



The Status of Live-in-Relationship in India : A Legal and Judicial Approach

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ABSTRACT

Live in relationship' is a living arrangement in which an unmarried couple lives together in a long term relationship that resembles a marriage. Such a relationship is also known as Common law marriage i.e informal marriage or marriage by habit and repute. Live in relationship form a characteristic feature and style of living of couples, especially those in metropolitan areas. However, the definition and ambit of live in relationship is very unclear, there is no specific legislation in India on this subject, and the laws are in the form of court verdicts which varies from case to case. This paper has made an attempt to the analyze the concept and legal status of live-in- relationship in India and judicial approaches towards the same.

KEYWORDS

Live-in –relationship, Maintenance, Rights of a female.

INTRODUCTION:

The position of live-in Relationships is not very clear in the Indian context but the recent landmark judgments given by the Hon'ble Supreme Court provides some assistance when we skim through the topic of live-in and analyze the radius of the topic in Indian legal ambit. The couples tied with the knots of live-in relationships are not governed by specific laws and therefore find traces of assistance in other civil laws. The law is neither clear nor is adamant on a particular stand, the status is dwindling.

No specific law recognizes a live in relationships in India. No legislation is there to define the rights and obligations of the parties and the status of children born to such couples. A live-in relationship is not recognized by Hindu Marriage Act, 1955 or any other statute. In the absence of any law to define the status of live in relationships the Courts have taken the view that where a man and a woman live together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary. The Protection of Women from Domestic Violence Act 2005 provides for the protection, maintenance and right of palimony to a live-in partner, if she complains.

LEGAL CONCEPT of LIVE-IN- RELATIONSHIP:

Live-in relation i.e. cohabitation is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married.

The Supreme Court in the case of *D. Velusamy v. D. Patchaiammal*¹ has held that, a relationship in the nature of marriage under the Domestic Violence Act 2005 must also fulfill some basic criteria. Merely spending weekends together or a one night stand would not make it a domestic relationship. It also held that if a man has a keep that he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, be a relationship in the nature of marriage.

There four key requirement to fulfill the criteria of live-in relationship

1. Legal age to marry,
2. Qualify to enter legal marriage
3. Must be unmarried
4. Voluntary cohabitation should be for considerable period of time

In addition to the above the supreme court in *Indira Sarmas case* has added to the above that

- duration of relationship ,

- shared house hold ,
- Pooling of resources and financial arrangement between the parties
- Domestic arrangements,
- children ,
- socialization of relationship in public

are some more guide lines in order to construe the same. Since the Supreme Court is not to legislate the law, it is the Indian Parliament to make law.

JUDICIAL APPROACH TO LIVE-IN-RELATIONSHIP:

The first case in which the Supreme Court of India first recognized the live in relationship as a valid marriage was that of *Badri Prasad vs. Dy. Director of Consolidation*², in which the Court gave legal validity to the a 50 year live in relationship of a couple.

The Allahabad High Curt again recognized the concept of live in relationship in the case of *Payal Katara vs. Superintendent, Nari Niketan and others*³, wherein it held that live in relationship is not illegal and has held that live in relationship between two adults without marriage cannot be construed as an offence. It further held that there is no law which postulates that live in relationships are illegal. The concept of live in relationship was again recognized in the case of *Tulsa v. Durghatiya*.

In the case of *S. Khushboo vs. Kanniammal & Another*⁴, the Supreme Court held that living together is a right to life. Live in relationship may be immoral in the eyes of the conservative Indian society but it is not illegal in the eyes of law. In this case, all the charges against Kushboo, the south Indian actress who endorsed pre- marital sex and live in relationship were dropped. The Court held that how can it be illegal if two adults live together? Live together is not an offence.

However in one of its judgment *Alok Kumar vs. State, the Delhi High Court*⁵ has held that live in relation is walk in and walk out relationship and no strings are attached to it. This kind of relationship does not create any legal bond between the partners. It further held that in case of live in relationships, the partners cannot complain of infidelity or immorality.

In June, 2008, it was recommended by the National Commission for Women to the Ministry of Women and Child Development to include live in female partners for the right of maintenance under Section 125 of Criminal Procedure Code, 1973. The view was also supported by the judgment in *Abhijit Bhikaseth Auti v. State Of Maharashtra and Others*⁶. In October, 2008, the Maharashtra Government also supported the concept of live in relationships by accepting the proposal

made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife. However, recently it was observed that it is divorced wife who is treated as a wife in context of Section 125 of CrPC and if a person has not even been married i.e. the case of live in partners, they cannot be divorced, and hence cannot claim maintenance under Section 125 of CrPC

In the cases prior to independence like **Dinohamy v Blahamy**⁷ the Privy Council laid down a broad rule postulating that, where a man and a woman are proved to have lived together as a 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.

In **Patel and others**,⁸ the apex court observed that live-in relation between two adult without formal marriage cannot be construed as an offence

In **S.P.S. Balasubramanyam v Suruttayan Andalli Padayachi & Others**⁹ the Supreme Court allowed presumption of marriage u/s 114 of Evidence Act out of live-in relations and presumed that their children were legitimate. Hence, they are rightfully entitled to receive a share in ancestral property.

In **Radhika v. State of M.P.**¹⁰ the SC observed that a man and woman are involved in live in relationship for a long period, they will treat as a married couple and their child would be called legitimate.

In **Somabhat Bhatiya vs. State of Gujarat and others**,¹¹ Supreme Court held that Domestic Violence Act has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either case the person who enters into either relationship is entitled to the benefit of the Act. In the Domestic Violence Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country **known as live-in relationship**. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe.

In USA the expression 'palimony' was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him. The first decision on palimony was the well known decision of the California Superior Court in **Marvin vs. Marvin**.¹² Although there is no statutory basis for grant of palimony in USA, the Courts there which have granted it have granted it on a contractual basis.

In **Abhijit Bhikaseeth Auti v. State Of Maharashtra and Other**¹³ on 16.09.2009, the Supreme Court also observed that it is not necessary for woman to strictly establish the marriage to claim maintenance under sec. 125 of CrPC. A woman living in relationship may also claim maintenance under Sec.125 CrPC.

In **Lata Singh v State of UP & Another**,¹⁴ the Apex Court held that live-in relationship was permissible only between unmarried major persons of heterogeneous sex. If a spouse is married, the man could be guilty of adultery¹⁵ punishable under section 497 of the IPC.

The verdicts of the Supreme Court has legalized the live-in relationship and giving protection to individuals from moral tussle ad orthodox pattern of Indian culture in the Nation.

The judgment of **Indira Sarma vs VKV Sarma**¹⁶ by the Supreme Court came in as a breath of fresh air. Amidst the lack of specific legislation on the subject, the apex court made an important decision to discuss live-in relationships under the pretext of the Domestic Violence Act The Supreme Court in

Indra Sharma case held that "live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in our country. Long standing relationship as a concubine, though not a relationship in the nature of marriage, of course may at times deserves protection because that woman might not be financially independent, but we are afraid of that Domestic Violence Act, 2005 does not take care of such relationships which may perhaps call an amendment of the definition of section 2(f) of the D V Act, which is restrictive and exhaustive." The Court asked Parliament to bring in proper amendments to the Protection of Women from Domestic Violence Act enact a suitable legislation so that women and children born out of live in relationships are protected, though those types of relationship might not be relationship in the nature of a marriage.

In a landmark judgment on 13 April 2015 by the bench consisting of justice M Y Lqbal and Justice Amitav Ray, Supreme Court ruled out that couples living in live in relationships will be presumed legally married.

The Apex Court also said that in case the man dies then his partner would inherit his property. Sine 2010 Supreme Court has ruled in favour of women declaring that women should get the rights as that of a wife, in case of live in couples. These rights include protection from domestic violence, the right to inherit property, the legitimacy of her children and the maintenance of woman after split.

CONCLUSION:

As in the interest of justice, equality and good conscience the Indian judiciary has already been passed a number of judgments in favour of live-in relationship now it is only on the society to come forward and accept the concept of live-in relationship.

END NOTES:

- 1 2011 CrL. L.J. 320
- 2 AIR 1978 SC 1557
- 3 (2006) 8 SCC 726
- 4 2010 (4) SCALE 462
- 5 CrL.M.C.No. 299/2009
- 6 AIR 2009 (NOC) 808 (Bombay.)
- 7 1928) 1 MLJ 388 (PC).
- 8 (2006) 8 SCC 726.
- 9 AIR 1992 SC 756
- 10 AIR 2008,
- 11 AIR 2005 SC 1809
- 12 1976) 18 C3d660.
- 13 AIR 2009 (NOC) 808 (Bom.).^{xxi} AIR 2006 SC 2522
- 14 ⁱ JT 2010 (4) SC 478[1] CrL.App.No.2009of 2013

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