



# Live-in- Relationship and Indian Judiciary

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## 1. Introduction

Law has been playing vital role in social change. Society is constituted of individuals. Law and society try to regulate the conduct of an individual. The institution of marriage being foundation of the society, interest of the society is well protected by keeping the foundation of institution of marriage strong. Since the matter relating to marriage falls within the purview of personal law, each religion in India is having its own law relating to marriage along with other family matters. As we are observing changing living patterns in the society, law has to respond properly keeping in view the societal and constitutional values in its mind. In recent times the Indian judiciary has taken a lead in showing a right path for the progress of the society. We have tried in this paper, to look into the trend of Indian judiciary in relation to live-in-relationship. As the decision of the apex court is considered as the law of the land under the Indian Constitution, the decisions are to be followed and respected. The society expects consistent stand from the judiciary.

The expression 'live-in-relationship' in its ordinary sense to mean that two people living together without intending to establish any kind of permanent relationship between them. This kind of relationship has emerged primarily out of convenience. Partners in such kind of relationship initially lack the commitment with each other. The main element that works in such relationship is 'compatibility' between such partners. Due to modernization and city culture, we are observing this kind relationship in few parts of Indian society. Different kind of persons may be involved in such relations. Unmarried man and unmarried woman or married man and unmarried woman or unmarried man and married woman or persons of same sex may live together. The main issues that concern every one who is interested in the progress of the society are namely, a) whether the Indian society is prepared to accept such new kind of relationship? b) What are the repercussions of accepting or rejecting of such relations on the continuity and progress of the Indian society? c) Should the new law be made in India to regulate such kind of relationship? d) What are the consequences of legalization of such relationship on married partners? Should the existing laws relating maintenance, guardianship, succession and inheritance be amended to accommodate such relationship? e) What is the role of Indian judiciary in the sphere of emerging of such relationships? The trend of Indian judiciary is so far not consistent with regard to recognition of such relationships. But in so far as the protection of the claims of women in such relations is concerned, the Indian judiciary is firm in its stand to render justice to the vulnerable section of the society.

## 2. The concept of Live-in-relationship

Live- in-relationships are not new for western countries. Some tried to define live-in-relationship by observing that it is an arrangement of living under which the couples who are unmarried live together to conduct a long-going relationship similarly as in marriage.

The main idea, according to some, of cohabiting or conducting a live-in-relationship is that the interested couple wanted to test their compatibility for each other before going for some commitment. Live-in-relationship is a de facto union in which couple shares common bed-room without solemnizing marriage. It is non-marital relationship prevailing in West with the different name like, common law marriages, informal marriages or marriage by habit, deemed marriages etc. It is a form of interpersonal status which is legally recognized in some jurisdictions as a marriage even though no legally

recognized marriage ceremony is performed or civil marriage contract is entered into or the marriage registered in a civil registry.

Some bold couples believe that going for a wedding is just a waste of money, because they think their love doesn't need any paper certification or social drama. According to Osho, in their true nature of all human beings are polygamy, marriage makes them monogamy which is against its nature. So that's the reason after marriage too people keep relation outside wedlock. We can infer from analyzing the relationships that it is evident that live-in couples are still largely from professions like entertainment, advertising, modeling and media. According to Samindara Sawant, clinical psychologist, Disha Counselling Clinic, Mumbai has found that the trend of live-in-relationships has not really caught on in India, especially in the middle and upper middle classes, where marriage is still very much the norm. Live-in-relationships are practiced mostly in the metropolitan cities. Such practice is still a social taboo in a major part of our country which is constituted by villages and towns. According to a view the live-in-relationships are earlier in existence in the form of 'maitraya karars' which has been practiced in some parts of Gujarat. There is a gradual transition from the sacrament of arranged marriages to love marriages and ultimately to live-in relationships, due to many reasons like lack of tolerance and commitment.

### 3. Law and Live-in-Relationships

There is no statute directly dealing with live-in-relationship in India. The Hindu Marriage Act, 1955, confers the legitimacy on child born out of 'void' and 'voidable' marriages and establishes their succession and property rights. The void marriage is not a marriage in the eye of law. The moot question is whether the relation existing in void and voidable marriage is equated with live-in-relationship as understood in its popular sense. The Protection of Women from Domestic Violence Act, 2005 (PWFDVA) also provides some kind of protection to the aggrieved parties from any kind of atrocities faced by the females living in 'relationship in the nature of marriage.' This Act has been widely hailed as the first legal Act to recognize the existence of non-marital adult heterosexual relations. This Act defines an "aggrieved person" who will be covered under this Act as "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent." Further the Act defines a

'domestic relationship' as '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.' In having used the idea of "relations in the nature of marriage", the Act seems to have widened the scope of legally recognised domestic relationships between men and women. In a commentary on one case arising out of the Act, the report *Staying Alive 2009* (Lawyers Collective and ICRW 2009) suggests that whilst this provision has invited much criticism and controversy, it is important to note that it does not make an invalid marriage valid or provide legal recognition to bigamous marriages... This provision merely seeks to denounce domestic violence in any quarter. It is not a judgment call on the morality of the choice to cohabit outside of marriage. It can therefore be argued that it would be mistaken to see the Act as conferring some sort of a legal status upon nonmarital relations. What it undoubtedly does is to acknowledge the existence of such relationships and the right of women in such relations to protection from violence. Justice Mallimath Committee as well as the Law Commission of India states that if a woman has been in a live-in-relationship for a reasonable period, she should enjoy the legal rights of the wife. The Committee also recommended the amendment of the definition of 'wife' under Section 125 of the Criminal Procedure Code (Cr.P.C) so that a woman in live-in-relationship can get the status of a wife. But there is a lack of consistency in the recommendations of the Committee. If all the recommendations of the committee were implemented, a woman can simultaneously seek maintenance under Section 125 of the Cr.P.C and be charged with adultery under Section 497 of the IPC. A man on the other hand may be susceptible to

charges of adultery and bigamy at the same time as he pays maintenance to the woman with whom he is in a bigamous/adulterous relation!

#### 4. Indian Judicial Treatment of Live-in-Relationships

Indian judiciary is neither expressly encouraging nor prohibiting such kind of live-in-relationships in India. The judiciary is only rendering justice in accordance with law in a particular case. The main concern of the judiciary is to prevent the miscarriage of justice. The judiciary in deciding the cases keeps in mind the social mores and constitutional values.

The connotation of the phrase “in the nature of marriage” is far from obvious and this is already a ground for contestation of the PWEDVA. In the case of Aruna Parmod Shah vs UOI, the petitioner challenged the constitutionality of the Act on the grounds that, first, it discriminates against men and second, the definition of “domestic relationship” contained in Section 2(f) of the Act is objectionable. Regarding the second, the petitioner argued that placing “relationships in the nature of marriage” at par with “married” status leads to the derogation of the rights of the legally-wedded wife. The Delhi High Court rejected both these contentions regarding the constitutional status of the Act. With regard to the second contention, which is of concern to us, the court said that “there is no reason why equal treatment should not be accorded to a wife as well as a woman who has been living with a man as his “common law” wife or even as a mistress”. In this case the judges interpreted “a relation in the nature of marriage” as covering both a “common law marriage” and a relation with a “mistress” without clarifying the legal and social connotations of these terms.

In, **Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others** the high court of Allahabad ruled out that a lady of about 21 years of age being a major, has right to go any where and that anyone, man and woman even without getting married can live together if they wish. In Patel and others case the apex court observed that live- in –relationship between two adult without formal marriage cannot be construed as an offence.

In **Lata Singh Vs.State of U.P. & Anr**, the apex court held that live-in-relationship is permissible only in unmarried major persons of heterogeneous sex.

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

In **Abhijit Bhikaseeth Auti v.State Of Maharashtra and Others** on 16.09.2009, the apex court also observed that it is not necessary for woman to strictly establish the marriage to claim maintenance under sec. 125 of Cr.P.C. A woman living in live-in-relationship may also claim maintenance under Sec.125 Cr.PC. In Chellamma v Tillamma the SC gave the status of wife to the partner of live-in-relationship. Katju J. and Mishra J. stated that, in their opinion, 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. One advantage of the ruling is that it would not only deter the couple to take hasty decision of splitting each other but also would encourage the couple to produce their offspring, who were earlier afraid of regarding their future in case of their break-up.

In **Madan Mohan Singh & Ors. Vs Rajni Kant & Anr**, the court held that the live-in-relationship if continued for long time, it cannot be termed in as “walk in and walk out” relationship and there is a presumption of marriage between the parties. This attitude of the court could clearly be inferred that it is in favour of treating the long term living relationship as marriage rather than branding it as new concept like live-in-relationship. In Khushboo case the apex court observed that the stress must laid on

the need to tolerate unpopular views in the socio-cultural space. Admittedly, Khushboo's remarks did provoke a controversy since the acceptance of premarital sex and live-in-relationships is viewed by some as an attack on the centrality of marriage. While there could be no doubt that in India, marriage is an important social institution; people must also keep their minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. The honorable apex court in this case, expressed its' opinion that entering into live-in-relationship cannot be an offence. A three judge bench said that when two adult people want to live together, what is the offence? Does it amount to an offence? Living together is not an offence. Living together is a fundamental right under Article 21 of the Constitution of India.

In **D. Velusamy .v D. Patchaiammal** case, the appellant had alleged that he was married according to the Hindu Customary Rites with one Lakshmi. The respondent D. Patchaiammal filed a petition under Section 125 Cr.P.C. in the year 2001 before the Family Court at Coimbatore in which she alleged that she was married to the appellant on 14.9.1986 and since then the appellant and she lived together in her father's house for two or three years. It is alleged in the petition that after two or three years the appellant left the house of the respondent's father and started living in his native place, but would visit the respondent occasionally. It was alleged that the appellant deserted the respondent. The respondent alleged that she did not have any kind of livelihood and she was unable to maintain herself, whereas appellant is a Secondary Grade Teacher drawing a salary of Rs.10000/- per month. Hence it was prayed that the appellant be directed to pay Rs.500/- per month as maintenance to the respondent. Thus it was the own case of the respondent that the appellant left her in 1988 or 1989 (i.e. two or three years after the alleged marriage in 1986). It is important to note that the respondent had filed the maintenance petition after twelve years of her desertion by the appellant. The lower Family Court had held that the appellant was married to the respondent and not to Lakshmi. These findings have been upheld by the High Court in the impugned judgment.

In opinion of the apex court, since Lakshmi was not made a party to the proceedings before the Family Court or before the High Court and no notice was issued to her hence any declaration about her marital status vis-à-vis the appellant is wholly null and void as it will be violative of the rules of natural justice. There is also no finding in the judgment of the learned Family Court Judge on the question whether the appellant and respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. The apex court opined that such findings were essential to decide the case. Hence it set aside the impugned judgment of the High Court and Family Court Judge, Coimbatore and remanded the matter to the Family Court Judge to decide the matter afresh in accordance with law. The judges in the case observed that:

Unfortunately the expression in the nature of marriage has not been defined in the Act [PWDVA, 2005]. Since there is no direct decision of this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required. The judgment further observes that:

It seems to us that in the aforesaid 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.

After making this statement which equates "relation in the nature of marriage" with "live-in" relations prevalent in the west, the judges state that in their opinion a "relationship in the nature of marriage" is akin to a common law marriage. According to the judgment, common law marriages require that although not being formally married, (a) The couple must hold themselves out to society as being akin

to spouses, (b) They must be of legal age to marry, (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried, (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. This definition of common law marriage was taken from 'Wikipedia on Google.' This is subject to criticism as the veracity of the web based source may be doubted. The third criterion which has been set out seems to considerably delimit the scope of relations covered by the PWDVA. The judges go on to state that:

In our opinion not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant, it would not, in our opinion, be a relationship in the nature of the marriage. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

In her commentary on the PWDVA, 2005, Agnes has suggested that the PWDVA has transformed the yesteryears concubines into present day cohabitees. While some may dismiss the term cohabitee as a western or urban phenomenon, this term can now be invoked to protect the rights of thousands of women, both urban and rural, who were earlier scoffed at as mistresses or keeps in the judicial discourse. But the above fragment from the SC judgment disproves the hopes for such a transformation. The judges further state that:

No doubt the view we are taking would exclude many women who have had a live-in relationship from the benefit of the 2005 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'.

In saying this, the judges appear to be implying that the scope of the term "live-in relationship" is much broader than that of "relationship in the nature of marriage". Indirectly, however, the judgment also equates what it treats as a "new social phenomena" with the idea of "relationship in the nature of marriage", subject to the definition of common law marriage as taken from Wikipedia.

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**. In Taylor vs. Fields the facts were that the plaintiff Taylor had a relationship with a married man Leo. After Leo died Taylor sued his widow alleging breach of an implied agreement to take care of Taylor financially and she claimed maintenance from the estate of Leo. The Court of Appeals in California held that the relationship alleged by Taylor was nothing more than that of a married man and his mistress. It was held that the alleged contract rested on meretricious consideration and hence was invalid and unenforceable. The Court of Appeals relied on the fact that Taylor did not live together with Leo but only occasionally spent weekends with him. There was no sign of a stable and significant cohabitation between the two. However, the New Jersey Supreme Court in **Devaney vs. L' Esperance** held that cohabitation is not necessary to claim palimony, rather "it is the promise to support, expressed or implied, coupled with a marital type relationship, that are indispensable elements to support a valid claim for palimony". A law has now been passed in 2010 by the State legislature of New Jersey that there must be a written agreement between the parties to claim palimony.

In **Alok Kumar v State & Anr** the petition was filed for quashing of First Information Report (FIR) registered against the petitioner. The complainant, out of malice in order to wreck vengeance on the petitioner because petitioner refused to continue live-in relationship with her, had filed the complaint. The court considered that it is a fit case where FIR should be quashed to prevent the misuse of criminal justice system for personal vengeance of a partner of 'live-in relationship'.

The court observed that 'live-in-relationship' is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time. Those, who do not want to enter into this kind of relationship of walk-in and walk-out, they enter into a relationship of marriage, where the bond between the parties has legal implications and obligations and cannot be broken by either party at will. Thus, people who chose to have 'live-in relationship' cannot complain of infidelity or immorality as live-in relationships are also known to have been between married man and unmarried woman or between a married woman and an unmarried man.

## 5. Conclusion

It becomes evident that the judiciary is not ready to treat all kind of living relations as akin to marriage. Only stable and reasonably long period of relations between the parties are given the benefit of the 2005 Act. At the same time it is not against the new emerging relations like live-in-relationships particularly in cities. The judiciary is equally aware of the fact that the law must accommodate the changing scenario of the society. It is also very careful in taking its' stand with regard to live-in-relationship as its decisions are binding and they become the law of the land under the article 141 of the Constitution of India. The society expects the consistency from the judiciary with reference to such sensitive issues. The judiciary while dealing with such issues should have pragmatic approach rather than pedantic. It is our submission that it is not appropriate to legalize all kind of live-in-relationships which lack seriousness. In this regard we should not blindly follow what is happening in other countries as the societal structure of our country is different from them. At the same time we should not ignore to consider the real pulse of our society in the light of day-to-day surrounding activities. The legislative measures are a response to more traditional and even patriarchal forms of non-marital cohabitation in which the male partner is already married and enters a relation with another, usually unattached woman, who may or may not be aware of the marital status of this man. Thus these legal moves appear to be set against the backdrop of prevalent practices of married men entering secondary relations with women. It is not obvious that all forms of non-marital relations can or should be treated as legally identical. In any case, even if they should be treated as such, the decision to do so should be preceded by a careful consideration of the implications this will have for the different categories. As things stand, in the absence of clear social and legal categorization of non-marital relations, the field has been left wide open and even the highest judicial functionaries have allowed themselves to preach upon the need to separate a "relation in the nature of marriage" from that with a "servant" or a "keep" and a "one night stand".

It may also be noted that none of these legislative measures should be treated as dealing comprehensively either with the gamut of live-in relations or with the corpus of rights and obligations which might require legal remedies in such relations. At best they extend some of the rights of married women to women who are in non-marital relations with men. A preliminary comparison of these legal measures with the legal trajectory of relations of cohabitation in western societies will show that the Indian situation is quite far from affording a high degree of legal protection to modern forms of non-marital relations and that the desirability of such protection is itself a much debated terrain. Therefore it is not useful to see the legal trend in India as imitating the western model.