

LEGAL, SOCIAL AND ETHICAL INTRICACIES OF LIVE-IN RELATIONSHIP

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Abstract

Live-in relationship is an arrangement in which an unmarried couple lives together in a long term relationship that resembles a marriage. The Concept of live-in relationships is not new in western world, but certainly a new trend in Indian society. Growing favourism towards this trend is due to increased mobility of population into urban area, influences of western culture and raised cost of living. Many couples desire the emotional/physical security of a live in relationship as well as the freedom and independence that comes with being single. Giving live-in relationships legal validity may mean the dilution of social morality, social obligations and family bonds. This article explores the legal, social and ethical impact of legalizing such relations.

Key words

Live in relation, Marriage, Cohabitation and Legal status.

Introduction

A live-in couple is a trend that is yet to be legalized in the Indian social milieu. It is in the

focus due to the recent judgment of the Supreme Court of India. A three judge bench consisting of Chief Justice K G Balakrishnan, Deepak Verma and B S Chauhan observed "Living together is not an offence, it cannot be an offence". The court quoted the example of "even Lord Krishna and Radha lived together according to mythology" and there is no law which prohibits the live-in relationship or consensual pre-marital sex. The apex court also said "please tell us what is the offence and under which section, living together is a not a right to life," apparently referring to Article 21 which granted right to life and liberty as a Fundamental Right¹

Present generation feels that they live only once so they want to live happily. So many couples cohabit, rather than getting married. They want to test their compatibility before they commit to a legal union. Even they may want to maintain their single status for financial reasons. The law does not allow Bigamy. In many cases partners feel that marriage is unnecessary and they do not believe in such binding. In some western countries live in relationship was followed mainly to avoid marriage tax , which they could not afford to start with. Couples do get married officially after many years of live in relationship, many times in presence of their own children.

The apex court's inclination is to consider such relationships equal to valid marriage if they

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had a long spell of togetherness. This could give women / men a lot to cheer or to worry about depending on their present status and duration on the relationship. But still it is too early to even arrive at some kind of conclusion regarding legalization of live-in relationship. An effort is made here to bring out the legal, social and ethical intricacies of concept of live-in together.

Definitions

A “live –in relation” is living arrangement in which an unmarried couple live together in a long-term relationship that resembles a marriage²

Types

1. Homosexual
2. Heterosexual

Marriage “is a socially sanctioned /consented heterosexual intercourse with an objective of consummation not necessarily to beget the child, necessarily to protect and bring up future generation”.³

Legal aspects⁴

1. Article 21 of Indian constitution: grants right to life and liberty as a fundamental right, but it does not include socially accepted relationship such as live-in relation.
2. Section 420 IPC:
Whoever cheats and thereby dishonestly induces the person, deceived any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall

also be liable to fine.

3. Section 493 IPC: Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Can either of the couple claim cheating / unlawful co habitation by their live-in spouse in case they get separated?

4. Section 494 IPC: Marrying again during lifetime of husband or wife

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Situation like ,either of the party who are living in get married to third person without the knowledge of other party ,will it create legal/ social problem ?

- 5 Section 497 IPC: Adultery

“Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a

term which may extend to five years, or with fine, or with both. In such case the wife shall be punishable as an abettor.”

Can either of the couple complain adultery by their spouse of earlier relation?

- 6 Section 16 of Hindu Marriage Act: Defines Legitimacy.

The state or quality of being legitimate or in conformity with law hence, the condition of having been lawfully begotten, or born in wedlock and according to Section 112 of Indian Evidence act, a child is presumed to be legitimate if it was born during continuance of a valid marriage.

Can a Child born as the product of living in relation is legitimate or a foster child?

Can it inherit the property?

- 7 Section 375 IPC :

Allegations of rape by female of live-in for short term, when the relationship falls apart can be ruled out.

- 8 Section 498(A) IPC ;

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is Cognizable,

non-compoundable and non-bail able”. Can women in live-in relationships are supposed to receive the same protection as the wives when it comes to domestic violence?

- 9 The definition of the word 'wife' under Section 125 of the CrPC has to be amended to include a woman, living with the man like his life partner for a reasonably long period.⁵

Is there any provision in the law to register or document the live-in couples as a husband and wife?

Ethical and social issues

Judgments mean more and more couples from upper and middle classes to choose to live in without marriage. This may not be taken easily by Indian orthodox society. Live in relationship, woman doesn't have much respect as what a married woman gets in the society especially in semi urban/rural set up. Fear of Morality, decency and family considerations will be at stake. A man or woman may think twice before marrying someone knowing the financial commitments involved. Many may prefer to live in rather than getting married. Live-in relationship may cause lot of mental turmoil and practical complications like child custody, inheritance of property unless there is legal and social support from all corners. In near future can this concept of live in relation be a solution for gay, lesbianism or other relations which are not accepted by society at present. Due to all these uncertainties there may be less trust and decorum between couples and chances of increase in divorces and litigations.

Shortfalls

Was the apex court talking something radical change in the Indian context? How long should a couple live together as husband and wife to get the benefit of this judgment so as to claim marriage and enjoy the rights flowing from it. The duration minimum or maximum is not specified and it does not specify what if the relation gets dissolved before that period of time.

To get the status of legal marriage the court needs the evidence of cohabitation of the couple for 'number of years'. It did not specify the number of years or not even the minimum period of co habitation.

When cohabiting couples separate, division of assets often becomes a contentious issue. The law needs to specify the details and give same protection to both parties.

To acquire legal status⁶

To acquire legitimacy or the 'legally married' tag, a live-in couple have to do have following:

1. Cohabit together for a long period (a minimum of 30 years, as per the instances taken note by the apex court)
2. Be known in society as husband and wife. This means either have children or get their names registered in some document, for example by having joint property / joint account as husband and wife.
3. Leave no evidence to allow anyone to rebut their relationship

Judgments on live in relations⁷

1. The case was between A Dinohamy and W L Blahamy. The council laid down the general principle: "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." As per the 1927 ruling, a live-in relationship was to be considered a valid marriage if the couple lived together and there was no evidence to the contrary.
2. Two years later, in 1929, the council

revisited the legal issue in the Mohabhat Ali Vs Mohammad Ibrahim Khan case. It made a significant addition to the conditions laid down in the 1927 ruling. It said: "The law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years."

3. After 23 years in the case between Gokal Chand and Pravin Kumari, the Supreme Court reiterated the 1929 principle, but added a caveat. It said though the presumption for a valid marriage between live-in couples could be drawn from their long cohabitation; it was no guarantee to earn them legitimacy, if the evidence regarding living together was rebuttable.

"If there were circumstances which weaken and destroy the presumption of long years of cohabitation, the courts could not ignore them" and consider the live-in couple to be legally married, it had said. in this 1952 judgment, the apex court had refused to recognize a live-in relationship, even though the couple lived together for some years before the pregnant woman went away from him and lived alone with her child born out of her live-in relationship with the man.

4. The court in the Badri Prasad case (1978) had recognized a live-in relationship as a valid marriage frowning upon the authorities for questioning their relationship 50 years after the couple started living together and were treated as husband and wife by the relatives. It quoted the 1978 ruling, which had said: "There is a strong presumption in favor of wedlock where the partners have lived together for a long spell as husband and wife. The presumption was rebuttable, but a heavy burden lies on the person

who seeks to deprive the relationship of the legal origin to prove that no marriage took place. Law leans in favor of legitimacy and frowns upon bastardy."

5. In the January 15, 2008, judgment pronounced by a Bench comprising Justices Arijit Pasayat and P Sathasivam, the court leaned in favor of legitimizing a live-in couple as they had lived together for 30 years.

6. The recent Supreme Court judgment opined that a man and woman living together without marriage cannot be construed as an offence.

Recent developments⁸

In a bold step to "legalize" live-in relationships, the Maharashtra cabinet approved a proposal suggesting a woman involved in such a relationship for a "reasonable period" should get the status of a wife. The proposal is based on recommendations of the Justice Mallimath Committee which said if a man and a woman are living together as husband and wife for a reasonably long period, the man shall be deemed to have married the woman according to customary rights of either party. The committee had also mooted that the definition of the word 'wife' under Section 125 of the CrPc, be amended to include a woman, living with the man like his wife for a reasonably long period.

Conclusion

It is essential to conduct substantial debate in all the levels of society and on national level prior to making any changes in cultural values as they are the way of life to the citizens. These types of issues are related purely to the society. If any

changes are made in the living style of the society, care should be taken in preserving the cultural values or fabric of the society or otherwise they will lose their identity. If at all such changes are essential they should come from the society and as the law is governing the society it must take the opinion of the society before going for a drastic step. It is advisable to make the present legal system to suit the changing needs of the society from time to time before making the to keep the live in relationship in abeyance before bringing some reforms are made in the legal system to suit the present living conditions.

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