The Socio-legal Impact of Live-in Relationship in India: An Analysis

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Abstract

India is a country where marriage is considered as a sacred bond between the spouses and it is believed that such relationships are made in heaven. Marriage is included in the Grihastha ashram which brings certain rights, duties and obligations to both the parties, which can be claimed by either of the parties after a valid solemnisation of marriage between them. Now-a-days sometimes people prefer to be in a live-in relationship instead of in a formal marriage; although it is not incorporated under the Hindu Marriage Act, 1955. However, judiciary has permitted for maintenance and protection under the existing statutory laws for live-in relationship partners considering the rise in incidents of such relationships. Live-in relationship resembles a relationship where two people live in concert for a long period of time without any formal marital knot. As an outcome of accepting the western culture, and due to circumstantial reasons, people now-a-days prefers live-in relationship over marriage, it helps to test the compatibility between the partners. The Protection of Women from Domestic Violence (PWDV) Act, 2005, now also protects the live-in-relationship couples. The objective of this article is to discuss the legality of live-in-relationship with its socio-legal impact on society.

Key words: *Marriage, Live-in Relations, Statutory laws, Domestic Violence, Maintenance.*

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INTRODUCTION

Marriage is a social institution where two heterosexual people live together having complex social dimensions. Under the Hindu jurisprudence, marriage is a *samskara* or sacrament and not a contract, it creates legal rights and obligations between spouses.[1] The great epic Mahabharata depicts the sacrament nature of marriage as, पाणिग्रहणमन्त्राणां निष्ठा स्यात् सप्तमे पदे। पाणिग्रहस्य भार्या स्याद् यस्य चाद्धिः प्रदीयते॥[2] which means the mantras of marriage bring the eternal knot of marriage, and it completes with the performance of the seventh steps of saptapadi. The Padma purana depicts that, a wife should not violate her duty towards the husband; she should serve him according to her capacity.[3] Similarly, the husband also has the responsibility to perform his matrimonial duties towards the wife. Every individual in the society requires certain protective shield for his/her improvement and better future perspectives. Therefore, the matrimonial and statutory laws provide protective remedy to the aggrieved spouse.

To understand the notion of live-in relationship, it is important to know the institution of marriage, and the obligations attached with it. In *Pinakin Mahipatray Rawal* v. *State of Gujarat*[4] defined the term marital relationship; it means matrimonial rights and interests of the spouses are legally protected, which includes living under the same roof, conjugal relations, marital rights and obligations; to have children, love and affection. Today, in the meteoric lifestyle of the people, they prefer hassle free relationship without any responsibility or obligation on them. In the era of globalisation, the western thoughts are percolating into our traditional culture and social norms, thus now-a-days couples find live-in relationship to be the best option to reside with each other without any legal bindingness.

In the contemporary era live-in relationship is one of the contentious legal topics. The theory of inner morality of law, which was propounded by Lon L. Fuller gives a clear picture of law, which includes moral value to law. The judiciary while delivering the live-in relationship verdict also included 'relationship in the nature of marriage' while interpreting the terms 'law' and 'morality'. In *D Velusamy* v. *D Patchaiammal*[5] the court very beautifully interpreted the term 'relationship in the nature of marriage;' and decided that, the concept

1 B.N. Sampath, *Hindu Marriage as a Samskara: A Resolvable Conundrum*, Vol. 33, No. 3, JILI 319, 319-320 (1991).

2 9 M. N. DUTT, et al. (eds.), MAHABHARATA: ANUSHASANIKA PARVA 208 (Parimal Publications 2018).

3 Vol. 40, Part - II, G. P. BHATT (ed.), ANCIENT INDIAN TRADITION AND MYTHOLOGY: THE PADMA PURANA, 724 (Motilal Banarsidass, 1989).

4 (2013) 10 SCC 48: (2013) 2 SCALE 198.

5 AIR 2011 SC 479.

of live-in relationship in India is very similar to the common law marriage[6] and to term a relationship as 'live-in relationship' apart from the requirements of a common law marriage the parties should live in concert in a shared household mentioned under section 2(s) of the PWDV Act, 2005. A man who is in a relationship with a woman for sexual needs or who is a servant cannot be included under the word 'relationship in the nature of marriage.'

During live-in relationship or consensual union or de facto marriage two people live in an intimate relationship.[7] Now-a-days, in villages as well as metropolitan cities, there is a lot of societal disparagement and disgrace attached to the live-in relationship partners, which forces them to remain essentially secretive.[8] These types of marriage are not even recognised by the Hindu law. The term live-in relationship is also not defined under The Code of Criminal Procedure, 1973. The PWDV Act, 2005 has defined the word 'domestic relationship' but the meaning of the word is not clearly mentioned; the judiciary has now included the 'live-in partner' under section 2(f) of the said Act. In such circumstances, the chances of victimization of either partner and mostly female partner become very easy. The patriarchal mind-set and hegemonic attitude always tries to deprive the women of their equal rights and status. In a live-in relationship the female partner is not considered as a wife, and she is also excluded from the ancestral property of the male partner. The situation becomes worst when a child is born in such relations, as such child is neither considered as a coparcenary in his/her father's family nor gets any property right over the joint family property; the only right which he/she possesses is his/her share from the parent's self-acquired property, he/she is also not entitled to claim the share from the father's inherited property.[9] After the commencement of section 16 of the Hindu Marriage Act, 1955, such children will also be termed as legitimate.

The increasing incidents of live-in relationship are due to liberal attitude towards such relationships and it needs special protection, as in such relationships women as well as men could suffer physically as well as mentally. The individual security and conflicting interest between the spouses are not protected by the legislature in India. It creates chaos and

6 Common law marriage requires,-
(a) The couple who resides together should be known to the society as being akin to spouses.
(b) The couples should attain majority, which is the legal age to marry.
(c) The couple should fulfil other conditions to enter into a valid or legal marriage which includes that the couple should not be already married or they should be unmarried couple.
(d) The cohabitation between the spouses should be voluntary and they should known to the world as being akin to spouses and live together for a significant time period.

7 INTERNATIONAL ENCYCLOPEDIA OF MARRIAGE AND FAMILY, https://www.encyclopedia.com/social-sciences-and-law/law/law/cohabitation (last visited Nov. 15, 2018).

8 Vijender Kumar, *Live-in Relationship: Impact on Marriage and Family Institutions*, 4 SCC 19 (2012).

9 Badri Prasad v. Dy. Director of Consolidation, AIR 1978 SC 1557.

inconsistency in the human rights of the parties, as legal safeguard has not yet been provided. However, recently few rights were granted to the live-in partners in order to prevent gross abuse of the rights of the parties involved in such relationship. One of such right is that of 'maintenance' to the live-in partner; it is not a new concept in other countries as in USA there was a concept of 'palimony,' which means an amount granted to the woman who had lived together with a man without having any legal marriage bond. This maintenance money was awarded to the woman when she is deserted by the man. But, this concept was not yet settled in USA, as some of the Courts granted palimony on the condition of written or implied contract, whereas other Courts granted palimony without any agreement. Although, New Jersey has passed a legislature in the year 2010 which mentioned that, for claiming palimony there should be a written agreement between the parties.[10] The concept of palimony was also accepted in California.[11]

INDIAN CULTURE AND LIVE-IN RELATIONS

India is a country of mythological believes, where people see marriage as a lifetime bond, therefore the concept of live-in relation is not accepted by the people. The act of live-in relationship has recently put its hands in the social arena; it intimidates a sense of non-recognition of marriage, which is the basic of all marital bonds. People opt for such relationships, as it is easy to begin these relationships without any legal hassle, and dissolution of these relationships is also trouble-free. Another reason could be to avoid legal consequences of marriage, or to test the compatibility before marriage.[12] The legal rights and duties which arises due to the legal marriage are not easy to be blown away, but in live-in relationship there is no such complication for the partners, who decide to live together without any marital knot. But, the major issue which needs to be taken into consideration by the legislature and judiciary in the present era, is the gap between a 'legally wedded wife' and a 'live-in partner' as when any issue comes before the Court, it becomes the responsibility of the Court to construe the term 'wife' as mentioned under section 125 of the Code of Criminal Procedure (CrPC) 1973 to provide remedy to the female live-in partner. In *Yamunabai* v. *Anant Rao*[13] the husband married another woman in subsistence of his first marriage, which was decided

10 Statute of Frauds, New Jersey Revised Statutes, s. 25:1-5(h) (Amendment)- A promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination. For the purposes of this subsection, no such written promise is binding unless it was made with the independent advice of counsel for both parties.

11 Marvin v. Marvin, (1976) 18 C3d 660.

12 Vijender Kumar, *Bigamy and Hindu Marriage: A Socio-Legal Study*, 59:4 JILI 370 (2017).

13 (1988) 1 SCC 530.

by the Court as *void ab initio* in violation of section 5 (1) (i) and under section 11 of the Hindu Marriage Act 1955, as there was no custom or usage which permits such marriage. Secondly, the Court while interpreting the word 'wife' provided a narrower interpretation and decided that, the term 'wife' only includes the woman who is legally married. Again the word 'divorcee' should also be applicable to a legally wedded wife who earlier had the status of 'wife.' Finally, the Court held that, a marital knot is a nullity which is solemnised according to the Hindu rituals to a man who already has a living wife; therefore she cannot claim the benefit of section 125 CrPC 1973 for maintenance, hence she could not be equated with a legally wedded wife.[14]

Similarly, in *Savitaben Somabhai Bhatiya* v. *State of Gujarat*[15] the Court did not considered the broader objective and purposive interpretation of the word 'wife,' as mentioned under section 125 CrPC 1973, and only focused on the literal interpretation of the word 'wife,' and held that marriage as per the Hindu rites and ceremonies with a man who had earlier married, and who still has a living wife is an absolute nullity and the second wife cannot claim maintenance after the commencement of the Hindu Marriage Act 1955. Therefore, such woman cannot be given the maintenance right under section 125 CrPC 1973. The term 'wife' does not include a woman whose marriage is void, and the Court cannot enlarge the meaning of 'wife' by interpreting the term 'wife' to include the second wife. This although is a work of the legislature and an inadequacy in law, but the present situation is that, only legally wedded wife is entitled for maintenance under section 125 CrPC 1973 whose objective is protection of the economic interest of the wife and also prevent vagrancy and destitution. In this case, although the wife was not informed of the preceding marital knot of the husband; the Court verdict that the principle of estoppel should not be applied to overcome section 125 CrPC 1973; however, the Court awarded alimony to the child. In both the above mentioned cases the Court did not take the wider interpretation or the purposive interpretation of the term 'wife,' which was dealt by the judiciary in *Badshah* v. *Sou. Urmila Badsha Godse*[16] case.

In *Badshah* v. *Sou. Urmila Badsha Godse*[17] the Court took a broader interpretation of the word 'wife, and applied the purposive interpretation to mention the purpose of enactment of this section, which is to secure social justice; and it can only be achieved by taking the path of Constitutional vision and by following the principle of rule of law. Also, the Court was of

14 Malti v. State of Uttar Pradesh, 2000 CriLJ 4170.

15 (2005) 3 SCC 636.

16 (2014) 1 SCC 188: AIR 2014 SC 869.

17 *Ibid.*

the view that, apart from the purpose of a statute, the mischief which a statute supress should also need to be taken into consideration and the Court should give effect to that which can bring smooth functioning of the system. The Court in this case also mentioned the concept of 'social justice adjudication,' and used the maxim *Construction ut res magis valeat guam pereat*[18] to provide justice, and to fill the gap between law and society.

Similarly, in *Narinder Pal Kaur Chawla* v. *Manjeet Singh Chawla*[19] Justice A.K. Sikri and Justice Aruna Suresh took a very interpretative decision while interpreting section 18 (2)(d) of the Hindu Adoptions and Maintenance Act (HAMA) 1956, the Judges took purposive interpretation of the above mentioned section, and included the 'second wife.' The Court was of the view that, the parties were residing as husband and wife for 14 years, so there is no reason for not permitting the maintenance allowance to a woman under section 18 of the HAMA 1956. The second reason for permitting the maintenance allowance to the second wife was that, there is no adequate definition of 'Hindu wife.' The Court decided that, the legislature has no intention that, a woman akin to the appellant not to be considered as 'wife' although not legally wedded at least under section 18 of the said Act and deprive her right to maintenance.

However, this issue has been resolved now, as it is recognised by the Courts that there is a presumption of marriage between such live-in couples if they continue to live together for a longer time.[20] Again in *Madan Mohan Singh* v. *Rajni Kant*,[21] the Court viewed that, whenever two heterosexual people resides in concert for a long duration than it should not be defined as 'walk in and walk out' relationship.[22] It is a natural corollary principle that, where the partners live together for a long time and cohabit with each other, there is presumption of marriage.[23] Similarly, in *Tulsa* v. *Durghatiya*[24] the Court viewed that, the marital knot could be presumed under section 114 of the Evidence Act 1872, as they were residing together for a long duration of time. Although this presumption is rebuttable, but the person who seeks to oppose that relationship have the burden to prove that no marriage took

18 Statute should be read as a whole to make it workable and effective.

19 AIR 2008 Del 7.

20 Madan Mohan Singh v. Rajni Kant, (2010) 9 SCC 209.

21 (2010) 9 SCC 209.

22 The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

23 Gurubasawwa v. Irawwa, (1997) 1 HLR 695 (Karn). See also, Ranganath Parmeshwar Panditrao Mali v. Eknath Gajanan Kulkarni, (1996) 7 SCC 681, Sobha Hymavathi Devi v. Setti Gangadhara Swamy, (2005) 2 SCC 244.

24 2008 (4) SCC 520.

place. The Court if finds certain situations which deteriorate and destroy such presumption, it cannot ignore them.[25]

Apart from these cases, the Apex Court after analysing the pros and cons of live-in relationships has given several path breaking judgments to protect the rights of the couples, where the changing nature and thinking of the society had flourished. The live-in relationship brings with it the multi-dimensional issues and complications, which needs to be look after by the Parliament through enacting new legislature for such partners. Recently the Court in *Ajay Bhardwaj* v. *Jyotsna*[26] again gave the positive connotation of live-in relation and held that, under section 125 of Code of Criminal Procedure 1973; live-in relationship partner is entitled to claim maintenance.

The judiciary is doing its best to safe guard the rights of either partner whenever disparity arose between the partners. Another dimension of live-in relationship arose in the case of *Nandakumar* v. *The State of Kerala*[27] where the court mentioned the concept of 'choice,' as a fundamental right under Article 19 of the Constitution of India. Here, although the girl attained the marriageable age but the boy did not attained the marriageable age on the day of their marriage; however, the Court recognised the concept of live-in partners and held that, even if the parties did not attained the age for entering into marital knot, they still have a right to live in concert even outside wedlock; this marriage is not null and void just because of the reason that, the male partner did not attained the marriageable age. In *Indra Sarma* v. *V.K.V. Sarma*[28] the Court very beautifully mentioned about the marriage as an institution and provided guidelines for 'live-in relationship' when construed 'relationship in the nature of marriage' under the PWDV Act 2005. The Court in this case also mentioned the concept of 'Consortium Omnis Vitae,' which means cohabitation; it obligates the husband and wife to live in concert and remain faithful to each other. Recently, the Supreme Court provides protection to the live-in partners who denied relief by the Punjab and Haryana High Court on the ground that such relationships are socially and morally unacceptable.[29] Again in Seema Kaur v. State of Punjab[30] the court viewed that, if without the nuptial bond of marriage the partners are decided to live together, it is not for the court to judge those partners.

In India, although the judiciary is now accepting the new dimension of live-in

25 Gokal Chand v. Parvin Kumari, AIR 1952 SC 231.
26 2016 SCC OnLine P & H 9707: (2017) 1 HLR 224.
27 AIR 2018 SC 2254.
28 AIR 2014 SC 309.
29 Gulza Kumari v. State of Punjab 2021 SCC OnLine P & H 896.
30 2020 SCC OnLine P & H 706.

relationship, but the cultural and traditional aspects still believe in marriage institution. The marriage being a social institution provides security, companionship and support from the members of the society, which is different from the concept of live-in relationship. Marriage is recognised under various personal laws as well as under various international conventions where parties of marriageable age are given the right to choose their life-partner and consider family as a social unit.

Similarly, in South Africa the concept of legal and moral obligation, and the reciprocal duty between the parties was recognised. In *Satchwell v. President of the Republic of South Africa*[31] the principle of reciprocity and joint responsibility of raising the children was recognised. Section 15(3)(a)(i) of the Constitution of South Africa formulates provision for the recognition of 'marriages concluded under the tradition, or a system of religious, personal or family law.'[32]

RIGHT TO MAINTENANCE UNDER THE PURVIEW OF LIVE-IN RELATIONS

The first and foremost things which come to our mind when we think of live-in relationships are its validity, liability and responsibility; which arises out of such relationships. It is always a major concern that how the rights of women are protected in live-in relations. Due to this reason, the parents also did not allow such relationships for their daughter. The very question in live-in relationship which arises relating to maintenance is, whether the live-in partner is entitle for maintenance allowance from his/her live-in partner. The Court in *Chanmuniya* v. *Virendra Kumar Singh Kushwaha*[33] held that,

> *"A broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman have been living together as husband and wife for reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under section 125 of the CrPC so as to fulfil the true spirit and essence of the beneficial provision of maintenance under section 125."*[34]

This provision was enacted specifically to protect and inhibit negligence of women in distress and destitute. Similarly, the Court in *Narinder Pal Kaur Chawla* v. *Manjeet Singh*

31 2002 (6) SA 1 (CC); See also, Du Toit v. Minister of Welfare and Population Development, 2003 (2) SA 198 (CC).

32 Indra Sarma v. V.K.V. Sarma, AIR 2014 SC 320.

33 (2011) 1 SCC 141.

34 AIR 2014 SC 874.

Chawla[35] held that, under the HAMA 1956, the second wife is entitled to allowance; here the Court took a broader aspect and included the provisions of PWDV Act 2005.[36] Another issue which is necessary to discuss here is, the 'strict proof of second marriage' while granting maintenance to the live-in partners. Also, in *Dwarika Prasad Satpathy* v. *Bidyut Prava Dixit*[37] the Court viewed that, under section 125 of CrPC 1973 'strict proof of marriage' is not essential as required under section 494 of the Indian Penal Code 1860, it also opined that section 125 CrPC 1973 was enacted to grant maintenance to the neglected wife.

In *Uday Gupta* v. *Aysha*[38] the Court observed that, if two heterosexual people are living together for a long duration then presumption of marriage will be there, although they may not be married in actual sense and the children born out of live-in relationship will be considered as legitimate. Similarly, the Court in *Sumitra Devi* v. *Bhikan Choudhary*[39] observed that, when two heterosexual people reside together for a longer duration and marriage is presumed between them, and the society also treats those couple as husband and wife, maintenance is granted in such situations.

The reason behind granting of maintenance to the live-in couples has varied over a period of time on the basis of the circumstances and fact of each case. Marriage gives legal right to claim maintenance from either of the spouses, as it is a *samskara* in nature, and here the *Grihapati* is obligated to maintain the *Grihapatni.* However, it also becomes necessary to give certain legal status in order to protect the rights of live-in partners. The protagonists of live-in partners in such situation are easily victimised, and remain behind the deep scars of social reality.

The society is neither static nor the laws of it; Savigny –the renowned jurist mentioned in his theory of '*Volkgeist'* about the changing social norms, and changing attitude of people in the society. Today, our society is also accepting the consequential vicissitudes of the human relationship which once was not accepted. The Hindu law always changed to cope up with the new dimensions of social pattern; one of such acceptance is section 16 of the Hindu Marriage Act 1955. Apart from that, the judiciary now also protects the rights of women by giving the inheritance right to live-in partner. In *Revanasiddappa* v. *Mallikarjun*[40] the Court granted the property right of a male Hindu to a live-in female partner after his death, although

35 AIR 2008 Del 7.

36 The Protection of Women from Domestic Violence Act, 2005, § 20 (1) (d), No. 43, Acts of Parliament (India).

37 1999 AIR SCW 3844.

38 (2014) 16 SCC 300.

39 (1985) 1 SCC 637.

40 (2011) 11 SCC 1.

he had a legally wedded wife alive at that time as section 16(3) of the Hindu Marriage did not restrict the property right of children born outside the legal wedlock. Such children will be treated similar to children who are born out of a valid marriage.

LIVE-IN RELATIONSHIP UNDER THE PURVIEW OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Women are always given secondary status, and they are always deprived of their legal rights in our society. The concept of equality which is enshrined in the Constitution of India, remains only in pen and paper, in reality it is always a dream for a woman to be accepted as equal to a man. Equality for a woman means giving lower status than a man in our patriarchal society. Sometimes the matrimonial home did not come with the concept of 'marriage bonds are created by God,' rather it takes with its sufferings and violence against women. This Act provides civil remedy which includes compensation, financial assistance who are victimised by the matrimonial members.

To pen down the legal responsibility, and to welcome the new facet of society the judiciary has come forward and included live-in partner under the purview of the PWDV Act 2005. Section 2 (f) of the said Act mentioned the term 'domestic relationship' and under this definition the term 'relationship in the nature of marriage' has been interpreted by various Courts, and has given verdict in support of the live-in relationship partners. According to Indian judiciary, this expression stands on the same footing, and it also includes the live-in relationships.[41] It is necessary in the present era to give the status of marriage to the live-in relationship partners for the protection of rights of man and woman, and for the administration of justice.[42]

However, the judiciary faced the hurdles in *Aruna Parmod Shah* v. *Union of India*[43] when the legitimacy of the PWDV Act 2005 was challenged on the grounds of discrimination against men, and the meaning of the term 'domestic relationship' under this Act is objectionable. However, the Delhi High Court rejected such contention and held that, domestic violence in live-in relationship by a man against a woman is subject to law.

DOMESTIC VIOLENCE AND LIVE-IN RELATIONSHIPS

Being a woman, she always faces various difficulties in life right from mother's

41 Nandakumar v. The State of Kerala, AIR 2018 SC 2254.

42 Abhijit Bhikaseth Auti v. State of Maharashtra, 2008 SCC OnLine Bom 1388: (2009) 1 AIR Bom R 212.

43 2008 SCC OnLine Del 457: (2008) 102 DRJ 543.

womb. Marriage is termed as a social union between two families, it sometimes brings bad fortune to the new bride. Live-in relationship for which legislation is not yet made in India, is more prone to the victimisation of the female partner in such relationships. The seeds of violence become very common in most of the live-in partners; one of such reason could be the social security which may be demanded by either partner, and when they approach the other for legal marriage; the second reason could be the withdrawal from such live-in relationship. The PWDV Act curtails the violence between the partners having the relationship in the nature of marriage, and tries to make a collaborative vantage point among the live-in partners. The judiciary took all the responsibility to protect and safe guard the rights of live-in partners, and it tries to provide equal rights similar to the legally married women, as the core objective of the Constitution is to provide equal justice –social, economic and political to all its citizens.

BIGAMY AND LIVE-IN RELATIONSHIP

The rule of monogamy prevails among the Hindus,[44] Christians[45] and Parsis[46] therefore, they are not allowed to have more than one wife at a time. It is only permissible for Muslim males to have more than one wife at time, since polygamy is permitted under Mohammedan law. If either of the spouse is of a Hindu, Christian or Parsi religion, who marries someone else without dissolving the existing marriage, then he/she will be liable for punishment under section 494 or 495 of Indian Penal Code 1860. The very objective of section 494 is to achieve monogamy.[47] Section 17 of the Hindu Marriage Act 1955 also prohibits the practice of polygamy in India. In live-in relationship, there is no such rule about monogamy, the married person can also become a live-in partner with someone else. In such situation, there will be violation of the rights of the legally wedded wife, as law also seeks to protect the rights of live-in partner. The controversial aspect of live-in relationship has permitted bigamy as in a bigamous relation the wife can even claim maintenance from her live-in partner.[48]

In India, people sometimes interpret the live-in relationship as 'illegal', therefore it becomes necessary for the judiciary to provide a clear meaning of the term 'illegal' as it is important for protection of the rights of the live-in partner. Therefore, the Apex Court in *Rameshchandra Rampratapji Daga* v. *Rameshwari Rameshchandra Daga*[49] made an effort

44 The Hindu Marriage Act, 1955, § 5(i), No. 25, Acts of Parliament (India).

45 The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament (India).

46 Parsi Marriage and Divorce Act 1936, No. 3, Acts of Parliament 1936 (India).

47 THE LAW DICTIONARY, https://thelawdictionary.org/monogamy/ (last visited Oct. 25, 2020).

48 Badshah v. Sou. Urmila Badsha Godse, AIR 2014 SC 869.

49 (2005) 2 SCC 33.

to differentiate between 'morality' and 'legality' of relationships. The Court viewed that, a bigamous marriage may be declared as 'illegal' since it violates the Hindu Marriage Act 1955, as per the present scenario of statutory law is concerned, but it cannot be termed as 'immoral' in order to deny the rights of maintenance to spouse.[50] However, live-in partner was given the status of wife by the Court in *Chellamma* v. *Tillamma*[51] and held that, live-in relationship cannot be considered as 'legal' but it may be termed as 'immoral.'

In *S. Khushboo* v. *Kanniamma*[52] the Court held that, if the couples reside together, it is not 'illegal' as per law since residing in concert is a right to life under Article 21[53] of the Constitution of India, and hence it is 'legal.' The Privy Council again in *A. Dinohamy* v. *W.L. Blahamy*[54] held that, if two heterosexual people are residing together, until contrary is proved; the law will assume that they have a legitimate marriage tie between them and not in state of concubinage. Similar view was upheld in *Mohabhat Ali* v. *Md. Ibrahim Khan*.[55] Similarly, the Supreme Court in *Patel and others case*[56] viewed that, two adults who are bound to live together without marriage tie are not criminals as there is no law specifying that live-in relationships are illegal.

JUDICIAL PRONOUNCEMENTS AND LIVE-IN RELATIONSHIP

The judiciary always helps to solve the forthcoming issues and give verdicts according to the needs of the society, and live-in relationship is one of them. It is a trending issue now-a-days as people fascinate towards such relationships which sometimes leads to disloyalty and disquiet. The judiciary always tries to interpret the black letters of law for the betterment of the people. The shifting nature of individuals and the changing scenario of traditional culture make the judiciary think beyond the statutory laws.

But, the major dilemma before the judiciary while pronouncing judgements on live-in relationship is, the law contradicts with itself as on one hand it prohibits bigamy and on the other hand it protects the rights of live-in partner. Unlike civil law countries, in India there is no specific legal agreement when two partners want to enter into live-in relationship. Due to this reason, in the common law countries like India it becomes very much easy for

50 Vidhyadhari v. Sukhrana Bai, (2008) 2 SCC 238.
51 AIR 2009 SC 112.
52 (2010) 5 SCC 600.
53 No person shall be deprived of his life or personal liberty except according to procedure established by law
54 AIR 1927 P.C. 185.
55 AIR 1929 PC 135.
56 (2006) 8 SCC 726.

the married person to enter into a live-in relationship when his/her previous marriage is already subsisting. There is no legal remedy given to the legally married wife except for the dissolution of marriage under section 13 of the Hindu Marriage Act 1955. In India, being a common law country, live-in relationship is very informal in nature and anyone can easily deceive his/her spouse as there is no necessity for making an agreement with the live-in spouse and in absence of any legal statute it becomes difficult for the judiciary to resolve the issues related to it.

In the present context of egalitarian society the hurdles which arose in legal marriage tie are also encroaching and knocking the door in the same pathway. One of the major issue relating to marriage is the problem of dowry which also encroached into the live-in relationship recently. The Court in *Koppisetti Subbharao Subramaniam* v. *State of A.P.*[57] gave protection from harassment for dowry to the live-in partner. But, as this issue is of a serious concern the legislature should make laws for the protection of the live-in partners, so that the judiciary could also work smoothly while protecting the legal shield for such live-in partners.

THE MALIMATH COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM 2003

Law always lends a hand to transform the society, and to bring orderly culture in the mankind. Law changes with time to cater the need of people, and to give fair justice to the victims. In the contemporary society, to deal with the live-in relationship is a blazing concern. The Malimath committee and the Law Commission of India recommend giving the status of wife to the live-in partner, who resides for a longer period of time. Recommendation is also given by the National Commission for Women in the year 2008 to the Ministry of Women and Child Development to amend the definition of wife provided under section 125 of CrPC 1973 to include the live-in partner. The case namely, *Abhijit Bhikaseth Auti* v. *State of Maharashtra*[58] also supported this view, further the Malimath Committee in the year 2003 recommend amending the meaning of 'wife.' It suggested,

> *"the definition of the word 'wife' in section 125 should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage."*[59]

57 (2009) 12 SCC 331.

58 SCC OnLine Bom 1388.

59 Government of India, Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, 2003).

The Maharashtra Government also supported the Malimath Committee report, and formally supports the live-in relationship. As per this report, when two heterosexual people reside together for a long duration, the female partner should enjoy the legal status of a wife, this initiative was taken as a precautionary measure to assist the live-in partner.

OPINION

India is known for its ethnic culture throughout the world, and it endorses the words of *shastras,* and follows its cultural values. Marriage as per the Indian *sanskriti*[60] has its own roots in the *shastras* and *puranas,* which narrates the true meaning of the term and lays down certain rights and duties towards each other. The sacred mantras of the marriage bind the two people together for entire lifetime; the bridegroom in the marriage ceremony addresses the bride and accepts her as his wife when he pronounces, ॐ यदेतत्हृदयं तव तथास्तु हृदयं मम । यदिदं हृदयं मम तथास्तु हृदयं तव ॥[61] which means yours heart is mine and my heart is yours. In live-in relation the sanctity of a relation is absent, and it only depicts the wish of the either partner to live together without the marriage tie. The *Manusmriti* also depicts the notion of householder which means one has married to perform the *yajnas* together to repay the debts, which the *grihastha* has to repay towards God, his/her father and ancestors. But, live-in relationship did not portray the same, it is an emerging concept, and it has stood in a greater degree and acted as a substitute for marriage.

Each and every member of the society is responsible to maintain the peace and tranquillity, and to ensure that they will cherish the significant values of human life. It is the duty of everyone, starting from lowest edifice to the top echelon to maintain and abide by the rules and regulations of Indian culture. The concept of live-in relationship is a western culture, which has slided into the Indian society. Live-in relationship does not bind together the live-in couples for entire lifetime, and is temporary in nature. Live-in relationship does not make the live-in partner responsible for any rights, duties and obligations towards each other. Marriage on the other hand, obligates either party to perform certain duties towards each other, the wife is known as *ardhangini* or *dharampatni,* which is believed to be inseparable in nature. The legal security which comes with the valid marital bond is not there in live-in relationship. In the absence of statutory laws and enactments, it becomes very easy to victimise either partner. Such relationship does not have any legal shield, and it totally depends on the judiciary for obtaining the rights of the partners.

60 The word sanskriti has its roots in Sanskrit language '*kri*' which means to do.

61 6 KANAI L. MUKHERJEE, BIBHAS BANDYOPADHYAY, ALOKA CHAKRAVARTY (eds.), NEW AGE PUROHIT DARPAN: HINDU MARRIAGE 89 (Association of Grandparents of Indian Immigrants, 2014).

The young minds wish everything at the earliest, and do not want to take any responsibility. They failed to understand the divine concept of marriage, and they just wish to live together; they wish to break up with each other even in case of small challenges. The notion of family will broke apart in such situations, and the cultural pyramid will be destroyed. The mutual concept of love and affection between the spouses after the marriage ensure all the legal rights for themselves and for the future generation, it is a symbol of sacredness, commitment and togetherness. The promises to each other before the sacred fire bind the two souls together for lifetime. The live-in relationship violates all these sacred features, which are vested in the marital tie. People choose live-in relation as an easy alternative for starting a relationship, since it comes with no obligations, and they can choose their partner by their own whims and fancies. It resembles with immature bond, which either partner mostly shares during their young age. It can be broken after small fights or due to over possessiveness and insecurities between the live-in partners. In live-in relationship no limitations are there for the partners; one may have more than one partner at a time.

In the contemporary era, it becomes essential to look into the changing dimension of relationship of the current generation. This facet needs to be considered as the lifestyle in tier – I cities which is very expensive and therefore the 'live-in relationship by circumstance' can be taken as a positive viewpoint; here people become bound to live together due to circumstantial reasons, which in turn create such relationships. Today the tendency among the young people is to go in the cosmopolitan cities where there is more scope for career and education. During such period they want emotional and mental support, and live-in relations could provide such kind of support. But, during this phase sometimes these people face certain social dilemma in way of finding a proper accommodation within a reasonable price; therefore, to adjust with it they need to share their own room with other people, this situation sometimes leads to 'live-in relationship by circumstance.'

In the year 2018, a survey was conducted through a news app, where 1.4 lakh netizens in the age group of 18-35 years had given their views regarding live-in relationship. The survey reveals that, more than 80% people support live-in relationship, and 26% people agree with such relationship over marriage.[62] The expenses of marriage are huge and one cannot marry without stability in their life. Along with it, if we look into the theory of evolution for mankind, it is very clear that our forefathers also did all the possible things which are necessary for their survival. With time they understood that changes are necessary to cope up

62 NEWS 18, MORE INDIAN WOMEN SUPPORTING LIVE-IN RELATIONSHIPS: SURVEY, https://www.news18.com/news/lifestyle/more-indian-women-supporting-live-in-relationships-survey-1754575.html (last visited Oct. 23, 2019).

with the society, so they also adapted to grapple with the society. But, 'live-in relationship by choice' can be taken as a negative viewpoint since it seems the live-in partner do not want to take any responsibility. The partners here live together mainly due to three reasons; firstly, they want to live together to test the compatibility before marriage; secondly, there is legal constraint for marriage, such as degree of prohibited relationship and sapinda relationship; and thirdly, the partners start to live together due to attraction or in search of higher status. It awfully affects the family structure and the engrafted principles of the society. The mutual bonding and understanding between the partners may be weak because it is by choice, and choice varies with time. There is no legal record of live-in relationship, which is a biggest loop hole, as it does not provide any evidence when required. Recently, the Rajasthan Human Rights Commission seeked to make laws against the live-in partners as it believed that, live-in relationship violates one's fundamental rights; therefore it is the duty of the state to enact laws against such practice. The live-in partner sometimes spends half of their life in live-in relationship and if it does not work then they spend their remaining life in depression or finding another partner, there is no stability in such relationship. Recent news from Greater Noida was a burning incident of such unstable relation between live-in partners, it was alleged that, the accused who is the male live-in partner stabbed the female live-in partner which caused her death. These partners resided together for three years and due to some discrepancies they got separated from each other.[63] The advantages of live-in relationships are personal in character, but the demerits have an impact towards the person as well as the society. In such relationships the female partners suffers the most, as even today they are deprived of equal status with man, and they become easy victim of the homogenous behaviour of the society.

As live-in relationships are growing in nature, the informal understanding of this concept needs a legal setup and proper laws to protect the rights of such partners. It is possible through amendment in the existing laws –firstly, the term 'wife' under section 125 of CrPC 1973 needs to be amended to include the term 'live-in partner;' or the phrase 'relationship in the nature of marriage' under the PWDV Act 2005 should be given a proper definition to have a clear vision to also include the live-in partners; secondly –section 18 of the HAMA 1956, section 20 of the PWDV Act 2005 and section 125 of CrPC 1973 should be amended to include the right of maintenance to the live-in partner who are residing in concert for a long duration and the either partner do not have the knowledge of the previous marriage of the other partner and the term 'long period' should also be clearly defined as to how long; thirdly –the children if any should be consider as a coparcener in the family of his father, so

63 NDTV, MAN ARRESTED FOR KILLING FORMER LIVE-IN PARTNER IN GREATER NOIDA, https://www.ndtv.com/noida-news/man-arrested-for-killing-former-live-in-partner-in-greater-noida-1982296 (last visited Oct. 22, 2019).

as to acquire the ancestral as well as self-acquired property of his/her parents; fourthly –it should become mandatory for the live-in partner to make a legal agreement to enter into such relationship, so that, it can be used at time of distress and lastly –the Court should look into the issues when come before it whether such live-in relation is 'by circumstance,' or 'by choice,' so as to provide remedy to the victim. Apart from this, for evidentiary purpose it would be a possible standout if a register is maintained in the respective police station for each area with all the details of such partners, this will help such partners in the future conflicts to prove their relationship in the society.

The researcher is of the view that, live-in relationship being a western ideology has struggled to find a place in the Indian culture. The Indian context still believes that live-in relationship is a taboo as it violates the traditional idea of purity of a woman before marriage. The conservative family structure is not ready to accept this notion of live-in relationship, which is emerging now-a-days in a rampant manner. Before giving legal status to the live-in partners, the people should accept it without hesitance and any societal pressure. The researcher also believes that, at present where live-in relationship has mushroomed in Indian culture, people may accept such relationships in future. Marriage and live-in relationship can work parallelly if it brings the dignity and privacy of the individual without hampering their rights. The seeds of such relationship are already augmented in the Indian culture, as the Apex court delivered many judgements by accepting the socio-economic dimensions of such relationship.

CONCLUSION

With the emerging trend of live-in relationship, India has gradually unfastened the orthodox society and welcomed the western culture. The increasing ratio of live-in relationship partners made the judiciary to open the door. Judiciary has granted certain rights for live-in partners, but there is a need to frame proper legislations for the complete security of the live-in partners. It is the urgent need of today's society, as the ratio of live-in relationships is increasing rampantly. It is now up to the Parliament to make new laws or amend the existing laws, and address the issues related to live-in partners at the earliest.

The major issues which need to be dealt with while legalising live-in relationship are practice of bigamy, live-in partner's rights, legally wedded wife, and children if any from live-in relationship. Amendment of the existing laws for live-in partners will be very difficult task to fit it in the purview of personal laws as they differs from each other. In a country like India, live-in relationships include several complex issues which are very difficult to resolve.

It should also be noted that, it is not possible to provide all the rights and privileges of a legally wedded wife to a live-in partner as this will destroy the entire marriage institution itself.

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