

“Live-In Relationships Encountering Pressing Issues In India”

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ABSTRACT

“Live-in relationship” in common parlance means “unbroken cohabitation” between couples without the legal recognition of marriage, in which they live together in a “shared household”. In this modern dynamic world ‘live-in-relationships’ are drastically achieving popularity, especially amongst the youth who seek freedom, newness and compatibility. There are various types of live-in partnerships. . First, heterosexual couples’ premarital live-in relationships. Second, a “wedded man” and a “unmarried or wedded woman” who are living together, and vice versa. In a third place, same-sex “live-in relationships”. As the live-in partners indulge into sexual cohabitation birth of children (mostly in cases of hetero-sexual couples) are an inevitable consequence. Unfortunately, in Indian there is scarcity of legislation giving recognition, protection and preserving the interest neither to the live-in partners nor to their children. The Protection of Woman from Domestic Violence Act, 2005, although for a limited purpose, is the first Indian legislation that brought a female partner of live-in-relationship within its sweep. Indian Judiciary by way of its various pronouncements has lifted the stigma of illicitness from the live-in relationships but there are multiple aspects which have been left untouched, such as recognition of live-in partners as separate class in government documents, inclusion of live-in partners for adoption purposes, giving equal the rights to the children born to live-parents to inherit ancestral property or to participate in joint family business etc. Apart from these, in coming days surely several other issues would come out. There is no turning back. These issues can be addressed only by way of far sighted and unambiguous legislation and clearer interpretation of words of statutes .

Key words: *Live-in relations, sexual cohabitation, biological children, adoption right, equal right of inheritance.*

INTRODUCTION

Whether a sacrament or a contract, the institution of marriage is undeniably the basic contexture of society. The edifice of society is based upon this foundation. Despite its institutional value, ¹the idea of a live-in relationship is refreshing in today's dynamic environment, especially for the younger generation who craves independence, novelty, and compatibility. Live-in relationship is an arrangement between two people who may be hetero-sexual or homosexual, romantically or sexually intimate with each other and living together in absence of matrimonial tie. The advent of globalisation, financial independence, moving around for work or education, shifting sexual ethics that prioritise consent over marital status, distinct sexual perspectives, social and legal complications associated with marriage, a higher divorce rate, and a predisposition for enjoyment have all contributed to the rise in popularity of live-in relationships. Unquestionably, it has evolved into a phenomenon that we are unable to ignore. This arrangement may seem peaceful at the out set but conflicting human interests and expectations raised several issues out of

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it. The issues become more condensed when the live-in-partners have biological children of their own. Such issues may be categorized as political, economical, social, moral, ethical and legal. Unfortunately, neither the live-in couples nor the children born to those couples are expressly recognised by law in India as of this writing. Despite this lack of legislation, the Indian judiciary repeatedly broke out from orthodoxy and provided a remedy whenever a pertinent argument arose. Needless to mention that such dispute resolution through court, is only on case to case basis. The Apex court in several cases such as *Indra Sharma* made several recommendations to the legislature for enacting statutes to resolve several disputes. Unfortunately till date apart from Protection of Women from Domestic Violence Act, 2005 there are no direct legislation directly recognizing live-in relationship. Therefore, in this predicament, in one hand the numbers of live-in couple are on the rise and on the other hand there is no enactment or instrument in the hand of the state to combat every day issues. A modest attempt has been made in this article to pinpoint the main problems that live-in couples are facing and to offer some solutions.

ISSUES RELATING TO LIVE-IN PARTNERS

Apart from mutual consent no other formality is the sine qua non to enter into a live-in relationship unlike marriage. Similarly there is no fulcrum for dissolution of the same. This has been the real reason for sudden rise in popularity of live-in relations. Couples prefer it because they get to enjoy their lives free from legal hassels and other social bindings. This blessing is also its burden, causing a number of disagreements, giving rise to several issues.

Legal Status of live-in couples:

Living together is not an uncommon sight in India. However, A partner in a live-in relationship is not directly recognized by any other legislation in India, not even for a specific purpose, aside from The Protection of Women from Domestic Violence Act, 2005. therefore, when it came to resolving the problems of partners and the children born out of such relationship, Indian courts frequently assumed the role of the Messiah. In absence of any specific legislation. Since the era of Privy council there is an undeniable contribution in this field by Indian Judiciary. Whether it was *Andrahennedige Dinohamy V. Wijetunge Liyanapatabendige Blahmy*² or *Mohabbat Ali Khan V. Md. Ibrahim Khan*³ the Privy Council has favored the presumption of a legitimate marriage over concubinage in order to protect women's modesty and equity, justice, and good conscience,

In these cases, According to the Privy Council, "where a man and a woman are proved to have lived separately as spouse, the law will presume until the contrary, as obviously be demonstrated, that they were living separately in result of a legitimate marriage and not a condition of concubinage.". Later the Supreme Court reiterated this opinion of the Privy Council in the celebrated case of *Badri Prasad V. Director of Consolidation*⁴, by legally recognizing a 50 years old live-in relationship, although at the same time it made the presumption of marriage rebuttable as a safe against false claims. while resolving the conflict between "law" and "morality," in *Payel Sharma V. Nari Niketan*⁵, the Allahabad High Court declared that "Live-in relation may be considered as immoral to the society but it is certainly not illegal". In this way, it has given live-in partnerships legal status. The similar way of thinking was reflected in *Ramdev Food Products (P) Ltd. V Arvindbhai Rambhai Patel*⁶. The Supreme Court issued a major ruling in the matter of

²1927 SCC OnLine PC51 ; AIR 1927 PC 185

³1929 SCC OnLine PC21 ; AIR 1927 PC 135

⁴ (1978) 3 SCC 527; AIR 1978 SC1557

⁵2001 SCC OnLine All 332

⁶(2006) 8 SCC 726

S.Khusboo v. Kanniammal⁷ in 2010 by generously reading Article 21 of the Indian Constitution and including live-in relationships within its purview. However, it was only made applicable to a certain category, which is "unmarried major persons of heterogeneous sex," and was not intended for all sorts of live-in partnerships. Further, in another applaudable judgment of Chanmuniya V. Chanmuniya Kumar Singh Khuswala⁸ the Supreme Court of India went a step ahead by awarding maintenance to the wife saying that the provision of section 125 of the Code Of Criminal Procedure must be considered in the light of section 26 of the Protection of Women from Domestic Violence Act, 2005. The Court even went on equating the right and claim of a woman partner of live-in relationship with that of a legally married wife. However, in this instance, benefits were provided to those Live-in relationships upon meeting specific requirements. First, the couple must be of legal age to wed or should otherwise be eligible to enter into a binding legal union. Second, the couples must have lived together of their own free will and projected themselves as spouses to society for a substantial amount of time. connections like "one-night stands" and any other connections formed purely for lewd purposes were excluded from its scope. In this judgment the Apex Court was pleased to refer American court's leading case of Marvin v. Marvin⁹ the crux of the case that came up for consideration was the social obligation of a man entering into a live-in relationship with another woman, without the formalities of a marriage. In this case they have coined a new expression called 'palimony', which is amalgamation of 'pal' and 'alimony'. The coining of the expression 'palimony' was made by , famous divorce lawyer. In the absence of any laws protecting property rights, the American court in this case, emerging from the shadows of orthodoxy, placed stress on express contracts between couples. If the facts and circumstances of the case warrant it, the courts may also, in the absence of any formal contract, apply the notion of "quantum meruit," or "equitable remedies," such as constructive or resultant trusts.

Further, in Indra Sarma v. V.K.V Sarma¹⁰ The Supreme Court established itself as an advocate by defending the rights of vulnerable female live-in relationships and the children of such relationships by implementing the following guidelines and submitting a new legislation proposal to the parliament. By emphasizing the phrase "at any point of time" found in section 2(f) of the Protection of Women from Domestic Violence Act, 2005, it stressed on the duration of the relationship. First and foremost, it meant a decent amount of time, followed by the points of "Shared household," "Domestic Arrangement," "Sexual relationship," "Children," "Socialization in Public," and, finally, "intention and the conduct of the parties". Further, the bench of Justice M.Y Eqbal and Justice Amitava Roy, in their landmark judgment passed in Dhannulal v. Ganeshram¹¹ decided for the presumption of valid marriage so far as the couples of Live-in relationships are concerned. It also upheld the eligibility of a woman partner to inherit to property of her male partner on his death. Lata v. State of UP¹² Further went on declaring that only in unmarried hetero-sexual couples live-in relationships are permissible. In this way the court has failed to look into the plight of same sex and minor live-ins. The High courts of the Country also did not take a back seat in the matter of recognizing Live-in relationships. After Payel Sharma (supra) , the Allahabad High Court in the year 2020 has ruled in Kamini Devi & another V State of U.P & Ors, right to remain in a live-in-relationship comes within the ambit of 'Right to life and personal liberty' hence protected under Article 21 of the Constitution of India. In a recent case involving a plea for a writ of habeas corpus, the Karnataka High Court granted Nisagra, a nineteen-year-old girl who had eloped and later been married, permission to remain with her partner Nikhil. This was printed in the Indian Express on June 14, 2022.

⁷ (2010) 5 SCC 600

⁸2011(1) SCC 141

⁹[(1976) 18 Cal.3d 660]

¹⁰2013 (15) SCC 755

¹¹2015 (12) SCC 301

¹²(2006) 5 SCC 475

In the year 2018 the Bombay High Court in *Reshma Begum V. State of Maharashtra*¹³, had put emphasis upon "prospect of a formal marriage as a sine qua non for establishing Domestic Relationship under section 2(f)¹⁴ of the Domestic Violence Act, 2005". It is pertinent to mention in this regard that the Madras High Court declared in *M.Palani v. Meenakshi*¹⁵ that even in situations when a man and woman engage in new sexual activity and neither side expresses a desire for a long-term commitment, the PWDV Act, 2005's rules would still be in effect. By way of doing this the ambit of the Act was widened to a considerable extent. Therefore, the court showed its reluctance to give relief to a relationship which was not "in the nature of marriage". Further, the High Court of Punjab and Haryana in the year 2021 in the case of *Sanjay and another vs State of Haryana*¹⁶ and others was in favour of protecting a couple in a Live-in-relationship, where a society is not yet conditioned enough to accept the same. In this case the court relied upon *Nanda Kumar vs State of Kerala 2018*,¹⁷ where the Kerala High Court afforded Police protection to a Live-in couple in view of the Protection of Women from Domestic Violation Act, 2005. Be that as it may, whether live-ins are entered into voluntarily or due to unanticipated circumstances, it is challenging to end these relationships formally. Therefore, the law doesn't address their futures.

Lack of dedication

"Lack of dedication" to one another in a live-in relationship can have both positive and negative effects. It goes without saying that these live-ins are overrun in western nations. Additionally, they are given legal sanctity. In 1999, France passed legislation governing social welfare, housing, inheritance, and income tax. But in India, the narrative is very different. In this case, no more requirements are necessary to enter into such relationships other the parties' assent. And it can be readily broken by either party acting alone or by both. As a result, one of the parties may only be fulfilling a desire and not have any intention of continuing the connection. Therefore, one of the biggest issues in this relation is lack of devotion.

Loss of interest in marriage

As the parties already enjoys all the pleasures marital life, without added responsibilities and obligations, it takes the charm out of the marriage. Ultimately the institution of marriage loses its appeal.

Social censure and lack of family support

There is scarcely any social, religious, or moral approval of live-in relationships in India because of the country's extremely traditional and orthodox culture. The family members are constantly observing the lovers. When someone needs financial assistance or other support, barely anyone from the family steps forward to help. This often tends to affect the vulnerable partner psychologically.

Breaking up becomes tough

Since the couples share their lives, finances, emotions, daily routines, and mutual peer groups, it is very difficult to end the relationship and to deal with the stress that follows as life satisfaction declines.

No right of adoption

¹³ Cri.Rev.Apln 82/17

¹⁴. Section 2(f) of Protection of Women from Domestic Violence Act

¹⁵AIR 2008 Mad 162

¹⁶CRWP-5531-2021; Date of decision: 22.06.2021.

¹⁷. 2018 SCC OnLine SC 492,

As we India is not financially self-sufficient and there are infrastructural issues here. The orphanages are filled with children who need care and protection. On the other hand there are innumerable live-in couple whether hetero-sexual or of same sex desperately willing for adoption. Absence of any law or state policy they are unable to adopt despite have the other fulcrum of a valid adoption. In this way not only the live-in couples are being deprived but an orphan to due to absence of legislation.

ISSUES RELATING TO CHILDREN BORN TO LIVE-IN PARTNERS

It is not only the partners of live-in relationships but the children born to them face plethora of issues in India.

Legal Status vis-a-vis rights of children of live-in couples :

It cannot be denied that, attributing bastardy on the children born live-in couples is an undignified approach of our civilized society. The ground reality is somewhat different in India. Therefore to protect the status and interests of these children the legislature and the judiciary has a pivotal role to play. Keeping in mind the plight of these children the Apex Court in *Tulsi V. Darghatiya*¹⁸, held that children born from live-in relationships won't be viewed as illegitimate any longer.

It is pertinent to mention that Section 114 of the Evidence Act¹⁹ deals with different kinds of presumptions. The Apex Court while granting relief to the weaker partner in a live-in relation and the children born to such couples, liberally interpreted section 114. In the landmark case *SPS Bala Subramanyam V. Sruttayan*²⁰ presumption was raised that when a man and a woman have lived together in close quarters for a significant amount of time, such as several years, they are presumed to be legally married couples, and any children they have are presumed to be their legitimate children as well. While opining so the Supreme Court of India, made a harmonious construction between the statutes and the Directive Principle of the State Policy as envisaged in part IV Constitution of India under Article 39(f) which talks about the State's responsibility to provide opportunities for the children which would ensure their development in a healthy way and protect their interests.

Right of maintenance

Section 125²¹ of the Criminal Procedure Code aims for providing maintenance right to the 'illegitimate minor child' irrespective of their legal status and who are unable to maintain themselves. By doing so section 125 of the Code of Criminal Procedure also ensures protection for the children of live-in parents and even for a limited purpose their right of maintenance being acknowledged by the Statute. In the case of *Dimple Gupta V. Rajiv Gupta*²² the Apex Court upheld that the right of maintenance u/s 125 of Cr.P,C of an illegitimate child born out of illicit relationship.

Right of inheritance of children born to live-in couples

Although starting with a non-obstante clause, Sub-section 3 of Section 16²³ of The Hindu Marriage Act, 1955, guarantees for the children born out of a live-in relationship inheritance rights from the properties of its parents which may be the parent's ancestral and self-acquired properties. The same was also held in the case of *Bharata Matha & Anr V. R. Vijaya Renganathan & Ors*²⁴. This ratio was adopted in *Jinia & Ors V. Kumar Sitaram*²⁵

¹⁸2008 SC 1193

¹⁹ Section 114 of Evidence Act

²⁰1992 Supp (2) SCC 304

²¹. Section 125(1)(b) of the Code of Criminal Procedure,

²²AIR 2010 SCC 239

²³ Section 3 sub section 1 and 2 of the Hindu Marriage Act , 1955

²⁴AIR 2010 SC 2685

²⁵1996 (4) SCC

However, the same was criticized by Justice Ganguly in *Parayankandiya Eravakanapraavan Kalliani Amma(Smt.)& Ors. V. S.K Devi & Ors.* It is opined there that in view of the intent of the legislation behind the enactment of section 16 of the Hindu Marriage Act was to eliminate the differences between legitimate and illegitimate children. Giving the illegitimate children a restrictive right is against the directive of the state policy as enshrined in article 39(f) and also to the right to property as enshrined in article 300A of the Constitution. This provision is in violation of principle of equality before the law and equal protection of law by not treating the children born to live-in partners with the children born to married couples at par. Children of married couples are guaranteed with the right of inheritance from their parents as well as from the family property but so far as children born to live-in couples are concerned they can only inherit the property of its parents. There are extensive repercussions from this discrimination. It will result in the offspring of live-in parents receiving partial bastardy without any fault of their own and being made fun of by society. Further, under the Hindu Succession Act, 1956 an illegitimate child can inherit the property of its biological mother but not from the property of his father. This provision is again discriminatory. This issue was dealt with by the Apex Court in its landmark judgment passed in *Vidyadhari V. Sukhranabai*²⁶. In this case the court has accorded the children born to live-in partners with the status of "legal heirs" and consequently granted them with inheritance right.

Muslim law is rigid in how it grants legitimacy to cohabiting couples and their offspring. Indra Sharma²⁷ advocated for protection that is effective and sufficient, especially for the female spouse and any children that result from a live-in relationship, as such relationship may continue for a long period and can end up into susceptibility and dependency.

Guardianship and custodial right of live-in children

In terms of guardianship and custody rights for children who live with their parents, section 2(2)(b) of the Children Act, 1960 states that an unmarried father can obtain parental responsibilities if he later marries the mother of the child by being named the child's official guardian, entering into a parental responsibility agreement with the mother, obtaining parental responsibilities under the act, or by acquiring a separate residence. Further, if the provisions of section 6(a) and 6(b) of the Hindu Minority and Guardianship Act 1956 are investigated, it may be learned that the mother is vested with custody of an illegitimate child regardless of whether she is able to care for the child or not, despite the fact that the father is the child's natural guardian in the case of a legitimate child. The youngster will be impacted by this ostensibly discriminatory policy in the long term. Although there is no provision in Muslim law for custody of illegitimate children, established case law gives the mother the same rights. This discrimination was made once more and is against state policy.

CONCLUSION :

History has shown that whenever a new idea or thinking was introduced that went against the old tradition, religion, or social norms, there was social resistance. Additionally, the idea of a live-in relationship is not an exception. Even while "popular morality" has legal recognition, it nevertheless opposes live-in relationships. It goes without saying that the partners bear the emotional burden in the end. If those relationships end and the live-in partner is a woman who also happens to be unemployed, she will undoubtedly suffer greatly. There is nothing for them to go back to. They have no means of support and are unable to return to their former family. When children are born into such a relationship and are rejected by their male partners, things get worse. Not only do the female partners face difficulties, but the children also experience difficulties. Without even understanding what bastardy is, they are being pushed in that direction. Further problem crops up when such children are being denied the name of its father and property rights. Although as discussed

²⁶AIR 2008 SC 1420

²⁷Supra no.7

above such children are given property right only to the properties of their biological parents. This again violates the principles of equality. From the discussion made in the article, it would be evident that the Indian Judiciary whether it is the Privy Council or the High Court or the Supreme Court have been dealing with various issues and aspects of live-in relationship and constantly redressing the grievances in absence of any specific and strong legislation. It goes without saying that the law offers the least protection to live-in relationships. It's more frequently used inappropriately as a "walk-in and walk-out" relationship. Additionally, it is apparent that the lovers' emotional bond may deepen. Sometimes it is only done to get pleasure from a sexual encounter, after which the partners may flee from their obligations. The spouse in difficulty must turn to the court in order to demonstrate their rights and obtain additional protection, which again requires time and money. Therefore, despite legal acknowledgment, uncertainty will persist until such partners' relationships with their children receive social approval as well as strong and specific legislative support. Last but not least, the legislature must consider the possibility that such legislation will lead to an increase in bigamy as well as the need to safeguard the interests of the legally married husband's wife and children in the event that the man maintains a live-in relationship with a different woman without the knowledge of the legally married wife.

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