

Live-In-Relationship: Legal Status and Indian Judiciary

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Submitted: 01-05-2022

Revised: 04-05-2022

Accepted: 08-05-2022

ABSTRACT

The institution of a marriage is an oldest concept of social institution which provides a foundation on which complete super structure of civilization and prosperity is made. Different personal laws have provided different meanings to the concept of marriage covering from sacramental union to contractual union. India still looked by the whole world as a country where marriage still occupies a sacramental position both philosophically and practically but with change in the modern era the traditional concept of marriage has changed and now a days a change is visible in our society from arrange marriages to love marriages and now to live-in relationship as well as gay marriages. Despite of these developments and even granting a level of legal legitimacy to this sort of relation is still largely perceived to be an immoral relationship in our society. Eventually the judiciary is looked upon as the last resort to deal with such sort of issues.

I. INTRODUCTION

Live-in-relationship is an arrangement where two people decides to live under a same roof for a long period of time. This term is applied to those couples who are not married. The legal definition of live-in-relation is, "An arrangement of residing together for a long period without performing rights and ceremonies of Marriage." People generally use to enter in this type of relation to check the compatibility amongst them before entering into any legal commitment or people also choose to enter in this relation because they don't want a legal relation.

In India there are no special provisions for live in relation but is legalized in India through various cases. Indian judiciary has taken a cause fill the gap that was created within the absence of any specific statute concerning live-in-relationships. It's getting to be considered immoral within the eyes of society but it's not within the smallest amount of illegality within the eye of the law. The aim is to render justice and stop a miscarriage of justice. Therefore, while deciding of numerous

cases, the judiciary has kept in mind numerous factors including societal norms as well as constitutional values.

Live-in-relationship can be divided to two categories i.e., by choice and by circumstances. Relationship by choice means both girl and boy lives together with consent. Whereas relationship by circumstances means when one or both partners are assuming that a valid marriage occur between them in future or where both or anyone of them is not legally divorced or not marry the partner because of Economic or social reasons.

EVOLUTION OF LIVE-IN-RELATIONSHIP

In ancient India marriage was a general norm, the Hindu scriptures provides existence of premarital relationships as well. Live in relationship is not a new word it has existence from Ancient time. Definition of live in relationship is nowhere define in law but it can be interpreted as man and woman living together for a long time without marriage. Under Hindu Marriage act, 1955 live in relationship has no provision but an aggrieved partner can claim Alimony under protection of Women from domestic violence act, 2005. In India there are no special provisions for live in relation but is legalized in India through various cases.

The judgment of Justice C.S. Karnan of madras High court Equating Live in relationship with marriage has made global news. "In Indian court rules that any live- in couple who sleeps together is considered married". In Justice Karnan's Judicial Thesis he said, "If a couple choose to consummate their sexual cravings, then the act becomes a total commitment with adherence to all consequence that may follow"

In **S.P.S. Balasubramanyam vs. Sruttayan** the apex court held that, if a man and woman are living together and cohabiting for a number of years then under section 114 of Indian Evidence Act, 1872 court may presume the children born will be their legitimate child.

Legalization Of Live-In-Relationship

There exists no uniform civil code in India and marriages are most of the days are governed under personal laws of each Individual. The concept of Live-In Relationships isn't expressly recognized by the legislature however the Indian Courts again and again while distinguishing morality from law have upheld the validity of such sort of relationships keeping in view the constitutional principles. The constitution of India has given certain fundamental rights and freedoms to the citizens and even to non- citizens

some of the fundamental rights. Under Article 19 of the Constitution Indian citizens have a fundamental right to freedom of speech and expression, and to reside and settle in any a part of the territory of India. Besides from this Article 21 of the Constitution confers Right to life to each person. One's wish to reside with a partner of their choice and establish relationship is governed by the above mentioned rights and freedoms. However it's to be kept in mind that such rights and freedoms aren't absolute.

No law deals with the concept and legality of live-in-relationship at the present. No statutes like Hindu Marriage Act, 1955; the special Marriage Act, 1954; Indian Succession Act, 1925 recognizes live-in-relationship. Hindu Marriage act, 1955 talks indirectly about live-in-relations as it provides with the legitimacy of children born out of this sort of relationship.

Indian Judiciary is somewhere in favour of this type of relationship as holding at par with marriage by granting legal rights same as granted to married couples.

Supreme Court held that a living relationship comes under the ambit of Article 21 of the Indian Constitution and live in relationship is permissible and cannot be considered illegal and unlawful.

S. KHUSHBOO V. KANNIAMMAL

In this case the Supreme Court held that a living relationship comes under the ambit of Article 21 of the Indian Constitution and live in relationship is permissible and cannot be considered illegal and unlawful.

BHARATA MATHA & ORS. V. R VIJAYA RENGANATHAN & ORS.

Supreme Court in this case held that child born out of live in relationship has all rights of inheritance of property.

Laws Associated With Live-In-Relationship

Live-in-relationship is an alien concept for the Indian society and also for Indian legislature.

There's no legal implications for the couples who live together without marriage. No legal definition of live-in-relationship is provided under Indian legislation and there's no lawful status of this type of relationship. However the court has given the concept of this type of relationship through its various judgments.

Though the law remains not clear about the legal status of this type of relationship yet few rights and obligations has been conferred upon the partners by amending and interpreting of existing laws associated with marriage. These legislations are:

HINDU MARRIAGE ACT, 1955

Hindus have always considered their Marriage as a Sacrament which has the implication that it is permanent, Indissoluble and holy. The important question that needs to be answered here is that whether the Hindu Marriage now become a contract or remained a sacrament?

Live-in-relation is taken into account as void-ab-initio. The child born out of this sort of relation are going to be legitimate child of the couple and enjoys every right and obligation if born from a marriage as provided under section 16 of Hindu marriage act, 1955 which talks about legitimacy of child from void and voidable marriage. In 1978 by a Supreme Court Judgment such kind of relationship is considered valid for the primary time. If the conditions of a legitimate marriage is fulfilled like sound mind, consent, competent age the couple are going to be considered as a legal couple.

DOMESTIC VIOLENCE ACT, 2005

The objective of Domestic Violence Act 2005, is to guard women from physical and mental abuse. This act not only protect women from marital abuse but also protect those women who live during a relation almost like marriage.

Section 2(f) and section 3 of the protection of Women from domestic violence Act, 2005 explains the definition of domestic relationship and domestic violation.

The Burden of proving the relation of alike nature as marriage is upon that one person asserting the existence of such kind of relationship. Therefore Supreme Court in few cases has recognized the existence of live-in-relationship and provided various rights and obligations within the ambit of the law specified.

In 2013 a two judge Bench of the Supreme Court including of K.S.P Radhakrishnan and Pinaki Chandra Ghose, within the case of **Indra Sarma vs. V.K.V. Sara** held that when the woman is conscious of the very fact that the person with

whom she is in live-in-relation and who already features a legally wedded wife and two children, isn't entitled to varied reliefs available to a legally wedded wife and also to those that enter into a relation within the nature of marriage.

But during this case, the Supreme Court felt that denial of any protection would amount to an excellent injustice to victims of an illegal relation. Therefore, the Supreme Court emphasized that there's an excellent need of extension in section 2(f) which defines domestic relationships under Prevention of Women from domestic Violence Act, 2005 so on to include victims of illegal relationships who are poor, illiterate along with their children who are born out of such relationships and who don't have any source of income.

The Supreme Court further requested Parliament to enact new legislation supported with certain guidelines given by it so as that the victims are often given protection from any wrong caused by such relationships.

CODE OF CRIMINAL PROCEDURE, 1973

Section 125 of Criminal Procedure Code, 1973 was incorporated so on to avoid vagrancy and destitution for a wife/minor child/old parents and thus an equivalent has now been extended by judicial interpretation to partners of live-in-relationship. A female has been during a live-in-relationship for a long period of time, she need to have the legitimate privileges as that of a spouse and should claim maintenance under section 125 Cr.P.C.

One big problem within the existing law of maintenance is that there's no provision within the existing Acts for prompt disposal of applications for grant of interim maintenance. The aim of interim maintenance is defeated just in case the application for alimony pendente lite isn't disposed of promptly. So as to make sure quick disposal of the applications for grant of alimony pendente lite the Central Government has decided to amend the said four Acts to supply for disposal of applications for grant of alimony pendente lite within the period of sixty days from the date of application verified by affidavit.

INDIAN EVIDENCE ACT, 1872

The court can presume the existence of any facts which in the eyes of court is likely to possess happened, regard being given to the common course of natural events, human conduct and public and personal business in relation on the facts of the actual case.

Therefore, where a few couple live for an extended spell of their time as a couple then there would be an assumption of marriage.

In **Dhannulal vs. Ganeshram** the Supreme Court decided out that couples living during a live-in-relation are getting to be presumed legally married. The Bench also added that the girl within the relation would be eligible to inherit the property after the death of her partner.

Maintenance Right Of Live-In Partner

There are uniform provisions for maintenance available to all or any of the married couples of any religion under section 125 of the code of criminal procedure, 1973. The necessity to incorporate live-in women for the proper maintenance under section 125 Cr.P.C was supported by the judgment of **Abhijit Bhikaseh Auti vs. State of Maharashtra and others**, during this case the Hon'ble Supreme Court observed that it's not necessary for a girl to strictly establish the marriage to say maintenance under section 125 Cr.P.C. A girl living in relation can also claim maintenance under the said section.

The Malimath Committee had also suggested that the word wife under section 125 of Cr.P.C be amended to incorporate a woman living with the person like his legally wedded wife which suggests that lady would even be entitled to alimony. The law commission of India has also suggested that if a girl has been in live-in-relation for considerably long period of time, she need to enjoy the legal status as given to a legally wedded wife. However, recently it had been observed that a divorced wife only is treated as a wife within the context of section 125 of Cr.P.C but a live-in partner can't get divorced, hence can't claim maintenance under the said section.

RIGHT OF CHILDREN

The child born through a live-in-relation enjoys an equivalent rights of Succession and inheritance as are enjoyed by children through a marriage under the Hindu Marriage Act, 1955. Notwithstanding that marriage is null and void under section 11 of Hindu marriage act, any child of such marriage who would have been legitimate if the wedding has been valid, shall be legitimate, whether such child is born before or after the commencement of marriage law (Amendment) act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this act and whether or not the wedding is held to be void otherwise than on a petition under this act. Thus so as to keep up the spirits of law within the righteous direction and to subside the social evils wherein

illegitimate child was denied his rights the Hindu Marriage Act has granted legitimacy to children born through marriages which are void.

The other laws haven't granted such legality to children born through such relationships and thus the status is dwindling for status of youngsters which ends up in extensive misuse of the provisions and still escape liability. Hence the legality of a child is doubtful in other laws and has got to be proved beyond reasonable doubt.

In **vidhyadhari vs. Sukhrana Bai**, the court held that the inheritance right to the four children born from the lady with whom the boy shared a live-in-relation, calling them his legal heirs. It had been further held that a child born out of a live-in-relation isn't entitled to say inheritance in Hindu ancestral coparcenary property (in an undivided joint Hindu family) and may only claim a share within the parent's self-acquired property. The court further ensured that no child born from live-in-relation of a reasonable period may be denied their inheritance. The court while dismissing the appeal within the property dispute held that there's a presumption of marriage between those are in live-in-relation for an inexpensive period could also of time and this can't be termed as walking in and walking out relation. The Supreme Court in **Madan Mohan Singh & Ors vs. Rajni Kant & Anr.** Accepted the principle that an extended period of cohabitation during a live-in-relation makes it equivalent to a legitimate marital status. The child born out of such relation are legitimate and that they are entitled to property except right in coparcenary property.

Thus all these decisions show that this type of relationship is in par with the legal marriage under Hindu Law. Hence the need of marriage as laid down in our personal laws, could also be dispensed for various atters like as to presumption of marriage, seeking maintenance and alimony, legitimacy of children then the property rights to children born out of such relationship. Marriage whether sacramental or contractual was foundation of morality but the above decisions does put us into dilemma on what's marriage.

In **Bharatha Matha & Anr. Vs. R. Vijaya Renganathan & Ors.**, the Supreme Court held that child born out of such kind of relation isn't entitled to claim inheritance in Hindu ancestral joint family property but can claim a share in parent's self-acquired property only.

II. CONCLUSION

Live-in relationships are now very admired in India. The law doesn't prescribe how we should always live; its ethics and social norms which

explain the essence of living in welfare model. The Court itself notices that what law sees as no crime should be immoral. It's said during a judgement of 2006, notices by the Court now, that two consenting adults engaging in sex isn't an offence in law albeit it's going to be perceived as immoral. Of course, such protective sanctions may potentially cause complications that would rather be avoided. Awareness has to be created in those youngsters minds and not only from the point of emotional or cultural pressures that such a relationship can create, but also the fact that it could produce to varied legal hassles on issues like division of property, violence, cases of desertion by death of a partner and handling of custody and other issues when it involves children resulting from such relationships.

The status of live-in relationships in India has been evolved and determined by the Supreme Court in its various judgments. However, there's no separate legislation which lays down the provisions of the live in relationships and provides legality to this present concept. Though the concept of live-in relationship is taken into account immoral by the society, but is certainly not illegal within the eyes of the law. The Supreme Court states that cohabitation may be a right to life and thus it can't be held illegal. The court has also tried to enhance the conditions of the lady and children born out of this sort of relationships by defining their status under the Domestic Violence Act, 2005 if the relationship is proved to be relationship within the nature of marriage.

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