
AN EVALUATIVE STUDY OF LIVE IN RELATIONSHIP IN INDIA: HUMAN RIGHT PRESPECTIVE

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ABSTRACT

Family is the basic component of the society. Individuals are free to establish their family according to their need. Traditionally in India family life is being started after marriage. Now a day's person can start to live with other without marriage, called live in relations. Generally live in relationship is not approved by the society but young generations are attracted to it and wants to live with out any formalities of marriage.

Meaning of “Live-in- Relationship”

Live in relationship means an arrangement in which the couples are unmarried live together to conduct a relationship like marriage. In western countries these types of relationships are valid but are not accepted in India. Now a days mostly young generation are attracted to live in relations so that complications of the married life can be avoid. Live in relationship provide opportunity to LGBT community to live together.¹

Methodology

Methodology is the way to complete the research. Keeping in view the nature of the problem doctrine research methodology has been chosen to highlight the issue. The methodology adopted is basically both descriptive and analytical. The research methodology has been chosen in such manner that the basic information derived from the different sources and disciplines may be co-ordinate effectively and a link may be set up between the present study and others

Difference between Live-in Relationship and Marriage:

Marriage institution allows the couple to live together. There are various types of marriages in Hindu law. The Marriage is governed by various laws and is universal phenomena on the other hand live in relationships have received recognitions in few countries ,presently it is growing faster and famous among young generation in India. It is believed that marriage is made in heaven and made by the god. Subconsciously, this idea fixed in the mind of the people and work hard to make their relationship last for long. Marriage is more stable then live-in relationship. The youth may not agree with conservative side of marriage. They feel that live in relationship gives them the sense of freedom as well as conjugal rights without restrictions. One can walk out from relationship if things aren't working. But marriage is tie in Indian society one cannot break easily some time spouse live together life time for the sake of children or maintains the status of married person for social recognition. There is long process to end the marriage which is difficult and time taking process

The Supreme Court has protected the rights of the live in partners. It is also observer by the apex court that the couple living together for long time ac be treated as married couple²In spite

¹ <http://www.legalservicesindia.com/law/article/956/15/law-governing-Live-In-Relationship-in-India>, accessed on 28/11/2020 at 3:30 PM

² Tulsa & ors v.Durghavita & ors (2008)4SCC 520

of Supreme Court decision live in relationship is not accepted in society and partner have to face discrimination name calling and ashamed etc.. The majority of people look live in relationship immoral and unethical. The basic difference between marriage and live in relationship is that marriage has received social approval and live-in has to struggle a lot.³

International prospective

Choice of individual is matter every where and to uphold the dignity of individual International Human right bill has given the sufficient space to the individual ,Be it it choice of family or marriage etc There are sufficient instruments which encourage the individual to have family in its own way.

UDHR

Universal Declaration of Human Rights is the premier document to protect the basic rights of human being. Article 1 says All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood⁴ and further Article 12 of UDHR declared that No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation n. Everyone has the right to the protection of the law against such interference or attacks. Article 16 para 2 Marriage shall be entered into only with the free and full consent of the intending spouses. And para 3 of Article 16 defines that The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Live-in relationships protected by law

Live in relation is a social contract between the parties to live together. They can live together only with their convince. There are various laws to protect the right of live in partners.

(a) Domestic violence Act

Protection of Women from Domestic Violence act, 2005 is a legislation to protect women from abusive partners and family. As per Section 2(f) the Act not only applies to a married couple

³ Tripaksha, Legality of live in relationship in India, <https://tripakshalitigation.com/legality-of-live-in-relationship-in-india> accessed on 27/10/20202 ,at 1:00PM

⁴ Universal Declaration of Human Rights, Article 1

but also to a relationship in nature of marriage. A woman is entitled to claim remedy in case of physical, mental, verbal or economic abuse. Therefore when it is established that there is a relationship in nature of marriage a woman in live in relationship can claim all the remedies available for her.

In land mark case **Velusamy v. D.Patchaiammal**⁵the Supreme Court determine the pre requisite for a live in relationship (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.(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

The court further clear that if a man keep a women as servant and maintains her financially and uses mainly for sex purposes ,such relationship would not be considered be a relationship in the nature of marriage'

(b)Protection of women Under Code of Criminal procedure

Section 125 of Cr.P.C provide the maintenance to the wife and children if man refuse to maintain them. In live in relationship long term relationship can be presumed as marriage and female partner can claim maintenance .

In **Chanmuniya v. Virender Kumar Singh Kushwaha**⁶the Apex court held that in those cases where a man , who lived with women for a long time even they may not married ,should be made liable to pay the women maintenance if he leave her. The man should not be allowed to benefit from the legal loopholes by enjoying advantages of de facto marriage without undertaking the duties and obligations.

Legitimacy and inheritance rights of children

Inheritance rights of children are mentioned in Section 16 of the Hindu Marriage Act, where the legal status of legitimacy is provided even to illegitimate children (those born out of marriage) for the sole purpose of inheritance. Therefore, inheritance rights have been granted to children born out of a live-in relationship. These rights are available in both ancestral and

⁵2010(10)SCC469

⁶.(2011) 1 SCC 141 20

self-bought properties. in case of **SPS Balasubramanyam v. Sruttayan**⁷ that if a man and a woman are living under one roof for some years, then it will be presumed under Section 114 Evidence Act that they live as a husband and wife and children born to them are not illegitimate.

Custody and maintenance rights of children

The position on the maintenance rights of children out of marriage varies in personal marriage laws. For instance, under the Hindu Law the father has to maintain the child, whereas under the Muslim Law the father has been absolved of such an obligation..However, under Section- 125 of the Criminal Procedure Code, remedy is available for children who are unable to claim maintenance under personal laws. Section- 125 provides a legal right of maintenance to wives, children

LGBT and live in relation

The LGBT community is most discriminated person in Indian society. They are being ill-treated and sometime atrocities accrued against them. They are being mistreated by their family members and compel to sacrifice their interest in the name of social and cultural traditions. Live in relationship provide the opportunity to LGBT to live with the partner of their choice .Live in relationship does not compel the adult to go through formality of marriage. Gay and lesbian are not allowed by society to marry so live in relationship is an opportunity to stay with partner of their own choice. The Apex court has also decriminalized the century old Section 377 of the IPC.

To live with dignity is the basic rights of human being, no person can take away and interfere in the life of other person unreasonably. In **Prem Shankar shukla v. Delhi Adminstration**⁸ The Supreme Court has declared that to live with dignity is the fundamental, right of human being. In **K.S. Puttaswamy v Union of India**⁹ the Supreme Court held that “the right to privacy is protected as an integral part of the right to life and personal liberty under Article 21 and as a part of freedoms guaranteed by Part III of the Constitution”

⁷ AIR 1992 SC 756

⁸ 1980 AIR [1535]

⁹ (2017) 10 SCC 1

In **Navtej Singh Johar & Ors. v. Union of India**¹⁰ the supreme Court declared consensual sexual acts between adults valid and overruled the 2013 ruling in **Suresh Koushal v Naz Foundation**¹¹. The court found that criminalization of sexual acts between consenting adults violated the right to equality guaranteed by the Constitution of India.

Live in relation Presumption of marriage

Long time relationship is presumed as marriage. The couple has all the rights as married husband and wife In **Tulsa and ors v. Durghatya and other**¹² the Supreme Court held that 50 years live in relationship of couple is marriage and valid. The Court further held that a strong presumption arises in the favour of wed lock where partners has live as husband and wife for long time

In **Madan Mohan Singh v Rajni Kant**¹³ the Apex Court observed that the live in relationship if continue for long time cannot ne termed as a “walk –in and walk out” relationship and that there is a presumption of marriage between the parties.

Rights of live-in partner

In the case of **S. Khusboov v. Kanniammal**¹⁴ the Supreme Court held that a live -in relationship comes within the ambit of article 21 of Constitution of India .The right to life and live with dignity is fundamental life of human being. The Court further held that two major living together can’t be considered illegal and unlawful and live-in relationship is permissible. In **Lata Singh v. State of UP and Anr**¹⁵ the Supreme Court of India observed that live in relationship between two consenting adults of heterogenic sex does not amount to any offence. In **Indra Sarma v. VKV Sarma**¹⁶ the Supreme Court held that the decision to marry or not to marry or have heterosexual relationship is merely personal .It was further held that Livein or marriage like relationship is neither crime nor sin.

CONCLUSION

The concept of family is changing within time. In India People preferred nuclear family instead

¹⁰ (2018) 10 SCC 1.

¹¹ (2014) 1 SCC 1

¹² 2008)4SCC 520

¹³ (2020)9 SCC209

¹⁴ (2010)5 SCC 600

¹⁵ AIR 2006 SC C522

¹⁶ (2013)15 SCC 755

of joint family. Live in relationship is emerging and couple lives without formality of marriage and marital status. Live in relationship is still a stigma in Indian society. Morally couples are not allowed to live together without marriage. Right to freedom is the fundamental rights guaranteed in article 19 of the Constitution. Choice of partner as well as live with partner in live in relationship is the basic right of the individuals. Presently younger generation preferring to the live in relations. LGBT community has opportunity to live together as well as establish their family. They can have peaceful and contented life. There is need to change the perception toward live in relationship. The live relation should be recognized as other relationships so that the couple can live with dignity and peace. They can focus on their profession and perform better in their carrier.

Recommendations

- There is need of a strong legislation to protect the rights of live in partner.
- The government should organize awareness programmms.
- Police protection must be given to the live in partner.