

An Overview About the Legalisation of Live-in -Relationship in India

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In the modern society technology and industrial development creates revolution in all the aspects of life. The concept of globalisation has changed our social life like the family structure and the marriage. In our country the marriage is considered as a sacramental institution. Here the marriage is the accepted form of relationship but in the modern society the youth from the urban cities are welcoming the concept of Live - in - Relationship. In our country developed cities are accepting the concept of Live - in - Relationship but in rural areas it is still a taboo. Societies is also at the urge of slowly accepting the Live - in - Relationship, as the male and female are place equally in the society and they are economically independent to each other. However these changes are under continuous criticism and it is a debatable topic due to the lack of legality and unacceptable by the majority of the society.

Live - in - Relationship is not a new concept to the world. Truly speaking the institution of marriage is the later developed concept to regulate the relationship between the men and women. In India from the Vedic period various forms of marriage exists and one of the forms is Gandharva marriage. Gandharva marriage has the characteristic of modern concept of living in relationship. The researchers says that the relationship between the Adam and Eve exists as a live - in - Relationship. The concept of marriage was not known to them. To meet the world or to survive in the new world they travelled together with their emotional bonding.

Later period of time when the human started to live in groups and they start to mark their borders of land for their society, the concept of marriage has been slowly evolved. At that time also marriage is not a sacrament institution. It started as a strategic or political

alliance between the kings to expand their territories and their desire to acquire the property the same situation only exists in India also. In the middle age, the marriage was performed to recognise their heirs and to shift the inheritance

Slowly the marriage took various forms in society based on the religious rituals and by the development of various cultures throughout the world. Later the marriage was legally recognised by the various part of the world. At that time when the divorce procedures are difficult the person has to live in misery. Later the thought about relationship by a men and women under a single roof also took a various form and now it took a form of the Live - in - Relationship.

Live - in - Relationship are cohabitation of two persons under a same roof whereby they decide to live together for a long term or on permanent basis in an emotional relationship. This term is commonly applied to the couples who are not married. Cohabitant indicates the heterosexual couples (i.e. men and women) who are in live in relationship. The same sex persons who are under the same roof are mentioned as civil partners.

This Concept of living relationship is growing faster among the youngsters who are in the metropolitan cities in our country. These are various reasons for the youngster to accept this concept. They may include economical independence among the persons or to establish a financial security before marriage or to test the capability of the marriage. The other reasons may be to avoid divorce after marriage etc.

In the starting point of this century the couples who are in living in relationship does not raise their child but now when it is a long term relationship the couples is live in relationship are also raising their child. They are following the all-types of relationship bonding which exists in the concept of marriage but without performing or registering the marriage. This creates chaos in the legal rights and legal relationship in the couples who are under living relationship as well the rights of the children born out of live-in relationship.

The various countries in the world have now legalised or recognised the live-in relationship. In Scotland, live-in relationship is recognised based on the duration length, then by the nature of bonding exists between them and the financial arrangements between the couples.

Further, In Canada the live in relationship legally recognised if the couple were together for a prescribed period and if the couples have their child, their rights are equal to the persons who are married.

In Ireland live in relationship is legally recognised for the same sex also. The government has also intended to pass the legislation which give maintenance, inheritance and financial assistance in case of the death of the partner or separation of this relationship. Here the legality of live in relationship is based on the time period prescribed by the law.

Further the United States, Sweden, Denmark and Australia has also recognised the live in relationship and they possess the same rights and obligation as equal to the married couple but in these countries such kind of persons are considered as legal parents of their child but in United Kingdom these types of relationship are identified as “common law marriage”. It is not an offence but no right has been guaranteed by any specific law or judiciary, when these couples separate or claim for any financial assistance.

LEGAL POSITION IN INDIA

India is a country where a premarital sex is considered as an immoral though the concept of live-in relationship has emerged and developed for past few years. Various cases were filed before the judiciary to determine the rights of the persons who are in live in relationship but still now there was no specific legislation or no amendments in the marriage law to recognise the live-in relationship but the judiciary through various decision has recognised the live-in relationship and has determined the right of the parties in various aspects and in various period. The Supreme Court has recognised the right to privacy as a fundamental right.¹ In the way of right to privacy; the court held that the live-in relationship comes under the ambit of fundamental right enshrined in Article 21 of Indian Constitution. We can discuss the rights of live- in relationship through various case laws:

In Gokul Chand V. Pravin Kumari¹ the court held that if any person challenges or objects the presumption as to the relationship between two persons then the burden of proof lies on that person who objects. In that way it indirectly recognises the various types of relationship which includes the live-in relationship. where a men and women claim to be a husband & wife who are under live-in relationship, if their relationship is questioned then it has to be proved in affirmative. Without disapproving the court will accept the relationship as per the law. Further this point was again confirmed and stressed in the case Badri Prasad V.

¹ . AIR 1952 SC 231

Director of consolidation², in which the supreme court has recognised and legitimised the 50 years of living in relationship of a couple.

Later in *SPS Balasubramanyam v. Suruttayam*³ the Supreme Court moved one step ahead and held that there will be a presumption of marriage when a man and women cohabit under a same roof for considerable year by invoking provision of Section 114 of Evidence Act. Hence the child born out of that long term relationship will be considered as a legitimate child and they are entitled to inherit the properties in the same footing of child born out of the legal wedlock.

Further in *Payal Sharma V. Nari Niketan*⁴ the Supreme Court affirmed that even though the live in relationship is not acceptable by the Indian Society, it is neither an illegal nor an offence. Hence a two adult (i.e. man and women) could live together upon their willingness without getting married.

In the year 2003 Justice Malimath Committee gave a suggestion for giving financial assistance for the dependant in the living relationship for the first instance the committee suggested that the definition of Sec 125 of the Code of Criminal Procedure, 1973 must be amended to include the woman who was under live in relationship with a man as his wife. Later in *Chanmuniya V. Virendar Singh*⁵ the Supreme Court ensured that the right of a woman in live in relationship to claim maintenance under Section 125 of Criminal Procedure Code.

In 2008, again in *Tulsa V. Durghatva*⁶ the Supreme Court held that a child born out of the living relationship will no longer be considered as an illegitimate child.

In a landmark case *Koppiseti Subbharao V. State of Andhra Pradesh*⁷ the Supreme court held that the Criminal Section of 304 B and 498 A of Indian Penal Code would apply even if the man claims that the woman who gave complaint about the harassment is not his legally wedded wife. In this case the dowry harassment provision will be applied to the person who is in live in relationship even though the first marriage subsists. The court further held that the man cannot escape from the law by using the term legally not wedded.

² . AIR 1978 SC 1557

³ . (1994) 1. SCC 460

⁴ . AIR 2001 All 254

⁵ . (2011) 1 SCC 14

⁶ . AIR 2008 SC 1193

⁷ . AIR (2009) SC 2684

In another important case of Velusamy V. Patchaiammal⁸ the period of cohabitation to recognise the live-in relationship is discussed here the court clarifies that the walk in and walk out relationship is not considered as a live-in relationship.

The kushboo v. Kanniammal⁹ was as landmark case in the history of living relationship. In this case the Supreme court gave a legal recognition to live in relationship by interpretation the definition under the protection of women from domestic violence act,2005 and further the court held that live in relationship comes within the ambit of Article 21 of Constitution.

The Supreme Court in Indra Sarma Vs. VKV Sarma¹⁰ mark a difference in the live-in relationship into two. One is the cohabitation between a married and unmarried and another is the cohabitation of two married individuals and between the married and unmarried individuals. Further the court only recognise the living in relationship between unmarried individuals and further the court has advised the parliament to formulate appropriate legislation for live in relationships.

In Svetlana Kazankina V. Union of India¹¹, the Court opined to grant an extension of visa based on the live-in relationship and the court further held that marriage and live-in relationships should not be treated differently. Thus, the judiciary in India has recognised the live-in relationship and has given rights to the parties and place live in relationship in the same footing of legal marriage.

The live-in relationship may be advantage for the individuals but not for society. When the law does not recognize or regulating the concept of live-in relationship. It may leads to unwanted child or abandoned child as well as the violence again women. It will lead to the raise in illegal relationship or in bigamy. When the cases are reported before the courts then it is the time to recognise or enact law to enact law to regulate the right of the person who are in live in relationship.

⁸ . (2010) 10 S.C.C. 469

⁹ . AIR 2010 SC 3196

¹⁰ . (2013) 15 SCC 755

¹¹ . W.P.(C)--635/2013

Reference:

- Aditya Manubarwala & Bhavyata Kapoor, “Live-in relationships vs morality: A case for strengthening Domestic Violence Act”
- Paras Diwan, “Family Law”
- Live-In Relationship And Indian Judiciary. SCC Blog. <https://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/>.
- Jagpreet Singh Sandhu, published May 20, 2021 “Live-in relationships not prohibited by law and its social acceptance also on the rise: Punjab & Haryana HC”



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