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Judicial Innovation: Recognition of Live-In Relationship in India

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ABSTRACT

In most of the places it is legal for couples to live-in relationship without getting married although in Indian society unmarried couples living together is not considered good for the society and generally not accepted by Indian families.

Few states still prohibit fornication, and any type of sexual relation between unmarried men and women. But such laws are no more enforced.

*There are no specific laws on the subject of live- in relationship nor it is recognized by the Hindu Marriage Act 1955. In absence of any statute the court did try to shed light on it though some of the judgments given in certain cases like *Badri Prasad vs. Deputy Director of Consolidation, Payal Katara vs. Superintendent Nari Niketan Kandri Vihar Agra and Others**

*In case of *S. Khushboo vs. Kanniammal & Anr.* The court held that “LIVING TOGETHER IS THE RIGHT TO LIFE”. For the very first time in the protection of women from the domestic violence Act, 2005 (pvdva) the legislature has acknowledged live-in relationship by giving rights and protection to those females who are not married and living with a male partner in a relationship.*

Live in relationship has always been a debatable topic and in the present time it is one of the most focused topic as many new cases are coming in Indian courts related to rights and advantages that are given to the couples who are considering live in relationship over marriage.

There are many laws which are formed regarding live in relationship recently and many of the couples are choosing to live together without any bondations of marriage and any type of religious ceremonies or any of the legal bondations by any type of legal authority.

I. INTRODUCTION

The concept of Live In-Relationship was one of the practice stunned away by the Indian society for long time. It was considered as the abomination to Indian Society and most importantly to the Hindu Dharma, which prefers “One man, One wife” as the most sacred form of matrimony. But as the time passed and people started evolving mentally, many of the forbidden practices

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were more openly accepted by the successive modern generation. The recent judgments like decriminalizing section 377 and 497 of IPC presents how Indian legal system and Indian laws are also evolving with the society.

The improved mindset is the result of freedom, privacy, profession, education and also the globalization. Moreover, for most of young and working, it is an escape from the responsibilities but the better way to understand their partner and to check if there is compatibility at all.

Live In-Relationship involves constant cohabitation between the partners without any type of responsibilities or obligation towards one another. There is not any type of law forcing the partners to live together, and therefore either of the partners can move out as per their choice.

Under section 125 the meaning of the word wife should be changed. The amendment would be like those woman who believes in Live In-Relationship or wants to have a polygamous relationship is legal

In a country like India were every religion has their strict value this is one of the Odd step taken but it is to prove “Right To Live”.

(A) Scope and Objectives

Live In-Relationship give the chance to the partners to understand each other and test their compatibility before getting into any type of legal bond this even lesser the chance of getting separated after getting bonded into a legal bond’

However ,not being in any type of social or legal bond has its own advantages, being in live in –relationship there is not any type of compromises should be needed from both the sides which is generally needed in married couples.

Partners can share their expenses between each other there is no pressure of satisfying or pleasing relatives or fulfilling the expectations of parents. These types of responsibility are generally faced by the married couples.

There are less legal hassles, being unmarried automatically implies the relationship from any type of legal obligations. If any of the partner is unsatisfied or facing any type of problem with the relationship can walk out without any legal pressure.

In Live In –Relationship each individual is responsible for their own conditions. There is no financial pressure on any of the partner.

The main concept of live in – relationship is that both couples are free from any type of legal responsibilities or any type of financial pressure. There is no need to make any type of

compromises to stay in or to continue with the relation because there is no legal pressure and who will have the custody of the child.

(B) Objectives

- To study the definition of live in relationship
- To research on the rights of women in live in relationship
- Status of child born out of live in relationship
- What the status of concept itself

(C) Literature Review

This research shows that how the concept of Live In-Relationship is taken by Indian society. How laws towards the live in relationship is changed as the time passed.

It gives the brief about what is the legal status of live in relationship in in India and hoe the modern generation in accepting the concept of “Living Together Is The Right To Life”. There are still many questions and obligation on this concept because in India there is very respectful place for each and every religion and their regulations and challenging those religious lows are difficult but as the time passing the society is being more practical and thinking of the youth generation is broad.

This research also shows the rights of women who are in Live In-Relationship and what are their benefits and what is their legal position in the society or in Indian legal system.

In spite of woman there are children who are born from the couples under live in relationship, this research briefs about their rights, who are responsible for them and their rights, on parents property.

Most importantly it gives couples a chance to see is there even a cohabitation between the two or not.

(C) Research Problem

Is there a need to regulate the concept of “live in” relationships in the present modern scenario, wherein the honorable Apex Court has accepted that the “right to live-in” as a part of Right to Life and also when the female partners in the live in relationship are seeking rights against their male counterparts, relating to the maintenance and succession, etc.?

(D) Methodology

The data of the research has been collected, for Empirical method through the sampling using one of the questionnaire for all the participants- Primary Data and the doctrinal method, has

been collected through various cases, articles on the Indian as well as Foreign judgments and regarding the status of live-in relationships, and the rights resulting from their-Secondary Data

II. STATUS OF LIVE IN-RELATIONSHIP IN INDIA

(A) Legal status of Live In-Relationship in India

The Live In-Relationship is legally defined as “An agreement under which the couples which unmarried live together to conduct long term relationship similarly as in marriage”.

The first ever case in India in which the Supreme court of India recognized the live in relationship as valid marriage was of *Badri Prasad vs. Dy. Dictator of consolidation*, in this case the court has given the validity of live in relationship to 50- year old live in relation.

In the case of *S. Khushboo vs. Kanniammal and Anr.*, the honorable Supreme Court held that living together is the “right to life”. Live In- relationship may be immoral in the eyes of the conservative Indian society but it cannot be considered “illegal” in the eyes of Indian law. In this case, all the charges against Kushboo, the popular south Indian actress who use to endorsed pre- marital sex and live In- relationship were dropped. The Court held that how can it be illegal if two adults are living together, in their own words without doing any type of harm to the society “living together cannot be illegal.”

(B) Acceptance of Live In-Relationship In Indian Society

The practice of live In-Relationship is not considered good in the Indian society for the long time even today in many families it is not considered good for their image in the society, but as the time passed the Indian law legalized many of the practices which are not considered good earlier but now they are accepted comfortably even by the society like section 377 and 497 of IPC being legal shows the major advancement of in the society.

As in India there is a very great impact of religious method and the ways that honor each and every religion and has its own importance. So even for the Indian Government it a difficult task to make the acceptance of Live In-Relationship but after so many cases that are related to the same concept.

(C) Indian Ways

In typical Indian marriage, both the partners are given certain duties that are supposed to be performed by either of them, there are certain religious personal laws to protect the matrimonial bond between two partners.

Being an alien concept for the Indian legislature does not have any type of specific legal

implications for the couples who live together without any religious or legal bond of marriage involved in the relationship.

Live In- relationships was legally considered void-ab-initio, but in the judgement in 1978, Live In- relationships were considered valid for the first time by the honorable Supreme Court. If that the requisites of the marriage such as the mental soundness, the fulfilment of legal age of the marriage and consent, etc. are all satisfied, the couple is considered in a legal live-in relationship. The couple is also considered married if they are leaving together for a considerably long period until the court prove otherwise.²

III. RIGHT OF FEMALE IN LIVE IN-RELATIONSHIP

(A) Right to maintenance of women in Live In-Relationship

In June, 2008, it was recommended by the National Commission of India for Women, the Ministry of Women and the Child Development to include the Live-In female partners as the, Right of maintenance under Section 125 of The Criminal Procedure Code, 1973. The view of this concept was also supported by the judgment in the case of *Abhijit Bhikaseh Auti vs. State Of Maharashtra and Others*. In October, 2008, the Maharashtra Government also became the supporter of the concept of Live In- Relationships by accepting the proposal made by Malimath Committee and the Law Commission of India which proposed that if a woman has been in a Live In-Relationship considerably for the long period of time, she ought to enjoy the legal status as given to wife in married couples. However, recently it was observed that it is a divorced wife who is treated as a wife under the context of Section 125 of CrPC and if a person has not even been married that is in the case of live in partners, they cannot be considered divorced, and hence cannot claim maintenance under the Section 125 of CrPC.

The partner in a Live In- relationship was for the first time accorded protection by the Protection of Women from Domestic Violence Act, 2005, which considers females who all are not formally or legally married, but are although living with a male person in a Live In-relationship, which is almost in the nature of marriage, and also akin as wife, though not particularly equivalent to the status of a wife. Section 2(f) of the Act defines as the domestic relationship which means a relationship between two persons who are leaving or have lived together at any point of time, in a shared household, when they are directly related by the

² Legal definition of Live In-Relationship
Case of *Badri Prasad vs. Dy. Director of consolidation*
Case of *S. Khushboo vs. Kanniammal and Anr.*
IPC section 377 and 479.
Indian way, religious aspects
Judgment of 1987

consanguinity, or marriage, or through a relationship which resembles the nature of marriage, adoption or are any family members living together as a joint family. Thus, the legal definition of domestic relationship includes not only the relationship of marriage but also any type of relationship 'in the nature of marriage'.

In, one of the case in Delhi, the Delhi High Court awarded Rs. 3000/- per month as the maintenance to the maid who was in a Live In- relationship with her widower employer. In *Varsha Kapoor vs UOI & Ors.*, The Honorable Delhi High Court has held that the female living in a relationship which is in the resemblance of the nature of marriage has the legal authority to file a complaint not only against husband or male partner, but also against his relatives with whom the female partner faced trouble or any type of domestic in-convenience. In the case of *Koppiseti Subbharao Subramaniam vs. State of Andhra Pradesh*, the defendant used to harass his live in partner for taking the dowry from her. In this case the Supreme Court held that the nomenclature 'dowry' does not have any magical charm written over it. It is just a label given to demand of money in relation to a marital relationship. The Court rejected the contention of the defendant that since he was not married to the complainant, Section 498A did not apply to him. Thus, the Supreme Court took one more step ahead and protected the woman in a live in relationship from harassment for dowry.³

IV. LEGAL STATE OF CHILDREN BORN OUT OF LIVE IN RELATIONSHIP

"Live in relationship is a walk and walk out relationship. There are not strings attached to this relationship, neither this relationship creates any legal bound between the parties. It is a contract of living together which is renewed everyday 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".

In a society based on traditional values like India, Live In- Relationship is a concept which still has to come out of its closet and gain full recognition by a larger section of the society. Marriage has been considered to be forming the foundation of the society and governing all heterosexual relation in the society for a prolonged period of time and this informal setup of a live in relationship seems to be challenging the basic tenets of marriage as a sacrosanct institution.

The status of the children who are born as a result of such a relationship is also not clear and due to this reason the courts have provided a description to the concept of live in relationship

³ The Ministry of women
Section 125 of CrPC
Domestic violence Act
Case of *Koppiseti Subbharao Subramaniam vs. State Of Andhra Pradesh*

through various judgment in the past few years. The court have the liberally stated that any man and women who are cohabiting since a long time

will be presumed to be legally married under the law unless it is proved to be contrary. The rights to maintenance of a women in live in relationship is decided by the court to be in accordance with the protection of women from domestic violence Act 2005 and will be given to the basis if the individual facts of the case

V. THE LEGITIMACY OF CHILDREN BORN IN CASE OF LIVE IN RELATIONSHIP

The first and the foremost right for a child born in a live in relationship is the rights to legitimacy. This rights will form the basis for all the other rights which are available to a child in our country

As per the existing law and social framework it is only children who are born to the married couple are legally entitled and recognized in the society. Marriages in islam is considered very significant as it is a civil contract between the two parties and marriage is considered good not only for the individual but for the good of the family as well. But living marriage is recognized till the date. The supreme court in Malimath committee report there it had defined the word eife in section 125 of CrCP and asked to be amended to also include any women who was living with a man his wife for a long period of time even when had a wife at that time from the first marriage. Again in protection of women to claim alimony who was living with that man from DOMESTIC VOILENCE ACT,2005 certain amendments were done so as to guard women who were involved in live in relationship that want on and defined the term “domestic relationship”. Indian judiciary has played a very important role in many ways by giving landmark judgements, such as in case of Dimple Gupta v. Rajiv Gupta where social justice was given by pronouncing that even the illegitimate child that is born out of illicit relationship was entitled to maintenance when they are minor and after they had turned major and where he/she is not able to maintain himself/herself. By this, the court had stated that children born to live-in parents are legitimate and have the same rights as in case of children from the valid marriage. Again, in case of SPS Balasubramanyam vs. Sruttayan that if a man and a woman are living under one roof for some years, then it will be presumed under Section 114 Evidence Act that they live as a husband and wife and children born to them are not illegitimate Article 39(f) of the Constitution of India which lays down the responsibility of the State to provide the children with adequate opportunity to develop in a normal manner and safeguard their interests. hqdefault

In the modern days, cases like Tulsi v D have held that a child born from such a relationship

will no more be considered as an illegitimate child. The crucial pre-condition for a child born out of a live-in relationship to be not treated as illegitimate is that the parents must have lived under one roof and co-habited for a significantly long time for society to recognize them as husband and wife and “it should not be a “walk in and walk out” relationship, as the Supreme Court has pointed out in its 2010 judgment of *Madan Mohan Singh and Ors v Rajni Kant & Anr.* The Courts in India have continued to support this interpretation of law in a manner to ensure that no child is “bastardized” for no fault of his/her own as it has been seen in the case of *Bharata Matha & Ors. V.R. Vijaya Renganathan & Ors.* In this case, the Supreme Court had held that a child born out of a live-in relationship may be allowed to succeed in the inheritance of the property of the parents (if any) and subsequently be given legitimacy in the eyes of the law.

(A) Right to Property

Right to Property is when there is an inheritance right to the person concerned. Under Hindu Succession Act, 1956 it gives right and tells that a legitimate child has the right including both son and daughter from Class-I heirs in the Joint Family Property. But in Hindu Law, the child which is illegitimate could only inherit the property from his/her mother’s side and not the alleged father. The legitimacy of a child has always been a topic of debate and legitimacy has always been considered a major factor while considering the inheritance rights under Hindu Law. Courts have but always said that a child born out of the live-in relationship will not be denied the inheritance of property when born after a reasonable period of time. In case of *Vidyadhari vs Sukhrana Bai* where a landmark judgement was passed where the court granted the right of inheritance to the child born out of live-in relationship and granted him legal status.

Many judges have criticized the idea of giving legal status to children born out of the live-in relationship. Justice Ganguly while criticizing the *Bharat Mata vs Union of India* case talked on the issue of live-in relationship and their rights to the property. He said that the legislature has used the word “property” in Section 16(3) of HMA, 1955 and has been silent on the topic that whether the property in question should be ancestral or self-acquired property. In such situations, the court has decided not to deny the child the right to property in an arbitrary manner.

Maintenance which is often talked about with respect to the rights of the live-in partners and to the child born out of such relationship. Under Section 21 of Hindu Adoption Act, 1956 that a son whether legitimate or illegitimate till the time he is minor and so long the daughter is unmarried she shall be entitled to maintenance by his/her father or from his estate of his/her

deceased father.

If there is denial of maintenance rights to children born out of live-in then it could be challenged under court of law who has appropriate jurisdiction for violation of fundamental right under Article 21 and such type of denial of rights will lead to depriving the individual the right to live with dignity and was upheld by the Kerala High Court. There has always been unequal treatment of children born out of live-in relations and marital relations even it is now said and proven by the courts that they are treated equally. The children who are born out of live-in are treated as equally even after so many pronouncements to not to treat them differently and if done then there would be a violation of Article 14. Thus even after so many judicial pronouncements the rights of children had been and remains a topic of debate.

legitimacy has always formed a pre-requisite for the inheritance rights under Hindu law. Consequently, the Courts have always ensured that any child who is born from a live-in relationship of a reasonable period should not be denied the right to inheritance and this practice is in sync with Article 39(f) of the Constitution of India. The Supreme Court in *Vidyadhari v Sukhrana Bai* [9] passed a landmark judgment where the Court granted the right of inheritance to the children born from a live-in relationship and ascribed them with the status of “legal heirs”.

Justice Ganguly in his criticism of the *Bharata Matha* case deliberated on the issue of live-in relationships and property rights of a child born out of such a relationship. He stated that the legislature has used the word “property” in Section 16(3) of the HMA, 1955 and is actually silent on whether such a property is meant to be an ancestral or a self-acquired property and in light of such an uncertainty, the concerned child’s right to property cannot be arbitrarily denied.154296183-621x414

Clauses (1) and (2) of Section 16 expressly declare that such children should be deemed as legitimate children in the eyes of the law. Thus, such discrimination against them and unequal treatment of other legitimate children who are legitimately entitled to all the rights in the property of their parents, both self-acquired and ancestral will amount to an amendment made to this section. Consequently, the Judge stated in *Parayan Kandiyal Eravath Kanapraavan Kalliani Amma (Smt.) & Ors. vs. K. Devi and Ors* [10] wherein it was held that the HMA, 1955, a beneficial legislation, has to be interpreted in a manner which advances the objective of the law.

The intention of the HMA, 1955 with respect to Section 16 and the subsequent amendment eliminating the distinction between children born out of valid/void/voidable marriages is to

bring about social reforms and conferment of the social status of legitimacy on innocent children which would actually be undermined by imposing restrictions on rights guaranteed under the said section.

(B) Custody of the Child

This is one of the core issues faced by both the partners in a live-in relationship as compared to the married couples and this is so because there is no law or legislation regarding this issue. To decide upon this problem of custody courts have referred to Section 13 of Hindu Minority and Guardianship Act, 1956 which tells us about the welfare of the concerned minor to be of utmost consideration. In the case of *Shyamrao Maroti Korwate* case held that the word 'welfare' is needed to be taken and inferred literally and in a broad manner. Apart from this, there are certain acts like Guardianship and Wards Act, 1890 and these acts are to be read together and then it is to be implemented in case of a child case for custody. Then there should be the appointment of a guardian for the minor in a proper manner.

So, even though there might be the case in live-in relation where the court gives the custody of the child to the male partner, however, interpretation should be done in favour of the child only and nobody else. It is to be kept in mind that evolves as the society grows and even though there have been cases where the court gave the verdict and supported the live-in relationships then also there has been an equal number of verdicts that have done the opposite. So, the law needs to keep in mind that there has been an emerging form of relationship because of the fast pace of growth in the economy and also because of the modernisation of culture in India. In the end, the impact of the live-in relationship on children must be analysed and kept in mind as this is the crucial part.

Under Muslim law, there is no obligation as such to maintain the child born out of live-in as it is the case under Hindu Law. The first and foremost right to have the custody of the child belongs to the mother and she cannot be deprived of her rights till the something contradictory is proven. The mother will have all the rights of custody of the child in all case and this right under Muslim law is known as *hizanat* and it could be used against the father of the child or any other individual.⁴

⁴ The Domestic Violence Act, 2005
Balasubramanyam vs. Sruttayan
of *Bharata Matha & Ors. V.R. Vijaya Renganathan & Ors.*
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VI. CONCLUSION

Live-In Relationships in India have still not received the consent of the majority of the people. They are still considered as the taboo to the Indian Society. The majority of the people consider these kind of relationship as an immoral and an improper relationship. At present there is no such specific legislation that deals with concept of live in relationship and the rights of both the parties and the children born from those couples leaving together without any legal or religious bond. It was a very unambiguous concept until the Supreme Court of India took the initiative and declared that live in relationship though considered immoral according to the religious concepts but it is not illegal.

Through its various decisions the judiciary has tried to accord legality to the concept and protect the rights of both the parties and the children of live in couples. But at present there is a need to formulate a specific law that would clarify the concept in a more formal way. There should be clear provisions with regard to the time span required to give status to the relationship in the society, registration and rights of both the parties and the children born out of it. The utmost need is to secure the future of the children born to live in couples. The steps taken by the judiciary are indeed welcoming and pragmatic in approach towards the concept. Though the live in relations provide the individuals individual freedom but due to the insecurity that it carries it with, there needs to be a law to curtail or lesser its disadvantages.

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