

Live- in Relationship: A Comparative Analysis on Issue and Challenges in India

Dr. Krushna Chandra Dalai

Faculty of law, Post Graduate Department of Law, Berhampur University. Ganjam, Odisha.

***Corresponding Author:** Dr. Krushna Chandra Dalai, Faculty of law, Post Graduate Department of Law, Berhampur University. Ganjam, Odisha. dr.kchdalai@gmail.com

ABSTRACT

The glamour and beauty of live in relationship is definitely unlocking and unfolding relationship. It has been one of the most controversial legal topics in the recent past. The issue is steadily creeping inside the present clog society and requires a special legislation to negate the chances of misuse of such relationship. One of the instincts of human being is to search life partner that has recognized by civil societies and existed with civilization. Marriage is a sacred union gets legal effects and high respect in society. Live in relationship denotes an arrangement in which a man and women decide to live together on a long term or permanent basis in an emotionally and or sexually intimate relationship like husband and wife or cohabits with each other without any legal sanction, therefore live in relationship has one of the most controversial legal issue as premarital sex, which is considered against the moral values of social ethics in a Indian culture. In this era of globalization the world became a village with the advancement of society and means of communication, man and women have distanced themselves from the obligation of marital bondage and have preferred a walk in and walk out relationship, the system of live in relationship has been opted by some highly educated, formerly self sufficient and by celebrities which sooner or later gets socially and legally complicated with various consequential constrains. The Indian judicial has tried his legal best to interpret different provisions of law in order to give legal protection to such challenges, In the year 2010 the hon'ble Supreme Court of India had rendered land mark judgment and strongly affirmed rights and claims in live in relationship augmenting though in favour of live in relationship is widen the scope to analyze the issue in greater dimension. That in a live in relationship is not simple to be recognized in law as there are several issues which remain ambiguous, complex and unaddressed. It is necessary to understand society with its changing colours and provide laws which are practicable and enforceable to tackle these complex issues, at present there is no specific legislation to deal with the concept of live in relationship and rights of parties and for the fruits of adulteries. Now it is upon us to weigh the pros and consequences of this and then accordingly take a decision for ourselves.

Keywords: Live-In-Relationship, Marriage, Pre-Marital Sex, Indian Culture, S.C Verdict.

INTRODUCTION

India is a country which having rich values, traditions, customs, rituals and beliefs are the important sources of law. In India marriage has always been considered a sacrament. The husband and wife are considered as one in the eyes of law. Marriage is a social institution and one of the important parts of Indian culture. Our country, which has strong cultural roots, focuses on morality and social ethics. But with changing times, Western culture has impacted a lot, which is totally different from Indian culture. A certain section follows Western culture i.e. of live- in relationship. A living arrangement in which an unmarried couple lives together under the same roof in a long term relationship that resembles a marriage is known as a live- in-relationship.

Thus, it is the type of arrangement in which a man and woman live together without getting married. This form of relationship has become an alternate to marriage in metropolitan cities in which individual freedom is the top priority amongst the youth and nobody wants to get entangled into the typical responsibilities of a married life.

Marriage is an institution in which both the partners have equal role to play for a successful innings. Some golden rules are a) creation of mutual trust which has to be made everlasting by watering it on daily basis, b) keep at bay undue interference by the nears and dears from both ends, c) share house hold work equally in case both are working, d) have joint accounts and joint property to create everlasting mutual

Live- In Relationship: A Comparative Analysis on Issue and Challenges in India

trust for everlasting relationship. In This article author explored a lot of issues and gives focus on its effects on the society and upcoming challenges. Our society has to play important role of watchdog to deny concept of live-in relationship and misinterpretation of marriage. Otherwise our identity, humanity and our rich ancient culture, tradition will be in grave danger.

BASIC CONCEPT OF LIVE-IN RELATIONSHIP

Live in relationship has become one too highly debated areas and most controversial legal topics in India as regards its legality and implication on the societal relationships. Strictly speaking, the word live-in has been lighted up particularly in recent years with the advent of such relationship practiced in the metropolitan cities. To be or not to be in live-in relationship is the most debated question after Supreme Court's recent observation on the issue of live-in relationship in the context of the Tamil actress Khushboo's statement on premarital sex.

Supreme Court held that, live-in relationship is not an offence. This recognition of such live in relationship at least in India indeed no civilized person of the society will agree to such relationship in his or her family or neighborhood as the case may be, as far de jure recognition is concerned, no legislature will ever enact any such law giving legal recognition to such relationship at least in India where one billion people, i.e. where one sixth population of the world live, what these small countries with small population do is none of our concern in this critical juncture.

The Maharashtra Government in October 2008 approved a proposal suggesting that a woman involved in a live-in relationship for a 'reasonable period', should get the status of a wife. Whether a period is a 'reasonable period' or not is determined by the facts and circumstances of each case.

The Commission recommended to the Ministry of Women and Child Development that, the definition of 'wife' as described in section 125 of Cr.P.C. must include women involved in a live-in relationship.

The aim of the recommendation was to harmonize the provisions of law dealing with protection of women from domestic violence and also to put a live-in couple's relationship at par with that of a legally married couple. There was a Committee set up by the Supreme Court for this purpose, called the Justice Mali math Committee, which observed that "if a man and a woman are living together as husband and wife

for a reasonable long period, the man shall be deemed to have married the woman." The Mali math Committee has also suggested that the word 'wife' under Cr.P.C1973. be amended to include a 'woman living with the man like his wife' so that even a woman having a live-in relationship with a man would also be entitled to alimony.

On 16.09.2009, the Supreme Court in a case observed that it is not necessary for a woman to strictly establish the marriage, to claim maintenance under section 125 of Cr.P.C. A woman in a live-in relationship may also claim maintenance under section 125 Cr.P.C.

These rights are provided in the matrimonial laws which govern the parties even the Protection Of Women From Domestic Violence Act, 2005, clearly provides in section 2(f) "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 by including such relationship in the definition of domestic relationship.

As far saying to avoid the provisions of law of inheritance one can make a will for his her own property, agreed, but what about the property, its share or right to enjoy it, which in such a person will inherent being a part of the family from any other family member of her or his spouse as the case may be. Anything which is not getting any legal recognition cannot be made legal by quoting wrong provisions of law & misguiding others.

There is no question of de facto in this case of S. Khushboo v. Kanniammal and Anr. (2010) (4) SCALE 462)

PERSPECTIVES OF LIVE-IN RELATIONSHIPS

Maintenance for live-in partner

Marriage is a holy sacrament in Indian philosophy. According to the Hindu Marriage Act, 1955, second marriage is invalid. The Supreme Court reserved its verdict on the question whether a woman in a live-in relationship or under the mistaken belief of being the wife of an already married man was entitled to maintenance.

The court reserved its order in a case where D. Velusamy has challenged an order of the Madras High Court directing him to pay maintenance of Rs.500 per month to his 'second

Live- In Relationship: A Comparative Analysis on Issue and Challenges in India

wife' D. Patchaiammal. Velusamy allegedly married Patchaiammal when his first marriage was still intact, further long-term relationship is valid to claim alimony

Legitimacy of the child born out of a live-in relationship

The Supreme Court on an earlier occasion, while deciding a case involving the legitimacy of a child born out of wedlock has ruled that if a man and a woman are involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be legitimate. Also, the recent changes are introduced in law through the Domestic Violence Act, 2005 gives protection to women involved in such relationships for a 'reasonable long period' and promises them the status of wives. A Supreme Court Bench headed by Justice Arjit Pasayat declared that children born out of such a relationship will no more be called illegitimate. "Law inclines in the interest of legitimacy and thumbs down 'whoreson' or 'fruit of adultery'"

Inheritance Rights

The Supreme Court held that a child born out of a live-in relationship is not entitled to claim inheritance in Hindu Ancestral Coparcener Property (in the case of an undivided joint Hindu family) and can only claim a share in the parents' self-acquired property. The Hon'ble bench set aside the Madras High Court judgment, which held that children born out of live-in relationships were entitled to a share in ancestral property as there was a presumption of marriage in view of the long relationship. A child can only make a claim on the person's self acquired property, in case the child is illegitimate. It can also be interpreted in a way in which a child could lay a claim on the share of a parents' ancestral property as they can ask for that parents' share in such property, as Section 16 of Hindu succession Act, 1956 permits a share in the parents' property. Hence, it could be argued that the person is not only entitled to self acquired property but also a share in the ancestral property. The Apex Court also stated that while the marriage exists, a spouse cannot claim the live-in relationship with some other person and seek inheritance for the children from the property of that other person. The relationship with some other person, while the husband is living is not 'live-in relationship' but 'adultery'. It is further clarified that 'live in relationship' is permissible in unmarried heterosexuals; in case, one of the said persons is married, the man may be guilty of adultery and

it would amount to an offence under Section 497 of the Indian Penal Code-1860 in India.

EFFECTS ON LIVE-IN RELATIONSHIP ON THE SOCIETY

This fashion of live-in relation has effected all the youth of the society for various reasons. In circumstances nothing escapes without leaving drawbacks. No doubt such relation gives two partners the maximum opportunity to right to liberty, right to privacy, right to life. But the negative point has to be realized as well. In coming days the negative effects on the society enumerated below for justification.

Breaking Down of Marriage Institution

Marriage is a social union or legal contract between people that creates kinship. It is an institution in which interpersonal relationships, usually intimate and sexual, are acknowledged in a variety of ways, depending on the culture or subculture in which it is found. Such a union, often formalized via a wedding ceremony, may also be called matrimony. Therefore, it would be easily mentioned that live-in relationship is in reality degrading the values of marriage which is recognized as social union unlike live-in relationship where there is only well of two person. Marriage leads to bondage between a man and woman and this ensures security for children. Let us also caution the protagonists of live-in relationships that parting of ways, for one reason or the other, will leave behind deep scars of being used and rejected. Progenies of such relationships will also end up as misfits in society

Walk in and Walk Out Relationship

In this live-in relationship, it is a contract of living together which is renewed every day by the parties and can be terminated by either without the consent of the other. Thus people who choose to have a live-in relationship cannot complain of infidelity or immorality. Therefore, we can say it nothing more than personnel enjoyment to have a relationship to come across the sexual urge.

Anti-Hindu and Live-In Relationship

In the Hindu Marriage Act, 1955, there is no such provision for a second wife among Hindus. Hence, enabling the mistress to get the status of a legally married wife in all matters, including share in property, inheritance, and maintenance is contrary to the Act as well as Hindu customs According to the Hindu Marriage Act, 1955, there is no provision for a second wife among Hindus. Hence, enabling the mistress to get the

Live- In Relationship: A Comparative Analysis on Issue and Challenges in India

status of a legally married wife in all matters, including share in property, inheritance, and maintenance is contrary to the Act as well as Hindu customs.” When the Maharashtra Government approved a proposal suggesting that a woman involved in a live-in relationship for a ‘reasonable period’, should get the status of a wife, the Government on one hand has banned dance bars because they are spoiling the social atmosphere, while on the other hand it is promoting illicit relationships through such amendments towards the destruction of society

Negative Identity

Everyone has the moral liability to adhere to life-enriching norms to enable the future generations to be proud of their birth, cultural traditions and national identity. Why children should be made to bear the cross of the skewed behavior of their parents. Responsible parents will leave a valuable legacy and not vicarious liabilities to the progeny. Even when parents normatively raise their children, many precautionary measures are required to insulate them from the ill-effects of the unsanctioned societal deviations and the vicious projections of modernity. India cannot afford to throw its proven and time-tested merits of its custom to the winds.

Weakens Social Relationship

In the so-called live in relation if two heterosexual free lovers get enough flexibility to enter into, and exit from their physical and emotional life without any sexual right and obligation, financial and legal trouble and social and cultural cost to each other, then why female partner demands her right to maintenance from her male partner in controversy and against social conditions. As such relationships are choice of two individual wish to make their own family without the will of their parents there is always expectation of weak relation between the parents of the spouse family. Therefore it is no doubt that there is always change of conflict of ideas and opinion in the family as a result it will laterally lead to weaken the relation between other member of the family. So over all it is no it has a better negative effect in the society.

Up to date Observations

In latest development the Supreme Court of India laid conditions for women seeking maintenance in live-in relationship. This was decided by a bench comprising Justices Markandey Katju and T S thakur said that in order to get maintenance, a woman, even if not married, has to fulfill the following four

requirements: accordingly maintenance claim can be sought by the spouse.

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

Merely spending weekends together or a one-night stand would not make it a “domestic relationship.” If a man has a “keep” that he maintains financially and uses mainly for sexual purposes and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage. No doubt, the view we are taking would exclude many women who have a live-in relationship from the benefit of the PWDVA Act, but then it is not for this court to legislate or amend the law. Parliament has used the expression “relationship in the nature of marriage” and not “live in relationship”.

CONCLUSION

Society is formed with traditions and customs which are foundational pillars. India, a country of cultural values cannot afford to fall into western ways. But since growing economy and people getting more and more aware, India finally has to step ahead and walk with the rest of the world by legalizing Live-in relationship. The Hon’ble Supreme Court of India in a recent judgment concerning **South Indian Actress Khushboo**, affirmed that a ‘live-in-relationship’ will be acknowledged as a legalized marriage. The bench headed by **Justice Arijit Pasayat** not only validated such a relationship, but going one step ahead, it said that the children born to such a parent would be called legitimate. Besides these children will have the rights in their parent’s property. It’s a welcome step which would now safeguard the right of a women living in a relationship with a man for a long time without marrying. The major achievement of the decision is that earlier Children of such parents were not treated at equal footing in the society, but now they would live with their head hold up straight. Born to either ‘in-wedlock’ or ‘out of wedlock’ children are children. This thing has now been recognized by the law and henceforth they will have the right to be called ‘legitimate’. The apprehended disadvantage is that the new

Live- In Relationship: A Comparative Analysis on Issue and Challenges in India

generation will be more spoiled. They will prefer live-in relationships instead of arrange marriage to escape from responsibility and indulging in any social bondage. What is inconsistent with and contrary to reason is not permitted with society/law. Hence, it is clear from the above mentioned discussion. That in a live in relationship is not simple to be recognized in law as there are several issues which remain ambiguous, complex and unaddressed. It is necessary to understand society with its changing colors and provide laws that are practicable and enforceable to tackle these complex issues in every endeavor to deal with upcoming challenges to do best for the rest and to next.

REFERENCES

- [1] AIR 2011 SC 479
- [2] AIR 2010SCW 2494. / 2010. 5 SCC 600.
- [3] 2010 (4) SCALE 462.
- [4] AIR 2006 SC.2522.
- [5] AIR 2006 SC 1301.
- [6] AIR 2005 SC.09..
- [7] AIR 2000 SC 3266
- [8] AIR 2000 SC 1869
- [9] International Referred Research journal, January,2012.ISSN-0975-3486.
- [10] The National Commission for Women recommended on 30th June, 2000
- [11] Abhijit Bhikaseth Auti v.State Of Maharashtra and Others
- [12] Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others.
- [13] Bharatha Matha & Anr. v. R.Vijaya Renganathan & Ors. (2010 STPL(Web) 406 SC).
- [14] The Hindu Marriage Act, 1955.
- [15] <http://timesofindia.indiatimes.com/india/SC-lays-down-conditions-for-women-seeking-maintenance-in-live-in-relationships>
- [16] /opinions/6786239.cms on 21st October, 2010 .09/05/2012

Citation: Dr. Krushna Chandra Dalai. "Live- In Relationship: A Comparative Analysis on Issue and Challenges in India." *Journal of Law and Judicial System*, 1(4), pp.34-38

Copyright: © 2018 Dr. Krushna Chandra Dalai. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.