

Live In Relationships and its Impact on the Institution of Marriage in India

Maj (Dr) Anil Balhera

Asst Professor, Dept of Laws, BPS Women University Khanpur-Kalan, Sonapat, Haryana

ABSTRACT: *Marriage is a sacred union and one of the important parts of Indian culture. As a result, as a social institution, it has legal implications and a high respect in society. However, changing times have seen the gradual emergence of the Western cultural idea of a live-in relationship, which is under criticism and highly debated regarding its legality and implication on societal relationships & set up. Though there is no explicit legislation, long term cohabitation between a man and a woman has long been equated to a valid marriage by the court as implied in other legislation. This article seeks to clarify the current legal status of live-in relationship in India and current developments in the attitude of the Courts in granting various rights to live-in partners in India. This Paper also tries to identify the need of a proper legal regime for ensuring the rights of live-in partners in India. It concludes that there is a need for a special statutory legislation and clearly laying down the rights and liabilities of each party & to remove clouds of all kind doubts.*

“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”

– Honourable Justice A.K. Ganguly in *Revanasiddappa v. Mallikarjun*¹

India is a country,² which is steadily opening its windows to western ideas and lifestyles, one of which is the concept of live in relationships.³ A relationship of a man with a women in legal

parlance is legitimate if is based on proper marriage and illegitimate if not as per Marriage Laws.⁴ The live in relationship is a living societal unapproved arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. In every day parlance, it is cohabitation.⁵ The basic idea of trial a live in relationship is that the interested couple wants to test their compatibility for each other before going for some commitment.⁶ It may also be that couples in live-in relationships see no benefit or value offered (in fact forced mechanism) by the institution of marriage or that their financial situation prevents them from being married on account of marriage expenses. Whatever the reason, it is quite clear that in a traditional society,⁷ where the institution of marriage is considered to be 'sacred',⁸ an increasing number of couples choose a live-in relationship, sometimes even as a permanent arrangement, over marriage. In such situations, various social, economic and legal issues have arisen and continue to do so.⁹ This article filter the impact of live in relationships on marriage and family institutions. It also aims at comparing the status of live in relationships with the status of married couples with the help of judicial decisions in India. It argues that it is difficult to fit the concept of live in relationships within personal laws governing the institution of marriage and legitimacy of children.

The Live-In Relationship emerging concept in urban India:

Live-in relationships in India are often seen as a taboo and a sin.¹⁰ However, it is not very uncommon to find unmarried people in big metropolitan area staying together as husband and wife. No statutes deal with succession or marriage such as the Hindu Marriage Act 1955, the Special Marriage Act 1954 or the Indian Succession Act 1925 and so on recognize live-in relationships specifically.¹¹ However, under the Hindu Marriage Act, children born out of such relationships are considered to be legitimate and have been granted the right to succession.¹² With no clear and specific legal sanction, there has been a huge societal change in the attitude towards live-in relationships together with multinational companies providing health insurance benefits to domestic partners¹³ of the employees.¹⁴

The Protection of Women from Domestic Violence Act 2005 recognizes the right to protection of a person in a “relationship in the nature of marriage”¹⁵ from domestic violence¹⁶, with access to monetary¹⁷ and other reliefs under the Act.¹⁸ The law does have a concept called “presumption of marriage”¹⁹ which could be used to recognize such relationships. A presumption is available if a man and woman are living under the same roof and cohabit for a number of years.²⁰ Continuous and prolonged cohabitation raises a presumption in favour of marriage.²¹

Analysis and Impact of the Status of Live In Relationships with the Status of Married Couples

There is no legal hurdle to prevent a man and a woman cohabiting together without entering into formal marriage in the form of “live-ins”.²² The traditional Indian society²³ however

disapproved of such living arrangements, for several reasons substantially on moral ethics.²⁴ First, society revered the institution of marriage. Secondly, if a woman was financially dependent on the man, the instability of such a relationship created a subservient status for the woman. Till recently and even now in small towns and cities, there is much social criticism and stigma attached to such live-in relationships, forcing them to remain largely secretive.²⁵

Marriage:

The Supreme Court in *Lata Singh v. State of U.P.*²⁶ held that the live-in relationship is permissible only in unmarried persons of heterosexual sex of the age of majority. The brothers of Lata Singh had alleged that she was mentally unfit when they had protested her marriage. However this was held to be untrue when she was examined by doctors. The live-in relationship if continued for such a long time, cannot be termed as a “walk in and walk out” relationship; there has to be a presumption of marriage between them²⁷. In *Gokal Chand v. Parvin Kumari*²⁸ the court cautioned that the couple would not get legitimacy, if the evidence of them living together was rebuttable. These decisions only served to recognize marriages which were doubted, on the basis that a long-term live-in relationship existed. However the courts did not recognize live-in relationships as independent of the institution of marriage, that is the presumption of marriage was a key element.

In *S.P.S. Balasubramanyam v. Suruttayan*²⁹ the Supreme Court held that if a man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114³⁰ of the Indian Evidence Act that they live as husband and wife and the children born to them will not be

illegitimate.³¹ This decision suggested that the law treats long live-in relationships as good as marriages. The courts could subsequently interpret live-in relations to mean “living together as husband and wife”³² to exclude those who enter into a live-in relationship “by choice” without intending to be married, as that is still a matter of doubt and debate.³³

Maintenance:

The Supreme Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*³⁴ held that where a man having a living lawfully wedded wife marries another woman, his second “wife” had no claim to maintenance under Section 125 of the Code of Criminal Procedure, 1973³⁵, even though she might be unaware of his earlier marriage. The Court refused to give any recognition to the fact that they had lived together even if their marriage was void. The man was allowed to take advantage of this, although he had failed to disclose his earlier marriage. The Supreme Court held that it would not grant any rights to the woman in such a live-in relationship “of circumstance”.³⁶ In *Malti v. State of U.P.*³⁷, the Allahabad High Court held that a woman living with a man could not be equated as his “wife”.³⁸ In this case, the woman was a cook in the man's house and she stayed with him and shared an intimate relationship. The Court however refused to extend the meaning of the word “wife”³⁹ as denoted in Section 125 of the Code of Criminal Procedure⁴⁰ to include such a live-in partner's maintenance⁴¹ claims.

In *Savitaben Somabhai Bhatiya v. State of Gujarat*,⁴² the Supreme Court went further to the extent of observing that the fact that the respondent was treating the appellant as his wife “is really inconsequential because it is the intention of the legislature which is relevant and not the attitude of the party”. Even the plea

that the appellant was not informed about the respondent's earlier marriage, when she married him, is of “no avail”, because the principle of estoppels⁴³ cannot be pressed into service to defeat the provisions of Section 125 of the Code of Criminal Procedure.⁴⁴ Thus, as per the present provisions of Section 125⁴⁵, there is no escape from the conclusion that the expression “wife” refers only to the “legally wedded wife”. Hence, the Court granted maintenance to the child and not to the second wife. Under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision.⁴⁶

In *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*,⁴⁷ the Court took a liberal view and stated that the second wife has a right to claim maintenance under the Hindu Adoptions and Maintenance Act, 1956.⁴⁸ 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, 2005,⁴⁹ 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.⁵⁰

The Supreme Court in *Rameshchandra Rampratapi Daga v. Rameshwari Rameshchandra Daga*⁵¹ tried to distinguish between the “legality” and “morality” of relationships. Where the Supreme Court observed that keeping into consideration the present state of statutory law, a bigamous marriage⁵² may be declared illegal because it contravenes the provisions of the Hindu Marriage Act, 1955 but it cannot be said to be

immoral so as to deny even the right of alimony or maintenance to spouse.⁵³

The increasing incidents of live-in relationships, especially those which occur “by circumstance”, however ensured that the need for reforms was recognized. In 2003, the Malimath Committee Report on “Reforms in the Criminal Justice System” suggested an amendment of the word “wife” in Section 125 of the Code of Criminal Procedure to include a woman who is “living in” with a man for a “reasonable period”.⁵⁴ Ironically, back in 1985, the Supreme Court in *Sumitra Devi v. Bhikan Choudhary*⁵⁵ had held that where a man and woman were cohabiting for a long time and were treated by society as husband and wife, marriage is to be presumed for awarding maintenance. However, the courts have not extended this principle to include purported live-in partners. Significantly, the Protection of Women from Domestic Violence Act 2005 became the first statute to give live-in partners the same recognition as married couples. The protection under this Act does not qualify live-in partners to get the same benefit under personal law.⁵⁶

In *M. Palani v. Meenakshi*⁵⁷ the respondent had filed a claim for maintenance of Rs 10,000 for food, clothes, shelter and other basic necessities from the plaintiff, who had been in a live-in relationship with her. The said application was filed under Section 20⁵⁸ read with Section 26.⁵⁹ The petitioner contended that the respondent was not entitled to any maintenance since they had not lived together at any point of time. They had only indulged in consensual sexual intercourse sometimes as friends, without any thought of marriage. He hence contended that mere proximity at some time for the sake of mutual pleasure (as in their case) could not be called a “domestic relationship”⁶⁰ to invite the application of the

Protection of Women from Domestic Violence Act, 2005.

The Madras High Court looked into the definition of “domestic relationship” as given in Section 2(f) of the Protection of Women from Domestic Violence Act, 2005⁶¹ which did not specify that the couple should have lived together for a particular period for the relationship to be a domestic relationship. The Court held that “at least at the time of having sex by them, they shared household and lived together”.⁶² The Court further held that the provisions of the Act would apply even in such a case; hence, a maintenance claim under the Act was upheld. Thus the provisions of the Act would apply even in those cases where man and woman share a frequent sexual relationship, even if there is no express intention to a long-term commitment from either party. While some may see this as a weapon which may be used by a woman to seek vengeance on a man, if he walks out of a soured live-in relationship, a larger issue of protecting the rights and vulnerability of the “other” woman has been partially addressed by allowing such claims.⁶³

Partners in a live-in relationship do not enjoy an automatic right of inheritance to the property of their partner. The Hindu Succession Act 1956 does not specify succession rights to even a mistress living with a male Hindu. However, the Supreme Court in *Vidhyadhari v. Sukhrana Bai*⁶⁴ created a hope for persons living together as husband and wife by providing that those who have been in a live-in relationship for a reasonably long period of time can receive property in inheritance from a live-in partner. In this case property of a Hindu male, upon his death (intestate), was given to a woman with whom he enjoyed a live-in relationship, even though he had a legally wedded wife alive.⁶⁵

Divorce:

Women in live-in relationships are not recognized by their husband's surname, for any legal or financial matters including opening a bank account, submission of income tax return, applying for loans, etc.⁶⁶ They retain their identity as an individual and are not recognized as a “wife”⁶⁷ or a “domestic partner”.⁶⁸ Consequently live-in couples can separate informally without any formal divorce⁶⁹ or the intervention of a court.⁷⁰ In case of live-in relationship, it is not possible to have a formal divorce in law among partners. The careful scrutiny of the existing matrimonial laws indicates that unless this kind of relationship is not recognized in law the partners cannot be allowed to separate formally. It looks like it is easy to get into live-in relationship whether “by choice” or “by circumstance” but difficult to get out of this relationship formally. Whereas the consequences of this relationship are left unanswered in law, for example, there is no law in place which deals with the division and protection of their separate or joint property on separation.

Status of children from live-in relationships

There is an increasing trend of couples entering into live-in relationships, not as a precursor but rather a substitute of a formal marriage. Such long-term commitments often include procreation of children. In live-ins “by circumstance”, the partners may procreate believing that he/she will become legally married. Either way various legal issues arise about the status and rights of such children, born out of legal wedlock, in comparison to those born in marriages. Following are the key issues for consideration.

(a) Legitimacy of children
Section 112 of the Indian Evidence Act, 1872⁷¹

provides that legitimacy of a child is proved only if he or she was born during the continuance of a valid marriage between his mother and father. Mohammedan (Muslim) law too recognizes only those children, who are the offspring between a man and his wife as legitimate children. Thus children born from a live-in relationship were “illegitimate”⁷² in the eye of existing law. However the Supreme Court in *Tulsa v. Durghatiya*⁷³ held that children born out of such a relationship will no more be considered illegitimate.⁷⁴

(b) Maintenance rights of children
A legitimate son, son of predeceased son or the son of predeceased son of predeceased son, so long as he is minor, and a legitimate unmarried daughter or unmarried daughter of the predeceased son or the unmarried daughter of a predeceased son of predeceased son, so long as she remains unmarried, shall be maintained as dependants by his or her father or the estate of his or her deceased father.⁷⁶ But children from live-in relationships do not enjoy this right under the Hindu Adoptions and Maintenance Act 1956, whereas Section 125 of the Code of Criminal Procedure provides maintenance to children whether legitimate or illegitimate while they are minors and after they attain majority where such child is unable to maintain himself.

(c) Guardianship and custodial rights
In Hindu law, after the marriage of a man to a girl who is a legal minor, the husband is the legal guardian of his wife as a minor and is entitled to her custody. The mere fact that she is a minor will not disentitle her from claiming such custody to the exclusion of her parents.⁷⁸ Where the father and the mother are not married to each other and a child is born to such parents, the mother and not the father has the parental responsibility for the child.⁷⁹ Section 6(a)⁸⁰ of the Hindu Minority and

Guardianship Act 1956 provides the father as the natural guardian of his minor legitimate children and the mother becomes the natural guardian “in his absence” i.e. where he is incapable of acting as the guardian.⁸¹ Section 6(b)⁸² of the Hindu Minority and Guardianship Act 1956 provides the mother as the natural guardian over any illegitimate children she has. Under Muslim law, the father is the natural guardian and the mother does not become the natural guardian even after his death. Muslim law does not provide for the guardianship of illegitimate children, but it has come to be established through case law that it will be vested in the mother.⁸³

(d) Inheritance rights of children Under Hindu law, an illegitimate child inherits the property of his mother only and not putative father, whereas under Sharia law, such a child cannot even inherit from his mother.⁸⁵ If children from a live-in relationship were to still be considered “illegitimate”,⁸⁶ inheritance from the father's estate would be barred. In fact, where the live-in relationship has not subsisted for a reasonable period of time, the courts would not consider a child from such relationship to be legitimate, thereby barring his inheritance. However, where the live-in satisfies this condition, a child being “legitimate” can inherit from both the parents. In *Revanasiddappav. Mallikarjun*,⁸⁷ the Supreme Court granted the inheritance to the four children born from the woman with whom the man shared a live-in relationship, calling them “his legal heirs”. The Court has thus ensured that no child born from a live-in relationship of a reasonable period may be denied their inheritance.⁸⁸

Conclusion

The concept of live-in relationships have come out of the closet and even found partial

recognition in law. Though the debate rages on in public forum with recommendations and opinions yet coming in from various authorities and Commissions to either amend the existing laws or desist from doing so, there have been no amendments to the existing personal law. It is thus, worthwhile to examine whether or not, live-in relationships can find their place in personal laws in the country. The harm caused to a “legally wedded wife” and her children, in a case where a man maintains live-in relationship with another woman without the knowledge of his legally wedded wife and the probability that such legalization will increase the practice of bigamy are the two main contentions of the critics of legalization of live-in relationships have aside from the done to death immorality. Any attempt to protect live-ins in personal laws must therefore tackle these two issues carefully.⁸⁹

The courts have recognized persons in long-term live-in relationship to be as good as a married spouse. Such decisions, while being delivered were for upholding the rights of the “other” woman but these decisions contradict the law on bigamy. When bigamy is illegal (except for Muslims) it is unclear in what sense a live-in relationship can be equal to a marriage, if either the man or the woman is already married to a living spouse.⁹⁰ The ambiguity allows a man or woman to be in another relationship without being subjected to punishment for bigamy.⁹¹ Personal laws differ for various communities on different matters and to fit in live-ins into each of these aspects would be a difficult and complex exercise.

However, that would mean that live-ins were being given an equivalent status to marriage. So would that imply an extension of all rights of married partners to live-ins? This is rather earth shattering as it would destroy the “institution of a marriage”. Secondly, it would

entail some form of recognition for live-in couples, through registration (legal civil ceremony). While registration has been a successful experiment in other countries but it may not be suitable for India, where many live-ins are those “by circumstance”. Live-ins may thus entirely fit into personal laws only if they were given an equivalent status as married spouses.

The Supreme Court in a number of cases has stated that where there is cohabitation for a “reasonable period of time”, the couple shall be presumed to be leading a married life and shall enjoy such rights. However, the Court has not defined how much time should be considered to confer the marital status on such relationships. It needs the immediate attention of the lawmakers to make it clear through suitable legislation otherwise different couples may be subjected to different yardsticks when they seek their rights. After all, live-in relationships are based on informal understandings.

An amendment to Section 125 of the Code of Criminal Procedure could be one such example that would bring a uniform law, which would outline the rights, duties and responsibilities of such couples. Such a law could define those couples that to whom it applied (in terms of length of cohabitation), recognize the two kinds of live-in relationships and provide remedies accordingly, in the same manner as the Protection of Women from Domestic Violence Act, 2005.⁹²

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⁷⁹ “Natural guardians of a Hindu minor”, Section 6, The Hindu Minority and Guardianship Act, 1956

⁸⁰ “The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family

property), are- (a) in the case of a boy or unmarried girl- the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother”, Section 6 (a), Hindu Minority and Guardianship Act, 1956

⁸¹ *Githa Hariharan v. RBI*, (1999) 2 SCC 228

⁸² “ in the case of illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father”, Section 6(b), The Hindu Minority and Guardianship Act, 1956

⁸³ Asaf Ali Asghar Fyzee, *Outlines of Muhammadan Law*, Oxford University Press, 3rd ed.,1964

⁸⁴ Section 13, The Hindu Minority and Guardianship Act, 1956

⁸⁵ Asaf Ali Asghar Fyzee, *Outlines of Muhammadan Law*, Oxford University Press, 3rd ed.,1964

⁸⁶ “born to parents not married to each other”, Catherine Soanes, *Oxford English Dictionary*, Oxford University Press, 7th ed. 2007

⁸⁷ (2011) 11 SCC 1 : (2011) 3 SCC (Civ) 581

⁸⁸ *Vidhyadhari v. Sukhrana Bai*, (2008) 2 SCC 238 : (2008) 1 SCC (L&S) 451

⁸⁹ Prof. Vijender Kumar, *Live-In Relationship : Impact on Marriage and Family Institutions*, (2012) 4 SCC J-19 at p. J-19

⁹⁰ Prof. Vijender Kumar, *Live-In Relationship : Impact on Marriage and Family Institutions*, (2012) 4 SCC J-19 at p. J-19 ⁹¹ *Vidhyadhari v. Sukhrana Bai*, (2008) 2 SCC 238 : (2008) 1 SCC (L&S) 451

⁹² Deepak Lal, *India: Population Change and Its Consequences*, *Population and Development Review*, The Political Economy of Global Population Change, Vol. 32, 1950-2050 (2006) at p.173