

Impact Factor - 6.261

ISSN - 2348-7143

INTERNATIONAL RESEARCH FELLOWS ASSOCIATION'S
RESEARCH JOURNEY

Multidisciplinary International E-research Journal

PEER REFREED & INDEXED JOURNAL

February-2019 Special Issue - 132

**'Women Empowerment and
Sustainable Development : A Perspective'**

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INDEX

No.	Title of the Paper	Author's Name	Page No.
1	Marriage Vis-A-Vis Live in Relations: Legal Ramifications and Responses	Prof. Sanjay Jayram Aher	08
2	Women Empowerment?-"They Already Are Empowered!!!"	Mrs. Shailaja Changundi	13
3	Legal Reforms and Women Empowerment	Mr. Samir Chavan	19
4	The Emergence of New Women in Indian Novels	Dalvi S.	23
5	Role of Hindi Daily Soaps in Women Empowerment	Pallavi Ilkal	28
6	Awareness of Health in College Girls	Alka Inamdar	31
7	Woman Empowerment in India: Issues and Challenges	Meenakshi Jadhav	35
8	Contribution of Indian English Women Novelists In Indian Writings in English	Dr. Vaishali Joshi	38
9	Women Empowerment & Financial Inclusion of Rural Poor Women in Satara District	Rohini Kale	41
10	Women Empowerment Holistic Need	Dr. Sunil Kamble	44
11	Still I Rise: A Representation of Suppression	Dr. Utkarsh Kittekar	47
12	Economic Growth and Gender Equality in India	Prakash Kumar	48
13	Tracing Patriarchy – Through the Ages and Its Place in the Modern Society	Dhara H. Moray	54
14	Education and Women Empowerment: A Study with Reference to Legislative and Judicial Efforts	Dr. Pooja Narwadkar & Mr. Vikram Irale	59
15	Women's Empowerment and Sustainable Development in India	Miss. Nilakhe Amruta Shital	65
16	Recent Judgement: A Boon for Changing Gender Stereotypes	Mrs. Komal R. Oswal & Mr. Ashish A. Bhasme	70
17	Women Workforce In BPO: A Sociological Analysis	Dr. Amol Patil	74
18	The Role of ICT in Gender Equality and Development	Dr. Pushpa Patil	79
19	Role of Women in Indian Politics	Swapnil D. Pawar	83
20	Participation of Women in Panchayat Raj System: Status and Challenges	Mr. Arun Pentawar	89
21	The Role of Women in Sustainable Development and Management of Water	Mrs. Asha V. Potalwad	93
22	Empowering Rural Women's Through Agrobased Industrial Development For Sustanibale Life	S. S. Sathe, P. B. Kale, A. T. Birajdar & N. M. Kumbhare	97
23	Role of Dairy Farming In Empowerment of Rural Women: A Case Study of Sangavi Village of Phaltan Tehsil in Satara District (Mh)	Mr. Popat Shende & Mr. Rajaram Kadam & Dr. Ashish Jadhav	102
24	Role of Government Schemes in Empowerment of Women in India	Mrs. Geeta Shete	110
25	The Depiction of Women Characters in Sudhir Kakar's Novel the Ascetic of Desire	Mr. Amol D. Shinde	114
26	Empowerment of Woman Through Legislation	Adv. Kirti Shinde	118
27	Empowerment A Myth for Women And Adolescent Girls with Disabilities	Poorva Shinde	124



Marriage Vis-A-Vis Live in Relations: Legal Ramifications and Responses

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Abstract:

The family and marriage are universal institutions as no society in the world exists without them. The kinship of the family members is either based on blood or adoption or affinity i.e. marriage. Marriage creates spousal relations between man and woman in accordance with social and legal norms in force. Intimacy and companionship is one of the prime objectives of marriage which is condemned, more or less, almost in all social systems. However, pre-marital and extra-marital male-female cohabitations are prevailing in every socio-legal system. Extra-marital relations are vetoed by sanctions of law. Unmarried cohabitation is socially disapproved but not legally. This increasing form of cohabitation is prevalent mostly among the highly qualified and high profile people living in the metro cities.¹ At present, there is no specific and clear law dealing with legal status of live in relationship² and matters incidental thereto such as maintenance, inheritance, infidelity, mutual rights and liabilities etc. However, the judiciary has addressed some issues in India through the catena of decisions.

Introduction:

Marriage is socially and legally approved conjugation of man and women with many folds objects. It age old institution that has provided stability, development of society and fulfilled diverse needs of individuals, offered several benefits to spouses provided that certain restrictions are to be observed. The centrality of marriage is the cohabitation and procreation. In the view of majority, cohabitation or procreation is subjected to the marriage only; there are some people who do not hold the same view and they may follow the other suitable form of cohabitation that is neither established nor accepted. These other forms of cohabitation may include pre-marital sex, extra marital sex.³

Living together in intimacy without marriage is one of the forms of cohabitation in which man and woman live together as a husband and wife without marriage. This type of relationship is termed as live in relationship and couple as a live in partners.

In other domains of law it is also termed as common law marriage⁴ or civil union⁵ or de facto marriage⁶ or relationship in the nature of marriage.⁷ In India, the Present form of cohabitation is free from socio-legal formalities and fully depended upon mutual understanding of the parties which has created few questions that need to be answered. However, in the absence of specific law, Apex Court has taken steps to provide maintenance and protection to women

¹ Ashish Kamad, Kantar Media's 57 Nations Survey Report, 2007.

² *Savitaben Somabhat Bhatia vs. State of Gujrat and Others*, AIR, 2005, SC, 1809

³ *S. Khushboo vs. Kannaiamal and Anr.*, 28.04.2010 at www.manupatra.com/judgement/sc

⁴ United Kingdom, Civil Partnership Act, 2004

⁵ France, Civil Solidarity Pact, 1999

⁶ Australia, Family law Act, 1957

⁷ India, Protection of Women from Domestic Violence Act, 2005



living in relations and also quashed illegal actions against such relationship.⁸ Judiciary considering the woman living in such relations as a wife of a man under the presumption of marriage on the basis of long time cohabitation as a husband and wife if contrary is not proved⁹ but did not recognized independent status of woman or such relationship.

Objectives: This paper has some objectives as follows-

To ascertain legal status of live in relations and women living therein.

To distinguish between marriage and live in relations.

To specify the need of special legislation to govern live in relations.

To have attitudinal changes in the society.

Need and Significance:

The present laws do not address issues as to live in relationship like status of the parties, rights and liabilities, status and rights of children. Initiatives of the judiciary to provide protection to such couples and decriminalizing live in relationship are significant. If it is not regulated and channelized by legal provisions, some will misuse and suffer there from. The absence of law has created too many legal issues. This form of cohabitation is preferred by the young generation and also by the aged people who are living single.¹⁰ It is adopted by the intellectual class, including youth and elderly single persons, which is an asset of society but they are vulnerable against exploitation and socio-legal insecurity which is resulting in honor killings, suicides and so on.¹¹ The need of special law is also endorsed by the Judges of High courts and Supreme Court in India.¹²

Marriage and Live in Relations: Concept

Marriage:

The term marriage has not been defined in any of the marriage laws. In socio-cultural context, it is sacramental union of man and women created according to religious, customary, social norms. It is legal wedlock between man and women solemnized in accordance with the legal provisions, protected by law. Edward Westermarck¹³ defined marriage as the more or less durable connection between male and female, lasting, beyond the mere act of propagation till or after the birth of the offspring.

Live in Relations:

In ordinary parlance, live in relationship is a relationship between male and female without marriage. Legally speaking it is an arrangement in which unmarried and major persons of heterogeneous sex live together without marriage for reasonable period of time.¹⁴ It is a contractual relationship based on mutual understanding of a couple for which no law has

⁸ *Lata Singh vs. State of U. P. and Anr.*, AIR, 2006, SC, 2522; See also, *Madan Mohan Singh vs. RajniKant & Anr.*, 13/08/2010, <http://www.manuptara.com/judgements/sc>

⁹ Indian Evidence Act, 1872, S. 114

¹⁰ Neelima Mahajan, *Live in relationship: a metro trend*, at <http://articles.timesofindia.com/2007>

¹¹ *Lata Singh*, Supra Note 8.

¹² C. Nagappan, Chief Justice of Orisa High Court, Times Of India, 17 May, 2013;

See also, *Radhika vs. State of M.P.*, AIR, 2008, SC

¹³ Edward Westermarck, *History of Human Marriage*, PHI Learning Pvt. Ltd. 2008

¹⁴ *S. Khushboo*, Supra Note 3. See also, *Lata Singh*, Supra Note 8.



prescribed terms and conditions to be complied with to enter into the same and no method or consequences of dissolution. Therefore it is purely a private relationship of two individuals in which no legal, religious, customary and otherwise intervention is required. In narrower sense, unmarried cohabitation may be narrowly defined as an intimate sexual union between two unmarried partners who share the same living quarter for sustained period of time.¹⁵

Legal Ramifications:

In the context of marriage, the present legal arena is such that marriage is socially and legally recognized and protected institution. It confers spousal status, privileges, rights and liabilities on husband and wife. Children born out of marriage are legitimate for all purposes. Rights of spouses and children as to maintenance, succession, inheritance, guardianship etc. are recognized and protected by various personal or civil laws. Marriage bond can't be broken as per wills and whims of spouses because divorce laws have provided grounds, procedures in which fate of children is paramount consideration.

In the context of live in relations, neither laws recognize or provide provisions in regard to live in relationship nor confer legal status, privileges, rights and liabilities on the parties or children.¹⁶ Provisions of the Criminal Procedure Code, 1973 does not include a woman living in relation with a man in the ambit of definition of wife in order to provide maintenance if deserted or otherwise by the partner.¹⁷ No penal law in India provides punishment in case of infidelity of the partners.¹⁸

Provisions of Indian Evidence Act, 1872 lay down that where an independent evidence of solemnization of marriage is not available, it will be presumed to be valid marriage by continuous cohabitation between the parties unless the contrary is proved.¹⁹ The Supreme Court of India has reiterated that if a man and woman are living under such circumstances and holding out to the world as husband and wife, they can be presumed to be such.²⁰

The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as Act of 2005) is one of the steps of positive manifestation of policy of law favoring legitimacy to such relations and against the condemned custom of concubinage. The Act of 2005 covers the woman in the term of an 'aggrieved person'²¹ and the household between the live in partners is termed 'shared household'²². The live in relationship is identical to the phrase 'domestic relationship' that means and includes 'relationship in the nature of marriage'.²³ The provisions as to

¹⁵ Bacharch C., Hidin M. J. et.al. "The changing Shapes that bind: An Overview and Synthesis", at [http://: www.springerlink.com](http://www.springerlink.com), cited on 11.01.2014, 2:05 p.m.

¹⁶ Hindu Marriage Act,1955; Special Marriage Act,1954; Parsi Marriage and Divorce Act,1988; Indian Divorce Act, 1872; Shariat Laws etc.

¹⁷ The Criminal Procedure Code, 1973, Ss. 125-128.

¹⁸ Indian Penal Code, 1860, Ss. 107,108, 375, 494, 497

¹⁹ Supra Note 9.

²⁰ *Tulsa & Ors vs. Durghatiya & Ors* on 15 January, 2008 at www.manupatra.com/judgements/sc

²¹ Protection of Women from Domestic Violence Act,2005, S. 2 (a)

²² The Protection of Women from Domestic Violence Act,2005, S.2 (s)

²³ The Protection of Women from Domestic Violence Act,2005, S. 2 (f)



respondents are still vague of the act of 2005.²⁴ These provisions altogether do not require the marriage between the man and woman so as to provide protection and maintenance to woman living in relations. In most of the cases, Supreme Court either acknowledged or rejected rights of female living in relations relating to maintenance, inheritance, property etc. on the basis of presumption of marriage not otherwise. The ratio of cases is not general but individual.²⁵

The Constitution of India has guaranteed under Art. 21 the 'right to life and personal liberty' to all people which means that one is free to live the way one wants and a girl, who is major, is free to marry or go away with anyone she wishes.²⁶ When two adult persons of heterogeneous sex live together without marriage, it is a part of fundamental right but not an offence.²⁷

Some Responses:

Mr. H.R.Bhardwaj, then Union Law Minister, on 15th December, 2008, while answering a question related to live in relations stated that if it is accepted by society, the government can make laws. It is hypothetical today to contemplate law for it because less than one percent are in such relations. If law is made, it will be misused.²⁸ The Government of Maharashtra in October, 2008 approved a proposal suggesting a woman involved in such relations for reasonable period should get status of wife.²⁹ The Mallimath Committee had also suggested that the definition of 'wife' u/s.125 of Cr.P.C., 1973 should be amended so as to include woman living in relations to be entitled for alimony.³⁰

The judiciary in India has taken the stand according to the Constitution of India, human rights and other laws of land. The basic presumption and rule of interpretation state that a thing is presumed to be valid, unless and until it is invalidated by law. Living in relations for one or the other reasons by major and unmarried couple is neither an offence nor any sort of civil wrongs.³¹

To live with person of one's choice is an exercise of basic right under Article 21 of Constitution of India.³² In the words of Hon. Justice Katju, "... [if] a petitioner is major at relevant time...[h]ence, she is free to marry anyone she likes or live with anyone she likes..."³³ [Emphasis added].

Hon. Apex Court stated that 'relationship in the nature of marriage' is akin to a common law marriage which requires the following conditions to be fulfilled.

(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.*

²⁴ The Protection of Women from Domestic Violence Act, 2005, S. 2 (q)

²⁵ Supra note 20, See also, *Bharatmatha & Anothers v/s R.V. Ranganathan & Anothers*, AIR, 2010, SC, 2685

²⁶ *Payal Katara vs. Superintendent, Nari Niketan Kandri Vihar Agra*, AIR, 2001, All, 254

²⁷ *S. Khushboo*, Supra Note 3

²⁸ <http://www.indianexpress.com/news/december/2008>

²⁹ <http://www.indianexpress.com/news/October/2008>

³⁰ <http://www.indianexpress.com/news/2002>

³¹ *Lata Singh*, Supra Note 8

³² *Payal Katara*, Supra Note 26

³³ *Lata Singh*, Supra Note 8



(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.³⁴ [Emphasis Added]

The Apex Court also held that there is a presumption as to the marriage between those who are living in relations for long time; therefore, it cannot be termed as "walk-in and walk-out" relationship.³⁵

Notwithstanding the Hon. Supreme Court and High Courts in India, in catena of decisions, have showed positive signs of recognizing the legitimacy of present form of cohabitation and awarded remedy to women in distress due to involvement in such relations but cleared their inability to make judicial law regulating live in relations until legislature do the same.

Conclusions:

The rise in cohabitation, pre-marital and non-marital represents one of the most alarming changes in Indian society. There are number of reasons of this social shift that need not to be discussed herein thoroughly but an existence of fact as to such relations and consequences of the same must be considered. It may be shortly concluded that-

Live in relationship exist in urban areas

There is no specific legislation to govern such relations and incidental matters.

Existing laws are inadequate.

Judiciary has showed inability to form and change letters of the law but has taken initiatives to provide remedy to such women with the help of existing laws

Suggestions:

All societies do change over a period of time. Live in relationship is not new to our society; the only difference is that now people are wide open to it. The judiciary, in its entirety and legislature to some extent, has taken initiatives to provide remedy to women living in relations. It is clear that there is no special law dealing with pre-requisites, minimum period, mutual rights and liabilities, form of agreement etc. in India. In this backdrop, some valuable suggestions are set forth, such as-

1. Model legislation is to be enacted in order to prescribe Norms and Pre-requisites, Minimum period to live together, Mutual rights and liabilities, Easy method of dissolution, Independent status of relationship and partners, Preventions of 'walk-in and walk-out', Legal protection and security etc.

2. Judiciary, in spite of invoking the presumption of marriage, should recognize independent status of such relations and couples and widen the purview of a term 'relationship in nature of marriage'. Judiciary should lay down guidelines to govern the said relationship until Parliament enacts appropriate law in this regard.

3. Basic human rights must be upheld and protected. Human rights refer to natural, equal and inalienable rights of all members of the human family.³⁶

4. Attitudinal changes, such as human life, liberty, welfare and dignity can never be subjected to social, religious, traditional, cultural, ethical values and norms, are must.

5. It is better to have live in relations rather than having desertion or loneliness.

³⁴ *D. Veluswamy vs. D. Patchaimal*, 21 Oct. 2010 at www.manupatra.com/judgements/sc

³⁵ *Madan Mohan Singh*, Supra note 8.

³⁶ *Keshvanand Bharati vs. State of Kerala*, AIR, 1973, SC, 1461