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Is live-in relationship, the escape route to avoid the commitments of marriage?

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Dr. Rajashree N. K.

Introduction

The era of globalisation and the development related to that is changing the concept of morality. The words, 'right or wrong' is defined by each person according to his own understanding of the concept of morality. But marriage is still holding a sacramental place in Indian society.

The word marriage sounds very attractive. But the responsibilities and commitments tagged along with that makes one to repel to the institution of marriage. The concept of family, as the basic unit of the society, is withering away. The live-in relationship is developed as an alternative to marriage. It is considered as immoral and against the basic unit of the society. At the same time considered as most convenient and comfortable.

Marriage

Marriage is a social institution, which is the foundation of any good society. It is the basis for the family. Marriage is considered as very sacramental. Even though marriages are between two individuals, it binds two families together. The society and the Indian Legislatures, attempt to protect marriage.

The functions of marriage include regulation of sexual behavior, reproduction, nurturance, protection of children, socialization, consumption and passing on of the race¹.

Hinduism

Hinduism considers life of a human being into 4 ashramas: Brahmacharya, Grahastashram, Vanaprasta and Sanyasa. The second stage Grahastashrama is marriage. Marriage is very important for a Hindu man as without wife he cannot conduct many rituals and also without marriage one cannot have a son who helps him to attain moksha and rebirth as a human being. As divorce is not an acceptable event in Hinduism, marriage gives social security to the whole family.

Christianity

Marriage in Christians is the covenant of love. The bonding of love between a man and a woman becomes strong and secure with the marriage. They consider God himself is the author of marriage and marriage is needed to get many benefits and to achieve many purposes.

Islam

Marriage in Islam is to give rise to family. The offspring without the

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1. Nambi, S., "Marriage, mental health and the Indian Legislation. Presidential Address" 47 LLP 3 -14 (2005).



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wedlock is not respected in the society. They claim marriage for spiritual tranquillity and peace. They believe marriage is a divine mandate which dictates cooperation and partnership between husband and wife in life.

Indian Judiciary

The legal definition of marriage can be given in *Hyde v Hyde and Woodmansee*, where Lord Penzance defined marriage as the 'voluntary union for life of one man and one woman, to the exclusion of all others'².

Live-in Relationship

The birth of live-in relationship, its origin, can be traced back to the western countries where the youngsters were sharing the accommodation and other facilities in an accommodation only to cut down the cost of living. This cost cutting measure is considered as the new trend and is followed by India.

The lack of commitment, the disrespect for permanent social bonds, economic freedom, lack of tolerance in relationship has made its transition from marriage to love marriage to live-in relationships³

In western countries live-in relationship is common as the marriage is not so sacramental and considered as contract between a male and female only. There unmarried male and female live under one roof for their happiness. The USA, Sweden and Denmark are given equal rights to couples in live-in, as marriage. In U.K, live-in is governed by Civil Partnership Act, 2004. But in 2010, it is given by House of Commons that, the couples do not get right in each other's houses if they break up. Australia considers de-facto relationship between a man and a woman even if they are not married and just living-in together.

In India, a male and a female start living together to check their compatibility before getting committed to marriage, before taking up the responsibilities of family. Whatever reasons are given, this relationship is still not recognised easily by the society as it is considered as immoral act. Live-in relationship is mainly practiced in metropolitan cities and is difficult to have in small towns as people are not broadminded and most of them are known to each other. But it is seen that, there is a gradual transition in India from the sacrament of arranged marriages to love marriages and ultimately to live-in relationships, due to many reasons like lack of tolerance, financial insecurity, commitment etc. The trend is good or bad, only time can decide as any other revolutionary changes happened in India.

Historical Outline

The live-in relationship was prevalent in ancient India too as 'maitri-karar' (friendship agreement), where a boy and a girl entered into agreement to live together and take care of each other. There are many reasons to go for live-in relationships than getting married, which is legal and socially secure:

² (1886) L. R. 1 P & D, 130

³ Varun, "The Socio-Legal Dimensions of Live-In Relationships" (2018). www.lawyersclubindia.com, accessed on 4/10/2019..



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1. The youngsters going to western countries for study purpose or to get into this relationship for emotional or financial support.
 2. Some are trying to understand their partners before they get into permanent wed lock.
 3. Some are in love and want to spend more time with their partners. They may not be ready for marriage commitments due to various reasons.
 4. The main reason is to avoid the responsibilities coming along with marriage.
 5. The new trend in the society is, economically independent males and females have a tendency to show that they are modern and so they follow western culture.

Indian Judiciary on Live-in Relationship

In India, till date there is no specific legislation enacted to deal with live-in relationship. The Protection of Women from Domestic Violence Act, 2005 provides some kind of protection to the aggrieved parties from any kind of atrocities faced by the females living in relationship in the nature of marriage. The Act defines an 'aggrieved person' covered under this Act as "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent". The Act further defines a 'domestic relationship' (S. 2(f)) as "a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family". The 'domestic relationships' are not restricted to marital context alone⁴. The Supreme Court validated long-term relationships as marriages. Supreme Court opined Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal⁵.

This Supreme Court judgement was followed by suggestions from National Commission for Women (NCW), and sought a change in the definition of 'wife' in Section 125 of the Criminal Procedure Code (Cr P C), dealing with maintenance. The NCW recommended that women in live-in relationship should be entitled to maintenance if the man deserts her.

On 23.03.2010 the Hon'ble SC in *Khushboos case*⁶ opined that if a man and woman are living together without marriage, then it cannot be considered as an offence. The court said even Lord Krishna and Radha lived together according to mythology. The court also held that living together is a part of the right to life u/Art.21 of the Indian Constitution and it is not a "criminal offence".

4 Nelasco Shobana, "Status of Women in India" (Deep and Deep Publications Pvt. Ltd, New Delhi, 2010).

5 *Indra Sarma V. V K V Surma*, AIR 2014 SC (309).

6 *S Khushboo Vs Kanniammal* (2010) 5 SCC 600



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In the cases prior to independence like *A Dinohamy v Blahamy*⁷, the Privy Council laid down a general rule – if a man and a woman are proved to have lived together, the law will presume that they were living together with a valid marriage and not like concubinage, unless the contrary is proved.

In *Radhika v. State of M.P.*⁸ the SC observed that if for a long time a man and woman are in live in relationship, then they are treated as a married couple and their child would be considered legitimate.

*Badri Prasad v Dy. Director of Consolidation*⁹, was the first case came up before court after independence. Here the Supreme Court recognized live-in relationship as valid marriage as partners lived together for 50 years.

In *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others*¹⁰ the Allahabad High Court ruled out that “a lady of 21 years of age is a major and therefore has the right to go anywhere and can live together with a man or a woman”.

In *Patel and others*¹¹ case the apex court observed that live- in –relation between two adult without formal marriage cannot be construed as an offence.

In *Lata Singh v State of UP & Anr.*¹² the Apex Court held that live-in relationship was permissible only between unmarried major persons of heterogeneous sex. If a spouse is married, the man could be guilty of adultery punishable under section 497 of the IPC.

In *Abhijit Bhikaseth Auti v.State of Maharashtra and Others*¹³ on 16.09.2009, the SC observed that it is not necessary for woman to establish marriage in case of live-in relationship to claim maintenance under sec. 125 of Cr.P.C.

*Joseph Shine V Union of India*¹⁴, The Supreme Court has declared that Section 497 is unconstitutional. Adultery is not a crime. The court declared that Section 497 of the Indian Penal Code - the adultery law - was unconstitutional. The Section reads: “Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery”.

Rights of the Children of Live-in Relationship

Property rights refer to the inheritance rights of children. Under the *Hindu Succession Act, 1956*, a legitimate child, both son and daughter form the Class-I heirs in the Joint Family Property. On the other hand, an illegitimate child

7 AIR 1927 P.C. 185
8 AIR 1964 Madh Pra 307
9 AIR 1978 SC 1557
10 C.M.H.C.W.P. Appeal No. 16876 of 2001 Decided On, 17 May 2001
11 (2006) 8 SCC 726
12 AIR 2006 SC 2522
13 2009 (1) AIR Bom 212
14 WP (Cil.) No.194/17



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under Hindu Law inherits the property of his mother only and not the putative father.

In the case of *SPS Balasubramanyam v. Sruttayan*¹⁵ the SC had said, "If a man and woman are living under the same roof as husband and wife and cohabiting for few years, there will be a presumption under Section 114 of the Evidence Act, of wedlock and the children born to them will not be illegitimate. This was a case wherein the apex court for the first time upheld the legitimacy of the children born out of a live-in relationship. The court interpreted the statute of such a child to be in concurrence with Article 39(f) of the Constitution of India which lays down the responsibility of the State to provide the child with adequate opportunity to develop in a normal manner and safeguard the interests."

Legitimacy has always formed a pre-requisite for the inheritance right under Hindu law. Consequently, the Courts have always ensured that any child who is born from a live-in relationship of a reasonable period should not be denied the right to inheritance and this practice is in sync with Article 39(f) of the Constitution of India¹⁶. The Supreme Court in *Vidyadhari v Sukhrana Bai* observed a landmark judgment where the Court granted the right of inheritance to the children born from a live-in relationship and ascribed them with the status of "legal heirs".

In 2010, live-in relationship suffered a setback, in a family dispute case *Bharatha Mata V R Vijeya Renganathan*¹⁷. Here Supreme Court held that a child born out of a live-in relationship was not entitled to the rights of inheritance in Hindu Ancestral Coparcenary Property. This appears to be a general law but its root lies in the facts, specific to this case. This ruling cannot be construed as a general law, as it is only justified in this peculiar case. If this case, it is applied to all live-in relations having long term, then it would result in gross miscarriage of justice.

In his criticism of the *Bharata Matha case*¹⁸ Justice Ganguly discussed the issue of live-in relationships and property rights of a child born out of such a relationship. He stated that the legislature has used the word "property" in Section 16(3) of the *Hindu Marriage Act, 1955*²⁰ and is actually silent on whether such a property is meant to be an ancestral or a self-acquired property.

15 1994 AIR 133, 1994 SCC (1) 460

16 Article 39 (f) of Constitution of India - children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

17 AIR 2008 SC 1420

18 (2010) INSC 413

19 *Ibid*

20 Section 16(3) of the *Hindu Marriage Act, 1955* - Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

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and in light of such an uncertainty, the concerned child's right to property cannot be arbitrarily denied.

Clauses (1) and (2) of Section 16 of HMA, 1955²¹ expressly declare that children of void and voidable marriages should be deemed as legitimate children in the eyes of the law. Thus, such discrimination against them and unequal treatment of other legitimate children who are legitimately entitled to all the rights in the property of their parents, both self-acquired and ancestral will amount to an amendment made to this section.

In *Parayan Kandiyal Eravath Kanapravan Kalliani Amma (Smt.) & Ors. vs. K. Devi and Ors*²² the judge observed that the HMA, 1955, a beneficial legislation, has to be interpreted in a manner which advances the objective of the law.

The intention of the HMA, 1955 with respect to Section 16 and the subsequent amendment eliminating the distinction between children born out of valid/void/voidable marriages is to bring about social reforms and conferment of the social status of legitimacy on innocent children which would actually be undermined by imposing restrictions on rights guaranteed under the said section.

*Revanasiddappa & Anr. vs Mallikarjun & Ors.*²³, the court stated that irrespective of the relationship between parents, birth of a child has to be taken independently. It is clear that a child born out of such relationship is innocent and is entitled to all the rights and privileges available to children born out of valid marriages. This is the crux of Section 16(3) of the amended Hindu Marriage Act, 1955.

In the modern days, cases like *Tulsa v Durgatia*²⁴ have held that a child born from such a relationship will no more be considered as an illegitimate child.

The crucial pre-condition for a child born out of a live-in relationship to be not treated as illegitimate is that the parents must have lived under one roof and co-habited for a significantly long time for society to recognize them as husband and wife and "it should not be a "walk in and walk out" relationship, as the Supreme Court has pointed out in its 2010 judgment of *Madan Mohan*

21 Clauses (1) and (2) of Section 16 of HMA, 1955 - Legitimacy of children of void and voidable marriages:

(i) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (6S of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(ii) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

22 (1996) 4 SCC

23 2011(2)UJ 1342(S.C.)

24 2008 SC 1193

Maintenance

Maintenance is often explained as the obligation to provide for another person. It forms a very important aspect in the case of a child born out of a live-in relationship. Under the *Hindu Adoptions and Maintenance Act, 1956*, Section 21, a legitimate son, son of a predeceased son or the son of a predeceased son of a predeceased son, so long he is a minor or/and a legitimate unmarried daughter or unmarried daughter of a son or the unmarried daughter of a pre-deceased son of a pre-deceased son shall be maintained as dependant by his/her father or the estate of his/her deceased father. A child born out of live-in relationships had not been covered under this Section of the given Act and consequently had been denied the right to be maintained under this statute.

The Indian judiciary used its power to achieve the ends of social justice in a landmark case of *Dimple Gupta v Rajiv Gupta*²⁶ held that even an illegitimate child who is born out of an illicit relationship is entitled to maintenance under Section 125 of the *Cr P C (Code of Criminal Procedure, 1973)* which provides maintenance to children whether they are legitimate or illegitimate while they are minors and even after such a child has attained majority if he/she is unable to maintain himself/herself. Even though there have been quite some cases that have upheld the maintenance rights of live-in partners where the statutes were interpreted in a very broad manner to include female live-in partners as "legally wedded wives".

However, in the case of *Savitaben Somabhai Bhatiya v State of Gujarat* made an exception where the live-in partner had assumed the role of a second wife and was not granted any maintenance, whereas the child born out of the said relationship was granted maintenance.

The denial of providing maintenance to a child born out of a live-in relationship can also be challenged under *Article 32* (Remedies for enforcement of rights) of the Constitution of India amounting to a violation of the fundamental rights which guarantees under *Article 21* which provides the Right to Life and Personal Liberty. Such a denial can deprive an individual of his/her right to lead his/her life with dignity, and this has been upheld by the Kerala High Court in *P V Susheela v Komalavally*.²⁸

The unequal treatment of a child born out of a live-in relationship and a child born out of a marital relationship even though both are perceived as legitimate in the eyes of law can amount to a violation of *Article 14* which promises Equality before Law²⁹ Adding feather to the cap, the Supreme Court of India

25 AIR 2010 SC 631
26 AIR 2010 SC 239
27 AIR 2005 SC 1809
28 (2000) 1 JMC 376
29 Gupta Note 17 at 6



A. Velumy v D. Patchaiamma differentiated between "live-in relationship" and "relationship in the nature of marriage" and laid conditions for women seeking maintenance in live-in-relationship. In the judgement Justices Markandey Katju and T S Thakur opined that in order to get maintenance, a woman, even if not married, has to fulfil the following four requirements: (1)The couple must hold themselves out to society as being akin to spouses (2)They must be of legal age to marry (3)They must be otherwise qualified to enter into a legal marriage including being unmarried (4)They must have voluntarily cohabitated and held themselves out to the world as being akin to spouses for a significant period of time. The court further stated that a "relationship in the nature of marriage" under the Domestic Violence Act 2005 must also fulfil the above requirements, and in additions the parties must have lived together in a "shared household" as defined in Section 2(S) of the Act. Merely spending weekends together or a one night stand would not make it a live-in relationship. Justice Katju further elaborated, "In our opinion not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a "keep" whom he maintains financially and uses mainly for sexual purpose and or as a servant, it would not, in our opinion, be a relationship in the nature of marriage. No doubt the view we are taking would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for this court to legislate or amend the law".

Live-in Relationship and Marriage – Socio-Legal Impact"

Age

People in live-in relationship are very young when they enter into relationship, but as they grow old, relationship fades away unlike the case of marriage, where people are committed and will be together for the fear of the society.

Compatibility

Normally a man and a woman are living together to have good compatibility between them, so that they can think of getting married in future. But as no one is perfect, after some the partners will lose interest in each other and start finding negative aspects of the behaviour of each other.

Social Acceptance

Whatever said and done, live-in relationship is not whole heartedly accepted by the Indian society, it is just tolerated, to accommodate the freedom of the people. But marriage is considered very sacramental and gets society's approval.

29 (2010) 10 SCC 469
 11 Gaur Sanjay, *Live-In-Relationship* (Yking Books, Jaipur, 2011)



Children

Children are not welcomed in live-in relationships as the purpose of the relationship is enjoyment without any commitment. Even if children are born, they are not secured as both male and female are not ready to take responsibility. Kids from wedlock are recognised as legitimate and get legal rights by birth.

Emotional Trauma

As there is no security in live-in relationship, partners develop serious emotional issues, if there is no compatibility between them. Because there is no consent from the family and no acceptance from the society, they cannot discuss their emotional state with anybody and thereby get into emotional instability. In Marriage couple are supported by family and society for emotional stability.

Health Issues and Old Age Problems

As there is no commitment to take responsibility in live-in relationship, partners are not bothered enough to take care of each other, on health issues at old age. In the case of marriage, whole family will take care of each other.

Legality

Law in India has not recognised live-in relationship as a whole. Women and kids are given some protection under some legislation. But, as it is, there is no direct law on live-in and the male and female will not get legal protection for the legal problems, unless they are able to prove their long term relationship and intention to stay together.

Analysis

Based on the judgements of Apex Court on live-in relationships, one can analyse that live-in relationship can be considered for the protection of women and kids, only if the partners are able to prove certain aspects. Here, one needs to understand that in case a couple is not able to prove the relationship, they do not get the security under law. But in many cases, live-in relationships are considered far better than or equal to marital relationships.

Duration of living together

If the partners are not able to prove their living together for some reasonable period, then they do not get any security under law. As there is no specific law, reasonable period is to be understood from case to case basis by the courts.

Shared household

Living together means, sharing a household, and not any arrangement of meeting at a decided place at specific interval of time or on weekends only. But there are many couples who for different reasons do not share the household but live together for years.



Domestic tasks

Domestic responsibility is given to women or shared between both the couples will happen both in marriage and live-in. In live-in sharing is more as both the couples are economically independent or respect each other.

Pooling of resources

Supporting each other and the kids financially, sharing bank accounts, acquiring immovable properties in joint names, long-term investments in business, shares in separate and joint names are the few factors shows the intention of staying together. But there are many instances where two people live together on their individual income and do not share any finances.

Sexual Relationship

The religious scriptures have validated marriage for procreation. Sexual relationship between husband and wife is promoted for getting offspring. In live-in relationships sexual relationship between a male and a female is for pleasure. One cannot say that they do not have intimate, emotional relationship and caring like marriage and it is known factor that marriage does not guarantee the emotional support to the partner.

Children

Children, in marriage are for long lasting relationship. But in live-in relationship couple may decide not to have kids or if they have kids law can say that both the parents should maintain the kids as in western countries, even though they do not live together later or get married to different persons later.

Public socialisation

Marriage gives the right to the couples to go out in public. But as it is the globalisation era, one need not interfere in the matter of others. As such, even live-in couples have right to public places as human beings and society need not criticise them for not getting married.

Intention of the couple

As there is no proof that marriage will last till the end, and as divorce cases are increasing on the basis of non-compatibility of the partners, one cannot say that live-in relationship will not last long. In fact, it is said that the compatibility and intimacy is more in live-in than in marriage as the couples are free from any kind of responsibility towards each other.

Need for a New Legislation

There is a need to enact a law to govern live-in relationships. If the existing family laws are modified then the legislation need to consider the above factors into consideration. It would be very difficult to incorporate all the matters in existing family laws. Then all the related enactments are also to be modified to give strength to the family laws.

If not, a new law on live-in relationship is to be enacted. Then all the aspects of



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a family - marriage, domestic care, divorce, maintenance, kids care, property rights, inheritance, succession, burial rights etc. need to be looked along with religion and impact on society. Again live-in between lesbians and gays too need to be looked in to. Once legal sanction is given to live-in relationship, the concept of marriage may be at trouble or it may totally vanish from the society. It may lead to all the ill-developments in society, which are the drawbacks of live-in relationships. It can be said that marriage and live-in may merge and become one.

Conclusion

Ruling by the court supporting live-in relationship should not be misunderstood and wrongly interpreted by the younger generation to their advantage. Judiciary is not supporting the live-in relationship; it is protecting the rights of women and children of such happened relationships.

Marriage should not turn out to be a mirage to those who honestly vouch for it. Going by the number of cases filed for divorce relentlessly and the pending cases for divorce before different family courts, it can be predicted that the institution of marriage is getting diluted and live-in relationship is growing more rigorously than the institution of family.

The existing laws are not effective enough to protect the rights of live-in relationship partners. In India, the concept of live-in relationship is not common. It is a tendency to emulate the West. To marry or just to live together without getting married is totally a matter of personal choice. In both cases, the most essential elements are happiness, mutual understanding, trust, adjustments and commitment. Without these elements, no relationship, be it marriage, can run in long term.

As far as Indian judiciary is concerned, the understanding of marriage and the notion of live-in relationship has gradually moved from the traditional view to the modern life of the changing society. Live-in relationship is gaining momentum amongst the educated and economically independent groups. There are serious concerns about such changing trends in the society i.e., the rights and obligation which such couples have towards each other and the status of children born out of such a tie is vague. No law on the subject has been formulated. The judiciary is just accommodating certain aspects of live-in relationships. It is also understood that there is no statute postulating that live-in relationships are illegal.

Though the intentions in live-in relationships are noble, in practicality it is more a disaster than a relief as the experiences from the west clearly manifest that no arrangements are as worthy and binding as that of marriage.

