

Live-In Relationship and Social Change in India: A Legal Analysis

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Abstract

India is known for its democracy and family system. The well-known adage “Marriages are made in heaven” is changing now and is losing its divineness. Therefore live-in-relationship is coming up as a substitute for marriage. The term might be new but the concept is not new in India. Live-in relationship is not socially accepted and still considered as taboo and sin in India. But the urban areas of the country have started accepting this concept widely, and now they are looking forward to the next level of it.

In the absence of any law to define the status of live-in relationship, the Courts have come forward to give clarity to this concept. The Supreme Court of India has granted the legal status to the live-in relationship, but what happens if one partner decides to walk out? Could the other partner be left homeless? Will the children born into a live-in relationship be recognized by the law? Will it empower women with the right to Inheritance, maintenance, and alimony? Will the law give the same standing status to a live-in relationship as that of marriage? Answers to these questions are changing regularly.

None of the above questions indeed yield easy answers. Whether you like it or not the phenomenon of live-in-relationship is digging deep into the social fabric of India challenging the institution of marriage. In this backdrop, this paper attempts to identify the legal shields available for the live-in partners and suggests solutions on how to improve the current situation and keep pace with the changing times.

Keywords: Marriage, Live-in relationship, Taboo, Legal Status, Rights

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Introduction:

Law and society are not alien to each other. When any concept is rooted in society, then it urges for its meaning in the eyes of law. All of us are familiar with the adage, “Marriages are made in heaven.” In ancient times it was considered that marriages are decided by God and solemnized on earth. Marriage is a social union or legal contract between people that creates kinship. It is an institution in which interpersonal relationships, usually intimate and sexual, are acknowledged in a variety of ways, depending on the culture and tradition in which it exists. The perception of marriage is changing now and for several reasons, this concept of marriage is losing its divineness. Love cannot be the only reason for marrying, sometimes marriages are forced on couples. Nowadays as our society is heading towards modernization, the existence of marriage as a lifelong social bond is being questioned owing to complexities and legal obligations. Therefore, live-in relationship introduced in society as a substitute for marriage, though it is having its stand in society.

Marriage and Live-In-Relationship: Two Faces of the Coin

India is known for its democracy and family system. Generally, people are very much attached to their families and the topmost priority of every ideal Indian is his family. Irrespective of faith, people regard marriage as an integral part of their lives and believe that moral values and traditions are to be followed and preserved for a healthy society. The first bond of society is marriage - the next is our children and then the whole family and all things in common.

Whereas a living arrangement in which an unmarried couple lives together under the same roof in a long-term relationship or permanent basis in an emotionally and/or sexually intimate relationship that resembles a marriage is known as a live- in-relationship. It is the type of arrangement in which a man and woman live together without getting married. There are no strings attached to this relationship, neither this relationship creates any legal obligation between the parties. It is a form of a contract of living together that is renewed every day by the parties and can be terminated by either party without the consent of the other party and one party can walk out at will at any time. Thus, live-in-relationship is a walk-in and walk-out relationship.

The phrase 'live-in-relation' might be a newly coined term in post-modern India, but this relationship can be traced back to the origin of humans, i.e. Adam and Eve. They could be termed the first non-married couple in history. As the institution of marriage did not exist then, neither Adam nor Eve was aware of the status of their relationship. Neither marriage rituals, mandatory symbols of marriage like the proverbial wedding ring, the mangal-sutra back this union of souls, nor a marriage registration certificate. A bite on the apple of desire changed everything forever. In the Vedic era, the marriage of King Dushyanta and Shakuntala in the form of "Gandharva Marriage" or "Maitray Karaar" of medieval Gujrat has also existed where a man and a woman mutually decided to live together without involving the family. The truth is that provision similar to the Live-in relationship was prevailing in India, not from the colonial time but, its roots go to ancient history. Thus, the term 'Live-in relationship' might be new but the concept is not new in India.

Morality, Live-In-Relationship, and Common People:

Live-in relationship is not socially accepted in India and still considered as taboo and sin which is evident from facts like no one give house for rent to the couple unless they are convinced that couple is legally married or unless they mislead the house owners that they are married. The moral ideology revolves around the concept of sin. On extracting the mythology, we will find that Kunti of Mahabharata, who gave birth to Karna out of wedlock, before marriage, was not accepted, and as a result of it, she had to sacrifice her child. In Hindu mythology, Ram has been portrayed as the ideal husband but the same mythology appraises the relationship of Radha and Krishna. The moral and religious value, on one hand, rejects the concept of Kunti, on another hand, it accepts the concept of Radha-Krishna and is being worshiped in many of the Hindu temples.

A child born of rape is stigmatized and is treated as illegitimate both by society and by law because it is difficult to ascertain the paternity of a child conceived in rape. Now the question arises on the mentality of morals. Is the moral say that one has to pay for such a wrong, in which he was not having any role? What is the fault of the child in the act, and why such a child is considered faulty? The whole question of legitimacy and illegitimacy of the relationship and the birth of a child destroys the stability of the social structure of the society. In a society that doesn't provide scope for inter-caste marriage, inter-religious marriage, and same-sex marriage, for the members of such society, the live-in relationship is a safe passage. The urban areas of the country have started accepting this concept widely, and now they are

looking forward to the next level of it, which is the legality of such a relationship. (Satsangi & Sevta, 2012)

When we apply living relationships to an average/middle class of people, we find it less prevalent as this class is scrutinized more in society as they are owing to moral values. On the contrary, both the high-income group and the lower-income group are in a position to readily accept newer kinds of relationships. A girl from a poor family that requires shelter without much hesitation can consider no harm in living with a man of a slightly higher financial status without marrying him. The concept had created a buzz in the social and media circles for the openness with which various aspects of taking up a live-in partner by those who are alone in their twilight years. This initiative is to reduce the loneliness and the neglect and isolation that many such single senior citizens face in the evening of their lives. This is a welcome move by the seniors. (Dholam, 2015)

Test of Live-In-Relationship Set by The Supreme Court of India:

In *Velusamy v. D. Patchaiammal* (2010) 10 SCC 469, the Supreme Court of India gives recognition to a live-in relationship. The Supreme Court in this case has held that a 'relationship like marriage' under the Protection of Woman from Domestic Violence Act, 2005, must also fulfill some basic criteria. The court opined that merely spending a few weekends or one night stand would not make the domestic relationship. There four key requirements to fulfill the criteria of live-in relationship: (i) legal age to marry, (ii) qualify to enter legal marriage, (iii) must be unmarried, (iv) voluntary cohabitation should be for a considerable period. Until these conditions are not been proved under the court of law the women would not be able to seek any remedy in the eye of law.

Legal Status of Live-In-Relationship in India Under the Court's Lens:

In the absence of any law to define the status of live-in relationships, the Courts have come forward to give clarity to the concept of live-in relationships. The Courts have taken the view that where a man and a woman live together as husband and wife for the long term, the law will presume that they were legally married unless proved contrary.

Badri Prasad vs. Dy. Director of Consolidation, AIR 1978 SC 1557, is the first case after independence in which the Supreme Court of India first recognized the live-in relationship as a valid marriage and gave legal validity to a 50-year live-in relationship of a couple.

In *Khushboo vs. Kanniammal*, (2010) 5 SCC 600, the Supreme Court held that living together is a right to life. A live-in relationship may be immoral in the eyes of the conservative Indian society but it is not “illegal” in the eyes of law.

Laws for Protecting the Rights of Women Partners:

Numbers of countries legalize live-in-relationship through Statues i.e; United Kingdom, France, Ireland, Australia. In India even in the absence of specific legislation, the judiciary through its wisdom has immensely contributed to understanding the problems relating to live-in-relationship and has maintained a balanced position. Followings are certain laws dealing with the live-in-relationship in India:

Protection of Women from Domestic Violence Act, 2005:

This statute is the only law that refers to the term “relationship in the nature of marriage” in the definition of domestic relationship given under section 2(f). The phrase “relationship in nature of marriage” used in the definition is wide enough to include a live-in relationship within it. As per section 2(f), the Act not only applied to the married couple but also the “relationship in the nature of marriage”.

Section 2(a) of the Act defines “aggrieved person” as “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”. A woman in a domestic relationship can claim remedies in the occurrence of physical, mental, verbal, or economic abuse.

Indian Evidence Act, 1872:

Under Section 50 and Section 114 of this Act, the concept called “presumption of marriage” could be used to recognize living relationships as a marital arrangement and the female living partner as a wife. Courts applied this presumption if a man and woman are living under the same roof and cohabit for several years. (*Gokul Chand vs. Parvin Kumari*, AIR 1952 SC 231).

Criminal Procedure Code, 1973:

For maintenance, the term “wife” is defined in section 125(1) (b) of the Criminal Procedure Code as “wife” includes a woman who has been divorced by or has obtained a

divorce, from her husband and has not remarried. But the status of women in live-in-relationship is not that of a wife. And also lacks social approval or sanctity.

Law regarding Maintenance:

In *Vidyadhari vs Sukhrana Bai* (2008) 2 SCC 238, the Supreme Court of India held that “a bigamous marriage may be declared illegal because it contravenes the provisions of the Hindu Marriage Act 1955, but it cannot be called immoral to deny the right of alimony or maintenance to the spouse.”

Property and Succession Laws:

Our personal property laws are not recognized as the succession right in the live-in relationship. In the current legal scenario, a person through a will can appoint any other person as his or her successor. The best way to inherit a property in case of a live-in relationship is through a will. But in the absence of a will living partner cannot inherit the property of the deceased partner.

However, the Supreme Court in *Vidyadhari vs Shukrana Bai* case created hope for live-in partners. In this dictum, the court ruled that a live-in partner can inherit the property of the deceased partner if they are in a long term live-in relationship. Without recognizing the inheritance right of such a partner, it would be disrespectful to the persons who dedicated their lives to a de-facto family.

Constitutional Protection:

In India acceptance of premarital sex is perceived as an attack towards the certainty of marriage. But in law, morality has very little role to play when it comes to protecting the legal rights of individuals. Whenever any kind of restriction is imposed on pre-marital sex or live-in relationship, it violates Article 21 of the Indian Constitution which confers the right to life and personal liberty and more importantly right to privacy which is interpreted under the canopy of Article 21.

Laws for Children Born Out of Live-In-Relationship:

As far as the rights of children are concerned, the dignity and respect that a child born out of a live-in-relationship is lacking compared to a child born out of a married couple. A child born out of a live-in relationship is also facing different kinds of discrimination in the

matters of parental responsibility, legitimacy, inheritance, etc. due to the absence of any proper legislation.

Legitimacy:

The rule of legitimacy depends upon marriage. But, Section 16 of the Hindu Marriage Act, 1955 confers legitimacy on those children, who are born out of null and void marriages.

Guardianship:

According to The Guardians and Wards Act, 1890, any matter concerning a minor has to be considered and decided only from the viewpoint of the welfare and interest of the minor. However, the parental responsibility of a child born out of a living relationship is an unresolved matter. As far as those children are considered illegitimate, at the time of partners, break-up/split-up who is responsible for taking care of the child is a great concern.

Section 6 (b) of The Hindu Minority and Guardianship Act, 1956, is indirectly dealing with live-in-relationship. This section grants custodial rights to the mother (natural guardian) in the case of children born out of illegitimate relations.

Maintenance:

Section 125 of the Criminal Procedure Code, 1973, provides maintenance to minor children irrespective of their legitimacy. The unequal treatment of children born in a live-in relationship and marital relationship even though both are legitimate in the eyes of law can amount to a violation of article 14 which promises equality before the law.

Advantages and Disadvantages of Live-In-Relationship:

There are many advantages for which Gen - Y is now more attracted to this form of relationship instead of marriage. These are:

- The live-in relationship gives more freedom – more convenience and no interference in personal activities.
- One can easily enter and easily break out the relationship without any formalities.
- No need to spend huge money on marriage ceremonies or dowry.
- For women, it's a great deal with a new study finding that live-in boyfriends do a lot more housework than married men.

- Allows couples to spend more time with each other as now they are not bound by the constraints of time.
- Live-in relationships expose the level of love and intimacy as stand between couples. It also brings relationship problems to the forefront before the final step of marriage is taken.

Several disadvantages have also existed. These are:

- With no concept of husband and wife, the parties can abandon each other and promote adultery making women the ultimate sufferers.
- There is no specific law on maintenance, succession, etc., and the 'reasonable' time after which the parties will be treated as husband and wife is unclear.
- A potent disadvantage of a live-in relationship is social censure. Many couples in live-in relationships prefer to call themselves married fearing rejection. This primarily causes problems in relationships.

A Critical Analysis on Social Fabric:

Every relation has its advantages and disadvantages. Even if you are married or just living together, the final verdict depends on the strength of the relation and understanding between the partners. Marriage is a legal approval to live together by the law and the society, but if you are not happy with your partner or you are not able to understand each other, then marriage or cohabitation does not matter. The success or the strength of the relation depends on mutual understanding, sacrifice by both partners. It has been seen in many relations that where sacrifice or understanding is seen in only one partner who takes the responsibility to keep the relation live, such relations would have the chance of breaking up any moment when the sacrificing partner feels, enough is enough. Live In relation could be the result of situations where marriage is not an option.

When you understand the law, you and your partner can make informed decisions about how to structure your life, finances, property ownership, and family relationships to best meet your needs. The Supreme Court of India has granted the legal status to the live-in relationship, but what happens if one partner decides to walk out? Could the other partner be left homeless? Will the children born into a live-in relationship be recognized by the law? Will it empower women with the Right to Inheritance, Right to maintenance, and Right to

demand Alimony? Will the law give the same standing status to a live-in relationship as that of Marriage? Answers to these questions are changing regularly.

Many problems might crop up while framing a law to live in a relationship.

- The law on this issue is ambiguous. Concrete law is required on the issue.
- The rights of a female and a child born out of such relationships ought to be secured.
- The rights and responsibilities of the parties involved therein should be clarified.
- The reasonable time limit after which parties in the live-in relationship could be treated as husband and wife should be cleared.

Conclusion:

The live-in-relationship is no longer a novelty to Indian society. It has come to stay. Live-in-relationship couples are multiplying in number; at the same time institution of marriages stays unaffected. Whether you like it or not the phenomenon of live-in-relationship is digging deep into the social fabric of India as if it is posing a bold challenge to the institution of marriage. The law in every country has to keep pace with the changing times.

List of Cases:

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

Badri Prasad vs. Dy. Director of Consolidation (1978) AIR 1557 SC (India).

Khushboo vs. Kanniammal (2010) 5 SCC 600 (India).

Gokul Chand vs. Parvin Kumari (1952) AIR 233 SC (India).

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