

## Changing Faces of Relationships



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Live-in relationships in India have still not received the consent of the majority of people. They are still considered a taboo to the Indian society. The majority of the people consider it as an immoral and an improper relationship. At present there is no specific legislation that deals with concept of live in relationship and the rights of the parties and the children of the live in partners. It was a very unambiguous concept until the Supreme Court of India took the initiative and declared that live in relationship though considered immoral but it is not illegal.

Through its various decisions the judiciary has tried to accord legality to the concept and protect the rights of the parties and the children of live in couples. But at present there is a need to formulate a law that would clarify the concept. There should be clear provisions with regard to the time span required to give status to the relationship, registration and rights of parties and children born out of it. The utmost need of the hour is to secure the future of the children born to live in couples. The steps taken by the judiciary are indeed welcoming and pragmatic in approach. Though the live in relations provide the individuals individual freedom but due to the insecurity it carries it with, there needs to be a law to curtail its disadvantages

In India marriage has always been considered a sacrament. The husband and wife are considered as one in the eyes of law. The legal consequences of marriage that follow add to the sanctity of this relationship. Marriage legally entitles both the persons to cohabit; the children born out of a legal wedlock are the legitimate children of the couple; the wife is entitled to maintenance during the subsistence of marriage and even after the dissolution of marriage and many more. A living arrangement in which an unmarried couple lives together under the same roof in a long term rela-

tionship that resembles a marriage is known as a live-in-relationship. Thus, it is the type of arrangement in which a man and woman live together without getting married. This form of relationship has become an alternate to marriage in metropolitan cities in which individual freedom is the top priority amongst the youth and nobody wants to get entangled into the typical responsibilities of a married life. This form of living together is not recognized by Hindu Marriage Act, 1955 or any other statutory law

### **Legal Status of Live In Relationship**

The definition of live in relationships is not clear and so is the status of the couples in a live in relationship. There is no specific law on the subject of live in relationships in India. There is no legislation to define the rights and obligations of the parties to a live in relationships, the status of children born to such couples. In the absence of any law to define the status of live in relationships, the Courts have come forward to give clarity to the concept of live in relationships. The Courts have taken the view that where a man and a woman live together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary.

The first case in which the Supreme Court of India first recognized the live in relationship as a valid marriage was that of *Badri Prasad vs. Dy. Director of Consolidation*, in which the Court gave legal validity to the a 50 year live in relationship of a couple.

The Allahabad High Court again recognized the concept of live in relationship in *Payal Katara vs. Superintendent, Nari Niketan and others*, wherein it held that live in relationship is not illegal. The Court said that a man and a woman can live together as per their wish even without getting married. It further said that it may be immoral for the society but is not illegal.

Again in the case of Patel and Others the Supreme Court has held that live in relationship between two adults without marriage cannot be construed as an offence. It further held that there is no law which postulates that live in relationships are illegal. The concept of live in relationship was again recognized in *Tulsa v. Durghatiya*.

In *S. Khushboo vs. Kanniammal & Anr.*, the Supreme Court held that living together is a right to life. Live in relationship may be immoral in the eyes of the conservative Indian society but it is not illegal in the eyes of law. In this case, all the charges against Kushboo, the south Indian actress who endorsed pre-marital sex and live in relationship were dropped. The Court held that how can it be illegal if two adults live together, in their words living together cannot be illegal.

However in one of its judgment *Alok Kumar vs. State*, the Delhi High Court has held that live in relation is walk in and walk out relationship and no strings are attached to it. This kind of relationship does not create any legal bond between the partners. It further held that in case of live in relationships, the partners cannot complain of infidelity or immorality.

Again giving recognition to live in relationships, the Supreme Court in *D. Velusamy v. D. Patchaiammal* has held that, relationship in the nature of marriage under the 2005 Act must also fulfill some basic criteria. Merely spending weekends together or a one night stand would not make it a domestic relationship. It also held that 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. The court made it clear that if the man has a live-in arrangement with a woman only for sexual reasons, neither partner can claim benefits of a legal marriage. In order to be eligible for alimony, a relationship must comply with certain conditions, the apex court said. The following conditions were laid down by the apex Court:

- The couple must hold themselves out to society as being akin to spouses;
- They must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried;

- They must have voluntarily cohabited for a significant period of time.
- Conscious of the fact that the judgment would exclude many women in live-in relationships from the benefit of the Domestic Violence Act, 2005, the apex court said it is not for this court to legislate or amend the law. The parliament has used the expression "relationship in the nature of marriage and not live-in relationship" The court cannot change the language of the statute.

### **Rights of A Female In Live In Relationship**

In June, 2008, it was recommended by the National Commission for Women to the Ministry of Women and Child Development to include live in female partners for the right of maintenance under Section 125 of Criminal Procedure Code, 1973. The view was also supported by the judgment in *Abhijit Bhikaseh Auti v. State Of Maharashtra and Others*. In October, 2008, the Maharashtra Government also supported the concept of live in relationships by accepting the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife. However, recently it was observed that it is divorced wife who is treated as a wife in context of Section 125 of CrPC and if a person has not even been married i.e. the case of live in partners, they cannot be divorced, and hence cannot claim maintenance under Section 125 of CrPC.

The partner of a live in relationship was first time accorded protection by the Protection of Women from Domestic Violence Act, 2005, which considers females who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. Section 2(f) of the Act defines domestic relationship which means 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. Thus, the definition of domestic relationship includes not only the re-

lationship of marriage but also a relationship in the nature of marriage.

In a case in Delhi, the Delhi High Court awarded Rs. 3000/- per month as maintenance to a maid who was in a live in relationship with her widower employer.

In *Varsha Kapoor vs UOI & Ors*., the Delhi High Court has held that female living in a relationship in the nature of marriage has right to file complaint not only against husband or male partner, but also against his relatives. In the case of *Koppiseti Subbharao Subramaniam vs. State of Andhra Pradesh*, the defendant used to harass his live in partner for dowry. In this case the Supreme Court held that the nomenclature of dowry does not have any magical charm written over it. It is just a label given to demand of money in relation to a marital relationship. The Court rejected the contention of the defendant that since he was not married to the complainant, Section 498A did not apply to him. Thus, the Supreme Court took one more step ahead and protected the woman in a live in relationship from harassment for dowry.

#### **Status of Children of Couples In Live In Relationship**

The Hindu marriage Act, 1955 gives grants the status of legitimacy to every child irrespective of his birth out of a void, voidable or a legal marriage. But there is no specific law that raises any presumption of legitimacy in favour of children of live in partners. The future of children of live in partners becomes very insecure in case the part-

ners step out of their relationship. There comes the requirement of a strong provision to safeguard the rights of such children. There must be provision to secure the future of the child and also entitling the children to a share in the property of both the parents.

But Supreme Court took the initiative to safeguard the interest of children of live in couples in case of *Bharata Matha & Ors. vs. R. Vijaya Renganathan & Ors* and held that child born out of a live-in relationship may be allowed to succeed inheritance in the property of the parents, if any, but doesn't have any claim as against Hindu ancestral coparcenary property.

#### **Conclusion**

Through its various decisions the judiciary has tried to accord legality to the concept and protect the rights of the parties and the children of live in couples. But at present there is a need to formulate a law that would clarify the concept. There should be clear provisions with regard to the time span required to give status to the relationship, registration and rights of parties and children born out of it. The utmost need of the hour is to secure the future of the children born to live in couples. The steps taken by the judiciary are indeed welcoming and pragmatic in approach. Though the live in relations provide the individuals individual freedom but due to the insecurity it carries it with, there needs to be a law to curtail its disadvantages.

#### **REFERENCE**

- 1 AIR 1978 SC 1557
- 2 AIR 2001 All 254.
- 3 (2006) 8 SCC 726.
- 4 2008 (1) SCR 709; 2008 (4) SCC 520
- 5 (2010) 5 SCC 600
- 6 2010 (4) JCC 2385
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- 8 AIR 2009 (NOC) 808 (Bom.)
- 9 170(2010) DLT166(DB)
- 10 AIR 1992 SC 756.
11. AIR 2010 SC 2685