, “a one night stand” in a case where the man has a - keep whom he maintains financially but uses her merely for sexual purpose and /or as a servant, would not qualify for protection under the Act within the definition of ‘domestic relationship’.¹³

In *Indra Sarma Vs. V.K.V. Sarma*¹⁴ also, Supreme Court enlists a set of criteria to decide whether a live-in relationship comes under the purview of PWDV Act, 2005. These criteria are based on the duration of the period of the relationship, shared household, pooling of resources and financial arrangements, domestic arrangements, sexual relationship, children, socialization in public, intention and conduct of the parties.

Thus, not all women in live-in relationships are entitled to seek maintenance under PWDV Act, 2005. That relationship must be “in nature of marriage” and should fulfil the above conditions.¹⁵

JUDICIAL APPROACH TOWARDS LIVE-IN RELATIONSHIP

• Presumption of Marriage

Section 114,¹⁶ Indian Evidence Act, 1872, lays down that where independent evidence of solemnization of marriage is not available, it will be presumed to be a valid marriage by continuous cohabitation between the parties unless the contrary is proved.

In *A. Dinohamy Vs. W.L. Blahamy*,¹⁷ the Privy Council laid down the preposition that, “Where a man and woman are proved to have lived together as husband and wife, the law will presume, unless the contrary be clearly proved that they were living together in consequences of a valid marriage, and not in a state of Concubinage”. The first case in which the Supreme Court of India recognized the live-in relationship as a valid marriage was that of *Badri Prasad Vs. Dy. Director of Consolidation*,¹⁸ in which the court gave legal validity to the fifty year old live-in relationship of a couple. The Allahabad High Court, in *Payal Sharma Vs. Superintendent, Nari Niketan, and others*,¹⁹ stated that a live-in relationship is not illegal. Justice M Katju and Justice R. B. Mishra stated, “In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality.”

¹¹(2010) 10 SCC 469

¹²(2010) 10 SCC 469, Para 33

¹³(2010) 10 SCC 469, Para 34

¹⁴(2013) 15 SCC 755

¹⁵ <https://www.quora.com/Are-live-in-relationships-illegal-in-india>

¹⁶ Section 114 of the Act lays down that the court may presume the existence of any fact which it thinks likely to have happened, regards being had to the common course of (a) natural events,(b) human conduct, and (c) public and private business, in their relation to the facts of the particular case.

¹⁷ AIR 1927 PC 135

¹⁸ AIR 1978 SC 1557

¹⁹ AIR 2001 All 254, 17-05-2001

Again the judgments given by Supreme Court in *Gokal Chand* and *Badri Prasad* Case was again revisited by the Court while interpreting sections 50 and section 114 of the Indian Evidence Act, 1872 in *Tulsa Vs. Durghatiya*,²⁰ wherein the Supreme Court held that, in case of relationship of marriage between two persons there is a rebuttable presumption regarding marriage. The presumption can be drawn from natural events and conduct of the parties. Long cohabitation as husband and wife raises such presumption. Law favours legitimacy of marriage and burden lies on the person who seeks to deprive such relationship to prove that no marriage took place. Thus in those cases where a man lived with a woman for a long time without formal proof of marriage, the woman has been accorded legal status with a view to protect her rights.

- **Maintenance**

The Courts have also conferred to a woman in a live-in relationship the right to claim maintenance. Thus the legal right to maintenance for woman involved in 'Live-in relationship' has been decided upon by the Supreme Court in the following cases;

In *Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and Another*,²¹ the Supreme Court held that, the standard of proof of marriage in Section 125 proceeding is not as strict as is required in a trial for an offence under section 494 of the Indian Penal Code, 1860. The Court explained the reason for the aforesaid finding by holding that an order passed in an application under section 125 does not really determine the rights and obligations of parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The court held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached.

In *Narinder pal Kaur Chawla Vs. Manjeet Singh Chawla*,²² the court took a liberal view and stated that the second wife has a right to claim maintenance under the Hindu Adoption and Maintenance Act, 1956. In this case the husband had not disclosed the facts of his first marriage and married the appellant and maintained a relationship with her for 14 years as husband and wife. The court also took support from the provisions of the Protection of Women from Domestic Violence Act, 2005 and held that if we do not give maintenance to the second wife it would amount to giving premium to the respondent for defrauding the appellant.

In *Virendra Chanmuniya Vs. Chanmuniya Kumar Singh Kushwaha and another*,²³ the High Court held that the appellant wife was not entitled to maintenance on the ground that only legally married woman can claim maintenance under section 125 Cr.P.C. But the Supreme Court turned down the judgement delivered by the High Court and awarded maintenance to the wife (appellant) saying that provisions of Section 125 Cr.P.C. must be considered in the light of Section 26 of the Protection of the Protection of Women from Domestic Violence Act, 2005. In brief, the Supreme Court held that women in live-in relationship are equally entitled to all the reliefs which are available to legally wedded wife.

- **Inheritance Rights and Status of Children**

In *S. P. S. Balasubramanyam Vs. Suruttayan @ AndaliPadayachi*,²⁴ the Supreme Court held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under section 114 of the Indian Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.

²⁰ (2008) 4 SCC 520

²¹ AIR 1999 SC 3348

²² AIR 2008 Del 7, CRL.REV. P. No. 238/2004

²³ (2011) 1 SCC 141

²⁴ AIR 1992 SC 756

In *Radhika Vs. State of M.P.*,²⁵ the Supreme Court observed that a man and woman are involved in live-in relationship for a long period, they will be treated as a married couple and their child would be called legitimate. So also the Supreme Court in *Vidyadhari Vs. Sukhrana Bai*,²⁶ passed a landmark judgment wherein the court granted inheritance to the children born from the live-in relationship in question and ascribed them the status of “legal heirs”. In this case Succession Certificate was granted to a woman after the death of the man with whom she was living despite the fact that his legally wedded wife was alive.

The issue of property rights has been dealt with in an incomplete manner under the Hindu Marriage Act 1955. Section 16 of this Act which talks about legitimacy of children of void and voidable marriages addresses this aspect of live-in relations in an indirect and incomprehensive manner which has often led to contradicting judgments and legal complications clearly seen in the two cases of, *Bharata Matha and Others Vs. Vijaya Renganathan and Others*,²⁷ and *Revanasiddappa Vs. Mallikarjun*.²⁸ The question raised in both the cases was whether the children of void/voidable marriages have a right to only the self-acquired property of their parents? Apart from the presumption of marriage in case of existence of such relations for a reasonable period of time, the court has adopted a liberal approach towards the inheritance rights of children specifically. In the *Bharata Matha*²⁹ case, the court held that a child born out of a void or voidable marriage was not entitled to claim inheritance in ancestral Coparcenary property but was entitled to claim only self-acquired properties. Whereas on 31st March, 2011 a special Bench of the Supreme Court of India consisting of G. S. Singhvi, Asok Kumar Ganguly in *Revanasiddappa and another Vs. Mallikarjun and Others*³⁰ remarked that irrespective of the relationship between parents, birth of a child out of such relationship has to be viewed independently of the relationship of the parents. It held that, ‘Child born in illegitimate relationship/void marriage is innocent and is entitled to all rights to property to which his parents are entitled whether ancestral or self acquired property.’

- **Latest ruling of the Apex Court**

In *Nandakumar Vs. State of Kerala*,³¹ a unique case where a 19- year old girl Thushara, who had married a boy Nandakumar below the age of 21 on 12.04.2017, was sent to the custody of her father by the Kerala High Court on the ground that Thushara was not lawfully wedded to Nandakumar as Nandakumar was not of a marriageable age. Noticing that both the parties were major at the time of marriage, the Supreme Court said: “Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

CONCLUSION:

It is not that the youth do not believe in the sacred institution of marriage but the fact is that their priorities have changed. Couples today feel that they need to understand each other properly before entering into the sacred institution of marriage. The way of thinking of the people has changed which can be considered as a fruit of Westernization. This change can also be seen in the judicial pronouncements. After going through all cases decided by the Supreme Court of India and the various High Courts in this regards, the positive role of the Indian Judiciary in the sphere of such relationships can be noticed. One has to except the fact that the concept of Live-in is rooting up day by day and thus it needs not only ethical concerns but

²⁵ AIR 2008 SC

²⁶ Civil Appeal No. 575 of 2008

²⁷ AIR (2010) SC 2685

²⁸ Civil Appeal No. of 2011, Arising out of Special Leave Petition (C) No. 12639/09, 2011(2) UJ 1342(S.C.)

²⁹ Supra note 27

³⁰ Supra note 28

³¹ Decided by Supreme Court on 20 April 2018

also legal concern. In support of this the fundamental right under article 21 of the Constitution of India envisage to all its citizens "right to life and personal liberty" which means that one is free to live the way one wants. Live-in relationship may be immoral in the eyes of the conservative Indian society but it is not "illegal" in the eyes of law.