
LEGAL STATUS OF LIVE-IN RELATIONSHIP IN INDIA

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ABSTRACT

With the increase in the level of modernization, a number of trends of foreign culture have been introduced into the traditional culture of India. One of these foreign cultures is the live-in relationship. In live-in relationship, a man lives with a woman under a roof without marriage. This trend of live-in relationship is getting popular in metro cities of India like Mumbai and Bengaluru. The trend of live-in relationship is very low in small cities of India.

In India, most of the families are very traditional and they don't like this trend of live-in relationship. Legally, there is also no proper definition of live-in relationship. In India, most of the families oppose this kind of relationship. The current paper highlights the legal status of live-in relationship in India.

KEYWORDS: Live-in relationship, Marriage, Institution, Law

INTRODUCTION

These days, a number of marriages are breaking and the cases of divorces have also increased due to the mismatch of the nature of the married couple. Hence, the youngsters are attracting towards this new trend of live-in relationship where they get the opportunity of living with their partners without any legal marriage.

The purpose of living in a live-in relationship is to test the comfortable level of each other. On living together for some time, the couples get to know the positive and negative points of each other and they can easily come to the decision whether both of them can live a happy married life or not.

If the live-in relationship stands for a longer duration without any huge problem then it is observed that the most of the couples are agreed to tie a knot with each other. This also reduces the chances of divorce after marriage.

Since, most of the Indian families follow the traditional ancient Indian culture and hence, they are against this kind of relationship. There is also no proper legal status of live-in relationship in India. According to the laws of India, only the marriage is that institution where two couples are allowed to live together.

Till now, the concept of live-in relationship is considered as taboo in India and it is like a sin for the Indians to live-in relationship. Girls are not allowed to go outside with any strange male person. Hence, it can be said that this trend of live-in relationship mostly exists in metro cities of India and it has not still reached to the boundaries of the small cities of India.

None of the statutes dealing with succession or marriage such as the Hindu Marriage Act 1955, the Special Marriage Act 1954 or the Indian Succession Act 1925 and so on recognize live-in relationships specifically. However, under the Hindu Marriage Act, children born out of such relationships are considered to be legitimate and have been granted the right to succession. With no clear and specific legal sanction, there has been a huge societal change in the attitude towards

live-in relationships together with multinational companies providing health insurance benefits to domestic partners of the employees.

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

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

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

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

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

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

The Supreme Court held that it would not grant any rights to the woman in such a live-in relationship “of circumstance”.

In *Malti v. State of U.P*, the Allahabad High Court held that a woman living with a man could not be equated as his “wife”. In this case, the woman was a cook in the man's house and she stayed with him and shared an intimate relationship.

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

Under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision.

DISCUSSION

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

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

In *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*, the Court took a liberal view and stated that the second wife has a right to claim maintenance under the Hindu Adoptions and Maintenance Act, 1956. In this case the husband had not disclosed the facts of his first marriage and married the appellant and maintained a relationship with her for 14 years as husband and wife. The Court also took support from the provisions of the Protection of Women from Domestic Violence Act, 2005 and held that if we do not give maintenance to the second wife it would amount to giving premium to the respondent for defrauding the appellant.

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

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

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

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

CONCLUSION

The concept of live-in relationships have come out of the closet and even found partial recognition in law. Though the debate rages on in public forum with recommendations and opinions yet coming in from various authorities and Commissions to either amend the existing laws or desist from doing so, there have been no amendments to the existing personal law. It is thus, worthwhile to examine whether or not, live-in relationships can find their place in personal laws in the country. The harm caused to a “legally wedded wife” and her children, in a case where a man maintains live-in relationship with another woman without the knowledge of his legally wedded wife and the probability that such legalization will increase the practice of bigamy are the two main contentions of the critics of legalization of live-in relationships have aside from the done to death immorality. Any attempt to protect live-ins in personal laws must therefore tackle these two issues carefully.

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