

Live-In-Relationship: Impact on Marriage Institution**Dr. Arshi Pal Kaur¹ and Dr. Rupam Jagota²**

Abstract: *“Live-in relationship in earlier days was seen as the influences of western culture. What we forget is that this whole idea is not new to our culture. Further is considered to be an immoral relationship. In India this concept isn't completely acknowledged due to solid religious establishment of marriage but at the same time continuously it has carved a specialty in a few section of society. It becomes therefore fundamental to form a legal System for such a connection and to consider its suggestion on Indian society as the societal texture is changing everyday. This research paper analyses the impact of live-ins on the institution of marriage”.*

Keywords: *live-in relationships, marriage, domestic relations*

1. Introduction

The very foundation of society is based on the institution of marriage as it is a universal institution. However, the ritual of marriage varies with the each religious tradition; every religion in India has its own personal laws in order to govern the marriage ceremonies. This relationship performs duties on those whose association is founded on the distinction of sex. Marriage gave societal approval to the sexual relationship of two persons of opposite sex and permitted them to live together as husband and wife and have a family of their own. Whereas, live-in relationships has also hold strong roots in the Indian society. Because there are several instances in history where a couple cohabiting without a matrimonial bond. Now-a-days the live-in-relationship has gained widespread recognition in India in the urban areas. In India, Hindu marriage is conducted through performance of religious rites. However the arrangement of live-in relationship is that where a couple has formed a domestic relation before their marriage which is similar to marriage.

Due to modernization and the spread of urban culture, it is observed that live-in-relationship is on the increase in many parts of the country. Live-in-Couples cohabit rather than marry, for various reasons, such as economic independence, high rent rates in big cities, the increasing number of failed marriages, marriages ending in divorce, domestic violence, and the influence of media and western life style etc. An important factor is that the live-in couples want to avoid responsibility. The factors are lack of commitment, disregard of social bonds and lack of tolerance in relationships, and a hectic lifestyle.³

2. Evolution and Growth of the concept of Live-in-Relationship in India

¹ Assistant Professor , School of Laws, Lovely Professional University, Jalandhar

² Assistant Professor , Guru Nanak Dev University, Regional Campus, Jalandhar.

³ Dr. Jyotasna Sharma, "Legal Status of Live-In Relationship In India", Criminal Law Journal, "Vol.2, (April-June 2012) 181.

The concept of live-in relationship is not new to India. Premarital relationships existed in Vedic period and post-Vedic periods. Manu, classifies eight forms of Hindu marriage i.e., *Brahma*, *Daiva*, *Arsa*, *Prajapatya*, *Asura*, *Gandharva*, *Rakksash* and *Paisacha*. From these forms of marriage '*Gandharva*' was similar to that of live-in relationship. *Gandharva* form of marriage where the union of a man and a woman by mutual consent is socially recognized. However, *Gandharva* form of marriage has not been recognized in the modern Hindu law.⁴ *Maitri Karari* i.e., friendship agreement which was a similar concept to the live-in relationship. This friendship agreement was practiced in the state of Gujarat. In this agreement a man and a woman would live together without marriage.⁵ In "*Minaxi Zaver Bhai Jethva v. State of Gujarat*"⁶ the court held that the system of *Maitri Karari* is void *ab initio*. Although the government of Gujarat had already prohibited this practice in the year 1982 by passing a Law. Live-in relationships are also found among the tribes of *Oraon*, *Ho* and *Bishor*. The girl enters the house of her lover and does not come out of the house in spite of all cruelties and insult inflicted on her. If the girl does not leave the house for a sufficient period of time, the girl is considered married to the young man.

"Centuries ago, civilized societies recognized and acknowledged the most basic instinct of all – i.e., the need for companionship – and founded an honourable institution known as marriage. Hindu ancestors set out some guidelines to make sure that the institution is a permanent one, with the potential of not only bringing happiness to two young people but also providing a delicate balance, so that the family enjoys the fullness of life within the framework of what they called Dharma, the Hindu code of right conduct. This is elucidated about 4000 years ago, in an ancient Indian epic, the Mahabharata, where a Hindu prince known as *Yudhishtira* revealed this secret. In an episode known as *Yaksha Prashna*, in the Aranya Parva of the great epic, the Mahabharata, one of the questions the *Yaksha* asked *Yudhishtira* was *kim vin mitram grhesatah* i.e., who is the friend of a householder? To which the prince answered *bhaarya amitram grhesatah* i.e., the friend of a householder is his spouse. The wife is half the man, the best friend, the root of the three ends of life, and of all that will help him in the other world; with a wife a man does mighty deeds, with a wife a man finds courage, a wife is the safest refuge. Accordingly, therefore, the basis for marriage is friendship and such friendship is the understanding, the promise and the commitment that unites a man and a woman."⁷

One must also note that ancient Hindu texts did not view such relationships as *fullius nullius*, and female partners entitled to maintenance. This had been cited in a number of cases before the coming into force of The Hindu Succession Act and the Hindu Adoption and

⁴ Retrieved from <http://www.yourarticlelibrary.com/marriage/8-traditional-forms-of-hindu-marriage-in-india/47455>, visited on Mar. 14, 2018

⁵ Retrieved from <https://www.quora.com/What-is-%E2%80%98maitri-karaar-How-different-is-it-from-polygamy-polyamory-What-is-the-legal-validity-of-the-same>, visited on Jan .7, 2019 and also available at The Final (1).docx

⁶ Retrieved from <https://indiankanoon.org/doc/1089323/>

⁷ Retrieved from <https://www.quora.com/What-was-the-complete-dialogue-between-Yudhishtira-and-Yaksha-from-Mahabharata> visited on Feb. 3, 2018

Maintenance Act, 1956. Though these relationships are not discussed in ancient Hindu Law, there is clear mention of Dasiputra (i.e., born to an exclusively kept woman/ concubine) and a son born to a woman other than wife and concubine or adulterous or casual intercourse. Caste is a crucial issue in India, and generally inter-caste marriages are forbidden. So, individuals who want to marry, but cannot, find solace in live-in relationship. Concubinage and de-facto marriages are considered are also considered as a form of live-in –relationship. A couple lived together without marriage is considered as a *de-facto* marriage.

3. Gradual Change in the Mindset of Society in the Present Day Scenario

“The concept of marriage has been changed from arranged marriage to love marriage and now live-in relationship. However, previously people were not declaring socially about their live-in status as they are feared that society would not accept their relationship because this type of relationship is still considered as a taboo in Indian society. However, society changes frequently and now the people are not hesitant to accept their live-in relationship status. With the changing times, the new generation is gradually accepting the idea of live-in relationship. The main concern until today has been that couples have been hiding their status of live-in relationships owing to societal pressure and condemnation. Now, when we reflect on the thoughts, we can infer that the many countries have permitted this and urban India is definitely ready to imbibe this in the societal fabric along with marriage. However, there is no legal definition regarding live-in-relationship but as per the decisions of various judgments the Court has analyzed the concept of live-in relationship as an arrangement of living under which the couples which are unmarried live together to conduct a long-going relationship similarly as in marriage.”

There are several important factors which are responsible for an increase in the instances of live-in-relationship in India. Enormous development of Indian call centers over the most recent years is viewed as bringing about significant financial and social advancements in Indian culture which has led to the growth of the in live-in relationship type of arrangements. There are no legal problems, budgetary intricacies or complex arrangements for isolating resources and obligations between the partners.⁸ Increasing job opportunities for the financial liberation of ladies by means of worthwhile occupations in rising administrations and information and technology industry through globalization is also a leading cause for women in particular to enter into live-in relationships. Now-a-days it is seen that the present generation attempts to evade responsibilities that are expected. The reason why many couples opt for a live relationship is because it does not bind one in mandatory duties as a matrimonial bond demands. The absence of duty seeks to point out that in an arrangement where couples live together there are no duties as such. It only requires cohabitation primarily. Present day scenarios and newspaper reports make it evident that there is a declining respect for social bonds. Matrimonial bonds come with a set of

⁸ Retrieved from <https://www.ukessays.com/essays/sociology/different-views-on-live-in-relationships-sociology-essay.php>, visited on Mar. 6, 2018

social bonds which are not seen in live-in relationships. Moreover, because it is not yet fully accepted in the Indian subcontinent, it is not viewed as part of the society and partners in such an arrangement are usually kept away from societal obligations.

4. Live-In –Relationship: Threat To Marriage Institution

The concept of live-in relationships is considered as a western concept but Indian society is still not ready to accept the relationships like live-ins. An orthodox society like ours are not accepting that any couple lives together without being married.⁹

We are bound by numerous traditional norms; however, our social assumptions are somehow changing now. In “*D Patchaiammal v. D Velusamy*”¹⁰, Supreme Court ruled that, if a couple living together for an extensive period then such couple can be considered as a married couple and the child born out of this relationship would be considered as legitimate child.

5. Legislative and Judicial Framework regarding Live-in- relationship in India

The prima facie distinction between a marital bond and a live-in relationship can be understood in terms of the acceptance of the idea by the society. On one hand, marriage is acceptable and is embraced with open arms but when it comes to live-in relationships, a glance of rejection is seen. The manifold augmentations in the number of live-in relationships in India exhibits the metropolitan tenor and bondage to free living but it also has posed some violent threats. The very notion of husband and wife and the cognition of marriage that enjoy high level of sanctity is very common in India. There are several misconceptions which branch out of the idea of live-in relationships. Some might say that it leads to adultery and some might say that live-in relationships also endorses bigamy. For instance, *PayalKatara v. Superintendent NariNiketanKandrivihar*¹¹ and others, where Rajendra Prasad, the person with whom plaintiff was living was already married came up, the court upheld the right of the plaintiff. While the court recognized the right of cohabitation of the plaintiff there arose questions regarding the wife's right. The question that seeks an answer with the elevation of live-in relationship is the status of wife accorded to a person who is in live-in relationship and is already married as law seeks to protect the right of live-in partner under statutes protection of women from Domestic Violence Act, 2005.

The recommendation of the Malimath Committee was to recognize live-in partner as wife. The apex court also recognizing the relations of live-ins. It recommended that living female partner who lives with her partner in the extensive period of time considered as a wife and needs to be covered under section 125 of Cr.P.C. However, this type of ideology will promote the offence of bigamy. Marriage has social recognition and therefore protection as depicted above

⁹ Ibid

¹⁰ (2010) 10 SCC 469

¹¹ MANU/UP/0288/2001

but there is no proof of live-in relationship, and a person can easily deny such an arrangement. When our Indian courts first began examining this aspect of live-in relationship they had little legal support except the California Supreme Court ruling of *Marvin v. Marvin*¹².

Although legally the judiciary has time and again stated that live-in relationships are not illegal, the society does not seem to accept it. The most hard-core moralist and traditional people criticized “Delhi High Court in *Naaz Foundation case*” which dealt with legalizing gay marriages which would in a wider sense mean acceptance of the arrangement of cohabitation of gay/lesbian couples and where it was opined that time has come to decriminalize Section 377 of IPC. Social evils in India are gradually transforming the face of the Indian society. Many opined that there are many successful living examples of live-in relationship; this concept is prevalent in higher urban classes and hence the need of the law to ensure rights formally is the need of the hour.

Marriages are more acceptable in our society on the other hand live-in relationship could not be acceptable in Indian society. The major section of the society looks at live-in relationship as a weakening of ethical and traditional practices. Further is considered to be an immoral relationship. In India this concept isn't completely acknowledged due to solid religious establishment of marriage but at the same time continuously it has carved a specialty in a few section of society. It becomes therefore fundamental to form a legal System for such a connection and to consider its suggestion on Indian society as the societal texture is changing everyday.

The Indian Judiciary has been playing an important role in order to interpret morality and law. Indian judiciary adopts a revolutionary approach in the live-ins' however Indian society is not ready to accept this relationship. Various judicial decisions on the live-ins, legal provisions and the report of various committees recommended to safeguard the rights of female partner who live in a live-ins. “The Protection of Women from Domestic Violence Act, 2005 provides protection to live-ins partner.

One of the major cases brought before the Supreme Court where the issue of merely speaking about live-in relationship was thrashed, was the landmark case of *S. Khushboo v. Kanniammal & Anr*¹³. This is the leading judgment where the apex court was faced with an issue where a woman was condemned merely because she stated publicly that premarital sex would fall under the blanket of right to life and the society should not deem this as an offence.

In *Tulsa v. Durghatiya*¹⁴ the Supreme Court held that, a couple who lived together from the long time it may be presumed that such couple is a married couple¹⁵. Taking out from foreign decisions the Indian Supreme Court on 21st October 2010 in the special leave petition *D Velusamy v. D Patchaiammal*¹⁶ laid down some rules and regulations for live-in relationships. In

¹²18 Cal . 3d 660

¹³ SLP (Crl.) No. 4010 of 2008

¹⁴(2008) 4 SCC 520

¹⁵ Retrieved from http://www.journalijar.com/uploads/973_IJAR-18347.pdf

¹⁶ Ibid

this case court ruled that any women who lives in a live-ins is entitled to claim maintenance from their former live-in- partner under certain conditions. The Court further declares that spending short time together cannot be considered as a domestic relationship.

Five Judges Bench of the Supreme Court unanimously struck down Section 497 of the Indian Penal Code on July 27, 2018 as being in violation of Articles 14, 15 & 21 of the Constitution in the case of *Joseph Shine vs. Union of India*.¹⁷ A crucial argument of the Petitioner was centered around how the impugned provisions infringed the fundamental right to privacy under Article 21 by interfering with the right to voluntary, consensual sexual intercourse between consenting adults. There was a three-fold approach to this issue. Firstly, the Constitution guarantees a right to privacy.¹⁸ Secondly, the right to privacy necessarily contains within it the right to sexual autonomy. The right to privacy is understood as the freedom of personal choice in matters of marriage and family life' and the acceptance of the fact that different individuals will make different choices.¹⁹ The third argument, the turning point was that there is no rationale to discriminate between sexual intercourse outside or inside marriage and between sex based on the marital status of both or either of the individuals. Irrespective of how obnoxious society thinks extra-marital sexual conduct is, that is no reason to criminalize such conduct'. The right to extramarital sexual conduct stands protected by the rights to privacy and intimate association.²⁰ It was unambiguously argued that the right to sexual freedom includes the right to choose one's sexual partner, even when one person is legally married to another. Punishing the adulterous relationship violates the right to choose the sexual partner or the right to make one's sexual preferences. Section 497 IPC hence infringes the fundamental right to sexual privacy.²¹

6. Conclusion

By analyzing the above stated information, one faces a major conundrum due to the diametrically opposite stance of the society and judiciary on live-in relationships. The primary concern one encounters is the fact that there is no law against two consenting adults cohabiting together yet the society condemns such an arrangement. Secondly, another dilemma that is seen is that of the non-acceptance of live-in relationship by society. To dissect the first issue, it is evident by various instances of the history that livein relationships are not new to the Indian Society or to the world at large. Several instances are found in almost all the parts of history where a man and woman have cohabited without engaging in matrimonial bonds. Hence, at this juncture the question that arises is that what is the reason that society has now begun to discourage such relationships? Prima facie one answer that comes up is that the society is concerned about the security of women. The second issue of non-acceptance is founded on mere

¹⁷ Retrieved from <https://indiankanoon.org/doc/1364215/>, visited on Dec24 ,2018

¹⁸ K.S Puttaswamy v. Union of India, (2017) 10 SCC 1 , retrieved from <http://www.nlsir.com/?p=698>, visited on Feb 2 ,2019

¹⁹ Bowers v. Hardwick, 478 U.S. 186 (1986) (per the dissenting judgment of J. Blackmun)

²⁰ Janelle Perez v. City of Roseville US Court of Appeals, No. 15-16430, 2018

²¹ Ibid

rigidity of orthodox ideas which are built on wrong notions. At no point in ancient history was this considered an unacceptable idea however, once in the modern times we see people shielding their orthodox perceptions behind the curtain of customs and traditions whereas, this condemnation has neither legal backing nor historical. By the above information a two-fold inference can be drawn. Firstly, that live-in relationship is not new to the Indian Society. There have been instances in the Vedic times wherein live-in relationship or cohabitation did exist and was fairly accepted. In the medieval era, particularly with reference to Europe, instances of live-in relationships have been spotted which were popularly known as marriages and although they were not fully and formally accepted, they weren't frowned upon either. Hence, it is safe to say that history has been a testament to live-in relationship and it is neither a new concept nor draws its roots from western culture. The unanswered question here remains that, what was the situation that brought the image of the idea of live-in relationship to be tarnished.

In the present day context, despite the judiciary time and again spelling it out that there is no law against cohabitation between two consenting adults who are not bound by matrimony, there have been constant condemnation of this idea. One of the main reasons for couples to adopt such an arrangement is the prevailing caste system in India. Apart from the reasons stated in the chapter, young adults prefer to check compatibility and seldom are such adults with progressive ideas to be of the same caste or creed. Therefore, prior to entering into the holy bond of matrimony, such individuals prefer to stay together without any limitations. This paves way for disapproval by the society and despite there being a vacuum in legal sanctions for live-in relationships; these are frowned upon by society.