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Living Under the Same Roof: The Concept of Live-In-Relationship

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ABSTRACT

As we know that law is a dynamic concept that changes as per the need of society and only those laws will survive if they fulfill the need of society. In the world of modernization and globalization, people get mature and also follow the many concept or fashions of the western world, and one of them there is the concept of the live-in-relationship which is very popular nowadays and many young couples this right is a fundamental right under the constitution of India. If we see the history of India we could not find such things as the Indian society being very religious and following their custom and tradition and living with unmarried couples before marriage is a sin for them so they did not allow them even till today but many young couple claim to be live together before the marriage so that they will understand their partner in a well way so that after they married it will face any difficulty with them. Following this ideology, they follow this concept of live-in-relationship but few laws protect the couples if any issue will arise from such thing. This paper will discuss the concept of the live-in-relationship and what will be the law says about the right of women under various laws, the right of the children born from such relationships, the legal status of that child, and judicial trends in this matter.

Keywords: *Live-in-relationship, Article 21 of Constitution, section 125 CrPC, Section 114 Evidence, and Domestic Violence Act.*

I. INTRODUCTION

Before going ahead it is important to know the definition of the live-in-relationship. Cohabitation is a live-in relationship. It is a situation in which two people choose to live together for an extended period or permanently, engaging in close emotional and sexual ties. A live-in relationship is defined legally as an arrangement of living in which an unmarried couple stays together to maintain a long-term relationship that is comparable to marriage.³ But the tone is informal. In actuality, this type of partnership spares the couple living together the duties typically associated with marriage. In most cases, people decide to participate in such

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³ <http://www.thegeminigeek.com/what-is-live-in-relationship>.

consensual agreements either to determine their compatibility before marriage, if they are unable to legally wed, or because it avoids the challenges of traditional marriage. The Concept of the live-in-relationship is not a new concept it is the only result of modernization and it has rooted in much international law many of which are described as follows-

(A) Australia

“As per Section 44-A Family Law Act 1957(Australia)-

- 1) A person is in a *de facto relationship* with another person if:
 - a) he persons are not legally married to each other; and
 - b) the persons are not related by family and
 - c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Paragraph (c) has an effect subject to subsection (5).

Working out if persons have a relationship as a couple

- 2) Those circumstances may include any or all of the following:
 - a) the duration of the relationship;
 - b) the nature and extent of their common residence;
 - c) whether a sexual relationship exists;
 - d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
 - e) the ownership, use, and acquisition of their property;
 - f) the degree of mutual commitment to a shared life;
 - g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship
 - h) the care and support of children;
 - a. the reputation and public aspects of the relationship.
- 3) No particular finding concerning any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.
- 4) A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem

appropriate to the court in the circumstances of the case.

5) For this Act:

- a) a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and
- b) a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.”⁴

(B) Canada

“In Canada, live-in relationships are also recognized by the law. Two people who are cohabiting or intend to cohabit and who are not married to each other may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, upon ceasing to cohabit, or upon death, including ownership in or division of property; support obligations. This is stated in Section 54 (1) of the Family Law Act, R.S.O. 1990. the authority to decide how their kids are raised and educated, but not the custody or visitation rights of their kids.”⁵

(C) France

On October 13, 1999, the Civic Solidarity Pact was adopted by the French National Assembly. In France, the civil solidarity contract regulates live-in relationships. "A civic solidarity pact is a binding agreement between two people, of either sex, to arrange their shared lives; the contracts may not be tied by another pact, by marriage, a sibling, or a lineage. Adults in custody are unable to sign contracts."⁶

II. THE CONSTITUTION OF INDIA

The Constitution of India is the mother of the law which is enforced in the territory of India. All the laws are made in such a way that they will not violate the constitution and additionally they are subjected to Judicial review by the Apex Court. There are various occasions when the Apex Court issued some guidelines when there was no law on that particular subject. Live-in-relationship is also one of the subjects which taken their power from Article 21 from Part III of the Constitution which is stated as follows-

“Protection of Life and Personal Liberty: No person shall be deprived of his life or personal

⁴ See Section 44-A of 44-A Family Law Act 1957(Australia).

⁵ See Section 54 (1) of the Family Law Act, R.S.O. 1990.

⁶ See The Civic Solidarity Pact.

liberty except according to procedure established by law.”⁷

The Interpretation of Article 21 has given the two rights-

- Right to life
- Right to Personal liberty.

The Apex court itself declared this article as the “ **Heart of fundamental rights**” as the scope of Article 21 is not narrow and restricted and it gave many concepts such as –

- a) Right to privacy (*Justice K. S. Puttaswamy (Retd.) and Anr. v. Union Of India And Ors* ⁸.)
- b) Right to go abroad (*Maneka Gandhi Of India And Ors.* ⁹)
- c) Right to shelter (*Olga Tellis v. Bombay Municipal Corporation*¹⁰)
- d) Right against handcuffing (*Sunil Batra v. Delhi Administration* ¹¹)
- e) Right to pollution-free water and air (*Subhash Kumar v. State. of Bihar* ¹²)
- f) Right to health and medical aid (*Consumer Education and Research Centre v. Union of India* ¹³)
- g) Right to education (*Unni Krishnan, J.P. And Ors. v. State Of Andhra Pradesh And Ors.* ¹⁴)

As the live-in-relationship come under the scope of fundamental right so the couple claim such right through the writs under article 32 and 226 of the Constitution and even the Apex court gave their view regarding this concept through various judgment.

The Supreme Court legalized live-in relationships in India and construed them as legal marriages in the case of *Badri Prasad v. Dy. Director of Consolidation*.¹⁵ In this instance, the court recognized a couple's 50-year live-in relationship as being valid.

Living together is a right to life and is not, according to the court in *S. Khushboo V. Kanniammal and Anr.*¹⁶ Even though it is viewed as immoral by the conservative Indian

⁷ See Article 21 of The Constitution of India, 1950.

⁸ (2017) 10 SCC 1).

⁹ AIR 1978 SC 597; (1978) 1 SCC 248.

¹⁰ 1985 SCC (3) 545.

¹¹ AIR 1978 SC 1675.

¹² (1991) 1 SCC 598.

¹³ AIR 1995 SC 922.

¹⁴ 1993 AIR 2178, 1993 SCR (1) 594.

¹⁵ 1978 AIR 1557, 1979 SCR (1) 1.

¹⁶ (2010) 5 SCC 600.

community, the court ruled that cohabiting is not against the law.

"When two adult people want to live together what is the offense? Does it amount to an offense? Living together is not an offense. It cannot be an offense," a three-judge bench of Chief Justice K G Balakrishnan, Deepak Verma, and B S Chauhan observed. The court said even Lord 'Krishna and Radha' lived together according to mythology. The apex court said there was no law which prohibits live-in relationship or pre-marital sex."¹⁷

The Supreme Court ruled in *Lata Singh v. State of UP & Anr*¹⁸. that, "only adult, unmarried individuals of heterosexual sex were permitted to live together. If the couple is already married, the male may have committed adultery, which is punishable by section 497 of the IPC."¹⁹

The Allahabad High Court stated in *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others*²⁰ that, "men and woman, even without getting married, can live together if they choose" and that "a lady of roughly 21 years of age, being a major, has right to roam wherever."

III. SECTION 125 OF THE CODE OF CRIMINAL PROCEDURE, 1973

Section 125 to 128 of the Code of Criminal Procedure gave the rights of maintenance to the wife, children, and parents from the person who wilfully neglects or refused to maintain them if he has sufficient means to maintain them.²¹

The Malimath Committee recommended that the word "wife" under the Cr.P.C. be amended to include a "woman living with the man like his wife," which means that the woman would also be entitled to alimony. Before the various judgments and recommendations, only the legally wedded wife could claim maintenance from her husband.

In the case of *Abhijit Bhikaseh Auti v. State of Maharashtra and others*,²² the Supreme Court ruled that "a woman did not need to formally prove her marriage to be entitled to maintenance. A woman living in a relationship is also eligible to make a maintenance claim under Section 125 of the Cr.PC."

In the *Vidhyadhari V. Sukhrana Bai*,²³ the Supreme Court ruled that "those who have been cohabiting as husband and wife for a reasonable amount of time are eligible to inherit property

¹⁷ (2010) 5 SCC 600.

¹⁸ AIR 2006 SC 2522.

¹⁹ JT 2010 (4) SC 478.

²⁰ AIR 2001 All 254.

²¹ See Section 125 of the Code of Criminal Procedure, 1973.

²² CRIMINAL WRIT PETITION NO.2218 OF 2007.

²³ Appeal (civil) 575 of 2008.

from a live-in spouse.”

IV. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

This Act was passed to protect women from the various forms of domestic abuse they may experience in the matrimonial home, including physical, mental, and financial abuse. Nonetheless, the term "wife" has adopted a new shape due to social change. The wife today also refers to "women who are live-in-relationships too.”

In the case of *Rajeevi v. Sarasamma*,²⁴ the court observed that "persons in a live-in relationship who have lived together for a very long time may be subject to laws addressing maintenance and domestic abuse and may, for certain purposes, be regarded as husband and wife. Yet, a partnership of this nature cannot become legally married. A female live-in partner cannot have a stronger claim than a wife who is legally wed.”

A new domestic violence law in India now treats live-in relationships the same as marriage. Those who are in live-in relationships are now covered under the Domestic Violence Act of 2005's provisions as well. The changes are meant to safeguard those who experience domestic violence in cohabiting partnerships. According to Section 2(g) of the aforementioned Act, a relationship between two people who are currently living together or have previously lived together is regarded as a domestic relationship. In the event of abuse or harassment, a woman in a live-in relationship may file a lawsuit against her boyfriend. The new law also offers protection to Indian women who are caught in illegitimate or fraudulent unions.

Under section 498 A of the IPC, a woman who experiences any kind of violence in a live-in or marital relationship may make a complaint. In addition, she is allowed to request remedies under sections 18 to 23 of the Domestic Violence Act through interim orders, compensation, and protection orders.

V. RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATION

The Supreme Court first addressed the issue of the legality of children born from live-in partnerships in *S.P.S. Balasubramanyam v. Suruttayan*.²⁵ According to a ruling, “there would be a presumption under Section 114 of the Evidence Act that a man and woman are living together as husband and wife and that any children they have together are legitimate.”

Subsequently, the court ruled in *Revanasiddappa v. Mallikarjun*²⁶ that, "the child born out of

²⁴ MAT.APPEAL NO. 338 OF 2017

²⁵ 1994 AIR 133, 1994 SCC (1) 460.

²⁶ [AIR 2010 SC 2685].

that relationship shall be viewed apart from the relationship between his or her parents, regardless of the legitimacy of the relationship between parents." Judge AK Ganguly observed that the child born from such a relationship is innocent and has the right to receive all the privileges and rights that are granted to children who are the product of legally binding marriages."

The Supreme Court ruled in *Vidyadhari v. Sukhrana Bai*²⁷ that, "under section 16 of the Hindu Marriage Act, children born out of a live-in relationship should be accorded the status of "legal heirs" and be eligible to inherit the property of both parents."

According to the Supreme Court's ruling in the case of *Dimple Gupta v. Rajiv Gupta*²⁸ even an illegitimate child born from an unlawful connection is entitled to support under Section 125 of the CrPC (Code of Criminal Procedure, 1973).

"The right to maintenance is a condition to the fatherhood of the child being proven," the court ruled in the case of *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal*.²⁹

The court's interpretation of "relationships like marriage" in the case of *D. Velusamy v. D. Patchaiammal*³⁰ is as follows: "Relationships like marriage are equivalent to a Common Law Marriage." Common Law Marriages demand that even though they are not legally married:

- a) The couple must present themselves as being similar to spouses to society
- b) The couple must be of legal age to get married.
- c) They must also meet all other requirements to be legally wed, such as not already being married.
- d) They had to live together freely and present themselves to others for a sizable amount of time as being close to spouses.

"The Supreme Court ruled in this case that if a couple had been living together for a significant amount of time, the child they had together may not be deemed to be an illegitimate child. A "walk-in and walk-out" relationship is not acceptable. The kid who is born out of a null and void marriage or when a decree of nullity is given in respect of a voidable marriage receives legitimacy under Section 16 of the Hindu Marriage Act, 1955, and Section 26 of the Special Marriage Act, 1954. Any child born or conceived before the decree is issued who would have been the legitimate child of the parties to the marriage is covered by Section 25 of the Special

²⁷ (2008) 2 SCC 238.

²⁸ AIR 2010 SC 239.

²⁹ (AIR 1978 SC 1807.

³⁰ AIR 2011 SC 479.

Marriage Act. The Special Marriage Act's Section 26 has a twist. According to subsection (3), these children can only inherit their parents' possessions. Children do not have any coparcenary rights to Hindu Undivided Families' property if their parents are not lawfully wed. As a result, this clause has been used to provide a child born into a live-in relationship the right to inherit from their parents independently earned property. But, if their parents are not married, the child is not eligible to claim the coparcenary right to their father's HUF property."³¹

VI. CONCLUSION

This article explains the idea of a live-in relationship and emphasizes the rights and remedies available to women in such relationships as well as the legal standing of children born from such relationships. Nonetheless, all legal rights and remedies have been derived from previous acts and statutes. In terms of Indian society, it is ethically improper for unmarried couples to coexist before getting married, yet it is preferable to live-in a relationship than to get divorced so that the couples can get to know one another. Additionally, it is the responsibility of the legislature to enact laws that are specifically designed for those who live in such relationships. These laws must expressly spell out the responsibilities of couples, the rights of children born from such relationships, and the necessary legal paperwork for those who wish to engage in such relationships.

³¹ *Tulsa & Ors vs Durghatiya & Ors. Appeal (civil) 648 of 2002.*