Socio-Legal Dimensions of ‘Living-in-Relations’ in India: An Analysis

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Abstract: Live-in relationships is not a new phenomenon to India society. In antiquity, ‘Maitry Karars’ (Friendship agreement) was a written agreements between the people of opposite sex to live together. The Gandharva Vivah was another personal consensual contract accepted in society. With passage of time, sexual relationship between man and woman without the sacred bond of marriage was considered anti-social loaded with disgust and horror. Hindu marriage emerged as an important institution. However, the institution of marriage has also underwent continuous change while interacting with various socio-economic phenomenon like western culture, urbanisation, migration and improvement in the ideals of personal rights. The state with help of evolved jurisprudence effected various safeguards to protect women in living-in relationships. Acts like The Protection of Women from Domestic Violence Act, 2005 has endeavoured to protect economic rights of women while bringing Live-in relationship in its ambit. The state of Maharashtra (2008) even desired to grant a status of wife to a woman in Living-in relationship for ‘a reasonable period.’ Still, one finds no concrete legal framework adopted to define Living-in relationship making couples vulnerable in such relations. The nature and disputes of Living-in relations are judged within defined narratives of other civil and criminal offences such as rape, kidnapping creating confusion among various stakeholders. As such, the time has come when the state must work out well defined legal identity and concerns of living-in relationships which have, of late, witnessed tremendous increase in numbers.

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I. Introduction

Hindu marriage, with its plethora of rites, rituals and customs, is strongly embedded with patriarchy giving male increased control over female as a wife. The evolution of society emboldened it to control feminine sexuality by linking it to the institution of marriage. Modernity coupled with humane jurisprudence has brought tremendous change in the modern notion of marriage which endeavoured to bring both stakeholders at equal footing. However, socially every matrimonial relation binds both man and woman to numerous socio-cultural obligations in terms of progeny, servitude and dependency. Modernity with strong ideals of personal liberty also introduced a new phenomena in which couples from opposite sex are not cohabiting within well defined socio-cultural norms of matrimony, but as living-in relation (a modern form Maitry Karars minus any legal agreement). The freedom from family obligations with better economic independence has fuelled the phenomenon in metropolitans from where it has started filtering down to other cities. Indian legal system is silent on the nature of Living-in-relationships whereas society attempts to hide it under the carpet furthering various complexities. Custodial and maintenance issues arise when there is a dispute in such relations. In order to dent maximum to the other party, criminal cases like rape and kidnapping are filed making things worse for the other party. The societal opinion regarding the immorality of such relations is also reflected when no proper legal framework is drafted for so long risking the rights of both partners in such relationship. Indian Constitution promises equal treatment to all its citizens and it cannot be denied when socio-cultural bias and prejudices predominates the opposite opinion.

II. Objectives of the Research Paper:

1. To study the institution of marriage in reference to modern Indian legal framework.
3. To examine various preventive legal measure undertaken by the state to safeguards victims in Living-in relationships.
4. To construct a tentative legal framework to address the legal concerns of Living-in relationships.

II. Transformation of Marriage into ‘Live-in-Relationship’ in India.

Live-in-relationship is the arrangement in which a man and woman live together without getting married. Over last 20 years, live-in-relationship has become one of the fastest growing family forms in India and is therefore one of the most important alternative to marriage. Yet, Live-in-relationship is not a new phenomenon. Relationships outside and beside marriage have existed and are better known under the term concubinage’. In ancient times it was known as ‘Maitri-Karar’ (friendship agreement) in which a written agreement was made between the people of two opposite sex that they would live together as friends and looking after each other. In ancient Rome and China concubinage was well established (especially between wealthy men and women of lower class) and even in western culture extra marital relationship were very numerous although unlawful.¹

Modern life with busy schedules have forced people avoid additional responsibilities. In such a case, living with a person whom one is in love without adding the financial and other responsibilities seemed attractive. Couples cohabit without marriage for a various reasons. They may want to test their compatibility before finally tying knots with each other. Or they may simply want to maintain their single status for financial or other such reasons. In some cases, the law does not allow the marriage between two people like, lesbian couples or gay couples or individuals already married. Similarly when couple faces opposition to their marriage from society and their family on the basis of caste (especially in societies like India), they find solace in live in relationship.²

However, it can be relatively frustrating at times to find that there is no commitment or security of the relationship. The traditional Indian law has always been biased in favour of marriage which is the foundation of family and society. Even public policy supports marriage as necessary to the stability of family. To preserve and encourage marriage, the law reserves many rights and

privileges to the married persons. Cohabitation carries none of these rights and privileges. It has been said that cohabitation carries with it all the headache of marriage without any of the endowed benefits. Cohabiting couples have very little guidance as to their legal rights in areas like property ownership, responsibility of debts, custody of children from such relationship, access to health care and other benefits inheritance and survivorship etc. However, there is a way to address such issues before entering into live in relationship and that too by way of making a written agreement, similar to a Premarital Agreement. The contract should outline how the couple will divide expenses and own property, whether they will maintain joint or separate bank accounts and how their assets will be distributed if one partner dies or leaves the relationship. But making such contract before entering into live in relationship is a rare phenomenon in India. However such contracts are popular in western countries so as to avoid future hassles. ³

In India, there is no law which prevents a man and woman of adult age to live together without entering into a formal marriage. So obviously it is not against law. However, social abhors such relations. Thus parliament owning to social taboos might have not passed any law which could recognize and regulate the live-in relationship, but it has got judicial recognition by the apex court of India.

IV. Impact of ‘live-in-Relationship’ on Related Statutes

‘Live-in-relationship’ is neither recognised by The Hindu Marriage Act, 1955 nor by The Criminal Procedure Code, 1973, nor by The Indian Succession Act, 1925. ⁴ However, the expression ‘Relationship in the nature of marriage’ which included within the definition of ‘domestic relationship’ has been defined in the Protection of Women from Domestic Violence Act, 2005(PWDVA) as follows:

Section 2(a) “Aggrieved Person”⁵ means any woman who is, or has been, in a domestic relationship which the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

³ Ibid..
⁵ Section 2(a), of the PWDVA,2005.
Section 2 (f) “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;

From this it is evident that to the broad range of domestic relationship between a woman and her husband, father, brother and other male and even female kin related through consanguinity or marriage, this Act has added the category of relationship in the nature of marriage. Under this Act, women in live-in-relationship can claim for such as protection, compensation, custody, residence order, and shared household against the male partner. However, it is important to note that this Act does not give validity to invalid marriage nor does it provide legal recognition to bigamous marriage. It only protects the rights of those women who are in relationship in the nature of marriage.

The rationale behind this move is to protect the rights of women. There is a large number of women who find it very difficult to get any assistance from men who had deserted them after living with them for a long period of time and on the promise of marriage in future. In many cases, these women did not even know that the man they had been living with was in fact, already married. This move will ensure that these women are entitled to alimony.

So far as the connotation of the phase “relationship in the nature of marriage” is concerned it was challenged in case of Aruna Parmod Shah v. Union of India, the petitioner had challenged the constitutional validity of Protection of Women from Domestic Violence Act, 2005 on the ground that, first, it discriminates against men and second, the definition of domestic relationship contained in Sec. 2(f) of the act is objectionable. Regarding the second the petitioner argued that placing, ‘relationship in the nature of marriage’ at par with ‘married’ status leads to the derogation of the right of legally wedded wife. The Delhi High Court rejected both these contentions and said

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6 Section 2 (f), of the PWDVA, 2005.
7 Ibid; Section 18.
8 Ibid; Section 22.
9 Ibid; Section 21.
10 Ibid; Section 19.
11 Ibid; Section 17.
13 AIR 2008 Del 543.
that there is no reason why the equal treatment should not be accorded to a wife as well as to a woman, who has been living with a man as his ‘common law’ wife or even as a mistress. In this case the judges interpreted ‘a relation in the nature of marriage’ as covering both a ‘common law marriage’ and a relation with a ‘mistress’ without clarifying the legal and social connotations of these terms.

Children form the most fundamental unit of a modern day progressive society and their fate is often determined by the social relations governing every sphere of their lives. In light of this, couples involving in any form of relation and subsequently engaging in procreation leading to the birth of such children significantly decides the placement of such newly born individuals in the society.

It is often argued that the Hindu Marriage Act, 1955 dealing with legitimacy of children of void and voidable marriages, the legislation indirectly ascribes a legal status to children born out of live in relations and it is only their property and maintenance rights subject to debate.14 The Indian Evidence Act, 1872 also provides that the legitimacy of a child is proved only if he/she was born during the continuance of a valid marriage between the mother and the father and consequently fails to address the issue of such children born out of live-in relationships.15 As a result, in India, such children have been given the status of- “Legitimate in law, Illegitimate in fact” which is proof of the insecurity such individuals face on a daily basis, the gloomy future awaiting them and their placement in a different strata of the society.16

To secure the future of child born from a relationship which has not taken the shape of marriage we need a legal provision. The Hindu Marriage Act, 1955 gives the status of a legitimate child to every child whether result of void, voidable, or valid marriage. So we don’t require legal provision to grant legitimacy to the child, but to grant property and maintenance rights. In case the parties to live-in-relationship decide to move out of it. There must be the provision that any of them would be responsible to look after the child. The child is entitled to get a share in the property of both the father as well as the mother.17

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16 Ibid; p. 414.
V. Judicial Perspective to ‘Live-In-Relationship’ In India

In India, there is no law which prevents a man and woman of adult age to live together without entering into a formal marriage. However, it is not socially accepted and still considered as immoral and sin. Despite that parliament has not, yet, passed any law which could recognize and regulate the live-in relationship, it has got judicial recognition by the apex court of India. The Supreme Court of India in S. Khushboo v. Kannianmal 18, has said that when two adult people want to live together, what is the offence. Living together is not an offence. The apex court also cited Article 21 of the Constitution of India, which expressly guaranteed the right to life with dignity, liberty and respect and court also stressed that the perceived immorality by a few protagonist of morality cannot be branded as offence. Even before the judgement of Khushboo, Allahabad High Court in Payal Sharma v. Superintendent Nari Niketan,19 had stated that “.... In our opinion a man and a woman, even without getting married can live together if they wish. This may be regarded as immoral by society but it is not illegal.” There is a difference between law and morality. Thus the Supreme Court of India has not only recognized the live-in-relationship but came forward to protect the right of property of a child born out of such relationship. In Tulsa & Others v. Durghatia & Others,20 Supreme Court has held that where a man and woman live together for a long spell there would be a presumption in favour of their having been married, unless it is rebutted by convincing evidence. A Bench of Justice Arijit Pasayat and P. Sathasivam said that such a presumption could be inferred by the natural courses of events and other surrounding circumstances. The bench passed the decision while upholding the property rights of the children born to a couple whose marriage was challenged by the rival claimants. The apex court has said, “Where a man and woman are proved to have lived together as husband and wife, the law will presume unless the contrary be clearly proved, that they were living together in consequences of a valid marriage and not in state of concubinage”. In Madan Mohan Singh & Others v. Rajni Kant & Others21 Supreme Court while dismissing the appeal in property dispute has again held that there is presumption of marriage between those who are in live-in-relationship for a long time and this cannot be termed as ‘walking-in and walking-out relationship.

18 AIR 2010 (SCW) 2270.
19 AIR 2001 All. 254.
When our Indian Courts first began examining this aspect, they had little support except a California Supreme Court's ruling in *Marvin v. Marvin*\(^{22}\). The case was about the famous film actor Lee Marvin, with whom a lady Michelle lived for many years without marrying him, and was then deserted by him and she claimed palimony. However, the American Family Law doesn't govern distribution of property acquired in a relationship outside marriage and such a relationship remains subject solely to judicial discretion. The Court was in a dilemma and came up with the concept of ‘palimony’ ‘pal’ + ‘alimony’. The Court also observed that in a palimony suit, the plaintiff must prove that the agreement of financial support is not a meretricious agreement, that is, one made in exchange for a promise of sexual relation as Court refuse to enforce meretricious contracts because of their similarity to contracts for prostitution. Subsequently in many decisions of the Courts in USA the concept of palimony has been considered and developed.

Taking aid from foreign decisions, the Indian Supreme Court in *Velusamy v. D. Patchaiammal* \(^{23}\) lays down some parameters for Live-in Relationships, according to which, a women in a live-in relationship is not entitled to claim maintenance from their former partner unless she comply with certain factors. The Bench comprising Justices “Markandey Katju” and “T.S. Thakur”, while observing that merely spending weekend together or staying only for sexual reasons would not make it a domestic relationship. It was further observed that if a man has a keep, to whom he maintains financially and uses mainly for sexual purpose and as a servant, it would not be a relationship in the nature of marriage.\(^{24}\)

The Supreme Court set certain parameters, which a woman, even if not married, has to fulfil in order to get maintenance. These are:

- 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 and held themselves out to the world as being akin to spouses for a significant period of time.

\(^{22}\) 18 Cal.3d 660 (1976).
\(^{23}\) Criminal Appeal Nos. 2028-2029.
On 26th November, 2013, the Apex Court in *Indra Sarma v. V.K.V.Sarma* held that when the woman is aware of the fact that the man with whom she is having live-in-relationship and who already has a legally-wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife and also to those who enter into ‘a relationship in the nature of marriage’ as per provisions of PWDVA, 2005. But in this case, the Supreme Court felt that denial of any protection would amount to a grave injustice to victims of illegal relationship who are poor, illiterate and also to their children who are born out of such relationship and has no source of income of her own. The Court again enumerated number of criteria to determine whether a relationship constitutes a live-in-relationship so that the live in woman can claim beneficial remedy available to her under the PWDV Act, 2005. The grounds enumerated by the Apex Court delve deep into the aspects which would bring live in relationship within the purview ‘relationships in the nature of marriage’. Following guiding principles have been laid down by the Apex Court to determine whether a relationship is live in relationship or not:

(i) **Duration of period of relationship**

   Section 2(j) of the PWDV Act, 2005 has used the expression ‘at any point of time’, which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the situation.

(ii) **Shared household**

   The expression has been defined Under Section 2(s) of the PWDV Act, 2005 hence, need no further elaboration.

(iii) **Pooling of Resources and Financial Arrangements**

   Supporting each other, or any one of them, financially, sharing accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and names, so as to have a long standing relationship, may be a guiding factor.

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(iv) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.

(v) Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure but for emotional and intimate relationship, for procreation of children as to give emotional support, companionship and also material affection caring etc.

(vi) Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(vii) Socialization in Public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(viii) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

The Court in this case made it very clear that the guidelines enumerated were merely explanatory and not exhaustive. The judgment of the Apex Court in Indra Sarma case to a great extent has cleared ambiguity which arose in interpreting the phrase ‘relationship in nature of marriage’ under the PWDV Act, 2005.26

The last two to three months have been influential in arousing response on the matter of live-in-relationships in India. It should not be denied that our culture does need a legislature to regulate relationships which are likely to grow in number with changes in the ideology of people. The right time has come that efforts should be made to enact a law having 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.

It is interesting to note that even though there is no legal bar in India for a woman and a man staying together as it is a matter between two consenting adults yet this relationship existing between two individuals is looked down upon by a society which continues to attach sacramental value to the concept of marriage- philosophically and practically.

VI. Conclusion

In India, live in relationships have been a taboo right since the British raj. However, this is no longer entirely true amongst young couples in big cities like Bangalore, Mumbai, Delhi, etc. However, one cannot deny that maintaining such relationships in most of the country’s rural areas would be nothing but to invite loads of unwanted attention, or maybe even trouble.

The government, however, has been taking various measures for the past few years (especially after the intervention from the judiciary) to protect the interest of female live in partners. In one such move, the government had extended economic rights to women in live-in-relationship under the Act of 2005.27 Similarly, the Maharashtra State Government in 2008 granted a proposal suggesting a woman involved in cohabitation for a ‘reasonable period’ should be given the status of a wife.

In the same year, the Ministry of Women and Child Development was urged by the National Commission of Woman to include female live in partners in the definition of wife as described in the Act.28 The objective of these recommendations was to harmonize various other sections of law with the Protection of Women from Domestic Violence Act, 2005. Justice Malimath of the Supreme Court recommended that this be turn into a law by all States. The committee had observed that “if man and woman are living together as husband and wife for a reasonable long period, the man shall be deemed to have married the woman.”

The Committee also recommended that the word ‘wife’ under Cr.P.C. be amended to include any “woman living with a man like his wife”.

The Allahabad High Court\textsuperscript{29} ruled that “a lady of about 21 years of age being a major, has right to go anywhere and that anyone-man and woman even without getting married can live together if they wish.” Similarly, in Patel and others case\textsuperscript{30}, the apex court had observed that cohabitation between an adult male and an adult woman without formal marriage should not be considered as an offence. In another case just two years later, Supreme Court ruled that if an unmarried couple of opposite sexes live together for a prolonged period of time, they can be considered as husband and wife. Also, their child, if any, would be legitimate.

For the first time, cohabitation was officially identified and legalized in Scotland.\textsuperscript{31} According to estimates at the time when the law was passed, almost 150,000 people across the country were involved in live in relationships. In case of such a relationship breaks, a cohabitant enjoys the rights to apply for financial support under section 28, of the Family Law Act, 2006. In the event one of the partners dies, the survivor has the right to seek financial support from the deceased’s estate.

Cohabitation is governed by the Civil Solidarity Pact\textsuperscript{32} known as ‘pacte civil de solidarite’ which was passed by the French National Assembly in October, 1999. According to the law, cohabitation in France is defined as a ‘de facto stable and continuous relationship’ between two persons of different sexes or of the same sex living together as couple.

The live-in-relationships used to be illegal in all States before 1970. However, soon after, it was accepted as a common law subject to certain basic requirements.

In Canada, cohabitation is officially recognized as ‘common law marriage’. In a lot of cases, the federal law of the country grants common law couples the same rights as married couples. All common law live in couples enjoy legal sanctity if they have lived together for a minimum of 12 consecutive months, or they give birth to/adopt a child.

A man and a woman living together in a stable and consensual sexual relationship is often called “common law spouses”. According to the UK laws, live in couples owe one another more

\textsuperscript{29} Payal Sharmaa v. Superintendent Nari Niketan Kendri Vihar Agra and Others trial, AIR 2001 All. 254.
\textsuperscript{30} (2006) 8SCC 726.
\textsuperscript{31} The Family Law Act, 2006.
\textsuperscript{32} Civil Solidarity Pact, 1999.
than that is worthy of the moniker. If the couple decides to separate, the courts do not have the legal power to override that decision.

The Family Law Act, 1975 of Australia suggests that any ‘de facto relationship’ can exist between two people of the same or different sex and also that a person can be in a de facto relationship even when legally in a de facto relationship with (or married to) another person.

Even though living together is legally recognized in Ireland, public opinions are strictly against a new legislation that aims to facilitate legal rights for ‘separated’ cohabitating couples to demand maintenance and/or share their property with the financially dependent partners. The legislation is applicable to same sex unmarried couples as well as couples from opposite sexes, provided they have been cohabitating for at least 3 years (or 2 years if they have children). The government, with this new legislation, plans to fetch financial and legal protection for financially dependent and vulnerable cohabitants in the event of break up or death.

In Indian context it is need of the hour to enact a new law governing live in relationships keeping in view the traditions and cultural values which form the founding stone of our Indian society rather than making efforts to bring these relationships within the purview of any existing law. After a substantial period of cohabitation live in relationships should be granted legal status so that the rights of live in partners and children born out of such relationship are protected.

VII. Submissions

1. The definition of ‘domestic relationship’ contained in Section 2(f) of PWDVA,2005 be broadened with a view to include therein victims of illegal relationship who are poor, illiterate and also their children who are born out of live-in-relationship and who do not have any source of income of their own.33

2. The definition of the term ‘wife’ contained in Section 125 of Cr.P.C.,1973 should be amended so as to include a woman having ‘relationship in the nature of marriage’ for a reasonably long period of time.

3. The Researcher wants to recommend that child born out of ‘relationship in the nature of marriage’ should also be entitled to claim its share in ancestral coparcenaries

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property of its parents in addition to their self-acquired property. The Supreme Court in *Bharata Matha & Ors. v. R. Vijaya Renganathan & Ors* 34 and *Revanasiddappa&Anr. v. Mallikarjun & Ors.* 35 considered the question rose in whether the children of void/voidable marriages have a right to only the self-acquired property of their parents? Since, there is no attempt to marry; theoretically it is often argued that live in relationships should not be granted any form of legitimacy in the eyes of law and the children born out of such sexual unions cannot be provided with any inheritance rights. However, in such a situation the Courts have exercised the authority vested in them and interpreted the statutes in a broader manner to ensure that the children do not suffer as a result of the wrongs of their parents and consequently face problems in their economic as well as social life. Apart from the presumption of marriage in case of existence of such relations for a reasonable period of time, the Court had adopted a liberal approach towards the inheritance rights of children specifically.

The intention of the Hindu Marriage Act, 1955 with respect to Section 16 and the following amendment eliminating distinction between children born out of valid/void/voidable marriages is to bring about social reforms and conferment of social status of legitimacy on innocent children which would be undermined by imposing restrictions on rights guaranteed under this section. 36

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34 AIR 2010 SC 2685.
35 AIR 2011 SC (Supp) 155.