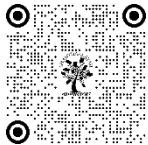


LIVE-IN RELATIONSHIP: AN ANALYSIS OF SOCIOLOGICAL AND LEGAL FRAMEWORK

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ABSTRACT

With growing Westernization and liberal views pouring in, Indians, especially the newer generation now a days are embracing such ideas readily. Growing individualism has been seen as the epicentre for modern ideas like ☐ live-in relationship ☐ , ☐ marrying a person of choice ignoring caste and religion lines ☐ , etc. The present study is undertaken to find the sociological and legal position of Live-in relationship in India. For this purpose, data is generally collected using secondary resources. It mostly involves romance and sexual intimacy. In a live-in relationship, couples (mostly unmarried) live together with their own free will. In such relation, couples face social stigma, especially in India where society seeks sanctity of marriage and sees the couple in such relation as a direct challenge to current status quo as well as disrespect to the existing culture. Live-in relationship is a living arrangement where an unmarried couple lives in a relationship like a marriage under the same roof in the long run. This is currently seen in the metropolitan towns as an alternative to marriage. Although no legal definition exists, it usually means living together as a couple without marriage. The Hindu Marriage Act, 1955 or other statutory law does not recognise this form of coexistence. Indian law does not grant the parties in living relations any rights or obligations. The status of children born in such relationship is also unclear and thus, through different judgements, the Court has clarified the concept of living in relationships. The article aims to measure India's current status as an individual living partner. The article also attempts to examine recent developments in the courts' attitude towards granting different rights for living partners in India by means of judgments. It also analyses the trend in other legal systems and laws in comparison.

Keywords: Live-in Relationship, Changing Form of Marriage, Maintenance, Metropolis, Globalisation

1. INTRODUCTION

In order to discipline sex and guarantee children's legitimacy and intellectual and psychological development in an agreeably atmosphere, the marriage institution appears to have evolved. The advent of the industrial revolution and the development of education, which opened the pathways to women's economic independence, brought a radical transformation to human values, in particular those of husband and wife. A particularly ambivalent situation in the form of non-marital heterosexual relationships was the result of rapidly changing social morality ("live-in" relations as they commonly called). These relationships among urban, educated, middle and elite young people have emerged in their view of independence, in order to keep them out of the "shackles" of marriage institutionalisation. Live-in relationship is a de facto heterosexual non-marital relations prevailing in the West with various names such as: common law marriages, informal or customary marriages, deemed marriages, etc. It represents a willing rejection of the marriage institution, its stereotypes and its constraints and inequalities. It is a form of inter-personal status recognised legally as

marriage in some jurisdictions, although a marriage ceremony has not been legally accepted and no civil marriage contract is made.

1.1. LAW AND LIVE-IN-RELATIONSHIPS IN INDIA

There exist no law which directly recognizes the live-in' relationship; however two legal moves have brought such relationship (i.e. the non-marital heterosexual relations) into sharp focus in India during the last decade. First, in 2008, the Maharashtra Government's attempt to amend Section 125 of the Criminal Procedure Code (hereinafter referred as Cr.P.C.) brought this issue to the fore. The amendment sought to broaden the definition of the term "wife" in Section 125 Cr.P.C. by including a women who was living with a man "like his wife" for a reasonably long period. This move followed the recommendations of the Malimath Committee (2003). Second, the Protection of Women from Domestic Violence Act (hereinafter referred as PWDVA) 2005, is considered to be the first piece of legislation that, is having covered relations "in the nature of marriage", provided a legal recognition to relations outside marriage.¹⁰In the following discussion, an attempt has been made to examine the context and implications of these two legal moves on different forms of non-marital cohabitation.

1.2. RELIGION & MARRIAGE IN INDIA

In India marriages are made, either in accordance with the personal law of religion to which a party belongs or in accordance with Special Marriage Act provisions. The common law states in Marriage that the parties undertake to live and support one another is a contract between a man and a woman. As a concept, marriage is also recognised nationally and internationally. Matrimony is strongly influenced by religion in India. In the whole nation, Hinduism, Christianity and Islam are beliefs. All these religions have an important role in the life and death of a person, especially in the context of marriage, since an institution of marriage has always been heavily interwoven in people's culture and tradition.

1.2.1. HINDUISM

In the life of a Hindu man marriage is seen to be an important event because he can not enter the ashram of the Griasthas without a wife ordained by the law-gifters. Besides, there cannot be no offspring in the chain of birth-death-rebirth without marriage and without a son. Hindu marriage is important because it is irreparable to be a religious sacrament. Only death can usually separate those united by holy marriage.

1.2.2. CHRISTIANITY

Christian marriages are also interwoven with many religious convictions and ideas in India. Marriage is one of the sacraments according to Christianity. Marriage is considered to be very necessary and important from the standpoint of Christians. It is not only for sexual satisfaction but also for other purposes. Marriage is a permanent and exclusive contract of love between a man and a woman, according to Christians. The covenant of love is marriage. Love is the foundation of wedding. God himself, in accordance with the Christian faith, is the author of marriage, given various benefits and ends.

1.2.3. ISLAM

Marriage in Islam is meant to serve a variety of objectives including, above all, the fulfilment of divine mandate with spiritual quiet and peace, cooperation and partnership. Islam aims to bring forth a righteous person, as a cornerstone of the country's social structure; it seeks to build a sound family, the primary factor and essential to building a good society. In India Muslims regard marriage as a bond uniting man and woman, who have solemn marriages, as the foundation for the family and who firmly believe that the wedlock, the way the laws of God, can never be a true or proper family.

1.3. IMPORTANCE OF MARRIAGE

Marriage is important in life because it ensures that an individual receives mental satisfaction (i.e. having a friend, family and children) and biopsy (i.e. sex). It guarantees the group and its culture to survive in two ways. The economy

depends so much on the cooperation and labour division of the two sexes that the functioning of both sexes can only be stable if they enter into a socially sanctioned relationship, that is to say, marriage. So, not only two persons, but also two families, even sons and villages, are found in the marriage bond between the Indians. It is not a tool that ensures personal satisfaction, but a social mechanism designed to create and promote social solidarity. Therefore entering into marriage is a relationship that also has public meaning. Marriage and family institutions are important social institutions which guarantee the security, support and fellowship of our societal members and which play an important role in child raising. The marriage celebration gives rise to moral and legal obligations, in particular the spouses' reciprocal duty to support and raise children born out of marriage. These legal obligations play an important social role. Marriage as a body is of great legal importance and different obligations and duties are derived from a marital relationship as defined by law in the field of property inheritance, estate ship, etc. Thus, marriage implies legal formality, publicity, exclusivity, and all of the legal implications arising from this relationship. Marriage is highly individualistic and personal in contemporary urban society.

1.4. OBJECT OF STUDY

The majority of the people have not yet accepted living in relations in India. The Indian society is still regarded as a taboo. Most people see it as an intolerable and unreasonable relationship. There is currently no specific law dealing with the concept of living in relation and the rights of parties and children living in partners. It was an ambiguous concept until it was decided by the Supreme Court of India that the relationship is considered immoral but not illegal. The following are the principal objective in view of all the above facts:

- 1) To define the conceptual framework and emerging dimensions live in Live in relationships neither a crime nor an offence a study with reference to right to marriage and privacy;
- 2) To review the socio legal study with reference to Live in relationships;
- 3) To analyze the available remedies of Live in relationships and their effectiveness in present day;

2. LITRATURE REVIEW

The focus of debates and debates, as it challenges our fundamental social system, has always been on living in relationships. The government reserves a lot of rights for married persons in order to encourage marriages. While living in a relation is not seen as an offence, until the day when this type of relationship is prohibited there is no law. Courts often refused, as this might run counter to public policy, any form of binding agreements between these unmarried couples. There is currently no law in India that defines living relationships. [1]

Protection of women from domestic violence ('PWDVA') Act 2005 is deemed the first piece of law to be legally recognised for non-marriage relationships with 'relationships' in the nature of marriage. There was an attempt to examine the context and implications for different forms of non-matrimonial cohabitation of these two legal movements. [2]

Human rights respect is an integral part of a democratic system in a country like India. Each person is free to choose his or her life and partner for family establishment by marriage. The goal of marriage, regardless of its pitfalls, is to create a sense of commitment. Eternal happiness is not guaranteed by marriage but rather by legal, social recognition and social protection. The changing circumstances in which people move into living relationships are a matter of private rights and privacy. Although there may be less people supporting this practise, it is genuinely concerned that it will be preferable to marriage in future. [3]

As we know, law is not a tool for law and order in society, but also a tool for social justice. We also know that the legislation does not work in a vacuum. It works in a society influenced by different factors, such as the social structure. Law is not law. Law is not law. Law is a social control instrument.

For living in a relationship there is no specific act. Neither the 'live-in-relationship' nor the 1973 Civil Procedure Code are accepted by any personal law. [4]

The public and even judicial reactions to the legislative move to amend Section 125 and the provisions of the 2005 PWDVA are sometimes distracted by the presumably occidental forms of non-marital coexistence, often as an example of experimentation prior to marital commitment, where men and women, usually unmarried, are engaged in non-marital

but exclusive relations. However, recognition of the modern way of living together does not show the primary impetus for legal changes. [5]

The concept of marriage involves a strong relationship, a sense of commitment and a support for economic and emotional issues. It also teaches you to be tolerant and provides the stability needed for a childhood family life. In a relationship, however, a person's psyche can have a negative effect at any time. Although some people do not understand, the sense of insecurity prevails. For a couple that wants children, in particular, this cannot be healthy. [6]

In the Indian context, however, such a relationship has a pressing and dire need to be recognised by legislation, which empowers both parties with rights and imposes obligations, thereby limiting their scope. The law so enacted should therefore take into consideration the basic structure of tradition in the Indian society. Family law experts advise coexistent couples in a written coexistence agreement similar to a premarital agreement, to address these and other issues. [7]

3. BACKGROUND

In the Vedas, we find Gandharva marriage is one type of marriage, in which consent of only the man and the woman is needed to get married. (Pandey, 1969) According to Apastamba Grhyasutra, ancient Hindu literature, Gandharva marriage is a method of marriage where the woman chooses her husband. They meet each other of their own accord, consent to live together, and their relationship is consummated in copulation born of passion. This neither includes the family of the couple nor a unique ritual to solemnise the marriage. It is simply a word-of-mouth commitment. But it nevertheless comes beneath the purview of marriage. Although a couple was united by using the capability of a Gandharvavivaaha, the commitment and accountability used to be identical to any of the different kinds of marriages ordained in the ordinary texts.

(Westermarck, 1922) an Anthropologist defined "Marriage is religiously accepted union of men and women living together with mutually agreed to sexual rights". Since the Vedic times, marriage is regarded by Indian society as a sacred bond. This concept of marriage has evolved constantly over time. The concept of marriage and relationship has evolved with the ever-changing society and human psychology. The next generations look even more liberally at relations. Many pairs around the world adopt such a concept of live-in relationships. The relationships in which two people live outside marriage without any legal obligation are called living relationships. This is a marriage-like, but nonetheless, relationship. In the Indian scenario, too, this concept has slowly been paved.

Table: 1.1

| RELATIONSHIP | ECONOMIC ORGANISATION |
|----------------------|--------------------------------------|
| Group Marriages | Hunters and Gatherers |
| Polygamy | Pastoral and Agriculture Settlement |
| Monogamy | Private ownership |
| Live-in Relationship | Women education, empowerment, rights |

4. METHODOLOGY

The research methodology will be Empirical, mainly comprising of questionnaire and survey methods, and also take some help from different sources for collection of material related to live in relationship like books, articles, and journals to analysis of different events in the context of the live in relationship. The proposed examination has utilized the accompanying exploration materials:

a) Textbooks, research papers, articles in papers and reports distributed by any college, news office, public library or an administration office or service will be utilized as essential wellsprings of exploration material.

b) The definitive reports of panels and commissions, the decisions of the distinctive law courts of India and would establish the essential wellspring of the research material.

c) Research articles and examination papers transferred online by people, on the web online journals and discussions, research work introduced in public and worldwide courses and discussions, will be utilized.

d) The various manuals, diaries, discourses and processes, perceptions of the court decisions, parliamentary discussions will likewise be utilized as secondary sources.

5. RESULT

There is a growing number of live-in relationship but the legality and the societal approval is not yet institutionalized. There is no universal definition for live-in relationship. The Supreme Court in (Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755, 2013) defined live-in relationship in five distinct ways-

- A domestic cohabitation between an adult unmarried male and an adult unmarried female. This is the simplest kind of relationship.
- A domestic cohabitation between an adult married man and an adult unmarried woman (entered mutually).
- A domestic cohabitation between an adult unmarried man and a married woman (entered mutually)
- Domestic relationship between an unmarried adult female and a married male (entered unknowingly)
- Domestic relationship between same-sex partners (gay or lesbian)

The Court stated that a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the Protection of Women Against Domestic Violence Act, 2005 and provided certain guidelines to get an insight of such relationships. Domestic relationship 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. (S.2(f) of the Domestic Violence Act, 2005)

Legal provision for live-in relationship: -

* Live- in relationship 1st time approved by Malimath Committee in 2008, in which the technical definition of marriage was changed by CRPC.

* Live- in relationship legally approved by the Maharashtra government in 2008.

- In 2010, the Supreme Court legally approved the live-in relationship.

(Bench: Sahai, 1993) The Supreme Court held that if a man and woman cohabiting under the same room for many years, there will be a presumption of marriage under Section 114 of the Indian Evidence Act and the children born to them will be legitimate. The court has formed a presumption of marriage based on Section 114 of the Evidence Act; the said section signifies the person upon whom the burden of proof regarding the sustainability of a fact that is being asserted is to be drawn.

(Katju, 2010) Hon^{ble} Supreme court in the D. Velusamy vs D. Patchaiammal observed that a woman in a live-in relationship is not entitled to maintenance unless she fulfils certain parameters, the court has observed that merely spending weekends together or a night would not make it a domestic relationship. The judgement determined certain pre-requisites for a live-in relationship to be considered valid. It provided that the couple must hold themselves out to society as being akin to spouses and must be the legal age to marriage, including being unmarried. It was stated that the couple must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. The court held that not all relationship in the nature of marriage to get the benefit of the domestic violence act. It further claimed that, if a man keeps women as a servant and maintains her financially and uses mainly for sexual purposes, such a relationship would not be considered as marriage in the court of law. Therefore, to get such benefit the conditions mentioned by the court must be satisfied and has to be proved by evidence.

5.1. CAUSES OF LIVE-IN RELATIONSHIP

- Modern Education and a building modern approach: - Before Globalization Indian people have mostly conservative mind setup. With education, people come into contact with people of different caste, creed and culture. They become aware and started thinking out of the box.
- Personal Liberties: - In the current era whether it is a boy or girl they don't want any kind of boundation. They don't like being asked questions about their dressing sense or partying and outing time, their peer group and

companies they like; in marriage, there is societal boundation and a lot of responsibilities whereas in Live-in Relationship there is freedom (as they perceive it).

- Expansion of western life culture: - People get influence by western culture due to curiosity as well as a feeling of cultural inferiority when compared to the “advance” western culture. So, it has increased the cases of live-in relationship in metro cities.
- Self-dependence of Couples: - Earlier patriarchal traditional mind setup was that the men had to earn while the woman had the obligation of taking care of the family. Nowadays due to increased occupational opportunities and broken barriers, when both partners are earning, they prefer independence, so live-in relationship comes into existence.
- Industrialization, Urbanisation, Globalisation and Communication revolution: - Social Media has played an important role in increased Live-ins. To test their compatibility with each other people opt for it and if their thinking isn't compatible, they can part away without any legal boundations.

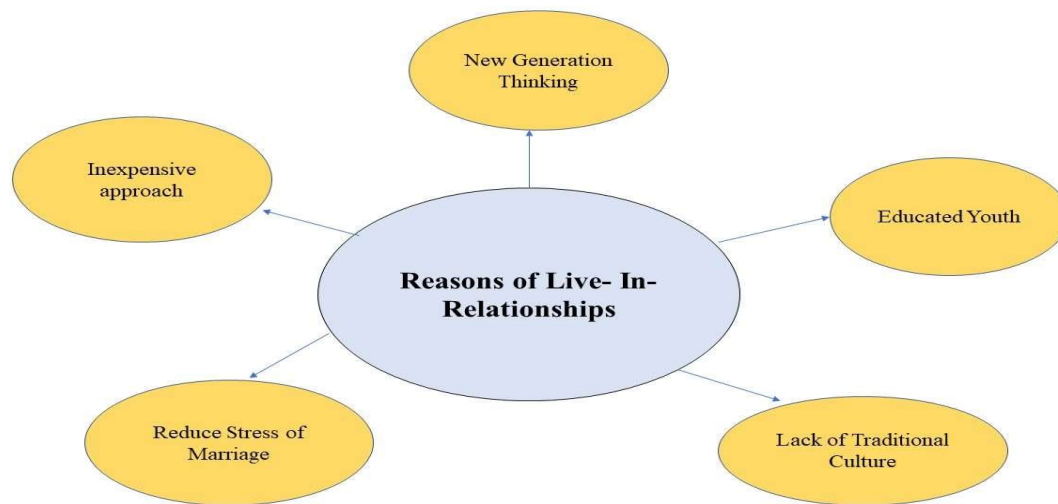


Figure: 1.1 Reasons of Live in Relationship

Currently, live-in relationships are regulated mostly by the multiple court judgements on the issue. So, a single law dealing with them seems necessary. However, the extent of regulation needs to be driven by a right-based approach, with respect for both community and individual rights. It is important not to legalise moral policing while regulating live-in relationships. A regulatory framework built along these lines can help balance the globalised societal norms of young modern Indians with the traditional values of Indian culture in a harmonious way.

6. DISCUSSION

A live-in relationship allows couples to spend more time with each other as now they are not bound by the constraints of time.

The level of love and intimacy between couples are demonstrated by live-in relationships. A couple living together will learn how much they love each other and how many obstacles in this connection. Before the final step of marriage is taken, it also puts relationship problems on the line.

Most couples think that before they take their final dip they should enter into a living relationship. Since some problems arise which cannot be resolved absolutely, the relationship can be finally resolved in most cases without a legal battle.

Another considered benefit of living relations is that society can prevent adverse effects within itself, which are now outside society's scope. This means that living relationships do not follow social requirements, which are otherwise necessary. The burden of social relations is less on living relationships and contributes to a relationship development.

The couple can not find anything in a live-in relationship in simple words after their marriages. The relationships between living and anxiety and hope remain after marriage are already established. Since in most countries there are no specific legislation to address the complexities of living relations, the impact of major problems is on the rise in these cases. In live relationships, many people are tampered with their property. In live-in relationships, cases of oral and physical abuse are also quite rampant, although living-in relationships are considered more "modern."

Social censorship is a powerful disadvantage of living relationships. Because the social acceptance stamp of these relations is not yet awarded, they are examined with contempt. Many couples in living relationships would rather call themselves married and fearful refusals. This causes relationship problems in the first place.

7. CONCLUSION

The Government has reserved numerous rights for married people to promote marriages. Although living in relationships is not considered an offence, until the date that this kind of relationship is prohibited there is no law. 'Living in' relationships in western countries are not new, when unmarried men and women usually engage in non matrimonial but exclusive relations with each other. In India, however, such relations are often seen as taboo, and it is not very common to find people staying together as a married wife in large metro lines without marriage.

The legal safeguard is provided by Judiciary but societal safeguard is not guaranteed by the society to the LIVE-IN PARTNERS. Indian society is not still ready to approve live in relations nor it is ready to give the same sanctity as marriage institutions. Montesquieu rightly said that for every institution in the society there is a need for people's approval.

So Live-in relationship refers to a couple who lives together but without the socio-legal binding like that of marriage. As the Indian Society is changing, so is the newer generation which is viewing such relationship as an interesting middle path to get to know their partners before entering into a lifelong commitment with them. However, the conservative elements of the society which dominate the social discourse are usually critical of such relationship and seek to regulate them. The demands made should be viewed in the following context.

Social Perspective- As the Indian society is getting younger, the acceptance of such relationships is rising. However, they are still considered taboo in a large section of society. The reasons for this range variedly and includes religion, caste, income status etc. So, regulation of live-in relationships is a fairly divisive issue in our society.

Right Perspective- The opponents of such regulations often cite individual liberty to argue their case. The Supreme Court itself has established that right to be in such a relationship is a part of the Right to Life as enshrined in our constitution. There is also a viewpoint that the rights of women in such a relationship are composed due to the absence of legal safeguards that come with marriage. Similarly, the rights of children born through such relationships are also a factor in deciding whether regulations are needed or not.

Legal Perspective- The Supreme Court has heard multiple petitions in the issue of live-in relationship and their regulations. It has held that the right to enter into such a relationship is fundamental. However, couples living in such relationships for a considerable period of time are to be considered for legal purposes. This decision has made such relationships subject to the Domestic Violence Act,

2005, just like legal marriages. Thus, multiple Supreme Court judgements have established the rights to have such relationships, fixed the responsibility of paying maintenance after separation and recognised the inheritance rights of children born through such relationships.

As Indian Constitution guarantees the right to every citizen to live with the person of their choice, there is a need to change the mindset of the society and the people should consult their children about their preferences as well. Given this socio-cultural setting of Indian society and growing modernity with the arrival of liberal views which are rightly based, live-in relationships which are subjected to social stigma and attacks by conservative mindset should be systemised by state's intervention with legal regulations.

CONFLICT OF INTERESTS

None.

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None.

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