



VULNERABILITY OF THE FEMALE PARTNER IN LIVE-IN RELATIONSHIPS IN INDIA: A STUDY
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Abstract

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The male and female couple living together as social union is termed as "Marriage", which is more of a sacrament and a divine concept and is practiced as a ritual since time immemorial. India is a tradition bound country, which is slowly opening its doors for western ideas and lifestyles. Live-In Relationship has been one of the most controversial socio legal topic in the recent days.

There is no specific statute which deals with live-in-relationship in India. A live-in relationship is not recognized by Hindu Marriage Act, 1955 or any other statute. To certain extent the Protection of Women From Domestic Violence Act, 2005 consider the vulnerability of the female partner in such relation

The whole notion of live in relationship is not as simple as it appears, but is multi-dimensional bringing along with it many issues and complications. In Indian context there is a urgent and dire need to recognize such relationship through legislation which would empower both the parties with rights and create obligations with duties thereby confining the ambit of such relationship.

Vulnerability Of The Female Partner In Live-In Relations In India: A Study

Introduction

The male and female couple living together as social union is termed as "Marriage", which is more of a sacrament and a divine concept and is practiced as a ritual since time immemorial. India is a tradition bound country, which is slowly opening its doors for western ideas and lifestyles. Live-In Relationship has been one of the most controversial socio legal topic in the recent days. The fundamental component that works in such relationship is understanding and compatibility between such accomplices. Because of modernization and city culture, we are watching this kind relationship in few sections of Indian culture.

Concept of live in relationship

Live in Relationship is a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. Live in relationship means those relationship where there is no marriage between the parties, in the sense of solemnization of a marriage under any existing law. Yet the parties live as couple, represent to the world that they are a couple and there is stability and continuity in the relationship.¹

Legal Perspectives of Such Relationship

There is no specific statute which deals with live-in-relationship in India. A live-in relationship is not recognized by Hindu Marriage Act, 1955 or any other statute. To certain extent the Protection of Women From Domestic Violence Act, 2005 consider the vulnerability of the female partner in such relation and provide the relief in the form of Section 2(f) which defines "Domestic relationship" 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... Indian legal System especially Judiciary has taken a lead in demonstrating a correct way for the advance of Live in relationship couples. This is not a recent trend but the judicial verdicts even before independence show the concern of judiciary for their rights.

Legal Presumption

The Privy Council in *A Dinohamy v. W L Blahamy*² laid down the principle that "Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage".

50 Years cohabitation and validity

Supreme Court granted legality and validity to a marriage in which the couple cohabited together for a period of 50 years.³ The Supreme Court held that in such a case marriage is presumed due to a long cohabitation. The same principle was reiterated in the case of Mohabhat Ali v. Mohammad Ibrahim Khan⁴

Law and Morality in case of live in relation

The Allahabad High Court, in 2001, in Payal Sharma v. Superintendent, Nari Niketan, and others, stated that a live-in relationship is not illegal. Justice M Katju and Justice R.B. Mishra stated, "In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality." It was also reiterated about the "legality" and "morality" of relationships-Supreme Court in Rameshchandra Rampratapi Daga v. Rameshwari Rameshchandra Daga⁵ 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 marriage⁶ 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.⁷

Live in not an offence

In Patel and others case,⁸ the Supreme Court observed that live-in relation between two adults without a formal marriage cannot be construed as an offence. It also stated that there is no such statute which postulates that live in relationships are illegal.

Long term relation as good as marriage

The same proposition was upheld in the case of Tulsa v. Durghatiya,⁹ where the long term live in relationship was recognised as equivalent to marriage.

Live in is between unmarried people of heterogeneous sex

In Lata Singh v State of UP and Anr¹⁰. The Apex Court held that live-in relationship was allowed just between unmarried people of heterogeneous sex. If the situation is something where the man is married it is an act of Adultery under Indian Penal Code but not of marriage, and if there is any children from that relation, the children would be precluded to acquire the property u/s 16 of the Hindu Marriage Act, 1955.

Live in relation as miscomprehended notion amongst a large chunk of our population about morality and ethical values 'Live in and Right to live' also to interpret live-in relations to mean "living together as husband and wife"

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In S. Khushboo v Kanniammal&Anr., the south Indian actress Khushboo had endorsed live in relationship for which reason criminal appeal was filed against her which the Supreme Court quashed, and observed "living together cannot be illegal. If two adult people want to live together what is the offence?" "If two people, man and woman, want to live together, who can oppose them? What is the offence they have committed? This happens because of the cultural exchange between people," a special three judge bench of chief justice of India K.G. Balakrishnan, justices Deepak Verma and B.S. Chauhan observed, a practice that is often frowned upon because of what could perhaps be called miscomprehended notion amongst a large chunk of our population about morality and ethical values. Supreme Court has held that living relationship comes under the ambit of Right to life. The Court held that the act of two grown-ups living together can't be unlawful.

Vulnerability of woman in such relations in Indian scenario

Indian women though strongly protected with constitutional mandate and various welfare and protective legislations, is not still able to elevate her status up to the mark. The personal laws on marriage also provide various beneficial provisions to safeguard her interest but still the status of woman is not safe and secure at large. The legally wedded wife is also denied her legal rights and due to socio cultural constraints, unawareness of legal provisions she does not access the doors of justice. To raise of voice against injustice , exploitation, violence is not rule but exception. Very few dare to knock the doors, or take help of the support

structure in the name of police or courts and many a times the incidences go unreported even. To avoid maintenance to women in need, every technicality is taken as defence by the men in court cases. For example in *In M. Palani v. Meenakshi*¹² 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 20¹³ read with Section 26.¹⁴ 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"¹⁵ to invite the application of the Protection of Women from Domestic Violence Act, 2005. The direct provisions of the PWDVA2005 provide for relief for live in woman partner but the intentions of the legislature and the use with the same spirit is somewhere going against each other.

The huge social disapproval to this 'live-in' as western norm in India is also to be viewed in different perspective, society revered the institution of marriage for safeguarding the interest of everyone in marital ties, again if a woman is financially dependent on the man, the instability of such a relationship becomes obstacle in her survival. 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.¹⁶ In this context the female partner in live in relation is at the disadvantage due to socially not approved way of living together without marriage.

There is no specific enactment for live in relationship. Neither any personal law recognize 'live-in-relationship' nor does the Criminal Procedure Code 1973. The Protection of Women from Domestic Violence Act 2005 on the other hand for the purpose of providing protection and maintenance to women says that an aggrieved person from relationship in nature of marriage can get relief. Whatever reliefs are available are only with the judicial activism of the judiciary who have pronounced the right of live in partners under the broad spectrum of Art 21 Right to live and personal Liberty.

The Protection of Women from Domestic violence Act has been generally hailed as the main lawful Act to cater such relations presently. This Act characterizes an "aggrieved individual" who will come under the ambit of this Act as "any lady who may be, or has been, in a local association with the respondent and who asserts to have been subjected to any physical or mental abusive behaviour at home.

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, in today's system the live in partners have little guidance as to their legal rights in such areas as property ownership, responsibility for debts, custody, access to health care and other benefits, and survivorship and a woman in such cases becomes very vulnerable when the male partner denies his relations. The unmarried woman living in relation with married man becomes more vulnerable when the male married person denies the said relations and responsibilities arising out of it.

Section 125 of Cr. P. C. provides for maintenance of wife, children and parents, who cannot maintain themselves. As of now maintenance can only be claimed by a woman who is a wife, has either been divorced or has obtained a divorce, or is legally separated and not remarried. To overcome this situation by amendment the National Commission for Women recommended to Ministry of Women and Child Development made suggestion to include live in female partners for the right of maintenance under Section 125 of Cr. P. C. Also the judgment in *Chanmuniya vs Virendra Kumar Singh Kushwaha*¹⁷ came to rescue a woman not coming in the strict definition of wife though the judgment when it was held that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr. P. C, so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125 of Cr. P. C.

The landmark judgement of Hon'ble Supreme Court in *D Veluswamy Vs D Patchaiammal*¹⁸ a relationship in the nature of marriage is akin to a common law marriage. Common law marriages require that although not being formally married :-

- a. The couple must hold themselves out to society as being akin to spouses.
- b. They must be of legal age to marry.

- c. They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- d. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

This judgment stand to protect the rights of women against her vulnerability but still there is no direct legislative provision yet made to grant her relief.

There are various judgements recently to protect the rights of woman in live in relations but instead of making use of provisions of the existing laws, the seperated specific legislation can only protect the rights and also create obligations.

Conclusion

As observed in by Justice A.K. Ganguly in *Revanasiddappa v. Mallikarjun*¹⁹ that "With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today" Gradually India is also accepting the live in like western norms to certain extent but still it is not receiving social acceptance.

The whole notion of live in relationship is not as simple as it appears, but is multi-dimensional bringing along with it many issues and complications. in Indian context there is a urgent and dire need to recognize such relationship through legislation which would empower both the parties with rights and create obligations with duties thereby confining the ambit of such relationship. The law so enacted on live in relationship should keep in mind the basic structure of tradition that prevails in the Indian society. The law will also have to answer many more questions like what to do when under PWDVA2005 the right of live in woman partner that confronts with the legally wedded wife what would be its implications or if at all a law to be made keeping all personal laws apart then whether Hindu personal law will dominate it? So on a so forth many more questions are still waiting in this Indian social system. The courts have recognized persons in long-term live-in relationship to be as good as a married spouse through various decision since pre-independence era. Such decisions, while being delivered were for upholding the rights of the woman who is in relations without marriage but these decisions contradict the law on bigamy in the present legislative provisions. If bigamy is illegal and subject to punishment, it is not clear in what sense a live-in relationship can be equal to a marriage, if either the man or the woman is already married to a living spouse.²⁰

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