

Does live-in-relationship degrades the institution of marriages?

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Abstract

“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.” – Honorable Justice A.K. Ganguly in *Revanasiddappa v. Mallikarjun*

India is a country, which is slowly opening its doors to western ideas and lifestyles, one of which is the concept of live in relationships. A relationship of a man with a women in legal parlance is legitimate if is based on proper marriage and illegitimate if not as per Marriage Laws. The live in relationship is a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. In every day parlance, it is cohabitation.

The basic idea of conducting a live in relationship is that the interested couple wants to test their compatibility for each other before going for some commitment. It may also be that couples in live-in relationships see no benefit or value offered by the institution of marriage or that their financial situation prevents them from being married on account of marriage expenses. Whatever the reason, it is quite clear that in a traditional society, where the institution of marriage is considered to be 'sacred', an increasing number of couples choose a live-in relationship, sometimes even as a permanent arrangement, over marriage. In such situations, various social, economic and legal issues have arisen and continue to do so.

This article analyzes the impact of live in relationships on marriage and family institutions. It also aims at comparing the status of live in relationships with the status of married couples with the help of judicial decisions in India. It argues that it is difficult to fit the concept of live in relationships within personal laws governing the institution of marriage and legitimacy of children. Can Live-in relationship also a factor to degrade the sacred institution of Marriage?

Keywords: live-in relationship, marriage, institution, law

Introduction

Live-in relationships in India are often seen as a taboo and a sin. However, it is not very uncommon to find unmarried people in big metropolitan area staying together as husband and wife. None of the statutes dealing with succession or marriage such as the Hindu Marriage Act 1955, the Special Marriage Act 1954 or the Indian Succession Act 1925 and so on recognize live-in relationships specifically. However, under the Hindu Marriage Act, children born out of such relationships are considered to be legitimate and have been granted the right to succession^[1]. With no clear and specific legal sanction, there has been a huge societal change in the attitude towards live-in relationships together with multinational companies providing health insurance benefits to domestic partners of the employees.

The Protection of Women from Domestic Violence Act 2005 recognizes the right to protection of a person in a “relationship in the nature of marriage”^[2] from domestic violence^[3], with access to monetary and other reliefs under the Act. The law does have a concept called “presumption of marriage” which could be used to recognize such relationships. A presumption is available if a man and woman are living under the same roof and cohabit for a number of years. Continuous and prolonged cohabitation raises a presumption in favor of marriage^[4].

There is no legal hurdle to prevent a man and a woman cohabiting together without entering into formal marriage in the form of “live-ins”. The traditional Indian society however disapproved of such living arrangements, for several reasons. First, society revered the institution of marriage. Secondly, if a woman was financially dependent on the man, the instability of such a relationship created a subservient status for the woman. Till recently and even now in small towns and cities, there is much social criticism and stigma attached to such live-in relationships, forcing them to remain largely secretive.

Judicial Pronouncements

The Supreme Court in *Lata Singh v. State of U.P.*^[5] held that the live-in relationship is permissible only in unmarried persons of heterosexual sex of the age of majority. The brothers of Lata Singh had alleged that she was mentally unfit when they had protested her marriage. However this was held to be untrue when she was examined by doctors. The live-in relationship if continued for such a long time, cannot be termed as a “walk in and walk out” relationship; there has to be a presumption of marriage between them.

In *Gokal Chand v. Parvin Kumari*^[6] the court cautioned that the couple would not get legitimacy, if the evidence of them living together was rebuttable. These decisions only served to recognize marriages which were doubted, on the basis that a long-term live-in relationship existed. However the courts did not recognize live-in relationships as independent of the

¹ Section 16 of Hindu Marriage Act, 1955

² Section 2 (f), Protection of Women from Domestic Violence Act, 2005

³ Section 3, Protection of Women from Domestic Violence Act, 2005

⁴ Section 2 (k) read with Section 20, Protection of Women from Domestic Violence Act, 2005

⁵ (2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478

⁶ AIR 1952 SC 231

institution of marriage, that is the presumption of marriage was a key element.

In *S.P.S. Balasubramanyam v. Suruttayan* ^[7] the Supreme Court held that if a man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114 of the Indian Evidence Act that they live as husband and wife and the children born to them will not be illegitimate. This decision suggested that the law treats long live-in relationships as good as marriages. The courts could subsequently interpret live-in relations to mean “living together as husband and wife” to exclude those who enter into a live-in relationship “by choice” without intending to be married, as that is still a matter of doubt and debate.

The Supreme Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav* ^[8] held that where a man having a living lawfully wedded wife marries another woman, his second “wife” had no claim to maintenance under Section 125 of the Code of Criminal Procedure, 1973, even though she might be unaware of his earlier marriage. The Court refused to give any recognition to the fact that they had lived together even if their marriage was void. The man was allowed to take advantage of this, although he had failed to disclose his earlier marriage.

The Supreme Court held that it would not grant any rights to the woman in such a live-in relationship “of circumstance”. In *Malti v. State of U.P.*, the Allahabad High Court held that a woman living with a man could not be equated as his “wife”. In this case, the woman was a cook in the man's house and she stayed with him and shared an intimate relationship.

The Court however refused to extend the meaning of the word “wife” as denoted in Section 125 of the Code of Criminal Procedure to include such a live-in partner's maintenance claims. In *Savitaben Somabhai Bhatiya v. State of Gujarat*, the Supreme Court went further to the extent of observing that the fact that the respondent was treating the appellant as his wife “is really inconsequential because it is the intention of the legislature which is relevant and not the attitude of the party”. Even the plea that the appellant was not informed about the respondent's earlier marriage, when she married him, is of “no avail”, because the principle of estoppels cannot be pressed into service to defeat the provisions of Section 125 of the Code of Criminal Procedure. Thus, as per the present provisions of Section 125, there is no escape from the conclusion that the expression “wife” refers only to the “legally wedded wife”. Hence, the Court granted maintenance to the child and not to the second wife ^[9].

Under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision. In *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla* ^[10] the Court took a liberal view and stated that the second wife has a right to claim maintenance under the Hindu Adoptions and Maintenance Act, 1956. In this case the husband had not disclosed the facts of his first marriage and married the appellant and maintained a relationship with her for 14 years as husband and wife. The Court also took support from the provisions of the Protection of Women from

Domestic Violence Act, 2005 and held that if we do not give maintenance to the second wife it would amount to giving premium to the respondent for defrauding the appellant.

The Supreme Court in *Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga* ^[11] tried to distinguish between the “legality” and “morality” of relationships. Where the Supreme Court observed that keeping into consideration the present state of statutory law, a bigamous marriage may be declared illegal because it contravenes the provisions of the Hindu Marriage Act, 1955 but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to spouse.

The increasing incidents of live-in relationships, especially those which occur “by circumstance”, however ensured that the need for reforms was recognized. In 2003, the Malimath Committee Report on “Reforms in the Criminal Justice System” suggested an amendment of the word “wife” in Section 125 of the Code of Criminal Procedure to include a woman who is “living in” with a man for a “reasonable period”.

Ironically, back in 1985, the Supreme Court in *Sumitra Devi v. Bhikan Choudhary* ^[12] had held that where a man and woman were cohabiting for a long time and were treated by society as husband and wife, marriage is to be presumed for awarding maintenance. However, the courts have not extended this principle to include purported live-in partners. Significantly, the Protection of Women from Domestic Violence Act 2005 became the first statute to give live-in partners the same recognition as married couples. The protection under this Act does not qualify live-in partners to get the same benefit under personal law.

Review of Related Literature

In *M. Palani v. Meenakshi* the respondent had filed a claim for maintenance of Rs 10,000 for food, clothes, shelter and other basic necessities from the plaintiff, who had been in a live-in relationship with her. The said application was filed under Section 20 read with Section 26. The petitioner contended that the respondent was not entitled to any maintenance since they had not lived together at any point of time. They had only indulged in consensual sexual intercourse sometimes as friends, without any thought of marriage. He hence contended that mere proximity at some time for the sake of mutual pleasure (as in their case) could not be called a “domestic relationship” to invite the application of the Protection of Women from Domestic Violence Act, 2005.

The Madras High Court looked into the definition of “domestic relationship” as given in Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 which did not specify that the couple should have lived together for a particular period for the relationship to be a domestic relationship. The Court held that “at least at the time of having sex by them, they shared household and lived together”.

The Court further held that the provisions of the Act would apply even in such a case; hence, a maintenance claim under the Act was upheld. Thus the provisions of the Act would apply even in those cases where man and woman share a

⁷ 1992 Supp (2) SCC 304

⁸ AIR 1988 SC 644

⁹ Section 115, Indian Evidence Act, 1872

¹⁰ AIR 2008 Delhi 7, 148 (2008) DLT 522, I (2008) DMC 529

¹¹ (2005) 2 SCC 33

¹² AIR 1985 SC 765, 1985 CriLJ 528, 1985 (2) Crimes 88 SC, 1985 (1) SCALE 184

frequent sexual relationship, even if there is no express intention to a long-term commitment from either party. While some may see this as a weapon which may be used by a woman to seek vengeance on a man, if he walks out of a soured live-in relationship, a larger issue of protecting the rights and vulnerability of the “other” woman has been partially addressed by allowing such claims ^[13].

Partners in a live-in relationship do not enjoy an automatic right of inheritance to the property of their partner. The Hindu Succession Act 1956 does not specify succession rights to even a mistress living with a male Hindu. However, the Supreme Court in *Vidhyadhari v. Sukhrana Bai* ^[14] created a hope for persons living together as husband and wife by providing that those who have been in a live-in relationship for a reasonably long period of time can receive property in inheritance from a live-in partner. In this case property of a Hindu male, upon his death (intestate), was given to a woman with whom he enjoyed a live-in relationship, even though he had a legally wedded wife alive.

Women in live-in relationships are not recognized by their husband's surname, for any legal or financial matters including opening a bank account, submission of income tax return, applying for loans, etc. They retain their identity as an individual and are not recognized as a “wife” or a “domestic partner”. Consequently live-in couples can separate informally without any formal divorce or the intervention of a court.

In case of live-in relationship, it is not possible to have a formal divorce in law among partners. The careful scrutiny of the existing matrimonial laws indicates that unless this kind of relationship is not recognized in law the partners cannot be allowed to separate formally. It looks like it is easy to get into live-in relationship whether “by choice” or “by circumstance” but difficult to get out of this relationship formally. Whereas the consequences of this relationship are left unanswered in law, for example, there is no law in place which deals with the division and protection of their separate or joint property on separation.

Status of children from live-in relationships

There is an increasing trend of couples entering into live-in relationships, not as a precursor but rather a substitute of a formal marriage. Such long-term commitments often include procreation of children. In live-ins “by circumstance”, the partners may procreate believing that he/she will become legally married. Either way various legal issues arise about the status and rights of such children, born out of legal wedlock, in comparison to those born in marriages. Following are the key issues for consideration.

(a) Legitimacy of children

Section 112 of the Indian Evidence Act, 1872 provides that legitimacy of a child is proved only if he or she was born during the continuance of a valid marriage between his mother and father. Mohammedan (Muslim) law too recognizes only those children, who are the offspring between a man and his wife as legitimate children. Thus children born from a live-in relationship were “illegitimate” in the eye of existing law. However the Supreme Court in *Tulsa v. Durghatiya* held that

children born out of such a relationship will no more be considered illegitimate.

Again in *Vidhyadhari v. Sukhrana Bai* ^[15] the Supreme Court held that even if a person had contracted into second marriage during the subsistence of his first marriage, children from the second marriage would still be legitimate though the second marriage would be void.

(b) Maintenance rights of children

A legitimate son, son of predeceased son or the son of predeceased son of predeceased son, so long as he is minor, and a legitimate unmarried daughter or unmarried daughter of the predeceased son or the unmarried daughter of a predeceased son of predeceased son, so long as she remains unmarried, shall be maintained as dependants by his or her father or the estate of his or her deceased father ^[16].

But children from live-in relationships do not enjoy this right under the Hindu Adoptions and Maintenance Act 1956, whereas Section 125 of the Code of Criminal Procedure provides maintenance to children whether legitimate or illegitimate while they are minors and after they attain majority where such child is unable to maintain himself. However, the right to maintenance of children born from a live-in relationship was upheld in 2007, in *Dimple Gupta v. Rajiv Gupta* ^[17].

(c) Guardianship and custodial rights

In Hindu law, after the marriage of a man to a girl who is a legal minor, the husband is the legal guardian of his wife as a minor and is entitled to her custody. The mere fact that she is a minor will not disentitle her from claiming such custody to the exclusion of her parents. Where the father and the mother are not married to each other and a child is born to such parents, the mother and not the father has the parental responsibility for the child.

Section 6(a) of the Hindu Minority and Guardianship Act 1956 provides the father as the natural guardian of his minor legitimate children and the mother becomes the natural guardian “in his absence” i.e. where he is incapable of acting as the guardian ^[18].

Section 6(b) of the Hindu Minority and Guardianship Act 1956 provides the mother as the natural guardian over any illegitimate children she has. Under Muslim law, the father is the natural guardian and the mother does not become the natural guardian even after his death. Muslim law does not provide for the guardianship of illegitimate children, but it has come to be established through case law that it will be vested in the mother.

While deciding a matter on custody, the court takes into account the welfare, age, sex and the wishes of the child as well as the wishes of his parents; the welfare of the child shall be the paramount consideration. This applies even in custody cases involving children from live-in relationships.

(d) Inheritance rights of children

Under Hindu law, an illegitimate child inherits the property of his mother only and not putative father, whereas under Sharia

¹³ Prof. Vijender Kumar, Live-In Relationship : Impact on Marriage and Family Institutions, (2012) 4 SCC J-19 at p. J-19

¹⁴ (2008) 2 SCC 238 : (2008) 1 SCC (L&S) 451

¹⁵ (2008) 2 SCC 238 : (2008) 1 SCC (L&S) 451

¹⁶ Section 21, The Hindu Adoptions and Maintenance Act, 1956

¹⁷ 2002 CriLJ 493, II (2002) DMC 1

¹⁸ Section 13, The Hindu Minority and Guardianship Act, 1956

law, such a child cannot even inherit from his mother. If children from a live-in relationship were to still be considered “illegitimate”, inheritance from the father's estate would be barred. In fact, where the live-in relationship has not subsisted for a reasonable period of time, the courts would not consider a child from such relationship to be legitimate, thereby barring his inheritance. However, where the live-in satisfies this condition, a child being “legitimate” can inherit from both the parents.

In *Revanasiddappav. Mallikarjun*, the Supreme Court granted the inheritance to the four children born from the woman with whom the man shared a live-in relationship, calling them “his legal heirs”. The Court has thus ensured that no child born from a live-in relationship of a reasonable period may be denied their inheritance.

Conclusion

The concept of live-in relationships have come out of the closet and even found partial recognition in law. Though the debate rages on in public forum with recommendations and opinions yet coming in from various authorities and Commissions to either amend the existing laws or desist from doing so, there have been no amendments to the existing personal law. It is thus, worthwhile to examine whether or not, live-in relationships can find their place in personal laws in the country.

The harm caused to a “legally wedded wife” and her children, in a case where a man maintains live-in relationship with another woman without the knowledge of his legally wedded wife and the probability that such legalization will increase the practice of bigamy are the two main contentions of the critics of legalization of live-in relationships have aside from the done to death immorality. Any attempt to protect live-ins in personal laws must therefore tackle these two issues carefully. Increase in Live in relationship will also degrade the institution of marriage.

The courts have recognized persons in long-term live-in relationship to be as good as a married spouse. Such decisions, while being delivered were for upholding the rights of the “other” woman but these decisions contradict the law on bigamy. When bigamy is illegal (except for Muslims) it is unclear in what sense a live-in relationship can be equal to a marriage, if either the man or the woman is already married to a living spouse.

The ambiguity allows a man or woman to be in another relationship without being subjected to punishment for bigamy. Personal laws differ for various communities on different matters and to fit in live-ins into each of these aspects would be a difficult and complex exercise. However, that would mean that live-ins were being given an equivalent status to marriage. So would that imply an extension of all rights of married partners to live-ins? This is rather earth shattering as it would destroy the “institution of a marriage”.

Secondly, it would entail some form of recognition for live-in couples, through registration (legal civil ceremony). The Supreme Court in a number of cases has stated that where there is cohabitation for a “reasonable period of time”, the couple shall be presumed to be leading a married life and shall enjoy such rights. However, the Court has not defined how much time should be considered to confer the marital status on such relationships. It needs the immediate attention of the lawmakers to make it clear through suitable legislation

otherwise different couples may be subjected to different yardsticks when they seek their rights.

After all, live-in relationships are based on informal understandings. An amendment to Section 125 of the Code of Criminal Procedure could be one such example that would bring a uniform law, which would outline the rights, duties and responsibilities of such couples. Such a law could define those couples that to whom it applied (in terms of length of cohabitation), recognize the two kinds of live-in relationships and provide remedies accordingly, in the same manner as the Protection of Women from Domestic Violence Act, 2005. It is necessary to understand society with its changing colors and provide laws which are practicable and enforceable to tackle these complex issues.

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