
A PERSPECTIVE OF LIVE-IN RELATIONSHIPS IN INDIA THROUGH LEGAL, JUDICIAL AND SOCIETAL SPECTACLES

Nandini Sohoni, RTMNU's Babasaheb Ambedkar College of Law, Nagpur

ABSTRACT

Recently Punjab and Haryana High Court in a case stated, “The live-in-relationship nowadays is not a new phenomenon but the society has not evolved to the extent of accepting such relationship without raising the eyebrows to such relationship.”¹ It is true that it is not a new phenomenon as the concept of live-in relationship can be traced back to the Vedic period but today even after hundreds of years there is hesitance in the society to accept such relationships. The law around this concept has been majorly developed through judicial interventions. This article deals with the development of the law, the societal perception and the role of judiciary in paving a way forward in protection of the rights of persons in such relationships. This article attempts to show how judicial activism in this area has brought a change in the mindset of people and has also brought some acceptance and that it should no longer be treated as a taboo.

¹Sanjay and another v. State of Haryana, CRWP-5531-2021

INTRODUCTION AND BACKGROUND

According to the Veda, marriage is a union between a masculine and feminine entity with commitments to pursue Dharma, Artha (possessions), Kama (physical and other desires) and Moksha (the liberation) in unison. In our country marriage is considered a sacred affair. It is something which is considered to mean living a more fulfilled life. Though now, with the influence from the west, times are changing. Students are becoming more welcoming to the idea of moving out and pursuing education after a particular age and attaining financial independence and mobility. They prefer living on their own terms. In all this, the concept of live-in relationship has gained a lot of popularity. Live-in relationship has not been defined under any statute. It is an arrangement wherein an adult couple, who are unmarried live together under the same roof for a long time. It is similar to the nature of being married but not so similar that it can be called a marriage. Unlike a marriage, such kind of relationships are less binding. The couple can choose to enter into such relationship, live together, get to know each other and see for themselves if they are compatible or not. If it doesn't work out, they can break up the relationship. It is for this reason these are described as walk-in and walk-out relationships. These are also being preferred more by the new generation because it saves a lot of wedding hassles or court procedures in case of divorce. It is also seen as a convenient option for the people of the same sex if they want to live together. But this notion of live in relationship, being unconventional is not approved by the society. It is considered socially and morally improper to cohabit with a person before being to that person. In most of the cases, it does not have family's assent. This individualistic way of living is considered as a social stigma in our country. It is said that the only thing that is constant is change and with the changes in the world, the society also needs to progress with an open mind.

Though this term 'Live-in relationship' is relatively a new one in the Indian setting but its concept can be traced back to the times of Vedas. There is a mention of eight different kinds of marriages in the Vedas. Among them, the one called the Gandharva Vivaah was a marriage in which both the partners, the man and the woman mutually decide and consent to marriage without involving their families, without performing any rites or rituals. It was a kind of commitment by words of mouth. But in this case the couple bore certain responsibilities and duties towards each other unlike live-in relationship. There is another concept similar to that of this new age arrangement. It is called Maitri Karar or friendship arrangement. In this a man and a woman enter into an agreement to live together without being legally wedded to one another. This was mostly practiced in the state of Gujarat.

Live-in relationship lays no responsibilities or commitments on the couple. Though this facet of this relationship is something which has made it more preferred but there is also a need to protect the rights of the parties involved. It is important to look at the effects and pertinence of such kind of relationship on our society. There is no separate statute in our country dealing with this live-in relationship. With the increase in the number of such relationships and there being no statutory backing one has to take recourse of the Indian Judiciary. The right to choose to be in a Live-in relationship is found under Article 21 of the Constitution which states that ‘no person shall be deprived of his life and personal liberty except according to the procedure established by law.’ This view has been upheld by the Apex Court in the landmark case of *S. Khushboo v. Kanniammal*.² It also stated that these relationships cannot be considered illegal or unlawful. Though the judiciary has been contributing immensely in order to know the status of such relationships, a few rights have also been granted by making interpretations and needed amendments to the existing enactments. This was done to prevent misuse by the partners.

DIFFERENCE BETWEEN LIVE-IN RELATIONSHIP AND MARRIAGE

Britannica defines marriage as “a legally and socially sanctioned union, usually between a man and a woman, that is regulated by laws, rules, customs, beliefs, and attitudes that prescribe the rights and duties of the partners and accords status to their offspring (if any).”³ It is the formal commitment given by the partners to each other which the law recognizes. Whereas live-in relationship is like an arrangement where the couple decides to stay and cohabit together. Families are involved in case of marriage but in the live-in arrangement is usually just the couple. A marriage confers more responsibility and commitment on the man and the wife while in case of live-in relationship there are very less obligations on the partners. Getting out of a marriage can be complicated and consuming on the other hand this relationship which is in the nature of marriage can be ended easily by breaking up as there is no as such commitment. Marriage is said to be a collective choice whereas the latter is individualistic in nature. But the most important difference is that marriage is socially and legally accepted but live in relationships are still not approved by the society. But slowly people are becoming open to this idea. But still it is a long way for India to accept this kind of arrangement.

² (2010) 5 SCC 600

³<https://www.britannica.com/topic/marriage>

RECOGNITION OF LIVE-IN RELATIONSHIP UNDER VARIOUS LEGISLATIONS PROTECTION UNDER CODE OF CRIMINAL PROCEDURE, 1973

The aim with which Sec 125 of CrPC was made was to avoid vagrancy and destitution of wife or aged parents or minor children. This right has been made available to a woman in case of a live-in relationship. A committee was set up under the head of Justice V. S. Malimath. The committee stated that if a man and a woman live together for a reasonably long period of time and though not married they live together as husband and wife, it will be deemed that they are married to one another. Further the committee also suggested to amend the term 'wife' under CrPC to include 'a woman living with the man as his wife' so as to provide the benefits of the particular provision relating to maintenance to the woman in live-in relationship.

In the case of *Chanmuniya v. Virendra Kumar Singh Khushwaha*⁴, The Apex Court held that when a man lives with a woman without being legally married to her and lives with her for a reasonably long time then, in case he deserts her, he should be made liable to pay maintenance to her. He cannot be allowed to enjoy this de facto kind of marriage and to take benefit from the loopholes present in the system.

PROVISIONS UNDER PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005

The legislature through the Protection of Women from Domestic Violence Act, 2005 has acknowledged the live-in relationship by providing some rights to the woman who is not married but is living with a man under the same roof. Section 2 (f) of the Act states the definition of 'domestic relationship'. It follows as-

“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”

So in this definition focus has been put on the phrase 'relationship in the nature of marriage'. The interpretation of this phrase was left with the court but in many cases it has been made applicable to and is said to have included within its ambit the live-in relationship. It is said to stand on same line and meaning of live in relationship. This way rights of women can be

⁴(2011) 1 SCC 141

protected and women can claim the benefits of this Act even after being in a live-in relationship. In the case of *Indra Sarma vs. V K V Sarma*⁵, it was a two-judge bench in the Apex Court that stated that Domestic relationship between an unmarried adult woman and an unmarried adult male, who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2 (f) of the Act 2005. So in this way if there exists any cases of domestic violence the same can be dealt by Section 3 of the Domestic Violence Act, 2005 and the rights of the woman can be protected thereby fulfilling the very purpose of the Act.

PROTECTION UNDER THE INDIAN EVIDENCE ACT, 1872

If a man and woman have been living together for a long period of time, then the Court may presume the existence of marriage. This can be understood after reading Sec 114 of the Indian Evidence Act, 1872. It states that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Thus, the Act acknowledges live-in relationship if from the facts and circumstances it can be proved that it was for a long spell of time which was in the nature of marriage.

LEGITIMACY OF CHILD BORN OUT OF LIVE-IN RELATIONSHIP

In the case of *Tulsa v Durghatiya*⁶, it was held by the Apex Court that a child born out of a live-in relationship would not be treated as an illegitimate child. But the condition was that the parents of such child would have lived under one roof and cohabited for a considerably long time. And that such a cohabitation has given them the recognition of husband and wife and that their relationship must not be as one describes a walk-in and walk-out one. Since this relationship was treated as legitimate being similar to that of husband and wife, the child born out of it was also treated as legitimate. Section 16 of the Hindu Marriage Act, 1955 confers legitimacy to children born out of void and voidable marriage by stating that where the marriage is null and void or where a decree of nullity has been passed in respect of a marriage, child born out of such marriage would be considered as a legitimate child. Similar is the position with Section 26 of the Special Marriage Act, 1954. But even though this is the case, when it comes to granting right of property, right of inheritance remains limited only to the property of the

⁵(2013) 15 SCC 755

⁶(2008) 4 SCC 520

parents. To say the same, such children do not have any rights to ancestral coparcenary property with respect to the Hindu Undivided Family if their parents have not been legally married. Such children have rights only with respect to their parents' self-acquired property.

INHERITANCE OF PROPERTY BY A PARTNER IN LIVE-IN RELATIONSHIP

Right of inheritance to the property has not been accorded to partners in live-in relationship. The Hindu Succession Act, 1956 does not mention any succession rights enjoyed by the partners in a live-in relationship. But in the case of *Vidhyadhari v. Sukhrana Bai*⁷, it was held by the court held that a man and woman living together for a reasonably long time as husband and wife can receive property in inheritance from either partner. In today's legal framework one of the ways in which property can be transferred is by a will. A person who wishes to transfer his self-acquired property nominates the name of the person to whom the transfer is desired. And such transfer takes place only after the death of the testator. Another way of transferring property is through gift. Gift is a transfer that takes between living persons. i.e. inter vivos. A gift made by the donor has to be accepted by the donee during the lifetime of the donor and while he is still capable of giving. Partners in a live-in relationship, if they wish to transfer their own property, they can do so by either making a will or giving it as a gift. However, a separate legislation is needed governing inheritance rights of the partners in a live-in relationship.

SOME IMPORTANT CASE LAWS: JUDICIARY'S CONTRIBUTION TO THE CONCEPT OF LIVE-IN RELATIONSHIPS

The Indian Judiciary has played a major part in recognizing the rights of the partners in live-in relationships. With the increase in the number of such relationships and in the absence of any statute in this regard to protect the rights of the parties involved judiciary has ensured that there should not be any miscarriage of justice. Although the Courts have not expressly encouraged this concept but also they have not prohibited it completely. The judiciary has gone long way in protecting any kind of abuses which may arise from such relationships. Live-in relationship may not be considered socially and morally proper but it is not considered illegal. Therefore, it

⁷ (2008) 2 SCC 238

is seen that, when the judiciary is deciding a particular case, it has to keep in mind both the sides societal norms as well as constitutional principles.

In the case of *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Blahamy*, the stand taken by the Privy Council was that, “where a man and a lady are proved to have lived respectively as spouse, the law will presume, unless the opposite be obviously demonstrated that they were living respectively in result of a legitimate marriage, and not in a condition of concubinage”⁸ So presumption as to marriage of the couples living together but not legally married was held. Similar view was taken in the case of *Mohobbat Ali Khan v Mohd Ibrahim Khan*.⁹ Wherein a couple which has lived together as spouse, such relationship was held legitimate.

In *Badri Prasad v. Dy. Director of Consolidation*¹⁰, a man and a woman had been living together for fifty years as husband and wife and the Supreme Court gave legitimacy to this relationship and stated that, “A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin, law leans in favour of legitimacy and frowns upon bastardy.”¹¹

The concept of live-in relationship was also recognized by Allahabad High Court in *Payal Sharma v. Superintendent Nari Niketan*¹². The Court in this case upheld the legitimacy of the Live-in relationship by stating that, “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 it is not illegal. There is a difference between law and morality.”¹³

In *Lata Singh v. State of Uttar Pradesh*¹⁴, it was held that since the petitioner was major she was free to marry anyone or live with anyone she liked.

Live-in relationship was considered to be within the ambit of Article 21 of the Indian Constitution in the case of *S. Khushboo v. Kanniammal*¹⁵

⁸ (1928) 27 LW 678 (PC)

⁹ AIR 1925 PC 135

¹⁰(1978) 3 SCC 527

¹¹ Ibid.

¹² 2001 SCC Online All 332

¹³ Ibid.

¹⁴ (2006) 5 SCC 475

¹⁵ (2010) 5 SCC 600

*Koppiseti Subbarao Subramanian vs. State of Andhra Pradesh*¹⁶. In this case the Supreme Court held that dowry is just an unjust demand for money and it is not necessary that it takes place only in a marital relationship. It was held that it can take place in a non-marital relationship but which resembles marriage as well. In this case the defendant asked for dowry from his live-in partner. The defendant also claimed that Section 498A of IPC, 1860 does not apply in this case because the parties are not in a marital tie. But the Court rejected this claim made by the defendant and gave the judgment in favour of the woman protecting her from harassment and abuse in the relationship.

In *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*¹⁷, at first the High Court declared that maintenance cannot be granted in this case as the appellant wife is not legally married woman. And only a legally married woman is entitled to maintenance under Section 125 CrPC. But the Supreme Court reversed the judgment given by the High Court and eventually maintenance was awarded to the wife because the provisions of Section 125 CrPC are to be considered in the light of Section 26 of the Protection of Women from Domestic Violence Act, 2005. It was held by the Apex Court that all the reliefs and claims which have been made available to the legally wedded woman, the same are available to the woman in live-in relationship.

As discussed earlier Protection of Women from Domestic Violence Act, 2005 attempts to protect the woman in case of any abuse from the partner in the relationship or his family. This has been possible because of the meaning of domestic relationship extended to 'relationship in the nature of marriage'. The Apex Court in *Velusamy v. D Patchaimmal*¹⁸ and *Indra Sarma v. V.K.V. Sarma*¹⁹ has recognised live-in relationship and has made it applicable to the said enactment if certain conditions are fulfilled. In *Velusamy Case*²⁰, the court was of the opinion that, "relationship in the nature of marriage' is akin to a common law marriage". And the pre-requisites of such kind of marriage which were observed in the case were:-

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

¹⁶ (2009) 12 SCC 331

¹⁷ (2011) 1 SCC 141

¹⁸ (2010) 10 SCC 469

¹⁹ (2013) 15 SCC 755

²⁰ (2010) 10 SCC 469

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

On the other hand, lately in the landmark case of *Indra Sarma*²¹, the issue of live-in relationship has been discussed in detail. A number of criteria for live-in relationship have been enlisted that can be given the status of marriage. And it is the duty of the Court to undertake a subjective analysis of the relationship and determine whether such relationship can be considered as the live-in relationship which can be brought under the Purview of the Domestic Violence Act, 2005. The Supreme Court has given the following guidelines and has requested the Parliament to come up with an enactment which will provide protection from any kind of societal wrong or injustice.

“(1) Duration of Period of Relationship

Section 2(f) of the Domestic Violence (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.

(2) Shared Household

The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) 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.

(4) 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.

(5) Sexual Relationship

²¹ (2013) 15 SCC 755

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.

(6) 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.

(7) 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.

(8) 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.”²²

Lately in *Dhannulal v. Ganeshram*²³, the court again held that a couple living together for a long time in live-in relationship is presumed to be legally married.

Recently, in a case Punjab and Haryana High Court denied protection to a couple in live-in relationship stating that such relationships were morally and socially unacceptable but later on the couple had approached the Supreme Court which ordered protection to the couple. After that there was another such case where the Punjab and Haryana High Court protected the couple and their rights by stating “It is evident that both the petitioners are above the age of 18 years, however, the boy is not of marriageable age. The live-in-relationship nowadays is not a new phenomenon but the society has not evolved to the extent of accepting such relationship without raising the eyebrows to such relationship.”²⁴

THE WORLD AND LIVE-IN RELATIONSHIP

The attitude of the countries across the world with respect to live-in relationship is not identical. Different countries have a different stand on this issue. In some countries like Indonesia,

²² (2013) 15 SCC 755

²³ (2015) 12 SCC 301

²⁴ Sanjay and another v. State of Haryana, CRWP-5531-2021

Bangladesh there are laws that make cohabitation punishable. On the other hand in countries like Denmark, Sweden, Norway, Australia etc., live-in relationship is a common practice.

UNITED STATES

The concept of live-in relationship has existed in the United States of America from a long time. It also known as common law marriages. They have come to be accepted in the 1970s. Prior to that, these had no legal recognition. There is a very famous case in relation to live-in relationship in the United States called *Michel Marvin v Lee Marvin* of 1980. In this case the term “palimony” was coined. Without being married to Marvin, Michelle adopted his surname and claimed that he had promised to support her for rest of her life. But she couldn’t prove any kind of agreement to that effect between them. So, the Court held that only in case an agreement dealing with sharing of the income earned during that period between the couple, they are legally bound to follow that condition.

SCOTLAND

In Scotland, due to the increase in the number of cohabitants, the Scotland government introduced a separate law for the purpose of providing certain rights to the couples. The Family Law (Scotland) Act, 2006 was enacted. This act enlists certain aspects for a relationship to be called as a valid live-in relationship. These are:-

- Length of the period during which the couple stayed together.
- Nature of the relationship
- Nature and extent of any financial agreements²⁵.

FRANCE

Pacte Civil De Solidarite also known as the PACS was passed on 13 October 1999 by the French National Assembly and this Pact governed the live-in relationship. It was a kind of contract between the couple which could bind the two adults of different sexes or same sexes without getting married. It was a type of cohabitation. Here, the couple could enjoy the rights of a married couple but there would be lesser responsibilities on them in comparison to marriage.

²⁵<https://blog.ipleaders.in/live-in-relationships-3/>

CHINA

In China live-in relationships are common. The law does not make the relationship of a man and a woman living outside marriage illegal. It would be illegal only if one or both of the partners cohabiting were already married. Although there is no specific law made in the context of such relationship. But still a child born out of such relationship is treated equally to the child born from a legal marriage.

PHILIPPINES

In Philippines there is a legislation called The Family Code. Article 147²⁶ of this code states that, when a man and woman who are capacitated to marry each other and who are living together and are exclusive to each other as husband and wife and during that period if they acquire any property then such a property will be considered as a jointly held property and the rules of co-ownership will apply. And here property can mean money, salary, property or industry owned by them in common.

AUSTRALIA

The Family Law Act, 1957 in Australia deals with live-in relationships. According to this Act a person can enter into a de facto relationship. Section 4AA states the definition of de facto relationship. For a relationship to be a de facto one it is necessary that:-

- The persons are not legally married to each other; and
- The person are not related by family and;
- Having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.²⁷

CONCLUSION

Over the last few years, there have been many changes in the form of relationship between couples. The idea of live-in relationship is gaining popularity because it allows the couple to check compatibility of their relationship and also allows them to decide for themselves if they want to continue with it or not. Globalization, education, freedom and other such factors are

²⁶<https://www.chanrobles.com/executiveorderno209.htm#.YNyY5-hKjIU>

²⁷http://classic.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4aa.html

responsible for changes in the way of thinking. The stand of other countries in this matter is much more progressive and relaxed. But in our country it is still seen as a social stigma. But gradually people are becoming more open to this concept. Now, as regards the status of live-in relationship, it is still not very clear though the Indian judiciary has gone long way in recognizing the long term living relationships. But still with regard to the rights and obligations of the partners in the live-in relationship there are a lot of ambiguities and confusions. But now there is a need for the legislature to formulate a law dealing with such arrangement so as to prevent any kind miscarriage of justice.