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LIVE-IN RELATIONSHIP (A SOCIO-LEGAL ANALYSIS)

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ABSTRACT

With the passage Of time the Indian society has constantly faced changes and accordingly the law has also enhanced to meet the requirements of the changing society. The major deviation has been observed in the past decades in relationship perspective. In India, family has an important place and earlier, the founding stone of family was only marriage as it brings stability in life. Today, the young generation is more inclined towards the live-in relationship. The concept of live-in relationship is not Indian concept but we cannot say that it did not exist n India, it has some traces back to ancient times therefore, it is not a new concept. Eastern culture in general and Indian's in particular still harbours certain reservations with respect to couples in live-in relationship. Many considered it as "taking a car for a test drive" or "trial and error method" which exploited the life of number of people especially females. This century is the golden period for westernization and globalization. Indians have accepted every western culture whichever they have found comfortable with for e.g., their food, dressing, language etc. Since, the concept of live in relationships have been adopted from the western country and is still an emerging issue in past decade we do not have any set legislation with respect to the issues arising out of such relationship, however the judiciary has not kept it out of the box. This article will deal with how the judiciary has interpreted the law and has given a place to live-in relationship in the dynamic society, the loopholes which still exist as the challenge to laws like, bigamy and overcoming through it.

Keywords:- Live-in relationship, Indian Legal Framework, response from Indian judiciary

INRODUCTION

Live in relationship has no statutory definition in India, but according to the Webster dictionary it can be defined as “a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage”. The Indian judiciary has put forward two essential grounds to fulfil the criteria for recognition of live-in relationship, firstly, they should share household under same roof and secondly, they should live together for a reasonable long period. That simply means it focuses on cohabitation by voluntary and consensual union of two heterosexual couple. This concept has emerged as a consequence of evolution of our society which has gained its significance from the western world.

Marriage is a general norm in India which provides a legal and social sanctity. All the other kind of pre- marital relations were criticized by the orthodox society and considered it as a ‘taboo’. All such kind of relationships were called and stigmatised as sexually exploitive. It is new approach to living world which is traceable in the ancient times which was known as ‘MaitriKarar’ in which a written agreement was made between the heterogenous couple that they would live together as friends and look after each other.¹The Vedic text also reveals about Gandharva Marriage, one of the eight marriages followed in Indian tradition it is found quite similar to the live in relationship. Around 4000 years ago in Aranya Parva, epic of Mahabharata, Yudhishtira stated this, when one of the questions asked by Yaksha that who is the friend of a householder, he replied ‘the friend of a householder is his spouse’. According to this, the root of marriage is friendship which has understanding and the similar is the case of live-in relationship as it is the founding stone of friendship and understanding. Even the supreme court of India said that according to Hindu mythology lord Krishna and Radha live together which gave the essence of live in relationship. Therefore, this is not an alien concept to the society.

In the world full of hustles, the young generation is reaching changes towards the conventional approach and giving importance to the live-in relationship. The reason behind such inclination is that youngsters want to check the compatibility by living together to reduce problems which arises due to marriage and as consequence of which can lead to a long-term process of divorce. It also provides life free from commitments and obligations as it lasts only when both of them are happy. This is not only reason that give rise to such approach, there are several other reasons like,

¹Live in relationship in international perspective,
available at: shodhganga.inflibnet.ac.in/bitstream/10603/28359/5/06_chapter2.pdf (last visited on March 14, 2020)

the traditional joint family has disappeared and young generation get ample of time to spend with their colleagues at workplace or with friends this boost the chances of entering into live-in relationship, they also have more freedom of marital choice. Changes in the lifestyle when brought up of children is in residential schools, the shifting in age of marriage etc.

Live in relationship can be observed in every part of the world and has slight variation in its acceptance. Different country has different approach towards it they make laws which are susceptible to them to get rid of the foreseeable worsening situation which may arise in lack of institution. Scotland is the first country to identify it for the first time legal under the Family Law Act, 2006 of Scotland. In China, couple have to sign a contract for entering into a live in relationship which protects the rights of both the party. USA has institutionalised such kind of relationship and provides same rights to both married and live in couples.

LIVE-IN RELATIONSHIP AND JUDICIARY IN INDIA

The Hindu Marriage Act, 1955 fails to incorporate live-in relationships as a legalized form of relation under section 5 and 6 of the Act. Therefore, society still looks down upon people who enters in such kind of a correlation. Similarly, the Hindu Minority and Guardianship Act, 1956 or the Hindu Marriage and Adoption Act, 1956 prevents live-in couples from adopting children, believing the child will not be subjected to a healthy and safe environment when growing up amongst parents in a live-in relationship. However the legal framework is changing and the loopholes are being filled in. Though live-in relationships are not defined categorically in the Act and are left to the courts for interpretation. By virtue of the provision mentioned above the court interpreted the expression “relationships in nature of marriage”. How the approach of the judiciary has transformed from a rigid interpretation of the law with respect to marriage and live-in to a more liberal viewpoint, shall be deliberated in this section of the paper.

Earlier Indian laws and society both recognized the relationship as valid only after tying the knot but the practices of live in relationship in last few decades attracts a change in legality of norms of dynamic society. As Honourable Justice A.K.Ganguly stated “with changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today”² Our system lacks the proper legislation for the recognition of status of live in

²Revanasiddappa v. Malikarjun AIR 2011 SC (Supp.) 155

relationship but it is not completely silent on this issue. The judicial pronouncements or precedents and recommendations by the authority concerned have been observed since several years to deal with such challenges. Thus, several legislations have been interpreted to provide for the same as follows-

Live in relationship as a fundamental right

The apex court validates this new approach of society as it grants individual freedom to live in their own way. It was further observed by the court that living together is a right to life which is a fundamental right under Article 21 of the constitution of India and none of the law prohibits the aforesaid. First time in Indian judiciary, the Allahabad High Court in 2001, in case of ***Payal Sharma v. Superintendent, Nari Niketan Kandari Vihar***³ girl appeared before the High Court of Allahabad and stated she is 21 years of age, producing her birth certificate pursuant to the same and conceded that she has the right to go anywhere and live with anyone, without getting married. The court held 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 is not illegal. There is a difference between Law and Morality.”*⁴

Furthermore in 2010 the Supreme Court of India in the special bench of K.G. Balakrishnan, Deepak Verma, B.S. Chauhan in ***Khusboo v Kanniammal & Anr***⁵ the appellant was a well known actress who appeared before the Madras court requesting to quash the proceedings under numerous provisions of the Indian Penal Code (499, 500, 505) and Section 4 and 5 of Indecent Representation of Women (Prohibition Act), 1986 for certain comments made by her in an interview which were later distorted by the reports of the news magazines. Upon the trial court refusing to entertain her plea, she approached the Supreme Court in manner of a Special Leave Petition. The Apex Court held with respect to one such comment made by her on live-in couples for which she was charged that

“living together is a part of the right to life u/Art.21 of the Indian Constitution and it is not a “criminal offence” on the question “If two people, man and woman, want to live together,

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⁴ *ibid*

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who can oppose them? What is the offence they commit here? This happens because of the cultural exchange between people.”⁶

This historic judgement gave space to premarital sex and live in relation in society. Thus, this stand has been reiterated by several other cases and added a way toward more liberty in prevalent society.

Presumption of Marriage in the live- in relationship

The practice of live in relationship has emerged as a branch of social aspect which cannot be left in dark. The difference in marriage and live in relationship attracts the provisions to be interpreted in such a way that it may provide certain rights and liabilities in new approach of relation. The apex court held that according to section 114 of evidence act⁷ the presumption of marriage can be raised by the continuous cohabitation between the parties of live in relationship. In case of ***Madan Mohan Singh and Ors. v. Rajni Kant and Anr.***,⁸ in this case one Madan Mohan Singh challenged the verdicts of Allahabad High Court and two land consolidation tribunals in favour of the two sons and four daughters of Chandra Deo Singh. The court and the tribunal held they all have a right to estate. Madan Mohan contended he is the sole heir of Chandra Deo’s property. However, his two half-brothers and four half-sisters held they should be entitled to inherit a portion of the land, because of Chandra Deo’s long standing relationship with their mother Shakuntala. After Chandra Deo’s wife died in 1945, while in prison because of taking part in Freedom struggle Deo had entered in an affair with Shakuntala, and had kept it a secret. The Apex Court held that:

“If a man and women are living under the same roof and cohabitating for number of years, there will be a presumption under section 114 of the Evidence act, that they live as husband and wife and not be illegitimate.”⁹

⁶*ibid*

⁷Evidence as to matters in writing.—Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts. Illustration The question is, whether A assaulted B. C deposes that he heard A say to D—“B wrote a letter accusing me of theft, and I will be revenged on him”. This statement is relevant as showing A’s motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

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⁹*ibid*

Further the presumption is not granted at any extent, if the facts and circumstance are present which weakens the probability of similar element that it may be presumed as marriage then it disapproves the presumption¹⁰. Thus, it on the discretion of court to decide the validity of presumption of marriage as the status of live in relationship.

Right to maintenance in live in relationship

The marriage and the live in relationship may not be considered on equal footing even after the presumption of marriage. To make such presumption suffice the rights to maintenance to the women in live in relationship has also granted by the court. In case of ***Virendra Chanmuniyavs.Chanmuniya Kumar Singh Kushwaha and Anr*** in the respective case one Sarju Singh Kushwaha had two sons, Ram Saran(elder) and Virendra Kumar Kushwaha(younger son and respondent one). The appellant, Chanmuniya married Ram Saran and had two daughters out of the marriage, the first daughter Usha born in 1988 and the second daughter born in 1990.After the death of Ram Saran on March 3rd 1992. The appellant stated she was as per the customs and usages of the Kushwaha community. The custom stating the widow was to be married off to the younger brother of the husband.The appellant was married off in accordance with the local customs. The appellant stated she and the respondent were living as couples and has discharged their respective martial obligation. The appellant further stated that the respondent started torturing and assaulting her after a time, stopped paying her maintenance and discharge his marital obligations towards her. The question before the court concerned whether a man and women living together could be considered husband and wife ,whether strict proof of marriage is required for maintenance under Domestic Violence act and whether a marriage performance in accordance with the Hindu Marriage Act,1955 or any other personal law would entitle a women to claim maintenance¹¹the apex court quashed the judgement of high court that u/s 125 of Cr.P.C. only legally married woman can claim for maintenance and opened the door also for women in live in relationship. Further considering section 125¹² of Cr.P.C in the light of Section 26 of

¹⁰Golak Chand v. Pravin Kumari1952 AIR 231, 1952 SCR 825

¹¹MANU/SC/0807/2010

¹²MANU/SC/0807/2010, Para. 43

Protection of women from Domestic Violence Act, 2005 the court entitled relief equally to women in live in relation as the legally wedded wife.

In the landmark case of *Velusamy v. D. Patchaiammal*¹³. in this case it was alleged by the accused he was married in accordance with the Hindu Customary Rites with Lakshmi on 25th June 1980. Their son from marriage was pursuing a degree in engineering in an college in Ooty. The appellant was working as teacher in secondary school. The respondent filed a petition under section 125 CrPC in 2001, before the family court at Coimbatore. Wherein she alleged she was married to the appellant on the 14th of September 1986. Since then she and the appellant had stayed in her father's house for 2-3 years. The appellant alleged after the same duration of staying in her father's house, the respondent's father started staying in his native house and visited the appellant infrequently. It was contended before the court the appellant had left the respondent 2-3 years into marrying her(u/s 125 C.r.P.C). The appellant contended not having any kind of livelihood ,she was unable to maintain herself. Hence she approached the court and requested to be paid Rs. 500 by the respondent as maintenance, per moth. The apex court commented in its judgement that Parliament is intended to protect women of both categories 'relationship of marriage' and 'relationship in the nature of marriage' Thus the Supreme Court held that

*“Relationship in the nature of marriage is akin to a Common Law Marriage. Common Law Marriages require that although not being formally married:- (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.”*¹⁴

The judgment clarified the essentials of a 'Common Law Marriage' and stated that not all "live in relationships" will amount to "a relationship in the nature of marriage."¹⁵ Thus for the rights and liabilities in live in relationship must have such essential grounds to be recognised. The national commission for women recommended to the ministry of women and child development in 2008 that the definition of wife u/s 125 of CrPC should include women involved in live- in

¹³AIR2011SC479

¹⁴ MANU/SC/0872/2010, AIR2011SC479, Para 33

¹⁵SaloniAbhang, "Judicial Approach to Live- In-Relationship in India- Its Impact on Other Related Statutes"19 IOSR Journal Of Humanities And Social Science 32 (2014)

relationship. The Malimath committee also recommended that the term wife u/s 125 of Cr.P.C must include “living with a man like his wife” so, that they are entitled to alimony and can claim maintenance.¹⁶

Protection of women against domestic violence act, 2005 and live in relationship

The legislature has acknowledged live-in relationships by giving rights and protection to those females for the first time in Protection of Women from Domestic Violence Act, 2005 (PWDVA) as it aims to protect any aggrieved women who have “domestic relationship” and is subjected to domestic violence.¹⁷ Upholding the idea of “relations in the nature of marriage”¹⁸ this Act expands the ambit of domestic relationship to the inclusion of live-in relationship. It further clarified that 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.¹⁹ Therefore, Courts presume live-in relationships under the ambit of the expression as the words nature of marriage.²⁰

Legal status of children born out of such relationship

In *SPS Balasubramanyan v Suruthaya @ Andali Padayachi and Ors* the court proposed partners in alive-in relationship for a long time duration, any children conceived of such union shall be considered legitimate.²¹ Such children are given the adequate opportunity to develop and their interest is also safeguarded as this obligation lies on state under Article 39(f) of the Indian constitution. The supreme court held that the child born out of such relation can inherit the

¹⁶ Zafar Ahmed Khan, “Live-in Relationship: A Socio-Legal Perspective”, 23 ALJ (2015-16) 366, pg.04

¹⁷Section 2(a), Protection of Women from Domestic Violence Act, 2005

¹⁸Velusamy vs. D. Patchaiammal AIR2011SC479, MANU/SC/0872/2010

¹⁹Section 2(f), Protection of Women from Domestic Violence Act, 2005

²⁰Asthasexena, “live-in relationship and the Indian judiciary”, available at:<https://www.scconline.com/> (last visited on March 15,2020)

²¹*S.P.S. Balasubramanyam v. Suruttayan*, (1994) 1 SCC 460 : AIR 1994 SC 133

property of parents and therefore be given legitimacy in the eyes of law.²² According to section 16(3) of The Hindu marriage Act, 1955 interpreted by the court, children born out of such relationship are entitled to all the rights and privileges available to the child born out of wedlock.

CHALLENGES DUE TO EMERGENCE OF LIVE-IN RELATIONSHIP

There is neither such law in India which recognizes the live-in relationship nor there is any laid down enactment relating to the rights, commitments and for the status of children born to such couples. Even, there is no statutory definition of this term, it simply means there is no lawful status of such sort of connections. Different people have perceived this concept differently. There are two perspective which are generally seen, firstly who believe that if they feel compatible together then they will turn their relationship into marriage. Which is at some extent right and protect the concerned issues. Secondly, who thinks that marriage is not that necessary element rather waste of money and they do not need any certification for their togetherness. But there are certain challenges to the live-in relationship, firstly, societal acceptance is the major problem, to change the mindset of people is the toughest and the long set process and even today, it is still seen as “taboo” especially in traditional and old age people. They are seen as social deviants. A society which does not accept couples who belong to different caste, religion and race, then how can we expect that, that society will accept the live-in relationship easily. Therefore, this society looks it in the harsh and judgemental way. Secondly, lack of commitment is another issue where a small fight, misunderstanding or disagreement will lead to easy way out to such relationship, there will always be fear of uncertainty and there is no economic, social and legal bondage in live-in relationship unlike marriages where couples try every possible ways to sort it out, not only the couple tries but even courts and society tries every possible effort to save the relationship rather than splitting. Thirdly, many social scientists observed grave problems in such relationship like pregnancy at early age, drug abuse, violence and juvenile delinquencies which will spoil the new generation.²³ Fourthly, women suffer more socially, biologically and emotionally. We have a patriarchal form of society, where men dominance is seen. Women are the worst burn when they are left out or ditched in the live-in relationship as it becomes difficult for her to get a good spouse who accept her after being in live-in relationship with another

²²*BharathaMatha v. R. Vijaya Renganathan*, (2010) 11 SCC 483 : AIR 2010 SC 2685

²³Zafar Ahmed Khan, “Live-in Relationship: A Socio-Legal Perspective”, 23 ALJ (2015-16) 366

person. And she is labelled as a deviant person in the society. Fifthly, if children is born out of such relationship and the couples have parted then the life of children becomes insecure on the grounds that, he has no legal grounds to hold custodial rights, he cannot hold the inherited property, since, the relationship of their parents is free of all legal bindings. Sixthly, even men are subjected to false allegation of rape, as section 375 defines rape, in which it is clearly mentioned that if the intercourse is without the will and consent of the women i.e. forcefully, then it comes under rape. if a woman in order to take revenge or out of ego drag the male partner for the offence of rape contending that she did not gave her consent and is a victim then the burden of proof lies on the accused which is nearly impossible as seen in most of the cases. Seventhly, the live-in relationship endorses the circumstances of bigamy. Bigamy is an offence where the already married person, marry again during the lifetime of their spouse. In terms of live-in relationship the Malimath committee stated that if the partners are living together for the “reasonable time” then the partners will be recognized as husband and wife.²⁴ Similarly in *S.P.S.Balasubramanyam v. Suruttayan*²⁵, the Supreme Court had said,

“If a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.”

According to the above statement we can say that even if it is not *de jure* marriage rather *de facto* it affects the legally wedded partner adversely because it arises a situation which is deemed to be a relation like marriage. The similar circumstances occurred in the case of *PayalKatara v. SuprerintendentNari Niketan Kandari Vihar Agra*²⁶. Thus, the recognition of the status of live in partner in the statute such as Domestic violence act, 2005, keeps the situation deviating in perspective of legally wedded wife and simultaneously promotes bigamy.Eighthly, it dilutes the motive of Prohibition of Child Marriage Act, 2006 as this Act prohibits marriage of girl child under age of eighteen years and boy below twenty-one²⁷ years because it will lead to poor development in terms of health and psychology of the children. Whereas, live-in relationship does not define any age limit and today even adolescent are in live-in relationship and they are

²⁴*ibid*

²⁵[\(1994\) 1 SCC 460](#) : AIR 1994 SC 133.

²⁶W.P. No. 16876/2001, MANU/UP/0288/2001 (All. H.C. May 17, 2001), 2001(3) AWS 1778

²⁷Section 2 (a), Prohibition of Child Marriage Act, 2006

immature to decide their live-in partner which consecutively lead to multiple partners which further lead to adverse impact and may result into venereal diseases as well as mental trauma. Thus, live-in relationship is the barrier to the policy of prohibition of child marriage act, 2006. Ninthly, glimpse of western world in Indian culture challenges the legal sanctity of marriage as in the sight of worldview, India is a country where marriage occupies a sacramental position both philosophically and practically. Whereas live in relationship is not based on future commitments and are independent of legal obligations which seems to create a non-contractual walk in and walk out type of relations which would create chaos in the traditional approach of society. Lastly, the judiciary has interpreted statutory provision and widen the scope to that extent where they have put the live-in relationship under legal parlance. Hitherto, wife under section 125 of CrPC include women involved in live-in relationship, it was 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 women”.²⁸ The facts of different cases decide the remedy in live in disputes and the fallacy is struck at the word “reasonable time”. The ambiguity in time period of togetherness is not yet explained as what period of time and circumstances may be called reasonable- one night stand, one week, one month or no fixed end. The reasonableness of indefinite time period depends on the discretion of the court.

CONCLUSION

The live-in relationship has been accepted to certain limit in India, it no more taboo which it earlier used to be when marriage was sine qua non to society, as no. of such couples are multiplying in the metro rush world. It has partial recognition in the law, since we do not have any legislation or statutory provision for live-in relationship but we have certain judicial pronouncement. It has been observed that live-in relationship challenges the root of institution of marriage as the people are more educated and financially independent and the globalization has led to the formation of nuclear family or broken up families, due to which they have to stay alone from their spouse in different countries this may be one of the reasons of live in relationship and can be called as deemed bigamy. We have to still face certain challenges in the acceptance by the

²⁸ Zafar Ahmed Khan, “Live-in Relationship: A Socio-Legal Perspective”, 23 ALJ, 04 (2015-16)

society therefore the law should be definite and keep the pace on the changing demand of the society.

SUGGESTIONS

To balance the transition phase of relationship in society, few suggestions may help to protect the legal status of person in live-in relationship. Now, the time has come when the legislature should specify the laws dealing with concerned issues. Even if the majority population has not adopted such kind of relationship, the number is increasing progressively. In lack of provision there is fear of stigma to such partners. Personal laws should therefore be amended accordingly to include live-in relationship. To get rid of the false allegations on either of partner, the approach of several countries such as UK, Canada, China and others as well should be followed. Signing the contract for entering into live in relationship must be made mandatory. The context of word 'wife' in section 125 of Cr.P.C. should be amended or be a part of new legislation to give rights to women in live-in relationship. The proper definition of 'relationship in nature of marriage' and 'reasonable time period' of cohabitation should be clarified by element to remove vagueness in circumstances. It is necessary to deal with aforesaid challenges to recognize a part of society.