
STATUS OF LIVE-IN-RELATIONSHIP IN INDIA

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ABSTRACT

Our Indian society is very diversified and based on Vedic cultures. It is diversified in every field rather it is linguistic, religious, political, cultural or it is in the sense of thinking or mindsets. So many things and laws are there which are essential for society but did not in force due to societal acceptance. The great controversy related to this remains with the marriage however there are laws and acts to provide legality and to indemnify the marriages like Hindu Marriage Act, 1955 or Muslim Law, etc. But marriage when solemnized with proper rituals and according to customs and usages governing the parties of marriage can be said to get societal acceptance automatically. We have another dynamic culture in our society that has struggled a lot to get legal acceptance which is known as Live-In Relationship. It is the culture that is mostly practiced by youngsters to ensure the compatibility of their companion or to check their sexual ability before marriage. It is also known as a pre-marriage relationship. In this research paper, we will see what the live-in relationship actually means, does it get full legal acceptance, how much it is able to get accepted within society, and what can be the laws related to this.

Keywords – Marriage, Walk-in/out relationship, Abuse.

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I. INTRODUCTION

Live-in is a western culture that in another sense means cohabitation. Cohabitation simply means to live with someone in a relationship of love and emotions for a long period or on a permanent basis. This is a practice mainly used by youngsters for many reasons whether to check the compatibility of the partner or to ensure the financial security, etc. It also provides the shed to some crimes of the society like polyandry, adultery, polygyny, etc. The relationship that exists in this type of culture is a pre-marital relationship where the consent of both partners matters. Neither it is a crime nor it is illegal but it is something considered a bad spot on the sacrament of marriage. Now the question arises that if two persons are willing to live together then what is the offense in it? How does it amount to an offense? When a man and a woman want to live with each other with their choice then how does this constitutes an offense? The same question was arisen by the supreme court of India where the three judges bench included chief justice of India K.G. Balkrishna, Justice Deepak Verma, and Justice B.S. Chauhan while deciding the judgment on a special leave petition filed by a south Indian actress. By analyzing and observing several facts the live-in-relationship is considered to be the dynamic aspect of present society and falls under the right to life and personal liberty i.e., article 21 as “live together is a right to live”. Our article 21 remains evolving as it is not only based on the criteria that define the way of life but growing up with the new upcoming societal change. Now, let’s discuss one more aspect of dynamic society which is Live-In-Relationship in a more elaborate manner.

II. CONTEMPORARY LEGAL STATUS

India has seen a significant shift in how the current generation views partnerships. The stigma that used to surround live-in relationships has started to disappear as society becomes more accepting of them. The right to freedom, privacy, professionalism, globalization, and education has all contributed to this throughout time. Additionally, live-in is not an attempt to avoid your obligations; rather, it is an effort to get to know your spouse better and determine compatibility in order to avoid divorce. This concept lies the same with the nature of cohabitation. Cohabitation remains taboo since the period of British. If we talk about its acceptance on the basis of regional development then live-in is something that is a very downtrodden practice in rural areas but modern

or urban societies does not follow such conservative values as much. The definition of a live-in relationship is not legally defined in India. In India, a live-in relationship is solely an agreement between the parties; if one of the parties decides he or she does not wish to live in a relationship like this, the partnership ends. Consequently, it is also known as a “walk-in/walk-out relationship”. It is now legalized in India but the responsibilities and obligations should be understood by the partners which came along with it.

In the landmark case of *S. Khushboo v. Kanniammal*¹, the supreme court held that the desire of two major persons to live together cannot be declared as an unlawful act or offense. The relationships of live-in come within the disc of article 21 of the constitution of India.

In the case of *Lata Singh v. State of U.P. & Anr.*², the same was held as above, but it was made clear that the relationship should contain the exception of adultery even if it is considered immoral.

Later in *Indra Sarma v. V.K.V. Sarma*³, it was observed by the supreme court that it is neither a crime nor a sin but still is not acceptable in the society of our country. The decision to marry each other or not is totally a personal matter.

The court does not proclaim it to be a crime or illegal, but it is also not accepted to create a new idea or define the new parameters as a live-in relationship, as is evident from the aforementioned determined decisions. This type of relationship is known as a ‘walk-in and walk-out relationship’ because any side can end it if they choose to. It also contains flexibility because either person can exit the relationship at any time. But where the relationship exists for a long period of time, will that also be considered a walk-in or walk-out relationship? In these cases, the relationship of partners is considered to constitute the presumption of marriage where the bond stays long live. In order to protect the interests of the parties, particularly the female partner in such arrangements and the children born out of such arrangements, the courts frequently raise such a presumption. Some cases referring to the presumption by the court are as follows-

¹ (2010) 5 SCC 600

² AIR 2006 SC 2522

³ (2013) 15 SCC 755

➤ **Tulsa & Ors v. Durghatiya & Ors**⁴-

In this instance, the supreme court upheld the legitimacy of marriages lasting up to 50 years or more. It was decided that any truth that a court considered to have occurred could be presumed to be true. When reading Section 15 and Section 114 of the Evidence Act together, it is evident that the act of marriage can be supposed from the usual progression of events that occur naturally and from the behavior of the parties as long as they are supported by a particular fact. Furthermore, it was decided that in cases where partners have lived as husband and wife for a considerable amount of time, there is a strong presumption in favor of marriage. Although the presumption is rebuttable, the burden of proof falls heavily on the person trying to strip a relationship of its legal foundation. Law favors legitimacy and disapproves of irrationality.

➤ **Madan Mohan Singh v. Rajnikant**⁵-

According to a ruling by the Supreme Court, a partnership cannot be referred to as a walk-in or walk-out relationship if there is a long-term bond between the partners.

➤ **Badri Prasad v. Dy. Director of Consolidation and Others**⁶

The Supreme Court ruled that a couple who had been living together for 50 years was assumed to be married. According to the court, such a presumption may undoubtedly be disproven with the right proof, but its initial emergence was due to the long-lasting nature of the relationship.

III. WOMEN: MERE PARTNER OR A WIFE

When a live-in partner is fulfilling the role just the same as in married life in this type of relationship. Because of this, the court held these relationships as presumptions of marriage. So, the wife who had a major risk in this western cultured live-in should be regarded with the status of a wife. The same was demanded by the Maharashtra high court in 2008 where it was also only suggested that a female partner should be should get the status of a wife who is cohabitating fully with devotion whether for a reasonable time or permanently. The National Commission for Women suggested on June 30, 2008, that women living in a live-in relationship should be included in the definition of "wife" as stated in section 125 of the Criminal Procedure Code. The suggestion sought to harmonize the legal protections protecting women from domestic abuse and to

⁴ (2008) 4 SCC 520

⁵ (2010) 9 SCC 209

⁶ AIR 1978 SCC 1557

equalize the status of a live-in couple's relationship with that of a lawfully wed marriage.

IV. THE PROTECTION UNDER “THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005”

The woman who sought to regard the status of wife when doesn't get the legalized rights to face many problems like being betrayed by her partner and left alone by him or harassment on them by the male partner in the aggression etc., to rescue her from such type of trap, the court has provided some legal arrangements managing the loopholes so that males cannot take advantage of such loopholes of law in legality of the live-in-relationships. As we all know, defending the dignity of women is still a priority for the legislature, for example, as seen by the Maintenance Act of 1956. To conduct like same, the female partner has an economic right provided by the government under The Protection of Women and The Domestic Violence Act, 2005. According to section 2 (f) of this act, The DV Act applies not just to married couples, but also to non-marital relationships i.e., where the nature of marriage is involved. Whether an act of abuse includes any sort of abuse, such as physical, emotional, economic, or verbal abuse, women have the right to seek redress for their suffering. Reparations are also provided for the expropriation of women's property and restrictions on access to facilities to which the abused are entitled. However, the remedies will only be granted in marriage-related partnerships.

The nature of marriage can be defined as where the couples behave like a husband and wife or it can be defined as a cohabitant couple who are living voluntarily and create their bond without marriage or a relationship where the people live together to know each other before marrying. But how can the nature of marriage be determined exactly? This concept was clarified by the Apex court in a landmark case of Velusamy v. D. Patchaiammal⁷. It was mentioned in this that a pair in a relationship must cohabitately voluntarily and must present themselves as spouses on equal footing to the outer world for a reasonable period of time. It was also underlined that all sorts of partnerships cannot be regarded as marriages and will not benefit from such an act. A partnership in which the guy financially supports a woman but treats her as a housekeeper and utilizes her for sexual fulfillment will not be declared marriage in a court of law. To obtain the

⁷ AIR 2010 (10) SCC 469

advantages made available by the court through this legislation, the court's conditions must be met with verifiable evidence.

V. SECTION 125 CrPC

Section 125 of the CrPC allows a wife to claim maintenance to support herself if her husband refuses to do so. The court may also grant a presumption of marriage to a female partner who is living in a relationship when the male partner refuses to maintain her. In this case, the relationship can be assumed to be a marriage, and the wife can be assumed to be a wife.

In the case of Chanmuniya v. Virendra Kumar Singh Kushwaha⁸, it was upheld that whether the man, who has a relationship with a female live-in has not completed the ceremonies to bring marriage or does not go under the necessities regarding making his marriage a legal and valid, is liable to pay the maintenance to his partner if he deserts her. By making use of the benefits of a de facto marriage without carrying out the duties and obligations, the guy shouldn't be permitted to exploit legal loopholes. The maintenance obligations in Section 125 are intended to avoid vagrancy and poverty, which would result from any other interpretation.

VI. LEGITIMACY OF KID BORN OUT IN LIVE-IN-RELATIONSHIP

The apex court ruled while deciding the case involving the issue of the legitimacy of a child born out of wedlock that the man and a woman will be treated as husband and wife if they are in a live-in relationship for a long period of time, their child will also be considered a legitimate child. Additionally, the Domestic Violence Act of 2005, which recently changed the legislation, guarantees women participating in such situations the status of spouses and provides them with protection for a "reasonably lengthy amount of time." Offspring born out of such a connection shall no longer be referred to as illegitimate children, according to a Supreme Court bench led by Justice Arijit Pasayat. "Law tends toward legitimacy and disapproves of whoreson or "fruit of adultery"."

VII. INHERITANCE RIGHTS

The Supreme Court ruled regarding the inheritance rights of a person born from a de facto marriage that a child born from a relationship that is lived in would not have the right to claim his part in Hindu ancestral coparcenary property but can claim in their parent's personal property. In addition, the Madras High Court has described the

⁸ AIR 2011 1 SCC 141

foundation for legitimacy. It was ruled that as live-in couples are regarded as husband and wife with the presumption of marriage, any children born to them will be regarded as legitimate and eligible assets on behalf of the children. Adultery is having a relationship with a different person when the spouse is still living. There is no "live-in relationship" here. Further clarification is provided about the legality of "live-in relationships" for heterosexual singles (in case, one of the said persons is married, the man may be guilty of adultery and it would amount to an offense under Section 497 of the Indian Penal Code). to inherit from their parents. The Apex Court held that a spouse cannot claim a live-in relationship with a different person while the marriage is still in force and then demand an inheritance from that person's property.

VIII. AN ISSUE OF COUPLE'S PROTECTION OF LIVE-IN

Sometimes it happens that a couple is living in a live-in without the consent of their family members which can give a suspicion of threat to becoming separated. Many times, couples suffer from fear of the society where they are living. This may create an unsafe environment for them. When it actually happens, they are entitled to reach the court for seeking protection granted under Article 21 of the Indian Constitution. This right has been observed by many rulings of the court that are as follows –

➤ *Sanjay and Anr. v. State of Haryana & Ors.*⁹ –

The Punjab and Haryana High Court ruled in this case, while providing protection to a couple, that a live-in relationship is not a new phenomenon, but today's society has not evolved to the point of recognizing the notion of such a relationship without raising their eyebrows. A boy and a girl, both aged 18 and 19, brought the action in order to get protection for themselves. They met on the social internet and decided to marry. According to the Court, the Supreme Court and numerous High Courts have acknowledged live-in partnerships and provided them protection under the values entrenched in Article 21 of the Indian Constitution.

➤ *Nandakumar v. State of Kerala*¹⁰ –

In this instance, the Court considered the petitioners' contention in the submission and ordered the police to protect them if they were in any danger. According to the court, the provisions of the 2005 Protection of Women from Domestic Violence Act acknowledge a live-in relationship.

⁹ AIR 2021

¹⁰ AIR 2018

➤ *Kajal and Anr. v. State of Haryana and Ors.*¹¹ –

The couple in this case, a 16-year-old minor girl and a 25-year-old guy living together without getting married, submitted the petition. The Court declined to award this couple, who were living together, protection. The Court stated that a juvenile girl living in a live-in relationship with an adult is neither morally nor socially acceptable in society. The Court stated that there is no need to issue a directive in this situation. Nonetheless, the Court said that if petitioners are concerned about the safety of their lives or liberty, they are allowed to contact law enforcement. Hence from above mentioned case, it can be noted that a couple must fulfill the guidelines, be released by the court, and hold lawful objects can seek protection.

IX. RELATIONSHIP – LICENSE TO RAPE OR BREACH OF PROMISE

As we know that a man and a woman enter into a live-in relationship for many reasons. One reason could be to check the sexual compatibility of their partners who are living together. This had turned into eventual fun and sometimes into a troublous situation. It happens when a male partner acts in aggression that creates trouble for a woman. Many times, their act turns into violence resulting in rape, harassment, mental trauma, etc. Generally, male partners promise to marry on behalf of entering into sexual intercourse but later deny to fulfill their promise. In revenge, women slap false rape charges on men that create havoc. Here, a question raises does this walk-in and walk-out relationship allows one to breach a promise or provide a license to rape and hurt someone. Does one more question arises whether a rape within the boundaries of a live-in relationship will be considered marital rape as there is a strong presumption of marriage? If yes then what can be the right measure to detect these types of crimes nourishing in these so-called relationships? To answer this court has provided its point of view and made a clear distinction between rape and consensual sex. In *Punjab vs Gurmit Singh*¹² the Supreme Court stated, "Rape is not only a physical attack; it is frequently damaging to the victim's entire psyche. A killer destroys his victim's physical body; a rapist ruins the vulnerable female's inner soul." A strict viewpoint that has little relevance to sex between live-in spouses. It also discovered a new trend of women pursuing rape complaints against males in failed live-in relationships.

¹¹ AIR 2021

¹² AIR 1996 (2) SCC 384

In *Uday vs Karnataka*¹³, the Supreme Court identified a considerable number of rulings dealing with the subject of lovers failing to culminate their close sexual connections in weddings, which resulted in rape allegations being filed against the males in many cases. It said, "...the consensus of judicial opinion is in favor of the view that the consent given by the prosecutrix (complainant woman) to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact."¹⁴

"A false promise is not a fact within the meaning of the IPC. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact,"¹⁵ it had said.

Further SC had said, "It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married... In such circumstances, the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationships."¹⁶

Rape is different from consensual sex. It is specified under Section 375 of the Indian Criminal Code, and the provision's fourth clause extends to live-in relationships. It states – A man is said to commit "rape" who has sexual intercourse with a woman with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.¹⁷ It would be naive to believe that in a live-in relationship, the man and woman consent to and engage in sex while considering themselves to be husband and wife. When a woman consents to sexual intercourse, her agreement must be in accordance with Section 90 of the IPC, which specifies that the permission must be free of fear or misunderstanding. To identify crimes like rape and so on one more option can be used by the government like the registration of live-in relationships. It will help to know about criminal histories, marital status, etc.

¹³ AIR 2003 (4) SCC 46

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Dhananjay Mahapatra, Failed live-in Relationship: Is it rape or breach of promise? The Times of India, March 8th, 2021.

X. SEEKING REGISTRATION OF DE-FACTO MARRIAGE

Recently an advocate Mamta Rani filed a plea in the honorable Supreme Court regarding the registration of a couple living in a live-in relationship that will cover emerging criminal issues arising due to live-in partners. Lawyer Mamta Rani filed the suit, which asks the court to order the central government to create regulations for the registration of live-in relationships. According to the petition, "This Honorable court has repeatedly acted as the guardian of the live-in partners and has given several judgments having the effect of affording protection to the members of live-in partnerships, whether it the women, men, or even the children born out of such relationships."

The petitioner argues that the registration of live-in relationships would result in accurate information about each live-in partner being available to both the live-in partners and the government about each of them regarding their marital status, their criminal histories, and other pertinent details. The PIL asks the Central Government to work on creating a database to determine the precise number of persons participating in live-in relationships in our nation in addition to asking for the enactment of legislation relating to such partnerships. It contends that the same can only be accomplished by mandating live-in partnership registration.

It adds– "There has been a huge increase in the false rape cases being filed by the women wherein the women claim to be living in live-in relationships with the accused and it is always difficult for the Courts to find out from the evidence whether the fact of living in a live-in relationship is proved by the backing of evidence. Registration of live-in relationships will work as vital evidence to prove whether the fact of a live-in relationship is correct or not...Looking at the fast-paced life and the choice of the young generation to adopt the western culture, proper registration of live-in relationships will keep a check on those who are entering into a live-in relationship with an ulterior motive."¹⁸

XI. PROS AND CONS

The judgments of the Supreme court in favor of live-in-relationship and pre-marital sex have fierce the whole country and fragments the society who supports it and who does not. A historical assumption on the validity of these types of western culture has seen

¹⁸ Padmakshi Sharma, PIL Seeking Mandatory Registration of Live-In Relationships Filed in Supreme Court, Cites Increase in Crimes by Live-In Partners, Live Law, February 28th 2023.

it as an omen of the sanctity of marriage. Various social activists and dignitaries have shared their views on this.

Rutuparna Mohanty, a trustee for the Maa Ghara Foundation, stated, "We hope the Government would take appropriate actions to defend Indian women's rights and dignity and prevent the community from turmoil. The fabric of Indian family life would begin to fall apart, she said. She said that despite its intent to limit many partners, it would have a negative effect on youth and lead to the spread of HIV/AIDS. She also saw that it would lead to child pregnancy and have broad implications. Mohanty lamented that children produced from cohabiting partnerships "would not be properly brought up."¹⁹

According to BJP spokesman Shaina, there is no provision for a second wife among Hindus under the Hindu Marriage Act of 1955. Therefore, it is against the Act and Hindu norms to allow the mistress to obtain the status of a lawfully wedded wife in all aspects, such as sharing property, inheritance, and maintenance.²⁰

Women from all walks of life have embraced progressive measures regarding live-in partnerships, as was to be expected. India has transformed, according to author Jaishree Misra of New Delhi. If people believe that youth are losing their morals, I would counter that they are becoming more realistic. It is better for kids to understand what they are going into in today's world. Live-in relationships have been the subject of controversies and arguments before. Whether a man and a woman who live together without being married may be legally recognized as a couple has long been a source of debate. Most areas now allow unmarried persons to cohabit due to social change that has entered society. Now, even in a nation like India, which is bound by countless traditional standards and customs, the law finds nothing illegal in partnerships where people live together.

XII. OBSERVATIONS

The concept of live-in-relationship has been widespread all over the world. It can be said this western cultured trait is a new dimension or a step towards the dynamic era but somewhere it is lagging behind regards its acceptance. Law has also cleared its view on this. But the law does not presume or prescribe the way of life from its own view. Society remains dynamic which is a fact but whoever knows where life can go. All the

¹⁹ <https://www.legalservicesindia.com/article/211/Live-in-Relationships.html>

²⁰ Ibid.

laws are derived from society and regulate its welfare. These types of relationships do not have full societal acceptance at all levels as it is considered that, by provoking these things we are destroying social ethics and norms. Ethics or behavior is not like something else which is set for everyone but is generated on its own in an individual. The changes in thinking like live-in-relationship can prove with some disadvantages but can also add to the dynamic society.

XIII. CONCLUSION

The judiciary's actions have been done with a pragmatic mindset, which is a positive step toward the acceptance of live-in partnerships by society. Although it does provide for individual freedom, the uncertainties it brings with it make rules necessary to lessen its drawbacks. Even if a live-in relationship may be sanctioned by the courts, it is nevertheless frowned upon and remains taboo. Proper legislative enactments are necessary to decide numerous additional rights coming out of such partnerships, such as rights over property, custody rights of children, etc., in addition to protecting the rights and interests of partners. Couples in live-in relationships have more chances to get to know one another personally and have the choice to call it quits whenever they choose. However, they must overcome several social and legal obstacles. Women who are in such relationships are frequently at a disadvantage. The Supreme Court has set instructions to control such partnerships and to safeguard the rights of the women participating in them and the children born as a result, as was previously mentioned. The social standards and ideals of the younger generation have altered. Live-in relationships could be acceptable in some situations, but there is no denying the significance of the institution of marriage in preserving social order.