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## **Live In Relationship : Legal Position in Present Scenario**

*Sudhanshu Shekhar Bisen\**

**Introduction :** Marriage is the name of social institution unionizing two opposite sexes. Marriage means any religious act or social procedure a man and women become called husband and wife. It whether considered as a sacrament or a contract gives rise to a status. The parties are not only called husband and wife, but status of legitimacy on the children of marriage. It is necessarily the basic of social foundation from which important legal rights and obligations emerge. Marriage according to the Hindu law is a holy union for the performance of religious duties. It is not a contract but it is a sanskar or sacrament<sup>1</sup>. Other hand live in relationship is a relationship with an informal arrangement between two heterosexual persons to live together without entering in to the formal institution like marriage.

**Meaning and Concept of Live in Relationship :** Live in relationship means, two person of opposite sex live together with each other and perform marital activities which out any religions sanctity means without proper marriage. The definition of live in relationship is a living arrangement in which an unmarried couple lives together in a long term relationship that resembles a marriage. In everyday parlance, it is cohabitation<sup>2</sup>. Live in relationship sometimes called consensual union or defector union and refers to unmarried heterosexual couples living together to an intimate relationship<sup>3</sup>. Cohabitation is defined as a situation in which opposite-sex couples living together outside the bond of marriage<sup>4</sup>. In some jurisdictions cohabitation is viewed as legal as common law marriage, either for a specified period, or after the birth of a child, or if the couple holds themselves out to society as being akin to spouses<sup>5</sup>.

**Difference Between Live-in-Relationship and Marriage :** A marriage is governed by a separate set of laws in all countries which safeguards the interests of both parties who enter into the union. Live-in relationships on the other hand have received due recognition in a few countries such as France and Philippines. In India, presently there is no law defining the maxims of a live-in relationship. The

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Supreme Court however, has observed in a current ruling that a woman who has lived in a live-in relationship for a long period of time should enjoy the same rights that a married woman is entitled to.

Live-in relationships do guarantee immense financial freedom for both parties involved. In a marriage however, it is generally accepted that the married couple share their earnings and enter into joint financial venture. However, these rules are not carved in stone. In today's day and age even married couple tend to keep their financial matters separate and many live in couples decide to share their individual earnings.

Despite the fact that there are scores of couples who are opting for live-in relationships, the society still attaches a taboo to such relationships. The majority looks at live in relationship as a dilution of morals and more importantly tradition. Marriage on the other is still venerated by most despite the alarming rise in the number of divorces and problems in relationship. Therefore, the primary difference between live-in relationships and marriage is that marriage has received the societal stamp of approval and live in relationship are yet to do so.

#### **Legal Position of Live-in-Relationship in Major Developed Countries**

**Scotland :** The first time identified, and in the process by default legalized, live-in relationship of over 150,000 cohabiting couples in the country. Section 25(2) of the Act said that in determining for the purpose of any of section 26 to 29 whether a person (A) is cohabitant of another a court of law can consider a person as a co-habitant of another person (B) the court shall have regard:

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 relationship, under section 28 a cohabitant has right to apply in court of law for financial support<sup>6</sup>.

**United States :** The American legal history was then witness to several consensual sex legislations, which paved the way for living together contracts and – their cousins, the “prenuptial agreements.” The country later institutionalized cohabitation by giving cohabiters essentially the same rights and obligations as married couples<sup>7</sup>.

**Australia :** (Australia) defines the meaning of de facto relationship it says that a person is in de fact relationship with another person if

(a) The persons are not legally married to each other, and

(b) The person are not related by family and \

- (c) Having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis<sup>8</sup>.

**Canada :** Live-in relationship is legally recognized in Canada also. Two persons who are cohabiting or intend to cohabit and who are not married to each other may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or on ceasing to cohabit or on death, including,

- (a) Ownership in or division of property;

- (b) Support obligations;

- (c) The right to direct the education and moral training of their children, but not the right to custody of or access to their children. And further sub section 2 of section 53 says that if the parties to a cohabitation agreement marry each other, the agreement shall be deemed to be a marriage contract<sup>9</sup>.

**United Kingdom :** Live-in relationship are largely covered by the Civil Partnership Act 2004. Though a man and woman living together in a stable sexual relationship are often referred to as “common law spouses”, the expression is not wholly correct in law in England and Wales. The UK feel that live-in partners owe each other more than that to be worthy of the term. As per a 2010 note from 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. If a cohabiting couple separates, the courts have no power to override the strict legal ownership of property and divide it as they may do on divorce<sup>10</sup>.

**France :** The France National Assembly passed the Civil Solidarity Pact 1999. Live-in relationship is governed by civil solidarity pact in France. The civil solidarity pact is a contract binding two adults of different sexes or of the same sex, in order to organize their common life, contractants may not be bound by another pact, by marriage, sibling or lineage. Adult under custody cannot contract<sup>11</sup>.

**Law of Live-in-Relationship 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 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 principals 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 can be placed under the category of „by circumstance“<sup>12</sup>. 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 India society might have frowned upon live in relationship. But the growing number of such couples indicates a degree of acceptance. Women, however, are still the loser. 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-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 fulfill the requirement under sections 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 or 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)<sup>13</sup> recommended to the Law Commission of India 2003, that if a woman has been in a live-in-relationship for a considerable period of time then she can claim maintenance under sections 125 of Criminal Procedure Code.

**Judicial Observations on Live in Relationship in India :** The Fundamental right under Article 21 of the Constitution of India grants to all its citizens “right to life 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 conservation 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*<sup>14</sup> 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. Pravin Kumari*<sup>15</sup> 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*<sup>16</sup> 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. They 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*<sup>17</sup> 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 India Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.

In *Malti v. State of Uttar Pradesh*<sup>18</sup>, 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*<sup>19</sup> 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.<sup>20</sup>

Again in *Tulsa v. Durghatiya*<sup>21</sup> 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.

After 2010 various issues are discussed and clarified by the Supreme Court and High Courts by delivering various guidelines in numerous judgments on validity of „live-in-Relationship“.

On, 28 April, 2010 Special Bench of the Supreme Court of India consisting of K.G. Balakrishnan, Deepak Verma, B.S. Chauhan in *Khushboo vs Kanniammal & Anr.*<sup>22</sup> posed a question “If two people man and woman, want to live together, who can oppose them? What is the offence they commit here? This happens because of the cultural exchange between people.” The S.C. held that „live-in-Relationship“ is permissible. The court also that living together is a part of the right to life u/Art.21 of the Indian Constitution and it is not a “criminal offence.”

In the context the court commented that there exists no law in the country which prohibits pre-marital sex. This comment was passed by the Apex Court in answer to the comments made by the prosecution that the actress Khusboo endorsed pre-marital sex which affects the moral fabric of the society.

In later part of the 2010 Delhi High Court decided a case *Alok Kumar vs. State*<sup>23</sup> which also was in connection with „live-in-Relationship“. The facts of the case suggest that the complainant started „live-in-Relationship“ with the petitioner, who had not even divorced his previous wife and was having a child of his own. The complainant was also having a child of her own. The Delhi High Court, therefore, described the nature of such relationship as a walk-in and walk-out relationship with no legal strings attached. It is a contract of living together “which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party.” Those who do not want to enter into such relationship enter into such relationship of marriage which creates a legal bond which cannot be broken by other party at will. Thus people who choose to have „live-in relationship“ cannot later complain of infidelity or immorality.<sup>24</sup>

On 17<sup>th</sup> May 2010 a Bench of the Supreme Court of India consisting of Hon<sup>ble</sup> Justice B.S. Chauhan and Justice Swatanter Kumar (JJ) in *Bharatha Matha & Anr vs R. Vijaya Renganathan & Ors*<sup>25</sup> held that “20. Thus, it is evident that Section 16 of the (Hindu Marriage) Act intends to bring about social reforms, conferment of social of legitimacy on a group of children, otherwise treated as illegitimate, as its prime objects.”<sup>26</sup>

“27. Thus, it is evident that in such a fact-situation, a child born of void or voidable marriage is not entitled to claim inheritance in



ancestral coparcener property but is entitled only to claim share in self acquired properties, if any.<sup>27</sup>

On 31 March, 2011 a special Bench of the Supreme Court of India consisting of G.S. Singhvi, Asok Kumar Ganguly in **Revanasiddappa & Anr. vs Mallikarjun & Ors.**<sup>28</sup> remarked that irrespective of the relationship between parents, birth of a child out of such relationship has to be viewed independently of the relationship of the parents. It is as plain and clear as sunshine that a born out of such relationship is innocent and is entitled to all the rights and privileges available to children born out of valid marriages. This is the crux of Section 16(3) of the amended Hindu Marriage Act, 1955.

On 26<sup>th</sup> November 2013 a two- judge Bench of the Supreme Court constituting of K.S. Radhakrishnan and Pinaki Chandra Ghose, JJ in **Indra Sarma v. V.K.V. Sarma**<sup>29</sup> held that when the woman is aware of the fact that the man with whom she is having living-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 provision of PWDVA, 2005.

But in this case, the Supreme Court felt that denial of any protection would amount to a great 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.

**Conclusive Observation** : The „live-in-relationship“ is no longer a novelty to Indian society. It has come to stay. „Live-in-relationship“ couples are multiplying in number; at the same time institution of marriages stays unaffected. Time was when institution of marriage was sine qua non of Indian society but not now. Emergence of Live-in-relationship seems to pose a challenge to the solid rock on which institution of marriage has been built up and nurtured. Break up of joint family system has given rise to satellite. Spread of education of women has led to formation of an army of Indian woman who are earning and ably assisting their husbands resulting into emergence of double income families. As an impact of globalization, families are broken up and life partners are bound to stay alone in different countries of the world away from their life partners. May be that this societal change has given rise to the growth of „Live-in-relationship“. 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 yare and new to our cultural those 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. In this context 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 coparcenaries property of its parents in addition to their self acquired property. It is as plain and clear as sunshine that a child born out of such relationship is innocent and is entitled to all the rights and privileges available to children born out of valid marriage.

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