



IMPERATIVES OF LIVE-IN RELATIONSHIP IN INDIA: LEGAL & JUDICIAL APPROACH

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Abstract

Live-in relationship is an arrangement where two people who are unmarried live together in an intimate relationship, particularly on a long-term or sometimes on a permanent basis. Live-in relationship is defined as a relationship both emotionally and sexually between two adult living together for a long period of time. It also denotes a living arrangement in which unmarried couples live together in a long term relationship which exactly resembles a marriage. It is not that couples reside together only for the sake of living together to get a partner with whom they can share their every emotion and feeling but also to satisfy their biological desires. Many couples go in for live-in relationship before marriage due to other reasons like testing their compatibility with each other and to ensure whether they can continue the whole of their life with the same person. Though there is no specific legal definition of live-in relationship, yet in different instances our Honb'le Supreme court has explained the said term in various ways. In the instant paper, the researcher have discussed on evolution of live-in relationships in India. An attempt has been made by the author to deliberate on the psychological implications of live-in relationship. In addition to this, the author have focussed on rights of women partners and children in a live-in relationship. The judicial approach has been elaborately discussed by the author. In concluding observation, the author firmly said that although the judiciary has tried to accord legally to the new concept of relationship and has helped in protecting the rights of the concerned parties and the children of such couples. But still there is a strict need to formulate a law which would clarify the concept. The main ordeal of this kind of relationship is the future of the children which is at a stake now when there are no strict provisions.

Key Words: *Live-in, marriage, Court, relationship, socio-legal, judiciary, law etc.*

Introduction

Live-in relationship has now been used as an alternative of marriage but it is not seriously so. It has been termed as a cohabitation of two people not necessarily of the opposite sex but they may also be of the same sex. Now-a-days, people particularly younger generation is becoming more materialistic than before and there has been manifold degradation of moral values and emotional bonding amongst partners. No single partner is prepared to take up the responsibility of the other partner and be committed to him or her for a lifetime.

The law traditionally has been biased in favour of marriage. Public policy supports marriage as necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Cohabitation carries none of these rights and privileges. It has been said that cohabitation has all of the headaches of marriage without any of the benefits. Cohabiting couples have little guidance as to their rights in such areas as property ownership, responsibility for debts, custody and access to healthcare and other benefits like survivorship.



Experts in family law advise that live-in partners should address all their issues and essentials in a written agreement which resembles a premarital agreement. In the agreement, points should be outlined about how the couple will divide their expenses and own property. It should be clearly mentioned in the agreement by the couples residing as live-in partners, they will maintain joint bank accounts or it will be separate. Regarding their property, it should be well mentioned in the agreement that how the assets will be distributed which will be jointly owned by the live-in partners.

Property acquired during such live-in relationship like real estate, home furnishings, antique artwork generally leads to dispute and may be contested if any one of the partners dies. So, to avoid such chaos, the agreement should clearly mention who is entitled to what.

Evolution of live-in Relationships in India

Defying marriage as the sole arrangement of cohabitation, the concept of live-in relationships has been increasingly emerging in India. Traditionally, Indian societies have always advocated the comfort of history over the uncertainty of future. Instead of embracing changes occurring in the contemporary civilizations of the west, we have stuck to our customs, traditions and conventions and let the customary laws rule us.

Live-in relationships may be a newly coined term in post-modern India, but the origins of its existence can be traced back to the evolution of mankind. Adam and Eve can be termed as the first non-married couple of human history. Since the institution of marriage did not exist then, they were not aware of the status of their relationship.

Post modernization, Indian society has been on a revolutionary rampage. From the age-old customs of arrange marriages to love marriages and now to live-in relationships, India has been witnessing westernization in an enormous way.

With the changing times and the advent of twenty-first century, traditional relationships are also losing their sheen and foothold. The notions of celibacy until marriage, one life one wife are fading away. People are embracing other newer non-conventional, non-traditional forms of relationships, live-in being the most prominent one, which in the eyes of the older generation is a paranoia.

The Need for live-in relationship

Today, when values and traditions are facing the dead end and marriages are being dissolved rapidly, the young mass have developed a sense of distrust in this institution which was once upon a time considered to be an eternal union. In this materialistic world, marriages are hardly made for the union of two souls but more of it is a unity between two families where there is accomplishment of business and financial goals. Live in is the answer for that fake pompousness and the great façade a traditional Indian marriage puts in front of the society. And it's considered better to be in "being together without commitment to marry" relationship than dead marriage, which many youngsters witness in their families.

The reason for being in a live-in relationship can be many. The primary reason may be to save money. They can share the same household and so the partner who is in the need of a house can save the same amount of money as house rents are at their heights in metropolitan areas. Many people are again of the view that it is very difficult to pay for a wedding as they have lower incomes. And certainly they



would not waste their hard earned money on marriage if it were to end in a divorce. Rather they find it easy to continue with their partner without getting into the institution. Some other people say that they continue to be live-in partners as because spending more time together them to test their relationship.

Live-ins sometimes called a de facto marriage is becoming more commonly known as a substitute for conventional marriage. In some states which recognise it, live-in relationship can be viewed legally as “common law marriages” either after the duration of a specified period, or if the couple consider and behave accordingly as husband and wife. This helps provide the surviving partner a legal basis for inheriting the deceased’s belongings in the event of the death of their live-in partner. In such relationships, forty percent of households include children, giving us an idea of how live-ins could be considered a new normative type of family dynamic. The parenting role of partners can have a negative effect on the child. If one of the partner, who is not generally not the parent of the child, does not have explicit and custodial rights on the child can cause instability within the child and the child can feel insecure due to this.

In the recent years, there has been a significant increase in the number of people opting for live-in relationship as a substitute for marriage. This very trend has been well accepted in western countries since long but the concept is gearing up in India as well. In a severely hectic and stressful life of today, people do not have the patience to deal with emotional issues that a marriage entails. The partners are well aware about what they are in for and if the relationship does not work out, they can leave anytime. There are no legal and financial impediments in such a relationship unlike a marriage where splitting up is not so easy.

Psycho-social implications of live-in relationships

In the post-modern era, Indian society has seen a huge change in the perception of relationship amongst individuals. Once upon a time, Indian society regarded premarital sex as taboo and highly immoral. There were hardly any couple cohabiting under the same roof without being married. However, in contemporary times, these social beliefs are slowly disappearing giving way to acceptance of premarital sex and live-in relationships. The changes in the mind-set of people, more particularly the younger generation, regarding the wider concept of exercising freedom of life, changing professions, education, globalization and stricter privacy laws have catalyzed this change. The argument that favors this change in mind set is that it is important to understand the partners and the compatibility between them before entering the institution of marriage.

The present generation is more generous and liberal about the idea of cohabitation. It is of the opinion that it is necessary to understand a partner in a reasonable way before entering the wedlock, given the cumbersome legal break up procedures which are associated with divorce cases. Living together, on the other hand, not only fulfills the feeling of being together, but also takes care of an easy break up, since there are no duties and obligations attached with it. Live-in relationships have the advantage of not being binding upon participating partners, whereas in marriages, the spouses are loaded with duties and obligations towards each other.

While on one hand, live-in relationships empower us to have greater autonomy in achieving relationship goals, they face social stigmas and ostracization as well. Indian society being mostly conservative in nature, there has not been an overwhelming acceptance of this concept of relation between a man and a woman. They are looked down upon and the couples are forced to lie about their



relationship status. The children born out of this arrangement often face mental trauma and inheritance issues of their parental and ancestral properties.

Nonetheless, live-in relationships give people a simpler way to associate with like minded partners and instill a new meaning, purpose and a sense of belongingness in their otherwise solitary life. The mental health effects of a positive relationship is immeasurable. Having a good conversation is a real stress buster and induces happiness in an otherwise exasperated mind. On the other hand, loneliness and isolation lead to multiple psychological problems including suicidal ideation and also impacts physical health.

Rights of Women Partners and Children in a Live-In Relationship

The rights of the participating partners cohabiting in a live-in relationship has been the forefront of jurisprudence in such matters.

The status of the woman partner, in a live-in relationship remains vulnerable as she is more susceptible to being exploited emotionally, mentally and physically and sexually.

In case of marriages, wives have the right to claim maintenance in the event of separation or divorce. Because of the lack of legal sanction to live-in relationships, such a right was previously not available to female partners of a live-in relationship.

In 2003, the Malimath Committee Report on "Reforms in the Criminal Justice System" recommended amending Section 125 of the Code of Criminal Procedure to consist of a female who has been "living in" with a male for a "reasonable time" within the ambit of wife to claim and seek maintenance. The Supreme court, by virtue of judicial activism, removed the strict necessity of marriage of a woman to claim maintenance, thereby extending the scope of sec 125 of CrPC to include women in live-in relationships. The judgements in the cases like *Abhijit Bhikaseh Auti v. State of Maharashtra*, and *Rajnesh v. Neha*, are in consonance with this.

In Kamala v. Mohan Kumar, the Supreme Court had expressed that a purposive interpretation should be given to the term 'wife' to further the principles of social justice and uphold the right to dignity of individuals enshrined in the Constitution. In this instance, long cohabitation between woman and man led to the presumption of marriage upon which the Court adjudged that the woman was entitled to maintenance for herself and the children born to them. Thus, the judicial standing is that a woman in a live-in relationship enjoys a similar right to maintenance akin to legally wedded wives. Children born out of live-in relationships have to bear the brunt of asserting their legitimacy right from their birth. The orthodox character of Indian society and a myriad of personal laws revolving around inheritance and property rights have compounded their woes.

In a pronouncement made in the case of **Tulsa v. Durghatiya** the Hon'ble Supreme Court ruled that the children born out of a live-in relationship will not be illegitimate with an important precondition that parents must have lived under one roof and cohabited for a significantly long time for the society to recognise them as husband and wife. This was one of most significant cases revolving around property disputes arising in cases of live-in relationships.



Further, in the case of **Revanasiddappa v. Mallikarjun** the Supreme Court held that Grey areas: The court rulings are contradictory and conflicting when it comes to same-sex relationships. Let's take a bird-eye view on the judgments of the Indian courts on this subject.

1. The question of protection from intimate partner violence, particularly sexual, to same-sex partners or men in heterosexual live-in relationships. The Indian Penal Code (IPC) Section 375 defines 'rape' as an offence a man commits on a woman, so a man in a heterosexual or a woman in a same-sex live-in relationship do not have a recourse if they are violated.
2. There is no provision for alimony for men and the SC also problematically ruled that only men initiate live-in relationships.
3. Relief under the Protection of Women from Domestic Violence Act, 2005 is not available to men in live-in relationships. Here it is pertinent to mention that in the case of Khushboo Vs Kanniamal, the Supreme Court observed that 'a live-in relationship is invariably initiated and perpetuated by men',"
4. India has personal laws according to religions. This leads to questions on succession and legitimacy of the children born out of live-in relationships.
5. The SC in **Kattukandi Edathil Krishnan & Another Vs Kattukandi Edathil Valsan & Others** observed that the law presumes in favour of marriage and against concubinage. If a man and woman consensually cohabited for a long period and their child cannot be denied the shares in the ancestral properties.

The Supreme Court has also ruled that such children are eligible to be part of family succession.

The Supreme Court has said that a child born out of an illegitimate marriage or a live-in relationship is a legitimate child. Moreover, they are entitled to coparcenary rights on their ancestral properties as well.

The concept of coparcenary right comes from the Mitakshara school under the Hindu Succession Act 1956, where the child, by birth, acquires automatic ownership on ancestral property even during the lifetime of the father whereas in case of Dayabhaga school, the question of ownership comes only after the father's demise.

6) There is no clarity on the questions of succession and legitimacy of the children born out of live-in relationships in other religions like Muslims and Christians. Alimony or legitimacy of children born out of live-in relationships is not permissible in Muslim personal laws.

Live-in relationships, which have pre-marital sex as an essential element, involve zina which is not permissible in Islamic law. Zina means pre-marital sex in Islamic law.

Ever since, the courts have been interpreting existing laws on their own. There is need to bring out legislations on this subject so that there is clarity and courts do not come up with conflicting judgements. The birth of a child out of such relationship has to be viewed independent of the relationship of the parents. It is as plain and clear as sunshine that a child born out of such relationship is innocent and is entitled to all the rights and privileges available to children born out of valid marriages. The Court granted the inheritance to the four children born from the woman with whom the man shared a live-in relationship, calling them "his legal heirs".



Live-in relationship in India and its judicial treatment

As of now, there exists no law on this subject. However, some case laws of the Apex court as well as that of different High Courts have come out in the recent past which are being dealt below.

Live-in relationship in India has been a taboo since the pre-independent era. In cities, it is not considered a proscribed act but still in villages the idea is more conservative. In India, live-in relationship is not considered illegal but it is immoral.

The Indian legal system has been systematically discriminating between the socially acceptable institution of marriage and the socially unacceptable arrangement of live-in relationships. Even years after independence, the legal stature of live-in relationships has been rather ambiguous and unsettled. It all comes down to the mind of the judge sitting on the bench whether he shall grant protection to the couple living in a live-in relationship or not.

In the absence of uniform Civil Code in India, marriages have been left to be governed by personal laws of the individuals concerned. While the concept of live-in relationships are yet to be expressly recognised by the legislature, the judiciary has upheld the validity of such relationships keeping in mind the inalienable “right to life and personal liberty” (Art.21).

The Timeline

1. The Protection of Women from Domestic Violence Act, 2005 has been the cornerstone in the judicial acceptance of live-in relationships. It imparts rights and protection to those females who are not lawfully married, nonetheless cohabiting with a male under the same roof in a relationship akin to wife.
2. Justice Malimath Committee 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 woman.” As a result of which, the definition of ‘wife’ as described in section 125 of Cr.P.C., now includes women involved in a live-in relationship.
3. In the case of *Lata Singh v. State of U.P. & Anr.*, it was observed that a “live-in relationship between two consenting adults of heterogenic sex does not amount to any offense, even though it may be perceived as immoral. A major girl is free to marry anyone she likes or “live with anyone she likes”.
4. 3. Giving legal recognition to a couple who were living 50 years in a live-in relationship, the Supreme court in the case of *Badri Prasad v. Director of Consolidation*, has observed that “Law leans in favour of legitimacy and frowns upon bastardy”.
5. In *S. Khushboo v. Kanniammal*, it was held by the supreme court that live-in relationships are permissible and the act of two adults living together cannot be considered illegal or unlawful.
6. 5. In *D.Velusamy v. D.Patchaiammal* the court while examining section 2(f) and section 2(s) of The Protection of Women from Domestic Violence Act, 2005, opined that a “relationship in the nature of marriage” is akin to a common-law marriage.

The Common-Law Marriages Require The Following Conditions

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried.



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

6. **Indra Sarma v. V.K.V. Sarma** is a noteworthy case wherein the Supreme Court extensively deliberated on the subject of live-in relationships. The judgment delivered in this case serves as a basic framework or rulebook for matters on live-in relationships. While expounding upon the legal sanctity afforded to live-in relationships, the Court referred to Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 that defines the term 'domestic relationship'. According to the definition in the Act, domestic relation 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.”

7. In **Sunita Jha v. State of Jharkhand**, while dealing with a case on cruelty, the Supreme Court expounded that the term 'relative' under Section 498A of the IPC, 1860, could not be given an extensive interpretation to include within its ambit a woman. The Courts, thus, expressed their reservations towards adulterous live-in relationships.

8. In **Chinmayee Jena vs State of Odisha & others**, The Odisha High Court unequivocally upheld that the couple has the right to decide their sexual preferences including the right to stay as live-in partners as consenting adults. Consequently, the Court allowed the petition and directed that Rashmi's mother should not prevent them from living together and granted the couple police protection. This judgment is extremely important as the first judicial decision in India that explicitly recognizes the rights of transgender persons to enter into a live-in relationship with the partner of their choice, regardless of the "gender" of the partner. It serves as a strong precedent in protecting rights of cohabitation and partnership for LGBTQIA+ individuals and bolsters the decisions in NALSA & Navtej. In this case, Justice Savitri Ratho observed:

“Love knows no bound has expanded its bounds to include same-sex relationships.”

9. In the case of **Svetlana Kazankina v. Union of India** the Supreme Court dealt with the issue of granting visa extension to an Uzbekistan national woman who had been in a live-in relationship with an Indian man. The Respondents submitted that the reason behind the denial of visa extension was that the concerned Rules permit such extension only upon proof of marriage and not in case of live-in relationships. The Court pointed out that the provisions for extension of visas of foreigners married to Indian nationals enabled such couples to enjoy companionship, love and affection. Highlighting that live-in relationships are now a factum of life, the Court opined that to grant an extension of visa, marriage and live-in relationships should not be treated differently. Moreover, in line with the Indra Sarma judgment, the Court advised the Parliament to formulate appropriate legislation for live-in relationships.

As seen from the above case laws and the judicial interpretations, the Indian judiciary, on multiple instances, has delineated the difference between social morality and constitutional morality by legitimizing live-in relationships and upholding their rights. Due to legislative ignorance, individuals in live-in relationships are not given protection under a prescribed set of rules or regulations. The current Indian legal framework surrounding live-in relationships is primarily a result of a series of relatively



progressive judicial precedents. While these judicial precedents lay a framework for regulating and guiding legal affairs from live-in relationships, they are not enough.

Concluding observation

Live-in relationships are extremely popular among educated urban classes as a way of keeping away from the restrictions and inequalities of institutionalized marriages. But a live-in relationship can never replace the institution of marriage. Such a relationship can in no way offer the kind of security and emotional fulfillment that a marriage does. Some people feel that there is no harm in a live-in relationship if it is a prelude to marriage, as it helps one to know the better half better.

Live-in relationships provide the participating individuals a greater advantage to know each other better along with a freedom to terminate the relationship as per their wish. Often, they have to face many social and legal hurdles. Such relationship also puts women in a disadvantageous position. The Supreme Court has issued guidelines for regulating such relationships and also for protecting the rights of women involved in the relationship and children born out of it, which has been described above. Social values and norms have changed for the new generation. Live-in relationship may be acceptable in some circumstances but the importance of the institution of marriage for maintaining the social order cannot be denied. From a psychiatrist point of view, what is more important is to get engaged into a positive, lovable, and meaningful relationship than to remain alone or main trapped in an unhappy, negative, and troublesome relationship.

From all the above discussions, deliberations, debate and discourse, it can be inferred that a live-in relationship may be immoral for some, may be indecent for others and at the same time may be gratuitous for another group of people. But it cannot be considered as an illegal act. It is true that there is no law which supports this type of relationship but the fact that no law restricts live-in relationship cannot be ruled out absolutely. In the Indian society, it is still considered as an immoral and wicked act. But the Supreme Court of India has taken a step forward and has declared that though live-ins is considered immoral, they are not illegal. Through many decisions of it, the judiciary has tried to accord legally to the new concept of relationship and has helped in protecting the rights of the concerned parties and the children of such couples. But still there is a strict need to formulate a law which would clarify the concept. The main ordeal of this kind of relationship is the future of the children which is at a stake now when there are no strict provisions. Last, but not the least, for many live-in relationship is the preference because it is time to change and evolve with the changing times, though it might seem socially incorrect. At the end, whatever relationship one opts for, it should be an arrangement and commitment between the two. It is just a matter of perception and sensitivity as to how a person takes it either as a live-in arrangement or has a live-in like marriage.