LIVE-IN-RELATIONSHIP AND STATUS OF WOMEN IN INDIA

WAZIDA RAHMAN*

ABSTRACT
In every socialist country the social values as well as individual liberties are secured by the state. The enduring debate on live-in-relationship can never have a conclusive viewpoint as it keeps varying from time to time and new issues observance up. It creates chaos and conflict with social ethics and legal lenience. The author presents a perspective on legalization of live-in-relationship in western countries and also discusses the status of women involved in such relationship and legal effects and consequences of adopting such relationship in Indian social and legal system.

“Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law and without justice”
-Aristotle

INTRODUCTION
Live-in-relationship is a relationship with an informal arrangement between two heterosexual persons to live together without entering into the formal institution like marriage. Live in relationship is a western concept and famous there. This is not a new concept in India is imported to India also. Live in relationship means, two persons of opposite sex live together with each other and perform marital activities without any religious sanctity means without proper marriage. The legal definition of live in relationship is “an arrangement of living under which the Couples which are unmarried live together to conduct a long term relationship similarly as in marriage.”Live-in-relationship is the arrangement in which a man and a woman live together without getting married. This is nowadays being taken as an alternative to marriage especially in the metropolitan cities. Currently the law is unclear about the status of such relationship though a few rights have been granted to prevent gross misuse of the relationship by the partners. Legalizing live in relationship means that a totally new set of laws need to be framed for governing the relations including protection in case of desertion, cheating in such relationships,

*Wazida Rahman, LL.M., NALSAR, University of Law, Hyderabad, Telangana, India

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maintenance, inheritance etc. Litigation would drastically increase in this case. The *Cambridge dictionary* defined it as: two people cohabit in the same house and have sexual relationship, but are not married. They often referred as live in partners.

**CAUSES OF LIVE-IN-RELATIONSHIP**

When man was uneducated, uncivilized surviving on the bloods of other; the live-in relationship was the trait of that time. But in modern time people are opting live-in relationship because of to test the relationship before marriage, they are unable to marry legally, they do not want long lasting relation, it is easy to establish and dissolve (without the legal cost often associated in divorce). These are the main reasons that attempt a person to opt for live-in relation. There are more reasons also. When a marriage is performed according to the law and religion it creates rights and duties which cannot be blown away easily. But in live-in relationship it can be. However list is not meticulous. It varies with different individuals with different individualities. Thus often the one party feels herself or himself to be cheated. Hence the court and legislation come forward for their rescue. Live in relationship that creates rights and duties and recognized is often termed as “common law marriage”. The common law marriage is an informal marriage or marriage by habit and repute, in this form of marriage no legally recognized marriage ceremony is performed, but two persons of heterogeneous sex live together as husband and wife.

**POSITION IN OTHER COUNTRIES**

In France, there is the provision of “Civil Solidarity Pacts” known as “pacte civil de solidarite” or PaCS,1 passed by the French National Assembly in October 1999 that allows couples to enter into a union by signing before a court clerk. The contract binds “two adults of different sexes or of the same sex, in order to organize their common life” and allows them to enjoy the rights accorded to married couples in the areas of income tax, housing and social welfare. The contract can be revoked unilaterally or bilaterally after giving the partner three months’ notice in writing.

In Philippines, live in relationship couple’s right to each other’s property is governed by Co-ownership rule. Article 147, of *The Family Code 1987*2, Philippines provides that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the UK, live in couples does not enjoy legal sanction and status as granted to married couple. There is no obligation on the partners to maintain each other. Partners do not have inheritance right over each other’s property unless named in their partner’s will. As per a 2010 note from the *Home Affairs Section to the House of Commons*, unmarried couples have no guaranteed rights to ownership of each other’s property on breakdown of relationship. But for the purpose of

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2 [https://philippinefamilylawperspectives.wordpress.com/category/marriage/property-relations/article-147-148-family-code/]
paying tax unmarried couples are overseen as individual under *Civil Partnership Act 2004*³. However, the law seeks to protect the right of child born under such relationship. Both parents have the onus of bringing up their children irrespective of the fact that whether they are married or cohabiting.

The live in relation were conferred legal sanctity in Scotland in the year 2006 by *Family Law (Scotland) Act. Section 25 (2)* of the Act postulates that a court of law can consider a person as a co-habitant of another by checking on three factors; the length of the period during which they lived together, the nature of the relationship during that period and the nature and extent of any financial arrangements, in case of breakdown of such relationship. *Section 28* of the Act gives a cohabitant the right to apply in court for financial support. This is in case of separation and not death of either partner. If a partner dies intestate, the survivor can move the court for financial support from his estate within 6 months.⁴

**LIVE-IN-RELATIONSHIP AND RIGHTS OF WOMEN IN INDIA**

The practice of men and women living together without being in a relationship of formal marriage has been in practice for a long time. It was not at all considered “immoral” for men to have live-in relationships with women outside their marriage. Concubines (Avarudhstris) were kept for the man’s entertainment and relaxation. Following independence, as society matured, bigamy was outlawed and women became more aware of their rights. This practice is now illegal though this has not prevented people from violating this law.

Unlike other western countries like USA and UK, India does not recognize the live-in-relationship. Because of the traditional principles in the society and dependency of female on male, India is still following the institution of marriage as the best forming part of society. The legal status, social dependency, economic dependency and also domicile of a woman are changed with the change of her matrimonial status.

Live-in-relationship can be categorized in two parts, either ‘by choice’ or ‘by circumstance’. People who by consent voluntarily are living together are under the category of ‘by choice’. But sometimes by mistake or by fraud people are living together as husband and wife then they can be placed under the category of ‘by circumstance’. Live-in-relationship by choice does not have any legal issue as it does not need the legal recognition but live-in-relationship by circumstances has certain problems just because of misunderstanding of the status of marriage. Traditionally, the Indian society might have frowned upon live in relationships. But the growing number of such couples indicates a degree of acceptance. Women, however, are still the losers. As comparison to marriage, live-in-relationship does not give the status of husband and wife. The couples who are living together are called partners only. But they are also not partners under the partnership Act 1932. Without the status they are not able to claim the rights, for example conjugal rights, right to divorce, right to maintenance, property rights, religious rights, societal rights etc. So live-in-relationship is not a marriage. For marriage we need to fulfill first the provisions given under section 5 of Hindu Marriage Act 1955 then section 7 of the same Act. But often in live-in-relationship by circumstance people claimed that they got marriage because they

⁴http://en.wikipedia.org/wiki/Scots_family_law, on 19th Feb 2015
⁵Prof. Vijendra Kumar, *Live-in relationship: Impact on marriage and family institutions*
fulfill the requirement under section 7 of Hindu Marriage Act 1955. Philosophy of section 7 is that to fulfill its requirement first need to fulfill the requirement of section 5 of the same Act. In case of divorce there must be a marriage between the parties. So in living relationship divorce concept is absent. They can be separated at any time at their own will without the right of matrimonial remedies. That is why various committees have recommended for the equal rights for a live-in woman on the footings of a married woman. Justice Malimath Committee (2003)\(^6\) recommended to the Law Commission of India\(^2\)\(^0\)\(^3\), that if a woman has been in a live-in-relationship for a considerable period of time then she can claim maintenance under Section 125 of Criminal Procedure Code.

JUDICIAL RESPONSE

The Fundamental right under Article 21 of the Constitution of India grants to all its citizens “right to life and personal liberty” which means that one is free to live the way one wants. Live in relationship may be immoral in the eyes of the conservative Indian society but it is not “illegal” in the eyes of law. There are some cases where the Courts have given limited recognition to such relations.

In A. Dinohamy v. W.L. Blahamy\(^7\) the Privy Council held that where a man and a woman are proved to have lived together as a man and wife, the law will presume, that they were living together in consequence of a valid marriage, unless the contrary can be proved.

Again in Gokal Chand v. PravinKumari\(^8\) the Supreme Court reiterated the same principle, though it cautioned that the couple would not get legitimacy, if the evidence of them living together was rebuttable.

The Supreme Court in Yamunabai v. Anant Rao\(^9\) held that where a man married the second time, his second “wife” had no claim to maintenance under Section 125 of the Code of Criminal Procedure 1973, even though she might be unaware of his earlier marriage. The Court refused to give any recognition to the fact that they had lived together even if their marriage was void. The man was allowed to take advantage of this, although he had failed to disclose his earlier marriage. The Supreme Court held that it would not grant any rights to the woman in such a live-in-relationship “of circumstance”.

In S.P.S. Balasubramanyam v. Suruttayan @ AndaliPadayachi\(^10\) the Supreme Court held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114 of the Indian Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.

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\(^7\) AIR 1927PC 185
\(^8\) AIR 1952 SC 231
\(^9\) (1988) 1SCC 530
\(^10\)AIR 1992 SC 756
In *Malti v. State of Uttar Pradesh*\(^{11}\), the Allahabad High Court held that a woman living with a man could not be equated as his “wife”.

The Supreme Court in *Lata Singh v. State of UP*\(^{12}\) held that live-in relationship is permissible only in unmarried major persons of heterosexual sex. The live-in relationship if continued for such a long time, cannot be termed in as “walk in and walk out” relationship and there is a presumption of marriage between them.\(^{13}\)

Again in *Tulsa v. Durghatiya*\(^{14}\) the Supreme Court held that when a man and woman live together for a long spell there would be a presumption in favor of their having been married, unless rebutted by convincing evidence.

In 2013, Supreme Court of India in *Indira Sarma V. V.K.V. Sarma*\(^{15}\) it declared that Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country.

In this landmark judgment, a bench headed by Justice K. S.Radhakrishnan framed guidelines to take along the live in relationship within the expression ‘relationship in the nature of marriage’ for the protection of women from *Domestic Violence Act 2005*. The bench said. “Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships should be protected, though those types of relationship might not be a relationship in the nature of a marriage.”

**NEED OF LEGISLATION ON LIVE-IN-RELATIONSHIP**

The decisions by the Indian Court is discerning as in some cases the Courts have opined that the live-in relationship should have no bondage between the couples because the sole criteria for entering into such agreements is based on the fact that there lies no obligation to be followed by the couples whereas in some instances the Court has shown opposite views holding that if a relationship cum cohabitation continues for a sufficiently and reasonably long time, the couple should be construed as a married couple infusing all the rights and liabilities as guaranteed under a marital relationship.\(^{16}\)

It also appears strange if the concept of live-in is brought within the ambit of section125 of the Criminal Procedure Code, where the husband is bound to pay maintenance and succession as the ground of getting into live-in relationship is to escape all liabilities arising out of marital relations. If the rights of a wife and a live-in partner become equivalent it would promote bigamy and there would arise a conflict between the interests of the wife and the live-in-partner.\(^{17}\) Apart from lacking legal sanction the social existence of such relationships is only confined to the metros, however, when we look at the masses that define India, there exists no co-relation between live-in relationships and its acceptance by the Indian society. It receives no legal assistance and at the same time the society also evicts such relationships.

\(^{11}\) 2000 Cri LJ 4170
\(^{12}\) (2006) 5SCC475
\(^{13}\) Madan Mohan Singh v. Rajni Kant AIR 2006 SC 2522
\(^{14}\) (2008) 4 SCC 520
\(^{15}\) Special Leave Petition (Crl) No 4895 of 2012
\(^{17}\) Dr. Parminder Kaur, Live-in relationship: A new paradigm in Indian matrimony, Journal *Army Institute of law, Volume iv, 2011*
The live-in-relationship come what may unify with the institution of marriage, separation, status etc. Thus Law Commission of India in its 71th report, 1978 recommended for the amendment of Hindu Marriage Act 1955 and Special Marriage Act 1954 for the divorce provision, because it is also a cause to adopt live-in relation by the parties. In case of irretrievable breakdown of marriage the both parties have no fault to prove in court of law to opt a divorce decree. The sweetness of marriage among them already becomes departed without any one’s fault. Thus it may lead to an easy ‘walk in walk out relation’ with other party. So in 2010 Rajya Sabha introduced the Hindu Marriage (Amendment) Bill 2010 to simplify the divorce procedure and included the irretrievable breakdown of marriage as a ground for divorce before cooling period is completed. But bill is still in pending.

Again Malimath committee Report 2003 recommended for the amendment of Section 125 of Criminal Procedure Code to include women in a void marriage or women in live-in-relationship to claim maintenance. Thus it is a call to legislate a new law to remove all the clouds of difficulties and protect the social values without infringing the individual liberties with the change of society.

CONCLUSION

The decision to marry or not to marry or to have a heterosexual relationship is intensely personal. Also their relationship will come under Domestic Violence Act 2005. So it is clear that live-in-relationship is not a marriage. It is harm to the legally wedded wife and her children if the husband is in live-in-relationship and also to the woman who by circumstances living under such unrecognized relationship. So as the personal law is the principal law governing to the relationship eminence which recognizes the status and right to inherit the property, it needs to be cleared and certain to circumvent the above consequences and need an amendment. So with the change in the society it is needed to ascertain the issue with meaningful and practical solution. Though the parliament, judiciary tries to recognize this concept in our society which is totally rare and new to our cultural ethos but while identifying this concept, it is also essential to look its effect on the legal matrimonial rights of the parties entering into this relationship.

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