

LIVE IN RELATIONSHIP- A BATTLE WON YET NOT WON

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ABSTRACT

Marriage is the union of man and woman forming the foundation stone of the society. It is considered to be a pious ceremony in the lifetime or “jeevan-chakra” of a human being. However, nowadays the concept of marriage has given way to a new emerging trend in the society among the youngsters- live-in relationship. Live-in relationship refers to a marriage-like setup where no marital rights and duties exist between the parties. It is a sort of temporary phase with no legal obligations on either party. The judgment of Supreme Court in *Nandakumar vs State of Kerala*ⁱ has set the wind to blow towards legalizing live in relationship. Live in relationship has emerged as a substitute for marriage -a way to avoid martial obligations and liabilities. In a this case a 19-year-old girl Thushara, who had married a 19-year-old boy Nandakumar on 12.04.2017, was sent to the custody of her father by the Kerala High Court on the ground that Thushara was not lawfully wedded to Nadakumar as Nandakumar was not of a marriageable age, the bench of Dr. AK Sikri and Ashok Bhushan, JJ removed Thushara from the custody of her father & held that the freedom of choice would be of Thushara as to with whom she wants to live. ⁱⁱThe practice is mostly prevalent at large in metro and big cities. The number of youngsters opting for live in relationship seems to be at rapid rise. The author discusses the meaning of live in relationship and the status of live-in relationships in other countries across the globe. The paper analyses the effect of legalizing live in relationship on the society and on individuals.

Keywords: Live-In, Marriage, Relationship.

INTRODUCTION

Marriage is a sacred union of a male and a female for the procreation of child. In ancient times, the concept of divinity was attached with it. It is regarded not as a contract but a sacrament. It is a union for the performance of religious rituals and rites. Hindu marriage joins two individuals for life, so that they can pursue dharma (duty), artha (possessions), kama (physical desires), and moksha (ultimate spiritual release) together. It is a union of two individuals as husband and wife, and is recognized by lawⁱⁱⁱ. In *Tikait Munmohinti vs Basant Kumar*^{iv}, it was observed that in Hindu Law, a marriage was sacrament, a union, an indissoluble union of flesh with flesh, bone with bone- to be continued even in the next world. However, with judicial pronouncements in the field of legalizing live in relationship, the concept of marriage seems to be diminishing at a rapid pace. Live in relationships are a means to satisfy sexual demands without indulging oneself into marital obligations.

MEANING OF LIVE IN RELATIONSHIP

The “live- in-relationship” is a living arrangement in which an un-married couple lives together in a long-term relationship that resembles a marriage^v. It is a type of arrangement where two people under the same roof without being married thus retaining the status of being “single”. The term “live in relationship” is neither recognized in the Hindu Marriage Act, 1955, nor by the Criminal Procedure Code, 1973. The SC in *Nandakumar*^{vi} case held that two adults have the right to live together even if they are not of a marriageable age outside the wedlock. The court based its reasoning on a recent judgment of *Shafin Jahan vs Asokan K.M & Ors.*^{vii} Stating “parental love or concern cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married”.

INTERNATIONAL SCENARIO

Scotland

The Family Law (Scotland) Act, 2006 introduced rights and obligations for cohabitants, which is defined under section 25. It states that cohabitant means either member of a couple consisting of—

- (a) a man and a woman who are (or were) living together as if they were husband and wife; or
- (b) two persons of the same sex who are (or were) living together as if they were civil partners.

In determining whether a person is a cohabitant of another person, the court shall have regard to—

- (a) the length of the period during which A and B have been living together (or lived together);
- (b) the nature of their relationship during that period; and
- (c) the nature and extent of any financial arrangements subsisting, or which subsisted, during that period.^{viii}

Section 26 embodies the right of cohabitants in household goods. It shall be presumed that each cohabitant has a right to an equal share in household goods acquired (other than by gift or succession from a third party) during the period of cohabitation.

“Household goods” means any goods (including decorative or ornamental goods) kept or used at any time during the cohabitation in any residence in which the cohabitants are (or were) cohabiting for their joint domestic purposes; but does not include—

- (a) money;
- (b) securities;
- (c) any motor car, caravan or other road vehicle; or
- (d) any domestic animal.

Section 27 provides that where, in relation to cohabitants, any question arises (whether during or after the cohabitation) as to the right of a cohabitant to—

- (a) money derived from any allowance made by either cohabitant for their joint household expenses or for similar purposes; or
- (b) any property acquired out of such money, the money or property shall be treated as belonging to each cohabitant in equal shares.

Section 28 operates when cohabitation ends otherwise than by reason of death of either cohabitant. On the application of a cohabitant (the “applicant”), the appropriate court may, after having regard to the matters mentioned in subsection (3)-

(a)make an order requiring the other cohabitant (the “defender”) to pay a capital sum of an amount specified in the order to the applicant;

(b)make an order requiring the defender to pay such amount as may be specified in the order in respect of any economic burden of caring, after the end of the cohabitation, for a child of whom the cohabitants are the parents;

(c)make such interim order as it thinks fit.

The matters are-

(a)whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and

(b)whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of—

(i)the defender; or

(ii)any relevant child.

In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters -

The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of—

(a)the applicant; or

(b)any relevant child.

The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of—

(a)the defender; or

(b)any relevant child, is offset by any economic advantage the applicant has derived from contributions made by the defender.

In making an order under paragraph (a) or (b) of subsection (2), the appropriate court may specify that the amount shall be payable—

(a)on such date as may be specified;

(b) in instalments.

Subject to section 29A, any application under this section shall be made not later than one year after the day on which the cohabitants cease to cohabit^{ix}.

If a partner dies intestate, the survivor can move the court for financial support from his estate within 6 months.^x

China

In China, the Marriage Law for the People's Republic of China^{xi} under Article 19 provides that Children born out of wedlock shall enjoy the same rights as children born in wedlock. No one may harm or discriminate against them.

The father of a child born out of wedlock shall bear part or the whole of the child's living and educational expenses until the child can support himself.

Canada

On Nov. 23, 2011, a new family law bill was passed in the B.C. legislature. The Family Law Act came fully into force on March 18, 2013, and replaced the Family Relations Act.^{xii} According to section 3, A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [*Property Division*] and 6 [*Pension Division*], has a child with the other person.

A spouse includes a former spouse. A relationship between spouses begins on the earlier of the following:

- (a) the date on which they began to live together in a marriage-like relationship;
- (b) the date of their marriage.^{xiii}

France

Live-in relationships in France are governed by the Civil Solidarity Pact of ‘pacte civil de solidarite’ or PaCS, passed by the French National Assembly in October 1999. Cohabitation is defined as a "de facto stable and continuous relationship" between two persons of different sexes or of the same sex living together as couple. The pact defines the relationship as a contract, and the couples involved as “contractants”. The contract binds "two adults of different sexes or of the same sex, in order to organise their common life." For a valid contract to exist, the contractants "may not be bound" by another pact, "by marriage, sibling or lineage."^{xiv}

United Kingdom

Live-in relationships in the United Kingdom are largely covered by the Civil Partnership Act, 2004. Though a man and woman living together in a stable sexual relationship are often referred to as "common law spouses", the expression is not wholly correct in law in England and Wales. The Government feels that live-in partners owe each other more than that to be worthy of the term. As per a 2010 note from the Home Affairs Section to the House of Commons, unmarried couples have no guaranteed rights to ownership of each other's property on breakdown of relationship. If a cohabiting couple separates, the Courts have no power to override the strict legal ownership of property and divide it as they may do on divorce. Unmarried partners have no automatic inheritance over their partner's assets on death. Cohabiting couples are treated unconnected individuals for taxation purposes.^{xv}

International Covenant on Civil and Political Rights, 1966

Article 23 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that:

- “1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”

Universal Declaration of Human Rights

Article 16 of the Universal Declaration of Human Rights, 1948 provides that:

“1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

LIVE-IN RELATIONSHIP IN INDIA

Before 2000, no courts in the country ever uttered the word “live-in-Relationship”, but not thereafter. In 2001 Payal Sharma vs. Superintendent, Nari Niketan, Agra, C.M. Hab. Corp.^{xvi} the Bench consisting of justice M.Katju and justice R.B.Mishra of Allahabad High Court observed 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”^{xvii}.

In Patel and others Case ^{xviii} the Supreme Court observed that the 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 “live-in-Relationship” as illegal. After 2010 various issues are discussed and clarified by the Supreme Court and High Courts by delivering various guidelines in numerous judgments on validity of “live-in-Relationship”. On 28 April, 2010 Special Bench of the Supreme Court of India consisting of K.G. Balakrishnan, Deepak Verma, B.S. Chauhan in Khushboo vs Kanniammal & Anr. ^{xix} posed a question “*If two people, man and woman, want to live together, who can oppose them? What is the offence they commit here? This happens because of the cultural exchange between*

people.” The S.C. held that “live-in-Relationship” is permissible. The court also held that living together is a part of the right to life under Art.21 of the Indian Constitution^{xx} and it is not a criminal offence. In this context the court commented that there exists no law in the country which prohibits pre-marital sex. This comment was passed by the Apex Court in answer to the comments made by the prosecution that the actress Khushboo endorsed pre-marital sex which affects the moral fabric of the society.

Live in relationship gives rise to many unanswered questions. What would be the status of women if left by her partner? What would be the future of their child born during the period of relationship? What would the rights of women and children in the property of man counterpart? However, there would be a presumption of marriage under Section 112 of Indian Evidence Act 1872 where a man and a woman live together for a long spell of time as husband and wife. In *A. Dinohamy v. W.L.Blahamy*^{xxi} the Privy Council took a stand that, “where a man and a woman are proved to have lived together as 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 concubinage.” And the same stand was also resorted to in the case of *Mohabhat Ali v. Md. Ibrahim Khan*^{xxii}, when the Privy Council stuck to their position that when a man and a woman cohabitated continuously for a number of years, the law presumes that they are a married couple and are not in a state of concubinage.

In a case *Badri Prasad v. Dy. Director of Consolidation*^{xxiii} where a man and a woman lived together for around 50 years, the S.C. presumed that they were a married couple. But in this case the S.C. laced their judgment by observing that, “The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon a basterd.” These pronouncements provide some sort of security to women but the battle is not won still.

Regarding the maintenance of women in such relationship, the position has been elucidated by in the case of *Virendra Chanmuniya vs.Chanmuniya Kumar Singh Kushwaha and Anr*^{xxiv} and *Velusamy vs. D. Patchaiammal*^{xxv}. The SC examined that a woman in “live in relationship” is entitled to same right of maintenance as that of a legally wedded wife. There is no specific legislative provision in regard to children born out of “live in relationship”. The SC through its judicial pronouncement in the case of *Bharata Matha v. R. Vijaya Renganathan*^{xxvi} clarified that a child born out of live in relationship may inherit the property of his parents under section

16 of Hindu Marriage Act, 1955 but he does not have any birth right in the Hindu undivided ancestral property. “Law inclines in the interest of legitimacy and thumbs down ‘whoreson’ or ‘fruit of adultery’”^{xxvii}.

On 26th November 2013 a two-judge Bench of the Supreme Court constituting of K.S. Radhakrishnan and Pinaki Chandra Ghose, JJ in *Indra Sarma v. V.K.V. Sarma*^{xxviii}, it was held that-

“Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.”

SC held that when the woman is aware of the fact that the man with whom she is having living-in-relationship and who already has a legally-wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife and also to those who enter into ‘a relationship in the nature of marriage’ as per provisions of PWDVA, 2005.

CRITICAL ANALYSIS

Long list of issues arising out of live in relationship do not ends here. Though the Supreme Court has acted as a rescuer whenever the need arose before it, yet the judicial pronouncements have in a way affected the traditional concept of marriage which existed during the Vedic age. The marriage institution has been disintegrated. According to Vedas, it has been considered that the average life of a human being was of hundred years to be divided into four stages i.e. twenty-five years for each. This division of life was related to four Ashramas as Brahmacharya, Grihastha, vanaprastha and Sanyas Ashram. During the second stage of Grihastha Ashram, a man was expected to get married and to procreate child. Live in relationship has broken down the traditional concept of marriage as now there is no specific of marriage. People tend to enjoy sexual pleasure without being married. Procreation of child (son) for attainment of moksha is no more prevalent. The concept that marriage was a religious necessity, rather than mere physical luxury for a Hindu to marry and to have a son, who alone can save him from a place of torment, the Narak or the hell after his death does not stand firm in urban areas. Also, live in relationship lacks permanency; it is in and out relationship. Marriage provides stability to the relationship as it could be dissolved through the process of

court only that too on some specific grounds provided under Section 13 of Hindu Marriage Act, 1955. Live in is more of a contract as compared to marriage. It could be terminated any time at the whims and fancy of either partner. Existence of social life is shaken as there are no family ties.

Talking on individualistic view, biological and physical harms prevail in such relationship. As there are rare chances of success of such relationship, it is obvious to indulge in sexual activities with more than one person after break up from former relation. Risk of transmission of sexually transmitted diseases such as AIDS also runs.

Looking to the other side of the coin, Men are falsely alleged into rape cases on failure of relationship or on refusal to marry the female. The Delhi High Court in *Ravi Kumar v. State*^{xxix} observed that “the economic and social dynamics of the society are changing very fast. This can be witnessed by the increasing number of live-in relationships which are justified by the young generation on the ground that the institution of marriage is too burdensome as proven by the increasing divorce cases. Moreover, with the changing times these live in relationships have acquired a legal mandate and are slowly becoming socially accepted. Therefore, the need of the hour is that the boys and more importantly girls have to be very careful and cautious before taking such an important decision concerning their lives before entering into the most sanctimonious relationship of marriage or even to have live in relationship. One of the major reasons contributing increase in the rape cases is a failure of live in relationship or any immature decision on the part of such young adults which more often end up in a broken relationship but sometimes after indulging into physical relationship”.

CONCLUSION AND SUGGESTION

The Malimath Committee (on Reforms of Criminal Justice System, 2003) 61 made several recommendations in Part IV, Chap.16 under the Head “Offences against Women” has observed; “that the definition of the word “wife” in Section 125 should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage. The researcher recommends the widening of the definition of “domestic relationship” under Section 2(f) of the Protection of Domestic Violence Against Women Act , 2005.

Many safeguards have been formed by judiciary in order to protect women from the grave consequences of such relationship. But the utility and relevancy of such relationship in regard to traditional values of marriage is in question. Can the society be adapted in a way to put public policy futile? The development though is needed in order to keep pace with the needs of the society, but it should not be insensible. Regard should be given to other social values.

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