

LIVE-IN-RELATIONSHIP – A TWIST TO PEDIGREEDr. Rupam Jagota¹**I. Introduction**

Society envisages a social order which emphasis on abiding by the legal ethical moral codes of conduct to ensure a positive healthy development, devoid of negativity and deviant behavior. Man being a social animal wants an infrastructure for his needs, so a relationship of give and take for eg master and servant, law and governance, state and citizens emerged in the society. State emerged as means to satisfy the demands resulting in evolution of the laws to ensure individuals rights and duties². The Constitution mandated that all are equal without discrimination. Laws particularly matrimonial and family have been evolved from time to time, to keep pace with the changing demands of the social structural setup.

Live-in-relationship visualizes a communion, an arrangement of convenience between two individuals, who though coming from diversified cultures but have an intention to live together and cohabit, either due to mutual compatibility, understanding or a strong belief that they are meant for one another. Though it is primarily a western ideology but traces of it are deeply embedded in Indian history. Earlier Maharajas, Kings, rich elite men used to have live-in-relationships with several women apart from sacramental union. Traditionally, men maintained relationship with various women as it was not considered immoral for men to indulge into such acts. Men even maintained additional household for live-in women away from their families without confiding in the wife.

The concept of living together without *marriage is not illegal but highly controversial yet it has gained momentum among the educated, independent, professionally employed youth who conscious of their acts and its consequences, intend to cohabit rather than marry to avoid liabilities thereby retaining their single status and financial independence.* In the metropolitan cities this is practiced owing to the high cost of accommodation and reduced societal control. *Relationships have become more cross cultural and contractual resulting in explicit expectations from each other. Today it also includes persons where either of the party is married or even both the parties are married but are living together.* Homosexuals, gays, lesbians, married men whom law earlier did not give a right to marry usually maintained living relationship.

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2 Paras Diwan, Hindu Law, Allahabad Law Agency, Allahabad, p.23.

Legally speaking the two parties in living relationship are called “the other women”³ and “the other man”⁴. The phrase “common law wife” was used to signify legal rights as that of a wife enjoyed by a woman living with a man without marriage.⁵ The efforts of the government and the apex court has been to protect the rights of other woman.

The transformation in the life styles towards western style has definitely brought the need of “common law wife” in India as well. Formally they were known as “maitray karars” in which people of two opposite sex would enter into a written agreement to be friends, live together and look after each other⁶. A change is visible in our society from arranged marriages to love marriages and now to ‘live-in-relationships’.

India being a land of sages, marriage as an institution was idealized. Earlier sex life was absolutely free but man’s quest to know the paternity of children laid the seeds of institution of marriage which was an exclusive union of man and women, conferring the status of husband and wife on the parties and vesting certain mutual rights and obligations apart from vesting legitimacy on children born from such a union. Manu the codifier of law emphasized that:-

“Those who have wives can fulfill their due obligations in this world, those who have wives, truly have a family life, those who have wives can be happy, those who have wives can lead a full life.”⁷

Marriage does not involve merely taking few decisions, its about sharing and blending into each others families. Marriage is a long term contract which encourages emotional investment in the relationship. It is a solemnized vow to support each other through all oddities, in the presence of community elders and with their blessings but circumstantial pressures and temperamental incompatibilities have resulted in increase in dissolution of marriages.

II. Live – in – Relationship -- Meaning

Live in relationship is a contractual union and youth opt for this workable union since nobody is willing to take up additional responsibilities. This enables them to find out their compatibility and understanding with a live-in partner before proceeding to enter into a marriage. It exposes the partner’s real side to assess whether he is the ideal person or better to part ways. It is also visualized as a rehearsal for a married life. Today, the urge for

3 The woman who is involved in either bigamous marriage or live in relationship.

4 The man who is involved in either bigamous marriage or live in relationship.

5 Catherione Soanes, The compact Oxford Reference Dictionary (2001).

6 www:Indialawjournal.com.visited on 3-06-2010.

7 Paras dewan, Hindu Law, Allahabad Law Agency, Faridabad, 2009.

faster returns and sexual desires has initiated the demand for live-in-relationships as sex is no longer a taboo. Now day's even parents have slowly started giving sanctions to living arrangements for the sake of happiness of their children. The busy lives don't permit us to look into background of couple if they decide to live in a new place or city.

The statistics no doubt portray a dismal story as most people in live-in-relationship don't marry their partner. It rebuts the fact that living together before marriage is all for a better understanding to maintain and strengthen the matrimonial union. Those who marry also end up in a hasty divorce as expectations are too high on both the sides. Moreover, parties in a living relationship if already married would be violating the law and even otherwise they would not earn any benefit under the matrimonial laws of their community.

Between 1970 and 1990, the number of couples living together outside of marriage quadrupled, from 523,000 to nearly 3 million⁸. These couples face some of the same legal issues as married couples, as well as some issues that their married friends did not consider. The cities in India are examples of continuance of faith in marriages on one hand and attractions towards living arrangements on the other. Today's generation has become increasingly independent, and they choose to live as per their own thoughts, wants, desires and necessities but the fact that the idea of live-in-relationships is popular does not mean that it is correct. Living in a conservative society, where only two decades ago, if a man and woman were not legally married, were not from the same family, were seen together in public, were arrested on the charge of zina (Pre-marital sex and adultery), the idea of an unmarried man and an unmarried woman living together was considered highly incorrigible⁹. Moreover, it is designated as violating the basic tenets of ethics and high morality since marriage holds more importance than any other relationship, and a live-in-relationship is a violation of that very thought.

III. Advantages: Live-in-Relationship

A live in relationship has certain distinct advantages over a married life. It is a relationship devoid of commitment to the extent marriage has. It can be an association with multiple partners simultaneously. In such a relationship even the financial obligations of marriage are absent¹⁰. In marriage one automatically commits his or her finances towards the betterment of both the spouses. It is an integral part of married life. However, in a live in relationship the terms and conditions of a contract would determine the rights and duties of the partner. Furthermore a live in relationship does not bog

⁸ <http://Legal Dictionary. Tfreedictionary.com/live in relationship>, visited on 30.05.2010.

⁹ In Islam it is extramarital sex & premarital sex.

¹⁰ <http://Theviewpaper.Net/live in relationship>. 30.05.2010.

down an individual to the norms of the society as a marriage will. One can continue to be away from the family and friends of the other without there being any problem.

The biggest advantage of a live in relationship is that it can be brought to an abrupt end while to dissolve a marriage, one has to go through a lengthy, cumbersome and expensive divorce procedure. No question of alimony and maintenance as both parties are self dependant and can compensate one another for the loss and gain incurred during their cohabitation. In a living relationship, there are equal rights for man and woman. Both the partners take independent decisions. A man will have no authority over his female partner and vice versa. Live in relationship is the ideal alternative for feminists as they can preserve their own maiden names and identity without compromising on their individuality. The women are free of man's authority.

IV. Disadvantages: Live-in-Relationship

Live in relationship resembles a pure form of adultery. Live in relations are very fragile and can break at any point of time. It is basically built up on the pillars of individualism, money and fashion. In Live-in relationship, there is no concept of husband and wife. It is conditional and lacks commitment and sacrament. Live-in-relationship, is devoid of religion, traditions and culture. In live-in-relation, the head of the family is absent. The blood relations in live-in-relationship are uncertain. It is an encroachment on the existing family set up. One can not depend on one, Partner to the same extent as it is possible in marriage. The shoulder is there for certain occasions, but it may not be there in bad times. It lacks the depth of a married relationship which is legally sanctioned.

V. Law on Living Relationship

No specific law has been enacted by the legislature like other countries wherein live in relationship has a legal recognition. However, the customary law and the Evidence Act inclines in favour of live in relationship wherein a long time living together as husband & wife in the society would be a reasonable presumption in favour of their marriage unless it is rebutted by convincing evidence. Presumption could be inferred by the natural course of events and surrounding circumstances.¹¹ The apex court mandated that where partners lived together, the law leans in favour of legitimacy.

“The presumption no doubt is rebuttable but a heavy burden lies on the person who seeks to deprieve the relationship of legal origin to prove that no marriage took place.”¹²

¹¹ PTI, 17.01.2008.

¹² Long live in relationship as good as marriage : SC, 17.01.2008.

The Domestic Violence Act, 2005, is the only legislation which bestows all benefits on women living in such kind of arrangement by reason of being covered with in the term “Domestic Relationship”. The Act provides *protection to the wife or live in partner against physical or mental abuse at the hands of husband or live in partner or his relatives*. Section 2(f) if we proposed to enact a law to regulate live-in-relationship, though it would grant rights to parties to it but at the same time it would also impose obligations on them. In the Act of 2005 the “aggrieved person”¹³ has been defined as any women 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. “Domestic Relationship”¹⁴ means a *relationship between two persons who live or have, at any point of time, live 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 protection of woman from domestic violence Act, 2005 recognizes *live in relationship* as it speaks of persons related by marriage or through a relationship in the nature of marriage. *The female partner in a live in relation has been given the same rights against the male partner as a wife has against the husband under this Act. The female partner in live-in-relationship can also file a complaint The law has extended equal benefits to both married women as well as live in partner. The law has given official recognition to live in relationships thereby treating the wife at par with the other women.*

A recommendation by the Justice Malimath Committee to the Law Commission of India (2003) stated that if a women *has been in a live-in-relationship for a reasonable time, she should enjoy the legal rights of a wife*. When the proposed amendment was announced critics immediately sprung up to say that the move would encourage men and women to get into multiple relationships outside the marriage. However one of the major reasons for the move was that *numerous women were finding it difficult to get any assistance from men, who had deserted them after living with them on the promise of marriage in the future. In many cases the women did not even know that the man they had been living with was in fact already married*. The Maharashtra Government recently approved a proposal where a woman in a live-in-relationship for a ‘reasonable period of time’ would get the status of ‘wife’.

In June 2008, the National Commission for Women recommended

13 Sec 2(a), The Protection of Women from Domestic Violence Act, 2005.

14 Sec 2(f); *ibid*

that the **live-in female partner should be entitled to maintenance if her man deserts her**. In far-reaching recommendations to the Ministry of Women and Child Development, the Commission has sought a change in the definition of “wife” as described in section 125 of Cr. P.C. which deals with maintenance of wife, children and parents, who cannot maintain themselves. Maintenance can only be claimed by a woman who is a wife and has either been divorced or has obtained a divorce, or is legally separated and is not remarried. It suggested that ‘wife’ should now be redefined to include women involved in a live-in-relationship and she could claim alimony. Pointing to the need for broad-basing the definition of wife in the section, Commission official said there **had been many cases where the man led the woman to believe that he was unmarried or was divorced or widowed and went through the formalities required by The Hindu Marriage Act or the custom governing him**. NCW chairperson Girja Vyas held that if the women can provide proof of long term relationship, her claim would stand.

However any amendment in the definition of wife in view of the Domestic Violence Act, 2005 which entitles equal rights to a live in partner would bring an amendment in the law of evidence, succession, adoption, bigamy, marriage. The Union Law Minister H.R. Bhardwaj in a debate in the Lok Sabha on 15.12.2008 in the question hour has stated that if live in relationships are acceptable by society, then government can make laws but with 1% of the population engaged in such relationships do we really need an act. If law is enacted it will be misused than used.

VI. Legal Appreciation of Live-in-Relationship

Marriage is an institution which is preferred over any form of union but long cohabitation by a man and a woman has all along, directly or indirectly, been recognized by the judiciary in India. Even in nineteenth century, courts enforced some agreements where the consideration was past cohabitation¹⁵. Section 23 of the Indian Contract Act, 1872 states that if courts regard consideration of an agreement immoral, it is unlawful and consequently the agreement is void. Where a man and woman live and cohabit together, although not lawfully married to each other, and the man in consideration of the past cohabitation agrees to transfer property to the woman or to make provision for her maintenance, the question often arises as to the enforceability of such an agreement.

In *Dhiraj Kaur V. Bikramjit Singh*¹⁶, the Allahabad High Court allowed the woman to recover arrears of allowance promised to her for past cohabitation. The Patna High Court in *Godfrey V Parbati*¹⁷, held that a contract

¹⁵ www.indialawjournal.com. 30.05.2010.

¹⁶ (1881) ILR 3 All 787

¹⁷ AIR 1938 Pat 502

to compensate a woman for what she had lost on account of past cohabitation with the promiser was not immoral and hence enforceable. However, if cohabitation amounts to adultery under the Indian Penal Code, such agreements are void for consideration being forbidden by law. The Madhya Pradesh High Court also enforced an agreement in *Subhashchandra v Smt. Narbadabai*¹⁸ where the consideration was apparently past cohabitation. In this case, Narbadabai has been living in exclusive keeping of one Seth Kishanlal, a married man, for the past about fifty years and was entitled to claim maintenance during her lifetime from the estate of Kishanlal. The cohabitation was not shown to be adulterous. It was held by High Court that the embodied agreement being a valid contract was enforceable.

In *D.Nagaratnamba v Kunuku Ramayya*¹⁹, Bachawat, J of the Supreme Court of India recognized past cohabitation as a good consideration. *These cases were concerning enforceability of agreements where the consideration was past cohabitation without marriage and upholding lawfulness of consideration in such cases amounted to legal recognition of live-in-relationship by judiciary.*

The Privy Council, being the Highest Court of Appeal for Indian cases prior to Supreme Court, declared in *Mohabbat Ali Khan v Muhammed Ibrahim Khan and Others*²⁰ in 1929 that law makes a presumption in favour of marriage in case of long cohabitation. It observed,

*“the law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years.” However, did not specify the minimum number of years for such presumption. It further held that where a man and woman are proved to have lived together as man and wife, the law will presume, unless contrary is proved, that they were living together in consequence of a valid marriage*²¹.

The Supreme Court in *Gokal Chand v Parvin Kumari*²² held that *“continuous cohabitation of a man and a woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage. But the presumption which may be drawn for a long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the court can not ignore them.”*

18 AIR 1982 MP 236

19 AIR 1968 SC 253

20 AIR 1929 PC 135

21 (1921) 2 Lah 207

22 AIR 1952 SC 231

In *Badri Parsad V Deputy Director of Consolidation and other*²³, the Supreme Court observed that a strong presumption arose in favour of wedlock where the partners had lived together for a long spell as husband and wife. Heavy burden lay on him who sought to deprive the relationship of legal origin. The Court observed,

*“if man and woman live as husband and wife in society, are compelled to prove, half a century later, by eye witness evidence that they were validly married, few will succeed”*²⁴.

The Supreme Court reiterated in *SPS Balasubramanyam v Suruttayan*²⁵ that if a man and a woman lived together for long years as husband and wife then a presumption arose in *law of legality of marriage though rebuttable*. The court held,

*“in our considered opinion a legal presumption arises on the admitted fact that they were living together as husband and wife and the said presumption has not been rebutted”*²⁶.

*Payal Katara v Superintendent, Nari Niketan, Kalindri Vihar, Agra and others*²⁷ held that it is a fundamental right of a girl, who was major, to go anywhere and live with anyone. The Agra police arrested her and Ramender singh with whom she had a living relationship, on the basis of an FIR lodged by her father, accusing Ramender singh, an already married man, of kidnapping Payal Sharma.. Justice M. Katju and Justice R.B. Mishra held that the petitioner had shown her date of birth certificate bearing date 10-07-1980. Hence she is major and has the right to go anywhere and live with anyone. In our opinion, a man and woman, even without getting married, can live together if they wish to. This may be regarded immoral by society, but is not illegal. There is a difference between law and morality.”²⁸

The Supreme Court bench comprising of Chief Justice K.G. Balakrishna, Deepak Verma, J. and B.S. Chauhan. J. held:

“When two adult people want to live together, What is the offence and under which Section? Does it amount to an offence? The bench refused to term living relationship as illegal. It is not an offence. It cannot be an offence. There is no law which prohibits live in relationship or pre

23 AIR 1978 SC 1557

24 Ibid

25 AIR 1994 SC 133

26 AIR 1996 SC 1290

27 AIR 2001 All 254

28 Ibid

marital sex. The SC unambiguously endorsed living together as part of Right to Life.”

A case regarding the caste of a child born to live-in partners, where male and female partners belonged to different castes, came before the Supreme Court in *S.H.Devi v S. G.Swamy*²⁹. Sobha's mother Simhachalam, who belonged to Bagatha scheduled tribe in Andhra Pradesh, had a live in relationship with Marahari Rao, an upper caste man and Sobha was born out of this relationship. Later on, the relationship had ended and Sobha was brought up by her mother and married to a person from Bagatha community Sobha was elected in 1999 on a Telugu Desam ticket from constituency reserved for scheduled tribes. Sobha's election was challenged by the defeated candidate on the ground that she did not belong to Bagatha community, which had been notified as a scheduled tribe community, because her father was an upper caste man The Andhra Pradesh High Court drew a presumption of marriage between the father and the mother of Sobha because of long cohabitation in a live- in relationship. The High Court set aside her claim. Before the **Supreme court she stated that her community would be determined as per her mother and not father as there was no marriage between the two. But the Supreme Court concurred with the view of the High Court and observed,**

“we must say that on the evidence here, including the documentary evidence relied on by the High Court, the presumption arising from long cohabitation of Marahari Roa and Simhachalam of a valid marriage between them, gets strengthened and there is no material circumstance which can be said to rebut such presumption arising from long cohabitation.”

In *Dimple Gupta (minor) v Rajiv Gupta*,³⁰ the S.C held that the child born out of live-in relationship could claim maintenance from his biological father. S.B.Sinha, J. and Harjeet Singh Bedi, J. of the S.C. set aside the order of H.P. High Court which had rejected the claim of Dimple Gupta (minor) who had claimed maintenance from her father Rajiv Gupta on the basis that she was born out of a relationship between her mother Narain Dassi and Rajiv Gupta when they were living together. The Judicial Magistrate directed Rajiv Gupta to pay rupees five hundred per month to the child as maintenance. The High Court, however, reversed the trial court order but *the Supreme court held that there was no reason to justify a reversal of the findings that had been recorded by the trial magistrate that they were not married and appellant, therefore, had virtually no rights which she*

29 AIR 2005 SC 800

30 AIR 2008 SC 239

could enforce except through an application under section 125 of the Code of Criminal Procedure.

In *Tulsa & Ors. v Durghatia & Ors.* AIR 2008 SC 1193, Supreme Court has ruled that

if a man and women are involved in a live in relationship for a long period, they will be treated as a married couple and their child would be called legitimate. While deciding a case involving the legitimacy of women born out of wedlock, the court ruled that children born to parents “out of wedlock” will have all the rights of a legitimate child.

In *Koppiseti Subbharao @Subramaniam v State of A.P.* (2009) He was accused of harassing his live-in partner for dowry but he defended himself saying that Section 498A did not apply to him since

- (a) he was not married to his live-in partner and
- (b) he was married to someone else.

The court was *not impressed*. It said that ‘*the nomenclature “dowry” does not have any magical charm written over it. It is just a liable given to demand of money in relation to a marital relationship*’.

Drawing parallels with the law which recognizes the legitimacy of children born of void and voidable marriages, it held:

“can a person who enters into marital agreement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise?”³¹

Preferring a liberal construction of law, the court held:

“such legal niceties would destroy the purpose of the provisions and encourage harassment of women over demand for money.”

This judgment seems to go a long way in saying *that men can’t dodge either responsibility or liability to women they live with by simply not getting married to them.*

VII. Lacunas

The law ought to strike a balance. By giving women an extra and added advantage over men in a live-in-relationship is by no means *becoming of a government*. It will be highly immature on their part to assume that all relationships end due to men’s fault and hence they should be made to pay for the same in the form of alimony.

31 www.Indiakanoon.org/doc.visited on 30.05.2010.

After totally lopsided and stringent provisions under the anti-dowry provisions, which are misused to the tune of 98% as provided by the 2% conviction rate in 498 A cases has **killed the institution of marriage silently, it seems it is now the turn of live-in-relationships.**

The logical rationale fails to understand that persons having the slightest of common sense can draft any provision on the basis of a generalized statement that **all men are criminals and all women are truthfully innocent. When there is a provision to extract money legally, why will women not initiate a live-in-relationship, break it at will and then harass a man for whole life.**

Concept of live-in-relationship in the Indian society is hundred times more complex than western society which is being attempted to be aped by the law makers.

To legalize the children born out of such relationships and promulgate the concept of father less society were in any couple starts living together, parts at will and lives the children in lurch. Such children will have deep psychological scarce rendering them very vulnerable to the possibility of turning into criminals with a multiplicity factor. Such a provision can never ensure long lasting relationships.

VIII. The Issues Which Need to be Focused Are

- 1 Would viewing prospectively live-in-relationships be accepted as alternative to marriage or marriages are nothing but socially endorsed Live in Arrangements.
- 2 Would live-in-relationship give the man and women a reasonable investment and security of relationship or it would be merely a temporary phase prior to acceptability of a permanent union.
- 3 Would acceptance of legal sanctity to live-in-relationship encourage adultery and bigamy or it is a byproduct of misplaced sense of culture and decency.
- 4 Would legal recognition of Right of a women in a live-in-relationship under the D.V Act, Customary law, Indian Evidence Act, and law relating to Maintenance under 125 Cr.P.C threatens the status of a legally wedded Hindu wife?
- 5 Would children of such relationship be socially compatible to accept and appreciate the consensus relationship of their parents in the

absence of marriage particularly where they moved out.

- 6 Who would take care of such a children who are born from such unions of convenience but neither party intends to rear the child. Though conferred legitimacy the child would be parentless
- 7 Would such a practice without commitment and sincerity to oneself open the road to prostitution as psychological frustration may drag individuals to exploitation?

The judiciary nodoubt has legalized such arrangements, thereby giving them the status of marriage and would be preferred by the educated, financially independent men and women in contrast to marriage. The researcher has given few suggestions to ensure the rights of both live-in-partners but protective sanction is likely to place it into the same trap that is live-in-relationships are bound by the same rules and structures as a marriage.

IX. Suggestions

1. There is a need to remove all monetary provisions as both are self dependent. Either the complainants or the defendant needs to be punished with an imprisonment. If allegations are proved to be true the defendants goes to jail and if proved to be false the complainant goes to jail for an equal term for causing unnecessary harassment, torture and defamation to the defendant.
2. Judgments and legal provisions should be completely gender-unbiased and based on merits and application of mind.
3. An urgent need to replace all words like man/woman/husband/wife with person and spouse respectively. No alimony for earning spouses or having a capability to earn and that needs to be determined from the qualification of the petitioner.
4. To ensure the rights of other men and women there must be an agreement determining the time period, their rights and responsibilities as well as liabilities, pecuniary matters and the matters to be settled if the partners intend to withdraw. The other party has a right to seek remedy from the court for breach of agreement and can claim compensation.
5. The parties by long cohabitation or for the decided period can claim the status of husband and wife under the Special Marriage Act 1954 or Foreign Marriage Act.

6. Awareness must be created so that the partners are aware of the positive and negative aspects before accepting such relationships rather than merely aping the thought for the sake of trial.
7. The concept of 'common law wife' and 'wife' though are being brought at a single platform to merge the controversy in relationships as the society has evolved new codes which were not defined under the institution marriage but the security and protection has to be ensured by law to the legally wedded wife due to her incompatibility to match the proficient other women and to save her of the threat of losing her husband as she may strongly advocate monogamy.

Law has to equip itself to the changing social demands but law has to be balanced to give equal rights to both genders as well as those accepting the traditional concept of marriage and those opting to defy those social norms due to their necessities or liking . Insightful communication is the only option that can bridge that gap, but even though the previous generation is what we now call "old fashioned", their policies seemed ethical enough to work. We need to take a leaf out of their book, and incorporate their views into our lives, for some of their concepts and practices seem far better than ours. The emphasis is on making relationships valid, acceptable and consecutively respectable.