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Live-In Relationships in India - Challenges and Issues in a Socio-Legal Perspective

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Marriage forms the basic structure of family building and helps to protect genetic purity, lineage, and personal morality and maintain social order in society.¹ It lays the foundation of the society. The couples involved in marriages have certain rights and duties that are imposed by society and personal laws for peaceful coexistence. These laws govern issues like marriages, succession, etc. Due to rigid customs and traditions involved in marriage, it has become unpopular among the people. So, live-in relationships are emerging as an alternative to marriage. Live-in relationship is new for the Indian legislature and no statute directly deals with this concept. Live-in relationships carry less legal weight and importance in our society. Cohabitation between couples is considered a sin in Indian society as it challenges the concept of marriage. But social dynamics are changing to greater acceptability towards live-in relationships. It was clarified by the courts that live-ins are not illegal in India. However, the law is still unclear about the status of such relationships. Since there is no legal recognition, parties remain uncertain about their rights and remedies. In this paper, we try to explain the evolution of the stance of society, legislature, and executive on live-in relationships along with key issues and challenges.

Keywords: *live-in relationship, challenges, family.*

¹ P. Roger Hillerstrom and Karlyn Hillerstrom, *The intimacy cover-up: uncovering the difference between love and sex* (Kregel Publications 2004)

INTRODUCTION

We have been often told that without marriage, our lives will be incomplete and that marriage is a concept inherent to society. The concept of marriage and society are intertwined, as the institution of marriage is the fundamental aspect of social organization in most societies across the globe. The very existence of society is dependent upon marriage because it is the most socially acceptable means through which one can lay down the foundations of the very basic sociological unit which is the family. Many of our scriptures, holy texts, and recitals of our elders place marriage on a sacred pedestal having an element of divinity. The subject of marriage falls within the scope of personal law. India, being a land consisting of people of various religions, the law related to marriage differs according to their respective beliefs.

However, the change in social dynamics of India has affected the belief system of the society. Certain societal factors that were once considered unacceptable are now being changed to favor the present and upcoming generations. The burden of family laws and societal pressure which are structured with religious beliefs surrounding them have now induced disenchantment among the couples. Couples nowadays prefer live-in relationships which liberates them from those customs and traditions. This arrangement between unmarried couples does not impose any barriers on individuals from choosing partners irrespective of caste, creed, religion, or gender. Because of the burden of family laws and issues like divorce, domestic violence, and extramarital affairs that have plagued the concept of marriage, couples nowadays want to test their compatibility and bond before entering a sacred union like marriage. This inconvenience has also led to the emergence of live-in relationships in our society. One can see the gradual amalgamation of live-ins in the country's societal and legal structure, majorly because the youth of the country is adopting this concept. The same can also be inferred from the fact that the Protection of Women from Domestic Violence Act 2005² was amended to address the needs of society and it includes the term 'relationships like marriage' in section 2(f)³ of the act. Further,

² Protection of Women from Domestic Violence Act 2005

³ *Ajay Bhardwaj v Jyotsna & Others* 2017 ALLMR (Cri) 43

the honorable Supreme Court of India in several cases ranging from *Badri Prasad v Dy. Director of Consolidation*⁴ in the year 1978 to *Indra Sarma v VKV Sarma*⁵ in 2013 has reiterated its position that live-in relationships or any other non-marital heterosexual relationship in a valid marriage are legal in India. However, the acceptance of the concept has been very limited, and not every stratum of society is willing to adopt this 'Western norm.' Since the very foundation of marriage is religious, personal, and holy, the sentiment of morality is automatically associated with it. In most religions around the world especially in Hindu Dharma, the practice of having sex before marriage is an offence and considered as a sin. Most of the religions and even constitutions of nearly all countries have laid down strict rules so that individuals will choose solely the practice of monogamous marriage. However, the concept of morality is quite subjective and personal to every society. What might be socially and morally right in one sociological setup may not be the same in the other.

As illustrated above, there has been a change in attitude towards the live-in relations which has led to an uncertain atmosphere. Let alone the common masses, even the three organs of the government, the executive, judiciary, and the legislature, at times find themselves at a crossroads whether to hold one is right to choose against the common conceptions of morality or vice-versa.

THE LEGAL EVOLUTION AND PRESENT SCENARIO

In the case of *Badri Prasad v Dy. Director of Consolidation*⁶ for the very first time prompted courts to ponder upon the legality of 'live-in relations' in India. The case mainly focused on the term 'presumption of marriage' from an evidential perspective under section 114 of the Indian Evidence Act 1872⁷. But the term also laid the path for the recognition of relationships not exclusively being a married one. The case held that when a couple resides together as a married one for a long duration of time, a presumption of marriage arises and a heavy burden of proof

⁴ *Badri Prasad v Dy. Director of Consolidation* 1979 SCR (1) 1

⁵ *Indra Sarma v VKV Sarma* AIR 2014 SC 309

⁶ *Badri Prasad v Dy. Director of Consolidation* (1979) SCR (1) 1

⁷ Indian Evidence Act 1872, s 144

lies on the person who contends to refute it. This set the ground for several other judgments that upheld the legality of live-in relationships.

*Lata Singh v State of Uttar Pradesh*⁸ was one such case wherein it was observed that a live-in relationship between two consenting adults of heterogenous sex does not amount to any offense with the exception of adultery, even though it may be perceived as immoral. A major girl is free to marry anyone she likes or live with anyone she likes. These cases established the legality of live-in relationships in India and upheld one's right to life under Article 21⁹. Moreover, in *S. Khushboo v Kanniammal*¹⁰, the court observed that one should sever the element of morality from law with respect to live-in for an act may be immoral but can still be legal.

The Malimath Committee recommended in 2003 to amend section 125¹¹. This section states that any person having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself the wife is defined as a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. The committee urged the legislature to include a 'woman, who has been living with an already married man as a wife for a reasonably long time, during the subsistence of his first marriage,' in the definition of 'wife.' Since a married man cannot marry again, the woman who has been living with him for a long duration will never be given the status of a 'legal wife' as it would go contrary to the provisions of section 5 of the Hindu Marriage Act 1955¹². This would deprive her of the benefit of maintenance under section 125 C.R.P.C¹³. However, the recommendation was not incorporated. In 2008, the Maharashtra government relied upon the committee's recommendations and attempted to give legal status to live in relationships prevalent in the state but to no avail.¹⁴

⁸ *Lata Singh v State of U.P* (2006) 5 SCC 475

⁹ Constitution of India 1950, art 21

¹⁰ *S. Khushboo v Kanniammal* (2010) 5 SCC 600

¹¹ Code of Criminal Procedure 1973, s 125

¹² Hindu Marriage Act 1995

¹³ Code of Criminal Procedure 1973

¹⁴ Anuja Agrawal, 'Law and 'Live-in' Relationships in India' (2012) 47(39) Economic and Political Weekly <<https://www.jstor.org/stable/41720191>> accessed 18 September 2023

The Ministry of Woman and Child Development then introduced an amendment to incorporate the expression ‘relationships in the nature of marriage’ in the definition of ‘domestic relationships’ under section 2(f) of PWDVA,2005¹⁵. However, the term did not have any operational definition. So, the apex judiciary took up the responsibility and in the case of *D. Velusamy v D. Patchaiammal*¹⁶ set some non-exhaustive parameters to assert what types of non-marital heterosexual relationships fall under the section. It was held that for a relationship to be recognized as being akin to a legally valid marriage, the foremost requirement is that they must hold themselves out to society as a legally married couple.

Following this course of action taken by the apex court, the courts have upheld the legality of live-in relationships in several cases. In the case of *Abhishek v The State of M.P.*¹⁷, the high court of Madhya Pradesh held that live-in relationships are the by-product of Article 21 of the Indian Constitution. The reasoning for the same is that the working of the constitution of India is made for a progressive society and its implementation and working will depend upon the prevailing atmosphere and conditions.¹⁸

In the case of *Resuna & Anr. v State of Haryana & Ors.*¹⁹, the Punjab and Haryana High Court while granting protection to a live-in couple opined that in this ever-evolving society which evolves the law with it, the time has come to shift perspective from didactics of the orthodox society, shackled with the strong strings of morality supported by religions to one that values an individual’s life above all for we are governed by the Constitutional Dharma.

However, despite all this, several lapses have emerged giving rise to an uncertain atmosphere with respect to live-in relationships. The notions of adultery, bigamy, and live-in relationships need to be clarified for the general public. In live-in relationships, the male partners are often charged with rape for failing to keep the promise of marriage in a live-in relationship. A man does not have any remedy when a woman who was in a cohabitation relationship with him and

¹⁵ Protection of Women from Domestic Violence Act 2005

¹⁶ *D. Velusamy v D. Patchaiammal* (2010) 10 SCC 469

¹⁷ *Abhishek v State of MP* Civ App No 1457/2015

¹⁸ *Manoj Narula v Union of India* WP (C) No 289/2005

¹⁹ *Resuna and Anr v State of Haryana* WP (C) 4302/2022

promised to marry, abandons him and marries another man. As live-in relationships involve premarital sex, there is a possibility of a child being born to the couple. Children who are born out of live-in relationships can be affected by mental trauma. There could be custody problems or maintenance problems as the child grows. The courts have declared such children to be legitimate. But there is no special law for the maintenance of children born out of such relationships, the law decides to provide children with protection. As personal laws of religions in India do not recognize live-in relationships, India's succession laws do not entitle individuals or their children to inherit their partner's property. Several judicial rulings have allowed individuals in live-in relationships to inherit only the self-acquired property of their partners and not their ancestral property. Children born out of these relationships are also entitled only to the properties acquired by their parents. Further, even though Section 377²⁰ has been decriminalized, there is no legal protection provided for same-sex marriages. Therefore, homosexual couples have no other option but to carry forward as live-in relationship couples. However the provisions given to female live-in partners in section 2(f) of the Protection of Women from Domestic Violence Act 2005 and the claim of maintenance by the female partner in a live-in relationship as mentioned in Malimath committee's recommendations cannot be availed by the homosexual couples.

Moreover, with the changing global trends, there is an upsurge in the number of live-in relationships in the country. A recent poll with a sample population size of 1.8 lakh mostly ranging between the ages of 18-35 expressed that more than 80 percent Indians support live-in relationships, and showed that over 80% of adults do not object to living in as a form of relationship, and in fact, support the idea. Therefore, if these fallacies and lapses are left unaddressed, it may lead to a chaotic situation where parties will be incapable of seeking any legal respite.²¹

²⁰ Indian penal code 1860, s 377

²¹ 'More women supporting live-in relationships: Survey' (*The Indian Express*, 20 May 2018)

<<https://indianexpress.com/article/lifestyle/more-women-supporting-live-in-relationships5184419/>> accessed 18 September 2023

ISSUES AND CHALLENGES

The concept of marriage is premised on 'solemnization'. Black Law's Dictionary defines solemnization as 'to enter into a marriage contract with the due publication, before third persons, for the purpose of giving it notoriety and certainty; which may be before any persons, relatives, friends, or strangers, competent to testify to the facts'. The distinction between a marriage and a live-in relationship is that the former is validated by external agencies, i.e. solemnization, and the latter is validated by the parties themselves by displaying fidelity to each other as can be inferred from the case of *D. Velusamy v D. Patchaiammal*²². However, one must understand that the subject of marriage and sexual relations is very personal to parties and demands minimal interference by third persons else it violates their right to privacy. The same was held in the case. So there lies a question as to why one relationship that fulfills all the prerequisites of a valid marriage but falls short of the solemnization requirement, an interference, given a socially and legally inferior status than a relationship of the same kind but recognized by a third party? This requirement is the archenemy to the grant of legal rights to parties in a live-in though the removal of the same may lead to several other legal issues.

Also, the central government is quite hesitant to expressly recognize live-in relationships because of the outrageous response that it would invite. Live-in relationships are perceived immoral and blasphemous for pre-nuptial sex is still perceived as a taboo in Indian society. The reason for the same can be linked to the position of women in several religions. A woman is generally given the image of being 'pure' and the purity here refers to a woman's virginity for a deflowered woman is considered as unchaste in this patriarchal society. A woman's dignity is still linked to her sexual experiences though such a linkage is strongly condemned by the apex court. However, till today the regressive concept of a woman's 'purity' is unchanged. Even our century-old personal marriage laws hold regressive notions with respect to marriage and women. The codes of marriage are derived from religious texts of respective religions which were authored a mammoth of years ago. These are not in line with the latest developments of the 21st century which hold a woman to be an equal counterpart of a man irrespective of her

²² *D. Velusamy v D. Patchaiammal* (2010) 10 SCC 469

sexual and married status. If any formal stance is given to live in relationships the government will be accused of giving its assent to immoral acts. In the case of *Abhishek v State of MP*²³, the judges opined that ‘the bane of live-in engulfs the ethos of Indian society, and promotes promiscuity and lascivious behavior, giving further rise to sexual offenses.’

Further, a large section of people in the country deems it to be the genesis of the sexual revolution of the 1960s-70s, which now is corrupting the minds of the youth of the country. Recently, Kerala High Court expressed its views regarding the current trends of live-ins and lamented that “the younger generation is considering marriage as an ‘evil’ and was avoiding it to ‘enjoy free life’ and this has led to an increase in the number of live-in relationships in the country. The southern state, which was once famous for ‘well knot family bondage’ is now witnessing the trend to break the ‘nuptial tie’ on ‘flimsy’ or ‘selfish’ ground. When warring couples, deserted children, and desperate divorcees occupy the majority of our population, no doubt it will adversely affect the tranquility of our social life and our society will have stunted growth.”

However, the concept of morality should not be a hurdle to safeguard the interests of women in heterosexual relationships that fall short of marriage. Without delving into the question of morality and by undertaking a cautious and measured approach, the government can still provide relief to the women in such relationships. For instance, the religious commentaries and Hindu texts state that a woman can be related to a man in many ways besides the blood lineage. These include *Patni*, *Yoshita*, *Avarrudha*, *Dasi*, *Bhujishya*, *Punarbhu* and *Svairirini Vaishya*.²⁴ All these terms except, ‘*Patni*,’ in its entirety refer to a concubine having a sexual relationship with a man, though not a legal one. As long as the woman could prove her fidelity to the man, she could safeguard her interests through the rights bestowed upon her by the religious texts. This also included her right to maintenance among others.²⁵ Therefore, though the scriptures did not term such relationships as morally right, they still provided some sought of relief to such

²³ *Abhishek v State of MP* Civ App No 1457/2015

²⁴ Shyam Krishan Kaushik, ‘A Relationship In The Nature Of Marriage - Hope And Disappointment’ (2011) 53(3) *Journal of the Indian Law Institute* <<https://www.jstor.org/stable/45148566>> accessed 18 September 2023

²⁵ *D. Velusamy v D. Patchaiammal* (2010) 10 SCC 469

a category of women. In the case of *Bai Nagubai v Bai Monghibai*²⁶ Lord Darling said that it is compulsory to provide the concubinage until the death of the paramour, and sexual fidelity to him should be preserved and the right to maintenance should be established.

In the case of *Amireddi Raja Gopala Rao v Amireddi Sitharamamma*²⁷, a woman kept in concubinage claimed maintenance for her lifetime against the estate of her paramour. It was held that the concubinage was permanent and she observed sexual fidelity to the man during his lifetime, and after his death has continued to preserve her qualified chastity. The court averred that concubinage itself is immoral, yet it was recognized by personal law for the purpose of rounding a claim for maintenance by her and her illegitimate sons. It is also referred to in the case of *Akku Prahlad v Ganesh Prahlad*²⁸ where it was held that an avarudhha stree by remaining faithful to her paramour was entitled to maintenance from the estate of the paramour so long as she preserved her sexual fidelity to him. Moreover, the judgment given in *D. Velusamy's* case has given rise to a new logical fallacy. It was held here that in order for a relationship to be akin to a legally valid marriage, the couple must hold themselves out to society as being akin to spouses; they must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage and they must have voluntarily cohabited in a 'shared household' as defined in section 2(s) of the act.²⁹ The Hindu Marriage Act, 1955³⁰ states that for a Hindu marriage to be valid, the parties must not be already married which de facto becomes a prerequisite to be recognized as 'relationships in the nature of marriage'. This may lead to two problems. One is that it limits the scope of the term whose sole intent was to include within its ambit, a number of relationships that fall short of a legal marriage in view of the increasing number of domestic violence cases in such relationships. The case of *Indra Sarma v VKV Sarma*³¹ illustrates the same. Here, a couple was in an abusive heterogeneous non-marital relationship for 14 years. The woman lodged domestic violence proceedings under the PWDV Act 2005

²⁶ *Bai Nagubai v Bai Monghibai* (1926) 28 BOMLR 1143

²⁷ *Amireddi Raja Gopala Rao V Amireddi Sitharamamma* (1965) SCR (3) 122

²⁸ *Akku Prahlad v Ganesh Prahlad* AIR 1945 Bom 217

²⁹ *D. Velusamy v D. Patchaiammal* (2010) 10 SCC 469

³⁰ Hindu Marriage Act 1955

³¹ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755

against her partner, who was married with two children. However, the Apex court refused to grant her relief on the sole basis that the woman was not ignorant of the fact that the accused was married with two children. It was held that the relationship between the two is adulterous and bigamous in nature and since the accused never associated his name with her, the relationship does not fall within the ambit of the act. The second issue again pertains to the essential 'akin to lawful spouses.' Bigamy is an offence under section 494 of IPC and a bigamous marriage is an invalid one under the Hindu Marriage Act 1955³². Polygamy is tolerated under Islam and is recognized under the Muslim Marriage Act, 1939. Hence, applying the ratio of the aforementioned cases of D. Velusamy and Indra Sarma, a live-in relationship between a married muslim man and an unmarried would not fall outside the purview of section 2(f). Further, the woman here, if subjected to any violence, would be entitled to seek refuge under the PWDV Act, 2005.³³ This would lead to inconsistencies and logical errors on the part of the judiciary because some relationships, as described, will constitute 'relationships in the nature of marriage' while other relationships of the same kind will be left with no remedy.³⁴

CONCLUSION

We all are aware that law and morality are intertwined but the aspect of morality should not be an obstacle to social reform and address the emerging needs of the society. The opinions of people have changed drastically and especially the new young minds are turning the tables to welcome this concept. But traditionally, being in a live-in relationship automatically translates to 'immorality' for pre-nuptial sex is a sin, majorly because of regressive notions about a woman's 'purity'. Even our century-old legislation seems to support this notion. Further, many people believe that the concept of non-marital heterogeneous relationships is present in our society because of the advent of westernization of our society and is undesirable for Indian society because the society seeks to preserve its cultural value and therefore, it will corrupt the minds of the youth. But the Indian judiciary has established that 'what might be immoral need not be

³² Hindu Marriage Act 1955

³³ Protection of women from Domestic Violence Act 2005

³⁴ Kaushik (n 24)

illegal'³⁵ in a number of cases and thus, has given legal backing to this emerging social trend as 'law is dynamic and its social utility consists in its ability to keep abreast of emerging trends in society and its willingness to readjust its postulates to accommodate those trends.'³⁶ Still, the position regarding responsibilities, roles, and rights of the parties is ambiguous and expressly laid down. The primary reason for this is the fear of the executive that if it ever seeks to safeguard the interests of parties in a live-in, it will be accused of promulgating such immoral relationships. But the expression of recognition can be given even without even supporting it as is evident from the application of scriptures of Hindu dharma in many rulings which are of religious importance. Moreover, we tend to differentiate marriage and live-in relationships based on just one criterion i.e. solemnization, which translates to third-party interference in a personal matter. Marriage is a personal matter and so is live-in and the very criteria that differentiates the two is weak.

Since the judgments given by the courts are diverse and manifestly lacking consistency, ambiguity surrounds the issue. Therefore, the lawmakers must acknowledge the dynamics of social change to amend the laws and provide legal remedies to parties in a live-in. This will help to avoid conflict and confusion between society and law. Prevalence of definite laws concerning the subject of live-in relationships will help to resolve emerging issues such as legitimacy and custody of children, protection of their separate or joint or self-acquired or inherited property, separation, inheritance etc.

³⁵ *S. Khushboo v Kanniammal* (2010) 5 SCC 600

³⁶ *Deena Dayal v Union of India* (1984) SCR (1) 1