
LIVE-IN RELATIONSHIP IS THE VANISHING POINT OF MARRIAGE

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ABSTRACT:

With the advent of modernization and westernization in Indian culture, the existing social structure of the society tends to change. Institutions, which are the organized ways of doing things and considered to be the backbone of civilized society, have undergone a change. The institution of marriage is one of the oldest social institutions under which cohabitation and intercourse between two heterosexual beings are socially acceptable and one of the legitimate ways for the procreation of children. The institution of marriage loses its rigidity over the said definition by giving space to the notion of live-in relationships and to a new wave of homosexual marriages. In the recent judgment, the court observed that public morality cannot overshadow constitutional morality. Marriage is considered to be a sacramental tie. On the other side, live-in relationships are the testing relationships emerging through the concept of walk-in and walk-out. This paper attempts to look at the recent judicial pronouncement in comparison with and from the historical perspective of marriage and relationships.

INTRODUCTION:

According to Indian society and prevailing culture, marriage is the legitimate and socially acceptable form of sexual cohabitation between men and women. Marriage creates social as well as legal obligations toward another partner. Marriage is an institutionalized mating arrangement between human males and females, and marriage is the socially approved way of establishing a family through procreation. Breakdown in marital ties and increasing divorce rates give birth to the concept of live-in relationships. Now-a-days, youth create a shortcut to marriage and find a way to save themselves from financial and family obligations and responsibilities. Unlike in marriage, the partners in a live-in relationship are not actually married to each other but cohabit under the shared household as in the nature of marriage. The concept of live-in relationships is becoming popular these days because couples want the freedom to check their bonding and compatibility before the solemnization of marriage.

MEANING OF LIVE IN RELATIONSHIPS:

Live in relationships means when two unmarried persons are willing living together for a longer while in the nature of marriage but not actually married meaning hereby, the couples in the relationships cohabit with each other, emotionally and physically attached with each other and the relationships formed between them is the consensual relation.

LIVE-IN RELATIONSHIPS WITH INDIAN HISTORICAL PERSPECTIVE:

The term of live-in Relationship is new or seems to be western but the concept have trace some evidence in the Early Vedic Period which is the Rig Vedic period¹ where the Vedas tell us about eight types of marriages and *Gandharava Marriage* was one of the type in which man and woman has mutually consented to get married but neither solemnize any type of marriage nor procreate the family, there is word to word commitment to live in a nature of marriage and perform marriage obligations without actually got married. The consent of parents is not required in this type of marriage. According to the ancient Hindu Literature ApastambaGrhyasutra, the woman chooses her own partner. The partners consent to live together, and the relationship between them is consummated in copulation born of passion.

MaitriKarar: MaitriKarar is a type of contract of friendship between the partners which is most popular in the Gujarat tribal communities but now become illegal and this practice is prevalent

mostly common between a married man and a unmarried woman. This system was some resemblance of present live-in relationship.

Nata Pratha: It is a pratha, the most prevalent custom in the tribal community of Rajasthan, where a man cohabitates with a woman without marriage as many times as he wants, and for this purpose he pays a certain amount of consideration to live with a woman with whom he is not married. The amount of consideration is decided and fixed by the members of the said community.

STRUGGLE BETWEEN CONSTITUTIONAL MORALITY & PUBLIC MORALITY:

It is rightly said by the Greek political thinker Aristotle that the “State came into existence for the sake of life and continues to exist for the sake of Good Life.” Man cannot live in isolation, by living in a society he has many needs and in order to fulfill those needs there arises the conflict of two interests i.e. conflict between the individual interest and societal interest. In order to create a balance of interest Roscoe Pound propounded the theory of social engineering through which the laws are created in such a way that competing interests must be balanced. Balancing the competing interests between individuals and society is the main aim of the State. In the case title **Leela v. State of Rajasthan**², the Court provides police protection to the couple in live in relationship as per the provisions of Article 21, the further observes, though the act is immoral and the public morality cannot be allowed to overshadow the constitutional morality. It is further stated by the Hon’ble Apex Court in the case titled as **Shafin Jahan vs. Asokan K.M**³, that the social norms and values have their existence but such existence is not above the rights and freedom granted by the constitution, which are utmost related to the individual human rights.

LEGAL POSITIONS OF LIVE-IN RELATIONSHIPS:

1. DOMESTIC VIOLENCE ACT:

Section 2(f)⁴ of the Domestic Violence Act defines the domestic relationship and states that the relationship is in the nature of marriage between two people who are residing in the same household at any given time, and those couple are connected with each other by consanguinity, or a relationship which is in the nature of marriage, adoption, and the family is living together as a family group. The Domestic Violence Act legalizes live-in relationships and considers the

couples as husband and wife who have lived together for a long period. Therefore, the woman can seek protection and maintenance under the purview of this Act.

In the case titled *Indra Srma vs. V.K.V. Sarma*⁵, it is held by the Court that many factors are to be considered to declare a relationship is a relationship in the terms and characteristics of marriage and issue the guidelines that are duration of the relationship hereby the reasonable point of time to maintain and continue within a relationship, the household is to be shared, the pooling of resources by the partners and the financial arrangements this might be sharing bank accounts, acquiring movable and immovable properties, sexual intimacy between the partners, family arrangements and intention as well as the conduct of the parties for their respective roles and how the partners socialize themselves in the society. It is further stated by the Apex Court that the main ingredients of section 2(f) which makes live-in relationship in the nature of marriage is the Consanguinity, marriage, through a relationship of marriage, adoption, and the family members are living together in the shared household.

- ***Same Sex Partners:***

Under section 2(f) and 3 of the Protection of Women from the Domestic Violence Act, does not recognize the domestic relationship between the same sex partners which may be gay or lesbians and the relationship between such partners cannot be regarded as the relationship in the character of marriage.

- ***Status of Children born out of live-in relationship:***

The Supreme Court addressed the issue of the legality of children born out of live in partnerships in *S.P.S. Balasubramanyam v. Suruttayan*⁶. According to a ruling, the court rely upon the presumption of marriage as per Section 114 of the Evidence Act that if a man and woman are living together as husband and wife and that any children they have together are legitimate and the children born out of such relations will not be considered as illegitimate they have all rights and privileges.

It is held in the case of *Vidyardhari vs. Shukrana Bai*⁷, here the Apex Court grants the right of inheritance of the property to the children born out of the live-in relationship and assigning the status of valid heirs to the children.

2. LIVE-IN RELATIONSHIPS DOES NOT ATTRACT THE PROVISIONS OF SECTION 376 IPC:

Section 376 of the Indian Penal Code, describes the punishment of Rape, for a rigorous punishment of 10 years with fine. But the Courts of law in India from time to time interprets the provision of Section 376 in relation to Live-in relationship. Live-in Relationship means by their nature is consensual partnership where the couples shared the common household, intimate together have a feeling of love, and it is right to say that an unsuccessful love story who cannot go to the phase of real marriage cannot be said to attract the provisions of Rape. As live-in relationship is not illegal, the two adults live together with their consent as in the nature of marriage for a longer period. The basic purpose of live-in relationship is to test the compatibility between the two persons and if they fail in test, it does not amount to rape. The relationship is as stated is in the nature of marriage and likewise a married man and woman cannot come for the offence of rape at the time when they are taking divorce with one another. It is held in the case of *Naim Ahamed Vs. State of NCT*⁸, where the Apex Court held that there is *difference between giving a false promise and committing breach of promise*, in the case of false promise the man have no intention to marry the girl from very beginning and the man is only come into the relationship for satisfying his lust, whereas in case of breach of promise the man try his level best to marry a girl in relationship but due to some unforeseen circumstances which is beyond his control can prevented him to fulfill his promise and due to failure of promise does not means the offence of rape is committed.

3. THE PROVISIONS UNDER SECTION 125 OF CRIMINAL PROCEDURE CODE:

The Malimath Committee⁹, which was formed to make reforms under the existing criminal law and System, recommended report in the year 2003 that the definition of "wife" under Section 125 of the Criminal Procedure Code be expanded to include women who had lived with a man for a significant amount of time without being married to him but who were treated like his wife. As per section 125, the wife, minor Children and old parents are entitled to maintenance.

Conditions to be fulfilled in order to claim Maintenance:

1. The nature of relationship between the couples is in the nature of marriage as they akin spouses to the society.

2. The partners must be under the legal age to marry.
3. The partners are qualifying to enter into a legal marriage, they must be unmarried.
4. The intimacy and cohabitation between the couples are voluntary and for a reasonable time period.

In the landmark case of *Chanmuniya v. Virendra Kumar Singh Kushwaha and another*¹⁰, court observes:

In order to fulfil the true spirit and essence of the advantageous provision of maintenance under Section 125, the court believe that the term wife should be given a broad and expansive interpretation to include even those cases where a man and woman have been living together as husband and wife for a significant amount of time. Additionally, the court think that such an interpretation would be a just way to apply the values of social justice and safeguarding human dignity that are established in the Preamble of our Constitution.

It is further observed in the case of *Abhijit Bhikase Auti v. state of Maharashtra and ors.*¹¹, the Apex Court observes that it is not compulsory for the female to be legally married with a man to claim maintenance, and there is no strict compliance of marriage to claim maintenance and therefore a woman who is not married to a man but living in a share household like a wife can be entitled to get maintenance as per Section 125 of the Code of Criminal Procedure.

4. SECTION 114 EVIDENCE ACT:

By considering the likelihood of happenings, mortal action, and public and private business in respect to the case's facts, the court may assume the reality of any fact that it deems likely to have happened. Thus, where a man and woman cohabit for an extended period of time, there is a presumption of marriage. Unless the contrary is proven, a legal marriage by continuing cohabitation between the parties will be presumed unless independent validation of solemnization of marriage is attained.

In the case of *Madan Mohan Singh Vs. Rajni Kant*¹², the court presumed that there is existence of relationship like in nature of marriage and favors marriage over concubinage and further stated that a man and woman who have lived together for a long period are presumed to be married and furthermore, a long-term live-in relationship cannot be regarded as only a

walk-in and out relationship and the court observes that the children born out of such relationships are legal and legitimate.

RECENT JUDICIAL TRENDS:

In *Gurjeet Kaur vs. State of Punjab*¹³, a direction petition is filed for seeking police protection as per the petitioner case, both the petitioners are major by age and are living in a live-in relationship, whereby, one of the live-in partners is married man and other is unmarried girl. In this matter, the Hon'ble Punjab and Haryana High Court direct the senior superintendent of police to look into the grievance of the Petitioners as stated in the police complaint.

In the landmark case of *Indra Sarma vs. V.K.V. Sarma*¹⁴, the court observed that if a woman enters into a live-in relationship with a married person, it cannot be held that such a woman has a relationship of the nature of marriage, and here the said woman is not entitled to the protection under the domestic violence act and her status as a concubine. The court further observes that the relationship between a married man and an unmarried woman is that of a concubine, and the relationship is not of the nature of marriage. It is a type of relationship that is adulterous and bigamous by nature.

In the case of *S. Khushboo vs. Kanniammal*¹⁵, the apex court observes the law of defamation in context of pre-marital sex and live-in relationship, the Court Observes that when one man and woman come into a relationship with consent and resides together, there is no illegality may be morality does not allow. The article published in the newspaper discussing the viewpoint on live-in relationship and pre-marital sex does not amount offence of obscenity and defamation.

In the case of *Gaytri vs. State of Rajasthan*¹⁶, the petitioner approaches the Hon'ble High Court for protection of their life and liberty as the private respondents are not recognizing their relationship as the petitioners are widow and widower and are in a live-in relationship and due to this, they face hardships by some of the society members who are impleaded as private respondents. The Court while granting them protection relied on the landmark judgment of *Navtej Singh Johar Vs. Union of India*¹⁷, the right to privacy is the utmost right and is cover under Article 21 of the Constitution and is above the societal expectations. India is a liberal democracy where recognition of the individual right and personality is more significant than the society perceptions. The right to privacy is the most significant right.

CONCLUSION:

Man is a social being and has many needs of its own, and in order to fulfill those needs, society made an arrangement of institutions by which the approved way of fulfilling the desires and the institution of marriage came into existence for fulfilling the physical and sexual needs of a person in a socially approved way. But with a changing society and the westernization of culture, the new trend of live-in relationships came into the picture, which is characterized by walk-in and walk-out relationships and is more of a testing relationship to check the compatibility between the couples. The judiciary plays an important role by giving these relationships a separate legal entity and separating them from social morality. The live-in relationships are not pure forms of marriage but always in the nature of marriage.

End Notes:

1. Time period of 1500-1000 BCE
2. Raj (HC) 2021 Criminal Misc (Pet.) No. 5045/2021
3. 2018 (16) SCC 368
4. Definition of domestic relationship
5. Criminal Appeal No. 2009 of 2013 SC
6. 1994 AIR 133
7. 1992 SC 756
8. Arising Out of SLP (Crl.) NO. 8586 OF 2017 SC
9. Malimath committee headed by justice V.S. Malimath
10. Arising out of SLP (Civil) No.15071 of 2009
11. Criminal writ petition no.2218 of 2007 SC
12. Civil Appeal No. 6466 of 2004 SC
13. CRWP No.4757 of 2021 P &H HC
14. Criminal Appeal No. 2009 of 2013 SC
15. Criminal Appeal No. 913 of 2010 SC
16. S.B. Criminal Writ Petition No. 642 of 2022 RAJ HC
17. (2018) 10 SCC 1