

“Living in Live-in”

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Abstract

A new societal change has emerged. The country wants to practice and profess a culture which has been mushrooming for a decade and now is at its peak. The custom of living-in has been seen as much of a taboo than being a boon by the society. In this article, we have tried and answered several orthodox and unorthodox questions so as to find out that whether this pseudo marriage arrangement will actually work out for our country. In this paper we approach the decadal old custom of couples living together without marriage by covering various case studies, its relevance in the current scenario, marking the difference between an actual marriage and live-in and finally asking our readers to arrive at the decision about the future of this practice by providing prima facie facts through the means of various verdicts in this arena.

Introduction**Meaning and origin**

A live-in relationship is a kind of relationship in which two persons decide to cohabit together permanently or for longer duration on the grounds of emotional or sexual relationship which resembles marriage. In The Merriam Law Dictionary, the definition provided for a live-in relationship is “living with someone else (especially a boyfriend or girlfriend)”

The custom of living-in is an ancient concept but the term assigned to this is new. In fact, there have been eight types of marriages mentioned in the Vedas. One of them is Gandharva which involves mutual consent of the couples for getting married. There is no interference or role of parents; neither is there any particular laid down ritual for such marriage. It is a commitment of word and falls under the purview of the marriage. Mutual attraction between couple is the basis for this kind of relationship.

There can be various reasons for which couples may opt for cohabitating rather than getting married to each other. One of them being, checking the compatibility with each other before tying their bond legally. This helps in maintaining the stability in their relationship. Besides this, there are situations where a person is already married and not satisfied with their partner,

the lex loci will not allow them to remarry again at the same time which might be a leading cause for pushing people towards live in.

Indian laws like Hindu Marriage Act, 1955¹ or any other statutory law doesn't give any recognition to live-in relationships in India. Live-in relationships as a concept, comes from an individual's desire. There has not been any established institution for regulating live-in relationships in India. The women are protected and provided maintenance which grants them right of alimony to those who are aggrieved under "Protection of Women from Domestic Violence Act 2005". In such type of relationship there is no requirement of signing any legal document. People enter into live in relationship because they feel it's difficult to tie a legal bond with a person forever. The Supreme Court has currently given the verdict that if any woman stays in live in for a longer duration she will be entitled to the same rights that a married woman has

What does live-in involve?

In a relationship which is of the nature of live-in there are no obligations and responsibilities for the partners living together towards each other. It helps in fulfilling emotional requirements which are required when it comes to spending whole life together with someone. This kind of relationships doesn't guarantee whole life relationship, i.e. breakup can be done anywhere anytime with the discretion of the partners. One must have the freedom to take decision whether to go for a live-in or not.

As compared to marriage, it is much better as sometimes marriage lacks the love which is expected from each other. Live-in relationships relies on mutual trust and love but not solely dependent on enjoyment. In other words we can say it is a cohabitation between two unmarried person out of mutual understanding and affection amongst them. These people get into this kind of relationship because of being motivated by intimacy towards one another.

In the case of IndraSarma Vs. V. K. V.Sarma², the Supreme Court laid down some guidelines on pre requisites of live-in on the below listed points:

- a. Longevity or span of relationship. The relationship should continue for a reasonable period of time which has been defined by Section 2(f) of the Domestic Violence Act by the term "at any point of time". This varies from situation to situation.
- b. Court's interpretation regarding the common household is that both partners in a live-in relation must share a common house, where they can reside in. There are several cases where the court could not grant relief to the aggrieved party as the prima facie evidence proved that the partners did not share a common household.
- c. The court in this mentioned case also stated that there should be sharing of assets and financial resources jointly.

¹ Professionals Book Publishers, The Hindu Marriage Act, 1955

² (CrL.) No. 4895 of 2012

- d. The court also brought a clause of maintenance, in the sense if the women sharing a common house with that of the other persons, performs certain duties which provides evidence of her maintaining the household of man, it can become a ground for the proving that the members of the house were in a live-in relation.
- e. Presence of sexual relationship. If the court finds any evidence, which suggests that both partners were engaged in a sexual relationship, the court may presume that those who are engaged in such activities were in a live-in relationship.
- f. The court also mentioned that by bearing responsibilities and duties towards care of child one can be considered to be in a relationship which doesn't need any sanction of marriage, where both the parent's will be considered to be in a live-in relation.
- g. Relationship by holding out. If the partners residing together and pretending themselves to the outside world or society as husband and wife, they will be considered as a strong point behind it.
- h. Expectation of the parties. There must be some common expectation and interest as to their roles among the partners which will define their relation. In many circumstances it has been discovered that the courts have dismissed petitions for the people seeking redressal for live in relationships, as it was found those relationships were of the nature of mere concubinage.

Difference between marital relationship and live-in relationship

Hence, this brings us to the question about various differences which are to be considered between an actual marriage and this newly emerged custom, and should one actually consider a live-in relationship over a marital relationship. It is clear from our understanding that the fundamental difference between a live-in relation and marital relation lies on factors like commitments, financial security, independence and the attitudes of the society towards something which they view as a taboo.

However strongly the advocates of live-in support the expansion of this custom, it remains a fact that being in such a relationship makes one of the partner vulnerable than the other in terms of security, which would in turn increase the dependency of one partner towards other. To develop this custom into a law, there has to be system which protects the partners- especially for women and for those children who are born out of live-in relationships.

It is a well known fact that live-in relationships provide much more freedom than any sort of marital relation, and it is important to note that it is the independence that is craved by married couples and that longing of such freedom only makes the couples to explore the idea of having extra marital relations. Live-in relationships as strong as they seem, will be comparatively weak in the matters of commitment of partners to make this arrangement work. It is a well proven fact that that there is much more seriousness towards one another in a marital relationship than just two people residing in a house independently.

Legal implication of live-in relationships

Living-in as a concept has emerged to completely be identified with marriage, yet it has its own significance as a distinguished custom, where some think that this arrangement is just a need for physical gratification, others feel that the significance of such bond cannot be ignored. This belief is more common amongst younger generation where they feel that they have their freedom of choice of selecting their partners in their own fashion.

In the case of *Indra Sarma vs VKV Sarma*³, the court said “that any live-in relationship will be expressed as 'relationship in the nature of marriage under the laws protecting women from domestic violence’”.⁴ Hence, ultimately it means that any live-in relationship will be considered as a form of marriage and will be viewed as if the partners were married when such cases reaches any judicial forum. This case not only clarifies a lot of scepticism regarding live-in relation and its comparison to marriage but focuses on the legal aspect of live-in and assures that culture of live-in will be having a bright future.

By understanding the concept of live-in it is quite clear as how this is different from the co-existing system of living together and why is it that the younger generation who are proactively engaged in preserving their freedom want to be in an independent relationship than being in contractual marital engagement more often.

Also there are many cases which are to be taken into consideration when we discuss about the concept of live-in relationship, the law in India has not provided a specific definition about the live-in relationships but in a case presided by justices Vikramajit Sen and A M Sapre of The Supreme Court, it was held that “co-habitation of partners in such a relationship would give rise to presumption of a valid marriage between the partners to be in a live-in and in the case of failure of such relationships, the man is bound to pay maintenance to the women.”

In the landmark case of *Gokal Chand vs. Parvin Kumari*⁵, the Court held that “continuous co-habitation of man and woman as husband and wife for a number of years may refer to presumption of marriage which the Court cannot ignore .”⁶ The judgement made in this case, made very clear that live-in relationship is in a way similar to marriage but where the ethos of marriage is based on the completion of both partners as one together, the concept of live-in lays emphasis on the development of an individual first.

Consider the case of *A. Dinohamy Vs. W.L. Balahamy*⁷, it was held that “where a man and woman are proved to have lived together as husband and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid

³SPECIAL LEAVE PETITION (CRL.) NO.4895 OF 2012

⁴ Section 2(f) in The Protection of Women from Domestic Violence Act, 2005

⁵ AIR 1952 SC 231

⁷ AIR 1927 PC 185

marriage, and not in a state of concubinage.” This case is also a perfect example of how the customs of different countries can be adopted in our country, with our rigid yet flexible Constitutional setup.

Hence, various courts have attempted to come out with their discretion regarding this new custom within the country but could not decide on an effective law, but rather had to depend on their judicial discretion to solve this dilemma.

The concept of alimony when live in relationship is equal to marriage.

Over here the court will rely on the concept of palimony, a concept commonly used in USA. In this perspective the court had to adopt the laws of western culture. The courts over here collectively decided that in a case where there is alimony, so as who gets the alimony, the court would follow the judgement of a very famous case named Marvin vs Marvin⁸. In this case the California superior court gave out judgement which made it clear that partners of non marital status may bring in claims for the division of property.

Status of the child born out of live in relationship

Live in relationship in India in itself seems to be a very complex process, where the Indians have to adopt this pseudo marriage arrangement as a custom. As of now, our Constitution is interpreted in such a way that there are no rights or obligations for partners who are in a live-in relationship. The judicial system is yet to come out with a codified law enlisting all provisions for the same.

It is further submitted that various Fundamental Rights of the child would be infringed if children born out of any such (ie not of the nature of marriage) relationships would be classified as an illegitimate. To name a few of the Articles, the primary Article which gets violated is the Article 14 and Article 21 of the Indian Constitution which dictates the right of equality between every citizen in the society and the fundamental right to life respectively.

The premise of determining the violation of Article 14, hereupon lies under two criterion, the first one being the concept of intelligible differentia where the likes are to be treated alike, which should be the case between all the new born's. The second criterion of determining the violation of Article 14 is that the aforementioned Article talks about class legislation but not classification. In the instant scenario, it is clear from the fact that children born out of such arrangements if classified as illegitimate then it would clearly lead to their violation of Article 14.

Similarly, Article 21 of the Constitution guarantees right to life and personal liberty to all its citizens. The court in Francis Coralie vs UT Delhi⁹, “observed that the right to live includes the right to live with human dignity and all that goes along with it, viz. the bare necessities of

⁸ 18 Cal.3d 660

⁹ Francis Coralie Mullin vs The Administrator, UT Delhi and ors, 1981 AIR 746, 1981 SCR (2) 516

life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities and also the right to carry on functions and activities as constitutes the bare minimum expression of human self”.

Claiming that children born to couples in live-in to be illegitimate would be violating the right to life of that child as that child was not given the adequate dignity. This would lead to a situation where the child would be facing discrimination from various sections of society for something which he/she is not even responsible of.

In this regard, the courts have liberally stated that “any man and women who are cohabiting since a long time will be presumed to be legally married under the law unless it is proved to be contrary.” Also in one such case the courts have stated it time and again that “If a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.”¹⁰ this was the first judgement made regarding the legitimacy of a child born out of a live in relationship.

Furthermore, there are several laws within our constitutional setup which preserves the interest of a child who was born out such relationships. One such Article within our constitution is the provision provided is the Article 39(f) which states that “the responsibility of the State to provide the children with adequate opportunity to develop in a normal manner and safeguard their interests. “

Hence, children born from a relationship which is of the nature of marriage but not actually, will no more be considered illegitimate in the eyes of law. The condition for a child born out of a live-in relationship to be not treated as illegitimate is that the relationship should not be a “walk in and walk out” relationship¹¹ie both adults should cohabitate under one roof.

Hence, it can be made evident from all this information that arguments framed in such a manner would not be considered invalid and there is no concept of illegitimacy of children born out of such arrangement.

Future of live-in relationship under the Indian law.

There’s been a drastic change as to how the relationships are being perceived by one in India. We’ve come a long way from our traditional mentality, where women with absolutely no rights were supposed to get married to men who are wealthy enough, and only carry on the “Stree Dhan” with them to their husband’s house. Old taboo which was much feared by one of the partners of pre-marital sex has long been faded and since, India has been progressing

¹⁰ *SPS Balasubramanyam v. Sruttayan*, 1994 AIR 133, 1994 SCC (1) 460

¹¹ *Tulsi v D*, 2008 SC 1193

as a country with strong moral values but is also very dynamic towards its adoption of western culture.

To the young Indians it is not about an escape from varied responsibility but it is matter of choice as to who we want to be in our lives. There is no harm to acknowledge that this dynamic custom of a live-in relationship is a product of freedom, profession, privacy and globalisation on its entirety.

By the scope of live-in we would be looking upon the past and compare it with present to predict the future, so as to ensure that whatever happens is for the best. Since, the culture of live-in relations have paced up during the last decade, it would be safe to assume that this custom would become even more stronger and there are chances that this custom might even turn into a law for the welfare of the society.

It has been very clear that despite the mushrooming of such relationships in our country, it is mostly the society that wants to live in a denial. It is the families which cringe on hearing that one is living-in with another because it gives the hint of having sex for pleasure instead of procreation, which is fairly implied in a marital relationship. A marital relationship is seen as a relationship where both the partners have devoted one's life to another, whereas in a live-in considered as abstinence from responsibility.

Again over here we have taken into account various landmark cases from the past to determine the future. Similarly, in one of most recent cases it has been held by the honourable court that even if the couple do not have the eligibility to be in a marital relationship they have the right to live together outside wedlock.¹² Also a point which is to be noted here is that in the case of *Khushboo vs Kanniammal*¹³ and anr it was held that “a live-in is not a criminal offence and to live together is an essential element of life which directly points out to the violation of right to life if such practice is denied on arbitrary grounds.”

There are various grounds amongst which we can predict that the custom of living-in would be positively accepted by the society, these are as follows:

- a. It is mostly the younger generation which are seen to be involved in such customs and hence, them being revolutionary in changing the societal norms acts as a catalyst in changing the conception about live-ins for the society.
- b. People orient the live-in culture as a by-product of globalisation. These days, there are more and more people who want to identify themselves with the western culture. It is due to such sections of the society that the cases for deciding live-in relations are more inclined towards the foreign western judgements.

¹² *Nandakumar vs The State Of Kerala* on 20 April, 2018, CRIMINAL APPEAL NO. 597

¹³ SLP (CrI.) No. 4010 of 2008

- c. Also, in live-in relationships, there is no such concept of divorce. This makes it extremely convenient for both partners to lead an independent life without any sort of expectation from the other. The hassle of filing divorce and getting adequate amount of paper work done is never felt in these types of relationships, this in fact is eased through break ups if one thinks that it is not working out (however hard that they may be).
- d. People in such relationships consider that living-in with someone has provided them with a new found economic liberty. This is mostly the case with women who believe that living independently and also being in a relationship is a balance struck between not being dependent on their partner financially and also to come home to their true love at the end of the day.
- e. Living-in has also catered to the needs of those sections of the society who do not believe in marriage for various reasons. It is because of these people that most people in the society are in the favour of this custom.
- f. Last but never the least, living-in with their partners have also provided a sort of relief to the discreet section of the society(for eg- gay, lesbian, etc), where these people, who cannot get married are still living together with someone out of their choice.

Hence, these were all the constructive points which makes one believe that the custom of living together without any social contract in India has a bright chance of turning these judicial discretions into a firm law enacted by agencies in the future.

CONCLUSION

By evaluating the concept of marital relations and the newly found concept of living together without marriage, it was found that the resentment by the society towards live-in relationships is not arbitrary. It is due to the intrusion of western culture that has made the society realize and made the younger generation think differently.

It is also to be taken into consideration that India has moved far ahead from those days when a woman was gifted as a form of “kanyadan”. Live-in relationships in its form provide a sense of independence to both partners, where they are at liberty to enjoy their life to the fullest. After analysing the difference between a marital social contract and a live-in relationship, it was found that the difference between the two is almost blurring.

It has been proven through various cases that status of a child born out of such relationships would be completely legitimate, where the child would be allowed to inherit the property, which involves certain restrictions like where they will not have any access to claim ancestral coparcenary properties.

The judicial system is coming out strong to protect the interest of both the partners as well as the child born out of such relationships, which acts as a catalyst to motivate the government

to make a firm law to protect their interest. It can be hereby concluded that in a country like ours, a law or a bill should be a 'must have' considering the influx of population indulge in this near decade old custom.