

Rights of Women in Live-in-Relationship in India: Legal Status and Landmark Judgements

Dr. Komal Krishan Mehta¹, Dr. Meenakshi²

¹Assistant Professor, Department of Laws, Guru Nanak Dev University, Regional Campus, Jalandhar, Punjab-144007

²Assistant Professor, St. Soldier Law College, Jalandhar, Punjab-144011

Abstract—The concept of Live-in Relationships has been gaining popularity in the 21st Century after multiple decades of being considered a taboo in the India society. Until recently, and even so in the present, a lot of people are of the view that the concept of Live-in-Relationships is not conforming to the morals and values of the Indian culture and has been a hotly debated issue with more and more people emerging in its support in today's world. However, some people often come up with their reservations as to the abuse and exploitation of women in a live-in-relationship. Hence, in this article, we discuss the concept of Live-in Relationship and analyze its legal position in the eyes of the law and the associated rights of a woman in a live-in relationship.

Index Terms—Indian Society, Indian Culture, Live-In-Relationship, Legal Position, Rights of Women.

I. INTRODUCTION

“Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law and without justice”¹

In India marriage has always been considered a sacrament. The husband and wife are considered as one in the eyes of law. Marriage legally entitles both the person to cohabit, the children born out of a legal wedlock are the legitimate children of the couple, the wife is entitled to maintenance during the subsistence of marriage and even after the dissolution of marriage and many more.²

The benefits of marriage came with a lot of responsibilities. The marital obligations towards the spouse, towards the family, towards the children and towards the marital house are an inseparable part of the Indian marriage. To avoid the obligations of a traditional marriage and on the other hand to enjoy the benefit of cohabiting together, the concept of live in

relationship has come into picture. Live in relationship provide for a life free from responsibility and commitment which is an essential element of marriage.³

Live-in-relationship is a relationship with an informal arrangement between two heterosexual persons to live together without entering into the formal institution like marriage. Live in relationship is a western concept and famous there. This is not a new concept in India is imported to India also. Live in relationship means, two persons of opposite sex live together with each other and perform marital activities without any religious sanctity means without proper marriage. The legal definition of live in relationship is “an arrangement of living under which the Couples which are unmarried live together to conduct a long-term relationship similarly as in marriage.” Live-in-relationship is the arrangement in which a man and a woman live together without getting married. This is nowadays being taken as an alternative to marriage especially in the metropolitan cities. Currently the law is unclear about the status of such relationship though a few rights have been granted to prevent gross misuse of the relationship by the partners. Legalizing live in relationship means that a totally new set of laws need to be framed for governing the relations including protection in case of desertion, cheating in such relationships, maintenance, inheritance etc. Litigation would drastically increase in this case. The Cambridge dictionary defined it as; two people cohabit in the same house and have sexual relationship, but are not married. They often referred as live in partners.⁴

II. MEANING OF LIVE IN RELATIONSHIP

- i. Live in relationship means a man and a woman living with each other as husband and wife for a

reasonable period of time without marrying each other.

- ii. It is a living arrangement in which an unmarried couple live together under the same roof in a long-term relation that resembles a marriage is known as a live-in relationship.
- iii. It is a kind of relationship in which a couple lives together without marrying each other and without any legal or social commitment. This arrangement is similar to marriage when it comes to the relationship between two individuals living together but there are no rights and obligations on either of the partners.
- iv. This form of relationship has become an alternate to marriage in many big cities in which individual freedom is the top priority amongst the youth and nobody wants to get entangled into the typical responsibilities of married life.⁵

III. CAUSES OF LIVE-IN-RELATIONSHIP

When man was uneducated, uncivilized surviving on the bloods of other; the live-in relationship was the trait of that time. But in modern time people are opting live-in relationship because of to test the relationship before marriage, they are unable to marry legally, they do not want long lasting relation, it is easy to establish and dissolve (without the legal cost often associated in divorce). These are the main reasons that attempt a person to opt for live-in relation. There are more reasons also. When a marriage is performed according to the law and religion it creates rights and duties which cannot be blown away easily. But in live-in relationship it can be. However, list is not meticulous. It varies with different individuals with different individualities. Thus, often the one party feels herself or himself to be cheated. Hence the court and legislation come forward for their rescue. Live-in-relationship that creates rights and duties and recognized is often termed as “common law marriage”. The common law marriage is an informal marriage or marriage by habit and repute, in this form of marriage no legally recognized marriage ceremony is performed, but two persons of heterogeneous sex live together as husband and wife.⁶

IV. POSITION IN OTHER COUNTRIES

The credit for emergence of live in relationship goes to the western culture where couples, before getting

married, think that it is important to know each other in and out before taking up the entire responsibilities that come along as a package with marital relationship.⁷

1. In Sweden and Denmark are the oldest countries to give legal sanction to live in relationship.
2. In United States of America, prior to 1970 live in relationship was considered illegal, but went on to gain status of a common law, subject to certain requirement. The country later on legalised live in relationship by giving the couple same rights and obligations as married couples.⁸
3. In France, there is the provision of “Civil Solidarity Pacts” known as “pacte civil de solidarite” or PaCS, 1 passed by the French National Assembly in October 1999 that allows couples to enter into a union by signing before a court clerk. The contract binds “two adults of different sexes or of the same sex, in order to organize their common life” and allows them to enjoy the rights accorded to married couples in the areas of income tax, housing and social welfare. The contract can be revoked unilaterally or bilaterally after giving the partner three months’ notice in writing.⁹
4. In Philippines, live-in-relationship couple’s right to each other’s property is governed by Co ownership rule. Article 147, of The Family Code 1987, Philippines provides that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.¹⁰
5. In the UK, live in couples does not enjoy legal sanction and status as granted to married couple. There is no obligation on the partners to maintain each other. Partners do not have inheritance right over each other’s property unless named in their partner’s will. 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. But for the purpose of paying tax unmarried couples are overseen as individual under Civil Partnership Act 2004. However, the

law seeks to protect the right of child born under such relationship. Both parents have the onus of bringing up their children irrespective of the fact that whether they are married or cohabiting.¹¹

6. The live in relation were conferred legal sanctity in Scotland in the year 2006 by Family Law (Scotland) Act. Section 25 (2) of the Act postulates that a court of law can consider a person as a co-habitant of another by checking on three factors:
 - i. The length of the period during which they lived together,
 - ii. The nature of the relationship during that period and the nature
 - iii. and extent of any financial arrangements, in case of breakdown of such relationship.¹²

Section 28 of the Act gives a cohabitant the right to apply in court for financial support. This is in case of separation and not death of either partner. If a partner dies intestate, the survivor can move the court for financial support from his estate within 6 months.

1. In Australia, the Family Law Act states that a de facto relationship can exist between two people even if they are legally married to another person or in a de facto relationship with someone else.
2. France makes provisions for "civil solidarity pacts" allowing couples to enter into a Union and be entitled to the same rights as married couples in such areas as income tax, inheritance and social welfare.¹³

V. LIVE-IN-RELATIONSHIP AND RIGHTS OF WOMEN IN INDIA

The practice of men and women living together without being in a relationship of formal marriage has been in practice for a long time. It was not at all considered "immoral" for men to have live-in relationships with women outside their marriage. Concubines (Avarudhstris) were kept for the man's entertainment and relaxation. Following independence, as society matured, bigamy was outlawed and women became more aware of their rights. This practice is now illegal though this has not prevented people from violating this law. Unlike other western countries like USA and UK, India does not recognize the live-in-relationship. Because of the traditional principles in the society and dependency of

female on male, India is still following the institution of marriage as the best forming part of society. The legal status, social dependency, economic dependency and also domicile of a woman are changed with the change of her matrimonial status. Live-in-relationship can be categorized in two parts, either "by choice" or "by circumstance". People who by consent voluntarily are living together are under the category of "by choice". But sometimes by mistake or by fraud people are living together as husband and wife then they can be placed under the category of "by circumstance". Live-in-relationship by choice does not have any legal issue as it does not need the legal recognition but live-in-relationship by circumstances has certain problems just because of misunderstanding of the status of marriage. Traditionally, the Indian society might have frowned upon live in relationships. But the growing number of such couples indicates a degree of acceptance. Women, however, are still the losers. As comparison to marriage, live-in-relationship does not give the status of husband and wife.¹⁴ The couples who are living together are called partners only. But they are also not partners under the partnership Act 1932. Without the status they are not able to claim the rights, for example conjugal rights, right to divorce, right to maintenance, property rights, religious rights, societal rights etc. So live-in-relationship is not a marriage. For marriage we need to fulfill first the provisions given under Section 5 of Hindu Marriage Act 1955 then Section 7 of the same Act. But often in live-in-relationship by circumstance people claimed that they got marriage because they fulfill the requirement under Section 7 of Hindu Marriage Act 1955. Philosophy of Section 7 is that to fulfill its requirement first need to fulfill the requirement of Section 5 of the same Act. In case of divorce there must be a marriage between the parties. So, in living relationship divorce concept is absent. They can be separated at any time at their own will without the right of matrimonial remedies. That is why various committees have recommended for the equal rights for a live-in woman on the footings of a married woman. Justice Malimath Committee (2003) recommended to the Law Commission of India 2003, that if a woman has been in a live-in-relationship for a considerable period of time then she can claim maintenance under Section 125 of Criminal Procedure Code.¹⁵

VI. JUDICIAL RESPONSE

The Fundamental Right under Article 21 of the Constitution of India grants to all its citizens “right to life and personal liberty” which means that one is free to live the way one wants. Live-in-relationship may be immoral in the eyes of the conservative Indian society but it is not “illegal” in the eyes of law. There are some cases where the Courts have given limited recognition to such relations.¹⁶

In *A. Dinohamy v. W.L. Blahamy*¹⁷ the Privy Council held that where a man and a woman are proved to have lived together as a man and wife, the law will presume, that they were living together in consequence of a valid marriage, unless the contrary can be proved.

Again, in *Goal Chand v. Pravin Kumari*¹⁸ the Supreme Court granted legality and validity to a marriage in which the couple cohabited together for a continuous period of years. The Supreme Court held that in such a case marriage is presumed due to a long cohabitation. *Badri Prasad v. Dy. Director of Consolidation*¹⁹ this was the first major case in which the Supreme Court of India recognized live in relationship and interpreted it as a valid marriage. In this case, the Court gave legal validity to a 50 year live in relationship of a couple. It was held that a strong presumption arises in favour of wedlock where the partners have lived together for a long term as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy.

The Supreme Court in *Yamunabai v. Anant Rao*²⁰ held that where a man married the second time, his second “wife” had no claim to maintenance under Section 125 of the Code of Criminal Procedure 1973, even though she might be unaware of his earlier marriage. The Court refused to give any recognition to the fact that they had lived together even if their marriage was void. The man was allowed to take advantage of this, although he had failed to disclose his earlier marriage. The Supreme Court held that it would not grant any rights to the woman in such a live-in-relationship “of circumstance”.

In *S.P.S. Balasubramanyam v. Suruttayan @ Andali Padayachi*²¹ the Supreme Court held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114 of the Indian Evidence

Act that they live as husband and wife and the children born to them will not be illegitimate.

In *Malti v. State of Uttar Pradesh*²², the Allahabad High Court held that a woman living with a man could not be equated as his “wife”.

*Payal Katara v. Superintendent of Nari Niketan*²³ It has been established that anyone, man or woman, could live together even without getting married if they wished. Further, the Apex court has repeated that the children born out of such relations are legitimate and have property rights of their parents under Section 16 of Hindu Marriage Act, 1955.

The Supreme Court in *Lata Singh v. State of UP*²⁴ held that live-in relationship is permissible only in unmarried major persons of heterosexual sex. The live-in-relationship if continued for such a long time, cannot be termed in as “walk in and walk out” relationship and there is a presumption of marriage between them.²⁵

Again, in *Tulsa v. Durghatiya*²⁶ the Supreme Court held that when a man and woman live together for a long spell there would be a presumption in favor of there having been married, unless rebutted by convincing evidence.

In *Chellamma v. Tillamma*²⁷ the Supreme Court gave the status of wife to the partner of live-in-relationship. The court stated that 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. The bench went one step ahead and observed that the children born to such a parent would be called legitimate. They have the rights in their parent’s property

In *Bharatha Matha v. R. Vijaya Renganathan*²⁸ the Supreme Court held that a child born out of a live-in-relationship may be allowed to inherit the property of the parents (if any) and therefore be given legitimacy in the eyes of law.

In *Madam Mohan Singh v. Rajni Kant*²⁹ the Supreme Court stated that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under section 114 of the Evidence Act, 1872 that they live as husband and wife and the children born to them will not be illegitimate.

In *S. Khushboo v. Kanniammal*³⁰ the Supreme Court held that a living relationship comes within the ambit of right to life under Article 21 of the Constitution of India. The Court further held that live-in relationships

are permissible and the act of two major living together cannot be considered illegal or unlawful.

In *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*³¹ the High Court declared that appellant wife is not entitled to maintenance on the ground that only legally married woman can claim maintenance under Section 125 Cr.P.C. But the Supreme Court turned down the judgment delivered by the High Court and awarded maintenance to the wife (appellant) saying that provisions of Section 125 Cr.P.C. must be considered in the light of Section 26 of the PWDVA, 2005. The Supreme Court held that women in live-in relationships are equally entitled to all the claims and reliefs which are available to a legally wedded wife.

In *D. Patchaiammal v. D. Velusamy*³² the Supreme Court held that not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Protection of Women from Domestic Violence Act, 2005 (PWDVA, 2005). The Women in such relationships are not entitled for any maintenance unless the following conditions are fulfilled such as:

- i. The couple must hold themselves out to society as being akin to spouses,
- ii. They must be of legal age to marry,
- iii. They must be otherwise qualified to enter into a legal marriage including being unmarried,
- iv. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

It further clarified that, if a man keeps women as a servant and maintains her financially and uses mainly for sexual purposes, such 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. Here, the court relied on the concept of 'palimony' which was used in the USA for grant of maintenance in live in relationships.

In 2013, Supreme Court of India in *Indira Sarma v. V.K.V. Sarma*³³ The Supreme Court held that "when the woman is aware of the fact that the man with whom she is in a live-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.

But in this case, the Supreme Court felt that denial of any protection would amount to a great injustice to victims of illegal relationships. Therefore, the Supreme Court emphasized that there is a great need to extend Section 2(f) which defines "domestic relationships" in PWDVA, 2005 so as to include victims of illegal relationships who are poor, illiterate along with their children who are born out of such relationships and who do not have any source of income. Further, Supreme Court requested Parliament to enact a new legislation based on certain guidelines given by it so that the victims can be given protection from any societal wrong caused from such relationships.³⁴ The following guidelines are given by the Supreme Court:

i. Duration of Period of Relationship:

Section 2(f) of the Domestic Violence (DV) Act has used the expression 'at any point of time', which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

ii. Shared Household:

The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

iii. Pooling of Resources and Financial Arrangements:

Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long-term investments in business, shares in separate and joint names, so as to have a long-standing relationship, may be a guiding factor.³⁵

iv. Domestic Arrangements:

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.

v. Sexual Relationship:

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring, etc.³⁶

vi. Children:

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing-up and supporting them is

also a strong indication.³⁷

vii. Socialization in Public:

Holding out to the public and socialising with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.³⁸

viii. Intention and Conduct of the Parties:

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.³⁹

VII. NEED OF LEGISLATION ON LIVE-IN-RELATIONSHIP

The decisions by the Indian Court is discerning as in some cases the Courts have opined that the live-in relationship should have no bondage between the couples because the sole criteria for entering into such agreements is based on the fact that there lies no obligation to be followed by the couples whereas in some instances the Court has shown opposite views holding that if a relationship cum cohabitation continues for a sufficiently and reasonably long time, the couple should be construed as a married couple infusing all the rights and liabilities as guaranteed under a marital relationship.⁴⁰ It also appears strange if the concept of live-in is brought within the ambit of Section 125 of the Criminal Procedure Code, where the husband is bound to pay maintenance and succession as the ground of getting into live-in-relationship is to escape all liabilities arising out of marital relations. If the rights of a wife and a live-in partner become equivalent it would promote bigamy and there would arise a conflict between the interests of the wife and the live-in-partner. Apart from lacking legal sanction the social existence of such relationships is only confined to the metros, however, when we look at the masses that define India, there exists no co-relation between live-in-relationships and its acceptance by the Indian society. It receives no legal assistance and at the same time the society also evicts such relationships. The live-in-relationship come what may unify with the institution of marriage, separation, status etc. Thus, Law Commission of India in its 71th report, 1978 recommended for the amendment of Hindu Marriage Act 1955 and Special Marriage Act 1954 for the divorce provision, because it is also a cause to adopt live-in-relation by the parties.

In case of irretrievable breakdown of marriage, the both parties have no fault to prove in court of law to opt a divorce decree. The sweetness of marriage among them already becomes departed without any one's fault. Thus, it may lead to an easy "walk in walk out relation" with other party. So, in 2010 Rajya Sabha introduced the Hindu Marriage (Amendment) Bill 2010 to simplify the divorce procedure and included the irretrievable breakdown of marriage as a ground for divorce before cooling period is completed. But bill is still in pending. Again, Malimath committee Report 2003 recommended for the amendment of Section 125 of Criminal Procedure Code to include women in a void marriage or women in live-in-relationship to claim maintenance.⁴¹ Thus it is a call to legislate a new law to remove all the clouds of difficulties and protect the social values without infringing the individual liberties with the change of society.⁴²

VIII. CONCLUSION

As of today, from most of the judicial precedents, it can be easily said that the judicial stand with regards to the rights of women in live-in relationship is very clear and the same in pro women. This approach of the judiciary helps the women in a live-in relationship by empowering them with conferment of various rights available to a legally wedded wife and protecting them under law from any kind of abuse. This can be seen as a welcome change in law with the changing times and trends in modern society thereby fulfilling the role to judiciary to answer the call of society for adapting to the changes in thinking of the society at large and modifying the legal landscape in the country to go hand in hand with changing times.

IX. SUGGESTIONS

The following are the suggestions put forward for securing the rights of female partners:

1. The registration of the live-in relationships to be made mandatory through a cohabitation agreement as in other countries.
2. A new legislation should be enacted to deal with the matters of couples in a live-in relationship and the legislation should have a clarification regarding the following.

3. There should be clarity regarding the period of cohabitation to consider it under the definition of live-in-relationship in the eyes of law.
4. There should a provision for registration of an agreement of cohabitation and a certificate of relationship should be issued by Courts for providing a proof.
5. Amend Section 125 of the Code of Criminal Procure 1973 as recommend by Justice Malimath Committee Report for providing maintenance to female partners.

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