



LIVE IN RELATIONSHIP AND ITS IMPACT ON INDIAN TRADITIONAL SOCIETY A CRITICAL SOCIO- LEGAL STUDY

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ABSTRACT

In the eyes of the world, India is such a country where marriage occupies a sacramental position or sacred union; philosophically, practically and traditionally. In our Indian traditional society, live-in-relationships are not a very new concept. The only difference in the contemporary time is that now people have become open about it. It is such a relationship in which people of two opposite sex live together and look after each other in their needs and deeds. With the changing time, a change is visible in our society i.e. arranged marriages to love marriages and now to 'live-in-relationships'. If an analysis is made why such relationships are emerging rapidly in the present day world, then definitely avoiding responsibility associated with marriage would emerge as the prime reason. The lack of commitment in such relations, the disrespect of societal bonds, the busy nature of day-to-day work culture and the lack of tolerance in relationships have given rise to alternative to marriages.

Therefore, in this paper I would like to critically study the socio- legal impact of live- in relationship in our Indian traditional society and will try to suggest certain remedial measures to meet the changing needs and demands of the contemporary world.

Introduction and the Concept

India is a country, which is slowly opening its doors for western ideas and lifestyles and one of the most crucial episodes amongst it, is the concept of live in relationships. 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. Live in Relationship is a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. ¹

Live in relationship form a characteristic feature and style of living of couples, especially those in metropolitan areas. However, the definition and ambit of live in relationship is very unclear, there is no specific legislation in India on this subject, and the laws are in the form of court verdicts which varies from case to case. The right of woman in such relationship is also not very certain, though court has shown willingness in recognising their rights. Though at global level as well, laws are not very clear on live in relationship, showing a common theme of aloofness and hesitation amongst countries to recognise such relationships. Nevertheless, as far as Indian scenario is concerned, there is a dire need to recognise such relationship in form of a new legislation that will clearly dictate the ambit of live in relationship and the rights and obligation of partners in such relationship. ²



Live-in relationships are still considered beyond the pale in India. But, in a country where parents often murder their children for marrying out of caste, many brave couples do live together without getting married. They face social opprobrium and many legal hurdles.³

On May 22, 2013, the apex court had observed that if a man and a woman in love decide to live together as a couple, it is well within their right to life and by no means can be deemed a “criminal offence”. Understandably the verdict must not have gone down well with all Indians- especially considering how there are still many who genuinely believe that premarital relationship between a man and a woman is nothing but a sin! However, despite its inevitable failure to change such mindset amongst a sizable chunk of the population, the Supreme Court’s ruling was rather a significant one because it provided couples living in such arrangement with the much needed protection of the law of the land.⁴

1.1 Defining Live-in Relationship

Live-in relation i.e. cohabitation is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married. The legal definition of live in relationship is “an arrangement of living under which the couple which is unmarried lives together to conduct a long-going relationship similarly as in marriage.”⁵

No specific law recognizes a live in relationships in India. No legislation is there to define the rights and obligations of the parties and the status of children born to such couples. A live-in relationship is not recognized by Hindu Marriage Act, 1955 or any other statute. In the absence of any law to define the status of live in relationships the Courts have taken the view that where a man and a woman live together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary. The Protection of Women from Domestic Violence Act 2005 provides for the protection, maintenance and right of alimony to a live in partner, if she complains.⁶

Legal Position of Live- in- Relationship in India⁷

The legal status of such live in couples lacks a definition. The rights and obligation which such couples have towards each other and the status of children born out of such a tie exudes a blurred shadow. No law on the subject has been formulated; the law is adumbrated in the court rooms via myriad cases. When it comes to live in relationships, in earlier cases the court tended to presume marriage based on the number of years of cohabitation.

In the cases prior to independence like *A Dinohamy v. WL Blahamy*⁸, the Privy Council laid down a broad rule postulating that, “*Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid*



marriage and not in a state of concubinage.” The same principle was reiterated in the case of *Mohabhat Ali v. Mohammad Ibrahim Khan*.⁹

After independence the first case that can be reviewed is *Badri Prasad v. Dy. Director of Consolidation*¹⁰, wherein the Supreme Court recognised live in relationships as valid marriage, putting a stop to questions raised by authorities on the 50 years of life in relationship of a couple.

Moving on from the initial time when the court recognised live in relationship which were of considerably long period, court in recent cases have postulated that live in relationship are not illegal *per se*. The Allahabad High Court, in 2001, in *Payal Sharma v. Superintendent, Nari Niketan, and others*¹¹, stated that a live-in relationship is not illegal. Sharma had approached the Allahabad High Court when she was forced to live in Nari Niketan at Agra, following her arrest, along with Ramendra Singh, with whom she had a live-in relationship. The Agra police arrested her and Singh on the basis of an FIR lodged by her father, accusing Singh, an already married man, of kidnapping Sharma. Payal Sharma produced documentary evidence evincing the fact that she was 21 years old. On the basis of this evidence, the court directed the authorities to set her free. 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.*”

In *Patel and others* case,¹² the Supreme Court observed that live-in –relation between two adults without a formal marriage cannot be construed as an offence. It also stated that there is no such statute which postulates that live in relationships are illegal. The same proposition was upheld in the case of *Tulsa v. Durghatiya*,¹³ where the long term live in relationship was recognised as equivalent to marriage.

The further sanction to live in relationship was granted by judgement of Supreme Court on 23rd of March, 2010 in the *Khushboo case*.¹⁴ The case of the prosecution was that the comment of the actress Khushboo allegedly endorsing premarital sex will adversely affect the moral fabric of society. The Court, while quashing the charges framed on Khushboo, commented that there is no law that prohibits pre-marital relationships. A three judge bench comprising of Chief Justice K.G. Balakrishnan, Justice Deepak Verma and Justice B.S. Chauhan observed, “*When two adult people want to live together what is the offence. Does it amount to an offence? Living together is not an offence. It cannot be an offence*“. The court further said “*Please tell us what is the offence and under which section. Living together is a right to life*”, thereby referring to the right to life guaranteed under Article 21. Though this was an obiter dictum, it provided a positive impetus to live in relationships.

However, this position is not all binding. The Delhi High Court, in a recent case, observed that a live in relationship is a walk in and walk out relationship. Justice S.N. Dhingra noted, “*There are no legal strings attached to this relationship nor does*



*this relationship create any legal-bond between the partners". The court further added, "People who choose to have live-in relationship cannot complain of infidelity or immorality as live-in relationships are also known to have been between a married man and unmarried woman or vice-versa"*¹⁵

Hence, though more or less uniformity has been exuded in a positive direction by the court when it comes to live in relationships, the law does not cut a clear picture as can be observed from the recent Delhi High Court judgment.

Live in Relationship in Indian Socio-Legal Context

The word 'live in' in the Indian Society has been lighted up particularly in the recent years. Such practice is still considered as taboo in a major part of the country. A large and clear picture of India thus will be substantiated by the rural India and not a handful of metros. But an increasing number of live in relationship in Indian society poses a great threat to the very notion of husband and wife and to the entire fabric weaved out of values and morals on which Indian society stands. It also tends to prop up adultery, as there is no surety that live in partners are unmarried. Such relationship also endorses bigamy. The rights of female partner are also precarious. Moreover, there is no law of succession and maintenance that protects the right of such live in couples. And above all, such relationships are fragile and can be dissolved any time.¹⁶

To be or not to be in live-in relationship is the most debated question after Supreme Court's recent observation on the issue of live-in relationship in the context of Tamil actress Khushboo's statement on premarital sex.¹⁷ Supreme Court held that, live-in relationship is not an offence. India is a country which having rich values, traditions, customs and beliefs are the important sources of law. Marriage is a sacred union, gets legal effects and high respect in society. Marriage is a social institution and one of the important parts of Indian Culture. Our country, which has strong cultural roots, focuses on morality and social ethics. But with changing times, we have started to follow the Western culture, which is totally different than Indian culture. A certain section of India too seems to have followed the Western culture i.e. of live- in relationship.¹⁸

These rights are provided in the matrimonial laws which govern the parties even the Protection Of Women From Domestic Violence Act, 2005, clearly provides in section 2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household. There is no question of de facto recognition of such live in relationship at least in India as no civilized person of the society will agree to such relationship in his or her family or neighborhood as the case may be, as far de jure recognition is concerned, no legislature will ever enact any such law giving legal recognition to such relationship at least in India where 1 billion people, i.e. one sixth the population of the world live, what these small countries with small population do is none of our concern.¹⁹



The Maharashtra Government in October 2008 approved a proposal suggesting that a woman involved in a live-in relationship for a 'reasonable period', should get the status of a wife. Whether a period is a 'reasonable period' or not is determined by the facts and circumstances of each case.²⁰

The Commission recommended²¹ to the Ministry of Women and Child Development that, the definition of 'wife' as described in section 125 of Cr.P.C. must include women involved in a live-in relationship. The aim of the recommendation was to harmonise the provisions of law dealing with protection of women from domestic violence and also to put a live-in couple's relationship at par with that of a legally married couple. There was a Committee set up by the Supreme Court for this purpose, called the Justice Malimath Committee, which observed that "if a man and a woman are living together as husband and wife for a reasonable long period, the man shall be deemed to have married the woman."²²

The Malimath Committee²³ had also suggested that the word 'wife' under Cr.P.C. be amended to include a 'woman living with the man like his wife' so that even a woman having a live-in relationship with a man would also be entitled to alimony. On 16.09.2009, the Supreme Court in a case observed that it is not necessary for a woman to strictly establish the marriage, to claim maintenance under section 125 of Cr.P.C. A woman in a live-in relationship may also claim maintenance under section 125 Cr.P.C.²⁴

Legislative Protection of Live-in- Relationship in India²⁵

Marriage under Muslims regulated by their personal law of Shariat, rest of Indians ruled by mainly two marriage laws such as Hindu Marriage Act, 1955 and The Special Marriage Act, 1954 for the purpose of proving one's marriage valid to establish an existing relationship or divorce while the pre-existing relation qualifies one for maintenance.

Under the practice of Live-in-relationship a man and women, generally both unmarried, enter into an agreement to live together and cohabit without getting formally married. This is prevalent in big cities where men and women, while working at the same place, find it convenient to live together and enjoy the life without taking the risk of marriage. However, the problem occurs when a child is born of such a relationship. Besides the questions of legitimacy of such children, the issues of their custody as well as the issues of inheritance have already started coming on surface in many cases. The State and the Judiciary are trying to find solution to these problems in the existing laws.

The protection of women from Domestic Violence Act, 2005 appears to have included such Live-in-relationship in the definition of Domestic Relationship" as follows:-



Sec. 2(a) “Aggrieved Person” means any women 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.”

Sec 2 (f)- “Domestic Relationship” 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, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”

Regarding the adoption of child stability is the key to raising an emotional and mentally healthy child; unmarried partners cannot provide the stability that married couples can give.

Position of Live in Relationship in other countries of the World

Live in relationships in various countries are either recognised as it exists or it's finding recognition via implied provisions of different statutes that protect property rights, housing rights. Many countries provide for live in relationship contracts in which partners can determine their legal rights. However, when it comes to the right of child born under such relationship, law of various countries exudes a uniform tenor of protecting their rights.²⁶ Below, the position of some countries relating to the live-in-relationship is summarized:²⁷

Scotland: The Family Law Act, 2006 for the first time officially identified and legalized cohabitation in Scotland. According to estimates, at the time when the law was passed, almost 150000 people across the country were involved in live in relationships. In case of such a relationship breaks, a cohabitant enjoys the rights to apply for financial support under section 28. In the event one of the partners die, the survivor has the right to seek financial support from the deceased's estate.

France: Cohabitation is governed by the Civil Solidarity Pact of ‘pacte civil de solidarite” which was passed by the French National Assembly in October, 1999. According to the law, cohabitation in France is defined as a “de facto stable and continuous relationship” between two persons of different sexes or of the same sex living together as couple.”

The United States: Live in relationships used to be illegal in all states before 1970. However, soon after, it was accepted as a common law subject to certain basic requirements.

Canada: In Canada, cohabitation is officially recognized as “common law marriage”. In a lot of cases, the federal law of the country grants common law couples the same rights as married couples. All common law live in couples enjoy legal sanctity if they have lived together for a minimum of 12 consecutive months, or they give birth to/adopt a child.



The United Kingdom: A man and a woman living together in a stable and consensual sexual relationship is often called “*common law spouses*”. According to the UK laws,²⁸ live in couples does not enjoy legal sanction and status as granted to married couple. There is no obligation on the partners to maintain each other. Partners do not have inheritance right over each other’s property unless named in their partner’s will. As per a 2010 note from the Home Affairs Section to the House of Commons, unmarried couples have no guaranteed rights to ownership of each other’s property on breakdown of relationship. However, the law seeks to protect the right of child born under such relationship. Both parents have the onus of bringing up their children irrespective of the fact that whether they are married or cohabiting. In the event,²⁹ the couple decides to separate, the courts do not have the legal power to override that decision.

Australia: The Family Law Act of Australia suggests that any “*de facto relationship*” can exist between two people of the same or different sex and also that a person can be in a de facto relationship even when legally in a de facto relationship with (or married to) another person.

Ireland: Even though living together is legally recognized in Ireland, public opinions are strictly against a new legislation that aims to facilitate legal rights for “separated” *cohabitating couples* to demand maintenance and/or share their property with the financially dependent partners. The legislation is applicable to same sex unmarried couples as well as couples from opposite sexes, provided they have been cohabitating for at least 3 years (or 2 years if they have children). The government, with this new legislation, plans to fetch financial and legal protection for financially dependent and vulnerable cohabitants in the event of break up or death.

The position that emerges with respect to live in relationships is not very discernible and lacks a definition in majority of the countries. While some countries have passed legislation according legal status to live in couples, some countries are granting greater legality to such couples by the implied provision of their statutes as discussed. In India as well, via various decisions of the court, law is exhibiting a tendency of giving legal tinge to live in relationships. Nevertheless, the fact remains; the legal progress of laws with respect to live in relationship and the sweeping increase in number of such live in relationships are not running parallel to each other. The law needs to whiz up to prescribe and proscribe speculation with respect to live in relations.³⁰

Advantages and Disadvantages of a Live in Relationship

The live in relationship is becoming the norm in the western societies. They are becoming so common that it is very much possible that there are more couples who are staying in a live in relationship as compared to those who have tied the knot. A live in relationship is becoming common in the society as it does not have the strings of commitment attached to it, as a marriage does. One may not get a readymade family but then one is also free from commitments of all kind.³¹



Pros/Advantages of live-in relationships³²

Maintenance for live-in partner

According to the Hindu Marriage Act, 1956, second marriage is invalid. The Supreme Court reserved its verdict on the question whether a woman in a live-in relationship or under the mistaken belief of being the wife of an already married man was entitled to maintenance. The court reserved its order in a case where D. Velusamy has challenged an order of the Madras High Court directing him to pay maintenance of Rs.500 per month to his 'second wife' D. Patchaiammal. Velusamy allegedly married Patchaiammal when his first marriage was still intact, further long-term relationship valid to claim alimony.

Legitimacy of the child born out of a live-in relationship

The Supreme Court on an earlier occasion, while deciding a case involving the legitimacy of a child born out of wedlock has ruled that if a man and a woman are involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be legitimate.³³ Also, the recent changes introduced in law through the Domestic Violence Act, 2005 gives protection to women involved in such relationships for a 'reasonable long period' and promises them the status of wives. A Supreme Court Bench headed by Justice Arijit Pasayat declared that children born out of such a relationship will no more be called illegitimate. "Law inclines in the interest of legitimacy and thumbs down 'whoreson' or 'fruit of adultery'"³⁴

Inheritance rights

The Supreme Court held that a child born out of a live-in relationship is not entitled to claim inheritance in Hindu ancestral coparcenary property (in the case of an undivided joint Hindu family) and can only claim a share in the parents' self-acquired property. The Bench set aside a Madras High Court judgment, which held that children born out of live-in relationships were entitled to a share in ancestral property as there was a presumption of marriage in view of the long relationship. A child can only make a claim on the person's self acquired property, in case the child is illegitimate. It can also be interpreted in a way in which a child could lay a claim on the share of a parents' ancestral property as they can ask for that parents' share in such property, as Section 16 permits a share in the parents' property. Hence, it could be argued that the person is not only entitled to self acquired property but also a share in the ancestral property.

The Apex Court also stated that while the marriage exists, a spouse cannot claim the live-in relationship with some other person and seek inheritance for the children from the property of that other person. The relationship with some other person, while the husband is living is not 'live-in relationship' but 'adultery'. It is further clarified that 'live in relationship' is permissible in unmarried heterosexuals in case, one of the said persons is married, the man may be guilty of adultery and it would amount to an offence under Section 497 of the Indian Penal Code.



Cons/Disadvantages of the live in relationship on the society³⁵

This fashion of live-in relation has effected all the youth of the society for various reasons. Nothing escapes without leaving drawbacks. No doubt such relation gives two partners the maximum opportunity to right to liberty, right to privacy, right to life. But the negative point has to be realised as well. Followings will be the negative effects on the society.

Breaking down of marriage institution

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 or subculture in which it is found. Such a union, often formalized via a wedding ceremony, may also be called matrimony. Therefore, it would be easily mentioned that live-in relationship is but degrading the valued of marriage which is recognised as social union unlike live-in relationship where there is only well of two person. Marriage leads to a bonding between a man and woman and this ensures security for children. Let us also caution the protagonists of live-in relationships that parting of ways, for one reason or the other, will leave behind deep scars of being used and rejected. Progenies of such relationships will also end up as misfits in society

In and out relationship

Live-in relationship is a contract of living together which is renewed every day by the parties and can be terminated by either without the consent of the other. Thus people who choose to have a live-in relationship cannot complain of infidelity or immorality. Therefore, we can say it nothing more than personnel enjoyment.

Anti-Hindu and live-in relationship

The Hindu Marriage Act, 1955, there is no provision for a second wife among Hindus. Hence, enabling the mistress to get the status of a legally married wife in all matters, including share in property, inheritance, and maintenance is contrary to the Act as well as Hindu customs. When the Maharastra Government approved a proposal suggesting that a woman involved in a live-in relationship for a 'reasonable period', should get the status of a wife, the Government on one hand has banned dance bars because they are spoiling the social atmosphere, while on the other it is promoting illicit relationships through such amendments.

Negative identity

Everyone has the moral liability to adhere to life-enriching norms to enable the future generations to be proud of their birth, cultural traditions and national identity. Why should children be made to bear the cross of the skewed behaviour of their parents? Responsible parents will leave a valuable legacy and not vicarious liabilities to the progeny. Even when parents normatively raise their children, many precautionary measures are required to insulate them from the ill-effects of the unsanctioned societal deviations and the vicious projections of modernity. India cannot afford to throw its proven and time-tested merits of its custom to the winds.



Weakens social relationship

As such relationships are choice of two individual wish to make their own family without the will of their parents there is always expectation of weak relation between the parents of the spouse family. Therefore, it is no doubt that there is always change of conflict of ideas and opinion in the family as a result it will laterally lead to weaken the relation between other member of the family. So over all it has a bitter negative effect in the society.

Protection of Rights of Female Partner in Live in Relationships³⁶

The rights of female partner in live in relationship tend to be secure, credited to the recent statutes and recommendation by the committees. Courts also display alacrity to protect the right of female partner in such relationship as exhibited by judgements given in number of cases. The statutes like Protection of Women from Domestic Violence Act, 2005 protects woman both in the categories of wife i.e. relationship by marriage and live-in partner i.e. relationship in nature of marriage, by reason of being embraced within the term “domestic relationship” under Section 2(f) of the Act. However as was discussed in *D. Veluswami v. D. Patchaimmal*, to get the benefits arising from “relationship like marriage”, it is necessary that, “*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, including being unmarried, they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.*”

In June, 2008, The National Commission for Women recommended to Ministry of Women and Child Development made suggestion to include live in female partners for the right of maintenance under Section 125 of Cr.P.C. This view was supported by the judgement in *Abhijit Bhikaseth Auti v. State Of Maharashtra and Others*. The positive opinion in favour of live in relationship was also seconded by Maharashtra Government in October, 2008 when it accepted the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife. However, recently it was observed that it is divorced wife who is treated as a wife in context of Section 125 of Cr.P.C and if a person has not even been married i.e. the case of live in partners, they cannot be divorced, and hence cannot claim maintenance under Section 125 of Cr.P.C.

The Apex Court even went on to protect the live in female partner from harassment for dowry. In *Koppiseti Subbharao Subramaniam v. State of A.P.*,³⁷ the defendant used to harass his live in partner for dowry. In the Supreme Court, Justice Arjit Pasyat and A.K. Ganguly while denying the contention of defendant that section 498A does not apply to him since he was not married to his live in partner held that, “*the nomenclature ‘dowry’ does not have any magical charm written over it. It is just a label given to a demand of money in relation to a marital relationship*”. Drawing parallels with the law which recognises the legitimacy of children born of void and voidable marriages, it explained its stand asking: “*Can a person who enters into a*



marital agreement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise?"

An important observation to be noted here is that to recognise the right of female partners in live in relationship and consequently the protection granted via some statutes will have to be accompanied by changes in laws of succession, adoption, marriage as well if we move in the direction of legalisation of such relationship. Another point to be taken note of is that recourse to such relationship was taken to circumvent the obligations, bondage and legality attached with marriage. Bringing in such limitations and obligations even without the formal shroud of marriage will run contrary to the whole idea of freedom and liberty associated with live in relation.

Supreme Court's guidelines on live-in relationship³⁸

In a landmark judgement with wide ramifications on marriage laws prevalent in India, the Supreme Court of India today said, live-in relationship was nor a crime, not a sin, and Parliament should enact law to regulate live-in relationship and amend Domestic Violence Act too.

In the landmark judgement, a bench headed by Justice K S Radhakrishnan framed guidelines for bringing live-in relationship within the expression 'relationship in the nature of marriage' for protection of women from Domestic Violence Act.

"Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage," the bench said.

The apex court formulated the following guidelines relating to live-in relationship on following points:

Duration of period of relationship

Section 2(f) of the Domestic Violence Act (DV Act) has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

Shared household

The expression has been defined under Section 2(s) of the DV Act.

Pooling of Resources and Financial Arrangements

Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.



Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or up-keeping the house, etc. is an indication of a relationship in the nature of marriage.

Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

Socialization in Public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

The apex court also said, “we cannot, however, lose sight of the fact that inequities do exist in such relationships and on breaking down such relationship, the woman invariably is the sufferer.

“Law of Constructive Trust developed as a means of recognizing the contributions, both pecuniary and non-pecuniary, perhaps comes to their aid in such situations, which may remain as a recourse for such a woman who find herself unfairly disadvantaged.

“Unfortunately, there is no express statutory provision to regulate such types of live-in relationships upon termination or disruption since those relationships are not in the nature of marriage.

“We can also come across situations where the parties entering into live-in-relationship and due to their joint efforts or otherwise acquiring properties, rearing children, etc. and disputes may also arise when one of the parties dies intestate.

“Such relationship, it may be noted, may endure for a long time and can result pattern of dependency and vulnerability, and increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship.



“Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against.

“Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage.”

Impact of Live in Relationship in the society³⁹

The fashion of live in relation has affected all the youth of the society for various reasons. Nothing escapes without leaving drawbacks. No doubt such relation gives two partners the maximum opportunity to right to liberty, right to privacy, right to life. But the negative point has to be realised as well. Following will be the negative effects on the society.

Breakdown of Marriage Institution: Marriage leads to bonding between a man and woman and this ensures security for children. Marriage is a social union or legal contract. Such a union often formalized via wedding ceremony. Therefore, it would be easily mentioned that live-in-relationship is but degrading the valued of marriage which is recognized as social union unlike live-in-relationship where there is only well of two person.

In and out relationship: Live in Relationship is a contract of living together which is renewed every day by the parties and can be terminated by either without the consent of the other. Thus people who choose to have a live-in-relationship cannot complain of infidelity or immorality. Therefore, we can say it nothing more than personnel enjoyment.

Weakness social relationship: As such relationships are choice of two individual wish to make their own family without the will of their parents there is always expectation of weak relation between the parents of the spouse family. Therefore it is no doubt that there is always change of conflict of ideas and opinion in the family as a result it will laterally lead to weaken the relation between other member of the family. So over all it is negative effect on the society.

Legitimacy of child born out of a live-in relationship: When it comes to the right of child born under live in relationship, we again find the law to be groping in the dark. The Hindu Marriage Act, 1955 gives the status of legitimacy to every child, irrespective of birth out of a void, voidable or valid marriage. However, they don't have property and maintenance rights. However, there is no such presumption of legality of child in any other religion or law, in such cases, legality of the child born out of such relationship is doubtful.

Another important matter that needs to be taken note of is that, if the live in partners and the parents desire to get out of the relationship, the future of the child



comes into question. There must be a provision to secure the right of the child, in case; none of the parent wants to keep the child with him. Court may appoint a guardian to look after the interest of child. A child can only make a claim on the person's self acquired property, in case the child is illegitimate. The child ought to be entitled to have share, both in mother's and father's property.

Problem in youth: Live-in-Relation would give rise to child pregnancy and has far reaching ramifications, adding despite its aim to restrict multiple partners. It would have an adverse impact on the youths and result in the spread of HIV/Aids.

1. Recommendations relating to Live in Relationship in India⁴⁰

Considering the number of Live in Relationship in India, the scope of the provision for maintenance under the section 125 of the Criminal Procedure Code (Cr.P.C) needs to be expanded, so that the women in such relationships do not face economic deprivation after living a domestic set-up for a long period of time. As of now maintenance can only be claimed by a woman who is wife, has been divorced or has obtained a divorce or is legally separated and is not unmarried.

The scope of sec 125 expanded in such a way that woman who is deprived by her partner & who has spent longer period of time. Merely spending weekends together or one-night stand would not make it a domestic relationship, because parliament has used the expression "relationship in the nature of marriage"

The spouse who wants to claim under the Live-in- Relationship must fulfill the following conditions:

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

Live in Relationships should be granted legal status after specific period of its existence, providing the partners as well as the child born out of such relationship with all the legal rights of maintenance, succession, inheritance as available to married couple and their legitimate offspring, also securing their rights after the dissolution of such relationship due to break up or death of one of the partner.

The guidelines given in *D. Veluswami V. D. Patchaimmal*⁴¹ is worth noting in this context and should be followed. Since, provide *de facto* live in relationship is difficult; the burden of proof should be relaxed, so that the rights that are conferred upon partners, specifically female live in partners can be availed. However, if the person in live in relationship is already married, then live in relationship should be considered as the second marriage, hence an offence bigamy. This will ensure the rights and privileges in live in relationship without possessing any threat to the institution of marriage. A good legal system always tends to adapt to the gradual



social changes. As such, the law cannot grope in dark, when the number of live in couples is increasing tremendously. The rights of live in couples should be legally recognized while ensuring that it does not impede upon the system of marriage.

Live-in- relation between two adults without a formal marriage cannot be construed as an offence. But at the same time if it is by the married adults then in such case they can not take the shelter of live in relationship; it should be construed as an offence.

Awareness: - Live-in-Relation would give rise to child pregnancy and has far reaching ramifications, adding despite its aim to restrict multiple partners. It would have an adverse impact on the youths and result in the spread of HIV/Aids. Therefore, awareness amongst youth is of most important.

Concluding Remarks

To conclude, it can be said that there is an urgent need of legal provision on live in relationship which demonstrate clear cut picture keeping in mind the present Indian social context which stands on the foundation of tradition and culture. Live in relationships should be granted legal status but only after considerable period of cohabitation protecting rights of partners and child born out of such relationship.⁴² Cohabitation and live in relationship often tends to be a human rightist and individualistic approach. Despite being highly prevalent in majority of the western countries, the reality with regard to the social fabric of India is drastically different. This can be comprehend from the fact that in India, marriage continues to be the institution that is preferred to any other form of union. But that does not mean that adult unmarried couples who wish to live together under the same roof, should be prohibited or frowned upon for any reason whatsoever. The judiciary's efforts to protect the interests of people living in such arrangements is definitely a welcome step for the greater benefits of the society.⁴³ Now, the ball is in the hands of the legislators to frame such policy which will give live-in-relationship a legal sanctity in one hand and also protects the interest of the Indian traditional cultural values and customs so that our age old sanskar of marriage will not be considered as an outdated concept by our next generation.

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