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A CRITICAL ANALYSIS OF LIVE-IN RELATIONSHIPS AND ITS RELATIONSHIP WITH INDIAN JUDICIARY

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Abstract: Live-in relationship is a very complicated and controversial term in the present Indian scenario. India is a land of culture and tradition, where marriage and family is held sacramental. The influence of live-in relationship in India is very recent and our country is trying to cope up with the emerging changes. There is no stringent legislation on this subject matter, but there are several landmark judgements delivered over the years which have favoured the status of such relationships and tried to balance the general expectations of the society and the individual rights of people. This article aims to talk about these relationships from every aspect, starting from the history till the current situation. It is divided into six major parts and it discusses thoroughly about the relationship of such associations with the Indian Judiciary and critically analyses and examines the same.

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1. Introduction

The term "live-in relationship" is a very controversial and complicated term by itself in the Indian society. Our society is traditional in nature and the concept of live-in relationship is very much new to us. We have a long established society, where there was no existence of "live-in relationships" ever in history and the concept of marriage was held sacramental at every stage of life. Hence, it would be fair to say that, a society which gives such a huge status to marriage, can never accept the concept of live-in relations in its complete terms. Our society is deeply inclined towards cultures, traditions and values and such things cannot see live-in relationships emerging out of the system. The objective of this paper is to primarily focus and critically analyse live-in relationships in India and its relationship with the judiciary.

In simple words the term ‘live-in relationship’ means cohabitation of a couple, who are not married to each other but are living together under the same roof. This kind of a relationship is generally romantic in nature and is continued for a long term or a permanent basis. The legal definition of ‘live-in relationship’ is “an arrangement of living under, which the couples, which are unmarried, live, together to conduct a long- going relationship similarly as in marriage”. It should be kept in mind always, that these associations should always resemble a marriage i.e. the live-in arrangements should always be long term. This kind of cohabitation is often termed as consensual union or de-facto marriage and refers to unmarried couple living together in an intimate relationship. There are certain requirements to fulfil the criteria of live in relationships:

- The couple should attain the legal age to marry.
- They should be qualified to enter a legal marriage.
- They must be unmarried.
- Voluntary cohabitation should be for a considerable amount of time.
- Shared household
- Pooling of resources and financial arrangement between parties
- Domestic arrangements
- Children
- Socialization of relation in public

It has been truly said that change is the only constant in this world. Without change, a society never progresses and it is known that a dynamic society is the identity of a progressive and a developed society. As a result, India is also trying its best to cope up with the new practices, values and ideologies of the modern world.

The Indian society is very much new to the concept of ‘live-in relationships’ but gradually people are opening their minds towards this emerging concept of relationships. India has indeed witnessed a drastic change, in the way the present generation perceive their relationships. To understand this sort of associations in a better way, we should trace the history of ‘live-in relationships’.

1. History of live-in relationships

As we all know, the concept of live in relationship is an emerging concept in India, but in the Western countries it had been in practice for a long time.

Live in relationships have become increasingly common in Western countries during the past few decades , because of certain changes in social views, especially regarding marriage, gender roles and religion. The entire history of live in relationship paves back to the Scandinavian countries in Europe which created a remarkable trend for the world. Many other countries started following this leading trend thereafter. According to the current scenario, among the European countries, France, Sweden have some of the highest rates of live in relationships while Poland, Spain, Italy have comparatively lower rates.¹ This actually proves how the society has been changing universally and getting progressive with time.

In some parts of the world, these types of relationships are valid and accepted but there are some countries which highly restrict the concept. It has been found that the younger generation of the current society are more inclined towards ‘live-in relationships.’

2. Live-in Relationships and the Indian Laws

The position of live-in relationship in the Indian context is not very clear but the recent landmark judgements given by the Honourable Supreme Court provides some assistance when we skim through the topic of live-in relationships and analyse the radius of the topic in Indian legal ambit. The couples involved in a live-in relationship are not governed by any specific law. Hence we can say that, there is no legal definition of live-in relationships in India and in this way the lawful status such sort of relationships is likewise unverified. The Indian legal system does not give any rights or obligations to the parties of live-in relationships. Live-in relationships are neither recognized by the Hindu Marriage Act, 1955 nor the Criminal Procedure Code of India, 1973. The only Act which deals with these kinds of associations is the **Protection of Women from Domestic Violence Act, 2005** (PWDVA). This Act provides for the protection, maintenance and right of palimony of the aggrieved partner which is being covered within the term “domestic relationship” under Section 2(f) of the Act. Under Section 2(f) of the Protection of Women from Domestic Violence Act, “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household,

¹Cohabitation, <http://en.m.wikipedia.org>

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. Though live-in relationships are not prominently or categorically mentioned in the Act but the Apex Court has interpreted these associations as “relationships in the nature of marriage.” The provisions of PWDVA are presently made applicable to the individuals who are in live-in relationships. Courts presume live-in-relationships to be covered under the ambit of the expression as the words-nature of marriage and live-in relationship stand on the same line and meaning.

Another major Amendment was initially proposed to be done to the **Criminal Procedure Code, 1973**. By the earlier definition, Section 125 was incorporated in order to avoid vagrancy and destitution for a wife/minor children/ old age parents, but now the same has been extended by judicial interpretation to partners of a live-in relationship as well. In November 2000, the Malimath Committee was set up. This Committee worked on the Reforms of the Criminal Justice System. In the year of 2003, when the Malimath Committee submitted its report, it made several recommendations under the head “offences against women”. One of its recommendations was to amend Section 125 of the CrPC to alter the meaning of ‘wife’. Due to this alteration, a revision was made and now the expression “wife” incorporates the ladies who were previously in a live-in relationship and now her accomplice her abandoned her at his will, and hence the lady in the relationship is now entitled to the status of a “wife”. In simple words, it means that if a lady has been in a live-in relationship for a sensible period of time, she is ought to have all the legitimate privileges as that of a spouse and can claim maintenance under Section 125 of the CrPC. Hence, to get maintenance under Section 125 of the CrPC, marriage is compulsory.²

However, the right to maintenance in live-in relationships is given to the aggrieved partners by the **Protection of Women from Domestic Violence Act, 2005**. In such cases, it is decided by the Court in accordance with the Domestic Violence Act, 2005 and the individual facts of the case. Though our society is still very hesitant to accept live-in relationships, the Protection of Women from Domestic Violence Act, 2005 provides for the protection and maintenance thereby granting the right of palimony (a form of alimony paid to a former partner in a non-marital relationship)

²AsthaSaxena, Live-in Relationship and Indian Judiciary, SCC Blog, (January 23, 2019), <http://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary->

to an aggrieved live-in partner. Thus we can say that, the female live-in partners and their children have been accorded adequate protection by the judicial system of our country.

The **Indian Evidence Act, 1872** has also given a legal status to live-in relationships. It is very important to note that, when a man and a woman live together for a long span of time as husband and wife there would be “presumption of marriage” under Section 114 of the Indian Evidence Act.

3. Indian Judiciary on Live-in Relationships

As far as the Indian Judiciary is concerned, the understanding of marriage and the notion of live-in relationships has gradually moved from the traditional view to a much modern and progressive aspect. Live-in relationships are gaining momentum especially amongst the educated and economically viable groups conscious about their rights. There are several landmark judgements which have favoured the status of live-in relationships in India over the years and helped our society to perceive these relationships in a positive way.

In the cases prior to independence, like in the case of **A. Dinohamy v. W.L. Blahamy**³, the Privy Council laid down a broad rule postulating that, “Where a man and 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 cocubinage”. The same principle was reiterated in the case of **Mohammed Ali v. Mohammed Ibrahim Khan**⁴

The first ever case after independence, in which the Supreme Court of India recognized the concept of live-in relationship as a valid marriage was that of **Badri Prasad v. Dy. Director of Consolidation**⁵, in which the court gave legal validity to a couple who stayed together in a live-in relationship for 50 years.

Before 2000, no courts in the country ever uttered the word “live-in relationship”, but not thereafter. In 2001, the Allahabad High Court recognized the concept of live-in relationship in

³A. Dinohamy v. W.L. Blahamy, AIR 1927 P.C. 185

⁴ Mohammed Ali v. Mohammed Ibrahim Khan, (1929) 31 BOMLR 846

⁵Badri Prasad v. Dy. Director of Consolidation, AIR 1978 SC 1557

the case of, **Payal Sharma v. Superintendent, Nari Niketan and others**;⁶ wherein it was held that, live in between two adults without marriage cannot be construed as an offence. It further held that there is no law which postulates that live-in relationships are illegal.

In **Koppiseti Subharao Subramaniam v. State of U.P.**⁷, the Supreme Court provided the protection cover against dowry, under Section 498A of the Indian Penal Code, 1860 by including a person who enters into marital relationship under feigned status of husband. In **Patel and others**⁸ case, the Apex Court observed two adults are not criminal offenders who are bound in 'live-in relationship' without a formal marriage. No legislation has ever been enacted by Indian Parliament which denounces any such relationships as illegal. This judgement was made applicable to the case, **Tulsa v. Durghatiya**, by the Supreme Court and re-organized the rule that there would be a presumption of marriage under Section 114 when there has been long co-habitation.

In the case of **S. Khushboo v. Kanniammal & Another**⁹, the Supreme Court held that living together is a right to life. Live-in relationships may be immoral in the eyes of the conservative Indian society, but it is not illegal in the eyes of law. In this particular case, the charges against Khushboo, the actress from South India, who endorsed pre-marital sex and live-in relationships, were dropped by the court. It was held that living together was not an offence in the eyes of law.

However, in one of its judgement, **Alok Kumar v. State**¹⁰, the Delhi High Court has held that live-in relationships are walk in and walk out relationships and no strings are attached to them. Hence, these kinds of relationships do not create a legal bond between the partners. It further held that in case of live-in relationships, the partners cannot complain of infidelity and immorality.

Another important judgement was given in the case of **Tulsa & Others v. Durghatiya & Others**¹¹, **2008** which was largely based on the judgment given in the Patel case in 2006. In this case the

⁶Payal Sharma v. Superintendent, Nari Niketan and Others, (2006) 8 SCC 726

⁷Kopiseti Subharao Subramaniam v. State of U.P., Criminal Appeal Number 867 of 2009, [Arising out of SLP (Crl.) No. 4496 of 2006]

⁸Patel and others, (2006), 8 SCC 726

⁹S. Khushboo v. Kanniammal & Another, Criminal Appeal Number 913 of 2010 [Arising out of SLP (Crl.) No. 4010 of 2008]

¹⁰Alok Kumar v. State, Cr.M.C.No. 299/2009, Decided on 9 August 2010.

¹¹Tulsa & others v Durghatiya & others, Civil Appeal Number 648 / 2002 / SC/0424/2008 (S.C. September 24, 2009)

Supreme Court provided legal status to the children born out of live-in relationships. It was held that one of the crucial pre-conditions for a child born from live-in relationships is that, the child should not be treated as illegitimate because the parents must have cohabited for a considerable amount of time under the same roof to recognize themselves as “husband” and “wife”. Therefore the court also granted the “right to property” to a child born out of a live in relationship.

On 13th April, 2015 a landmark judgement was delivered by the Bench consisting of Justice M.Y. Iqbal and Justice Amitav Ray. The Supreme Court ruled out that couples who are living in alive-in relationship will be presumed legally married.

The Apex Court also said that, in case the man dies, then his partner would inherit his property. Since 2010, the Supreme Court has ruled in favour of women on declaring that women should get the rights as that of a wife, in case of live-in couples. These rights include protection from domestic violence, right of inheritance of property, the legitimacy of the children born out of such relationships and the maintenance of children after separation.

4. A Critical Analysis

Everyone has different thoughts and perceptions on live-in relationships which lead them to approve or disapprove such relationships. Making the decision to cohabit before marriage requires careful consideration of both the parties. Although, the right decision will increase the chances of achieving a successful long-term relationship, similarly the wrong decision can be equally disastrous.

One of most important advantages of these relationships is, they provide a trial run for marriage. The couple gets the opportunity to discover a lot of things about themselves before their marriage, among which compatibility and sharing responsibilities are extremely crucial.

Sharing the financial burdens also become much easier between the partners when they decide to split it between them. It can be said that, living in is an affordable and convenient method of living.

A live-in relationship is like a marriage without all the legalities and responsibilities of marriage. Hence, it gives an immense amount of freedom to the couple who do not want to risk their lives

being tied up in a messy divorce battle. It is very easy to come out of a live-in relationship without facing the legal formalities.

On the other hand, social censure is a very big stumbling block for these relationships. Our society till now, finds it extremely difficult to accept such relationships openly. It is considered unacceptable especially by the older generation. In many cases it has been observed that the live-in couples are often harassed and shamed by the society for their choice. Another major disadvantage of live-in relationship is the lack of commitment. Separation can easily take place based on an issue, whereas in marriage an issue gets resolved based on reasoning and responsibilities.

Inclusively, we can say that, the very advantage of being in a live-in relationship i.e. lack of commitment, is its biggest disadvantage. It is assumed that human relationships are weak and complex and hence there is no guarantee of these relationships.

Live-in relationships might be or not be better than marriage but it gives a clear perspective to the couple about their compatibility and hence of spending a life together with their respective partners. Because of all the pressure and responsibilities that come with marriage, couples prefer being in cohabitation to satisfy their various needs. Therefore, a couple, before advancing towards living in together, should always keep in mind the consequences and responsibilities that come with it.

5. Conclusion

India is a democratic country and respect for human rights is an integral part of our system. Every individual has the freedom to choose their partner and way of living. The changing scenario of people moving into live-in relationships is an issue of individual right and privacy and hence they should be given the absolute liberty to choose their way of living. Live-in relationships are no longer a novelty to Indian society. Although the number of people supporting such practice may be less in number, but there is a genuine concern that in future people may prefer it for marriage. In fact, the couples involved in live-in relationships are constantly multiplying in number and it creates a challenge to the solid rock on which the institution of marriage has been built up and nurtured. Although, the idea of live-in relationship may sound very unique and appealing but we should always keep in mind that certain

complications are likely to arise out of them, a there is no law which acts as a guardian angel for these relationships. The emergence of some stringent legal statute is very much necessary to safeguard these relationships. Therefore, a couple should be rational and sensible enough to take a decision of moving in together. Until then, as in the interest of justice, equality and good conscience the Indian judiciary has already passed a number of judgements in favour of live-in relationships and now, it is only on the society to come forward and accept the concept with open mind and heart.



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