A Critical Article on Live in Relationship in Indian Context

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ABSTRACT

The institution of marriage has been recognized as a form of holy ritual in the Indian society since old times. The marriage ritual has been accepted as a never-ending relation since old times. The marriage has been recognized not only a relation between two persons but also between two families. In Hindu religion, the institution of marriage through seven rounds (phere) has been accepted as a relation for seven births. According to the changing chronology, there seems to be many new shades of the institution of marriage. Before coming of Hindu Marriage Act, 1955[1], there was no acceptance of marriage-dissolution in the Hindu institution of marriage. Through this Act, the husband and wife have been given the permission to divorce. As such, a new phase came to light in the institution of marriage. The increasing level of education has inspired awareness and the feeling of rights among the women. As a result, the women who were exploits and victims of their rights for years got awareness towards their rights. Under the traditional marriage, the role of women has been limited to the boundary of the house since old times. The social functional participation was very low. Their role in the family was just limited to prepare meals and to look after the children.

Keywords: *Live-in-relationship, Social System, Life-Style, Changing Scenario, Single Parents.*

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1 w.e.f. 18th May, 1955.

INTRODUCTION

Generally, because of impact of mechanical industrialisation in the traditional ways of marriage, the fast procedure of urbanisation and the effects of globalisation, the whole social set-up is in the changing position. This has not even spared the institution of marriage. Although it is true that with the development of human civilization, there has been a flow of changes in the institution of marriage, but which changes have been observed in the Indian social system in the last decades, there remains always a state of clash between husband and wife. In such a situation, there has been an increase in the possibility of divorce between husband and wife and this trend is not in the interest of the institution of family.

Through marriage the society gets the reliable control for children's bringing up. During this process, the transfer of socialization goes from one generation to another. The structure of the society which was based on the values of the traditional marital relations, is in the changing situation. Mental deformities, unnecessary enmity and clash are one side of change in the marital relations. Due to expansion of individuality and consumerism, the tendencies of egoism and selfishness are growing instantly in the family.

As a result of speedily change in the expectations and life-style of the youths, they are not finding fit themselves in the traditional value system. This is the reason that the marriage system is being affected for want of new values. In the past, being in the joint family, the man used to earn his livelihood keeping adjustment in the social, cultural, and psychological circumstances. In the new social system, the entry of the new values has changed the married status in the changing circumstances.

In the changing scenario, a change in the traditional set-up of the institution of marriage is going to be seen. In addition to traditional marriage in the institution of marriage, the practices like love-marriage, inter-caste marriage and live-in-relationship (live together as husband and wife with getting married) are being seen. The important aim of the institution of marriage is to give birth to children and because of this the role of husband and wife get changed as father and mother, but the present scientific and medical research has broken the myth that marriage is necessary to get children.

In the present times, there happen some incidents, like- becoming of single parents of Tushar Kapoor and Karan Johar or becoming of surrogate mother without conceiving are such incidents which indicate us about the changing nature of marriage. The step taken by Tushar Kapoor and Karan Johar has broken the made-up myth of such persons who consider marriage very pious and necessary for the institution of so-called family.

This change indicates towards the fact that the nature interests only in the safety of its existence and it has nothing to do with the marriage. In this way, with the running of time there have been seen many phases of change in the so-called traditional institution of marriage.

RESEARCH METHODOLOGY

For this research paper, we proposed to adopt doctrinal research methodology. The work is carried out by devising necessary and appropriate research tools to collect data from various law sources. E.g. various books, articles, reports, case laws, journals and websites have been referred for the same purposes.

LIVE-IN-RELATIONSHIP

As a result of industrialisation and urbanisation in the changing scenario, a new changed form of institution of marriage has come to notice, which is known in the name of 'Live-in-relationship'. Since last one decade, due to increasing industrialisation and reform in the standard of education, the executive role of women has increased. As a result, a favourable social environment has been prepared for women. As such this has given a new life-style to the society.

This is true that in the changing social environment, the young boys/girls are becoming afraid of hard complexities of marriage. The young women remain in doldrums after getting education in achieving their goals and to perform their official roles, whereas the young men also give more emphasis to become self-reliant. In such a situation, the violation of traditional marriage age limit is being noticed. The young men/women living in cities become prey of loneliness.

In such prevailing conditions, they need an emotional attachment to free themselves from the daily mental stress. Besides, on human grounds the satisfaction of sex desires is also an essential factor which bring a young man close to a young woman.

Resultantly, a new life-style is being seen which has developed in the Metro cities and the same is being called 'Live-in-relationship.' In this life-style a young boy and a young girl live together with mutual consent without marriage and even make physical relations also. Although this new form of marriage relations is in practice since long in the developed countries, yet this is a new concept for the Indian society, and therefore its scope is limited to metro-cities only.

As per legal definition of the term 'Live-in-relationship,' "it is a system to live a life in which an unmarried couple lives together to solemnized the long-time relationship like marriage. Live-in-relationship is such a relation in which a young boy and a young girl make emotional as well as physical relations before marriage. Later-on, they can or cannot change their relationship in the form of marriage with mutual consent or can live together for a long time as such, though this new social system cannot be accepted in Indian society. The primary difference between marriage and live-in-relationship is that marriage has a social acceptance, whereas live-in-relationship has no such acceptance.

In the present scenario, to be in live-in-relationship is not a crime. As per Indian laws, the live-in-relationship has been considered as legal. If a child born in live-in-relationship, the child has a full right to paternal property. If a husband dies while living in live-in-relationship, his partner woman can seek her share in the property of the husband. The man and woman who are living in live-in-relationship, are free to be separate at any time without any legal procedure. The Domestic Atrocities Act, 2005[2] is also applicable in case of live-in-relationship. Besides, the woman can also demand for subsistence allowance from her live-in partner.

The Supreme Court of India has said while giving a historical verdict in support of Live-in-relationship, "If two persons have been living together for a long time and still, they have relations, then they will be treated as married persons.

THE PRESENT SCENARIO

In India, perhaps none case of live-in-relationship has ever been seen in the rural areas, while such relations are being seen in abundance in metro-cities. Even though, such relations are seen in large number in some areas of a city like industrial, commercial, and posh areas, whereas there has been seen the scarcity of such relations in the old areas of the city. There are persons and institutions equal to marriage bureaus in cities like Mumbai to help the people in making live-in-relationship relations.

COURT'S VERDICTS

The Supreme Court of India has said in its verdict that "Protection of Women from Domestic Violence Act, 2005[3] gives acceptance to such relations which are in favour of

2 w.e.f. 13 Sep, 2005.
3 w.e.f. 26 Oct, 2006.

marriage" and provides protection from domestic violence to the women. Such a life-partner can claim for

In the case of **S. Khushboo v/s Kanniammal and others**[4], the Supreme Court held based on its earlier decision in the case of **Lata Singh v/s Uttar Pradesh and others**[5], that live-in-relationships are possible only between two unmarried persons of opposite sex.

In the case of **Madanmohan Singh and others v/s Rajni Kant**[6], the Supreme Court had given its verdict on the validity of live-in-relationship and on the children born out of such live-in-relationship. In its judgement, the Supreme Court had considered the children born in such relationship as legitimate children.

In June 2022, the Supreme Court in **Kattukandi Edathil Valsan & others**[7] ruled that children born to partners in live-in-relationship can be considered legitimate. This is conditional in a way that the relationship needs to be long-term and not of 'walk in, walk out' nature.

There is no law specifically addressing live-in-relationship, but the Indian Judiciary has developed jurisprudence over the years through a series of judgements. According to the Supreme Court judgement in **Badri Prasad v/s Dy. Director of Consolidation**[8] held that live-in-relationships in India are legal but subject to caveats like age of marriage, consent, and soundness of mind.

FEATURES OF LIVE-IN-RELATIONSHIP

The features of Live-in-relationship are as under: -

1. **Easy to know the other partner:** In a live-in-relationship, you get enough time to know and understand your partner. You get full information regarding the habits, behavior, and mentality of your partner. In this way, in such relationship one partner looks and understands the attitude of the other partner very closely. As a result of this, one partner does not find any difficulty in knowing the personality of the other partner. On the other hand, in a traditional marriage, the would-be husband and wife do not get any special opportunity to know each other.

4 (2010) 5 SCC 600.
5 AIR 2006 SC 2522; (2006) 5 SCC 475; 2006 (56) ACC 234.
6 AIR 2010 SC 2933.
7 Civil Appeal No. (s). 6406 – 6407 of 2010; 13th June, 2022.
8 AIR 1978 SC 1557; 1979 SCR (1) 1.

2. **Financially dependent:** In a live-in-relationship one partner does not need to be a burden on the other partner. Generally, both the partners are financially independent and do not depend on any one. Even in case of broken relationship, one partner does not bear the financial burden of the other. In such relationship, every partner is free to spend any money on the other partner as per their own desire. No partner is bound to follow the other.

3. **Free from the responsibilities of married life:** The responsibilities of married life do not apply in such relationship. Every partner has the freedom to take decisions independently. In such relationship, the other partner cannot put any kind of moral and mental pressure in the matter.

4. **The feeling of respect to each partner:** In a live-in-relationship, each partner gives full respect to the other partner. Every partner gets the equal position. The simplicity and self-reliance to come out of this relationship without any difficult increase the feeling of giving full respect to each other.

5. **Free from legal action:** In such a relationship every partner has full freedom to come out of relationship without any legal procedure in case a partner does not make adjustment with the other partner. In a traditional marriage, the husband and wife must go under a very difficult procedure as of divorce, whereas this does not happen in such relationship. In such relationship, every partner is free to go out of this relationship at any time with mutual consent.

CHALLENGES OF LIVE-IN-RELATIONSHIP

The challenges of live-in-relationship are as under: -

1. **No acceptance of the society:** Though live-in-relationship among the youths is in vogue speedily at present, but this has not got the social acceptance till now. As a result, the society does not look at the young boys/girls with respect who live in live-in-relationship. Even they must face problems in getting houses on rent in cities.

2. **Lack of stability:** There is lack of stability in such relationship in comparison to the traditional marriage relations. Every partner is free to break the relationship based on hurting self-dignity on the matters of small things. This is the reason that such relationship keeps on going on a delicate string of relations. Besides, no need of legal procedure for coming out of such relationship also provides instability.

3. **Bad effects on the children:** The children born from male/female living in live-in-relationship feel more insecure in comparison to the other children of the society. The children born out of such relationship are unable to understand and to adopt the traditional customs. In due course of time, if both the partners end up their relation, then this will have a bed effect on the children.

4. **Fear of distrust:** There remains a fear of distrust always between both the partners of live-in-relationship, whereas the concept of married life is an essential factor for life. In addition to that the freedom to come out of such relation increases the distrust. Resultantly, both the partners are unable to lead their life happily in a wide way.

5. **The pitiable condition of female partner:** In the present time also, the Indian society is suffering from male mentality. In case of disunion in the live-in-relationship, the male partner does not have any special effect, but the female partner must face many kinds of social injustice. A female partner who has been in relation earlier has to face difficulties on entering in the traditional institution of marriage.

In this way, in case of broken relations, the women must suffer maximum problems. In the present time, there is an increase in sex-exploitation of women due to live-in-relationship.

RECOGNITION OF FOREIGN DECREE (ORDER) IN INDIA RELATING TO MARRIAGE AND MARRIAGE-DISSECTION

(i) The controversy of theories of laws of various countries is a complex conflict. In case of marriage and divorce, this controversy becomes more serious. The reason of this is that the marriage is made in one country and the divorce is got from the other country. In case of India wherein marriage-dissection is happened in India, whereas the decree of divorce is got from any foreign jurisdiction. The reason of this dual action is that because in India marriage is accepted as a rite and the procedure to get a divorce is very complicated. Though, there is provision of mutual consent to get divorce, yet the procedure of marriage dissection is very complicated.

(ii) Although, where the Fault theory in divorce has been applied, there is partner who is in favour of getting divorce, whereas the other partner does not take any interest in it. In such situation, several years is spent in getting divorce. Some peoples have prepared a "Forum shopping" tool for the purpose. They want divorce from the court where they can get the same easily. The Supreme Court of India has elaborated a constructive explanation of laws and provisions prevailed in India wherein such

foreign verdict on divorce can be taken as valid and legal. This has been done on the ground that marriage laws are different in the whole world.

(iii) The problem in respect of divorce arises at that time when both the partners have the domicile of the same country and wherein only one partner seek marriage relief. In the same context, for getting the benefit of clash in laws on the subjects like divorce, the illegal domicile certificate is common.

CONDITIONS OF RECOGNITION

1. The court has said on the sub-section (A) of Section 13 in respect of marriage-dissection that no such foreign verdict will be granted recognition which has not been passed by a court of competent jurisdiction.

2. Here, a competent court means a court which has been recognized as court of competent jurisdiction for considering the marriage disputes under the laws or the Acts under which the partners got married. Any other court cannot be recognized as a court of competent jurisdiction until and unless both the partners voluntarily and unconditionally do not accept the jurisdiction of the court.

3. It is said in the sub-section(B) of section 13 that if any verdict has not been given based on merits and demerits, the courts of this country do not accept such verdict, as

   (a) The basis of verdict of foreign court should be available in the laws under which the marriage of the partners was solemnized.

   (b) The verdict should have been being passed after hearing both the partners.

4. The second condition will only be fulfilled when the summons is duly executed to the defendant and the defendant accepts the jurisdiction of the court in respect of his or her willingly and without any condition, and defend the case. The defendant must accept the decree by attending the court or without attending the court.

5. It is said in the sub-section (C) of section 13 that when the verdict is based on the non-recognition of laws in this country in respect of cases, in which, such laws are relevant here, then the courts of this country will not recognize the verdict of that country. The marriages to be made in this country can be solemnized as rituals of this country or as per applicable constitutional laws of this country. Therefore, only such

laws can be applied on marriage disputes, under which the marriage was solemnized and not as per other laws.

6. The jurisdiction adopted by the foreign court and the basis on which relief has been granted should be as per the marriage laws under which the marriage of the partners has been solemnized.

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