



RESEARCH ARTICLE

LIVE-IN RELATIONSHIP IN INDIA: A CULTURAL CONFLICT

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ABSTRACT

The mindset and attitude of the generations keeps on changing with the passage of time. There are ample examples of vanishing of rudimentary and age long practices and customs which were once considered to be the integral part of one's culture and society. Some of them proved to be reformatory for the society like abolition of Child Marriage, Sati, Widow Remarriage, whereas some concept came out of the contemporary needs of modern generations. Live in relationship is also one of the concept adopted by the youths in India as a substitute to the marriage. The paper discusses the social and cultural conflict between live in relationship and marriage in country like India which is known for its Unique Culture and Traditional Values.

INTRODUCTION

There are sixteen sanskars (Sacraments) among Hindus and Marriage is one of them. As said in Mahabharata and Manu Smriti, "Those who have wives can fulfill their due obligations in the world; those who have wives, truly have a family life, those have wives can be happy, those who have wives can lead a full life".<sup>1</sup> "He only is a perfect man who consists of wife, himself and his offspring."<sup>2</sup>

"Om samjnatu vishwedeve sampohridayano Samatvishwa sandhat samohdrishti dadhatunoh"<sup>3</sup>

-Shukla Yajurveda

II Marriage Its Concept and Relevance in Indian Context:

Marriage is one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal

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way, and once concluded, recognizes the parties as husband and wife. Marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally.

Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, succession ship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship

There are principally three elements of common law marriage

- Agreement to be married
- Living together as husband and wife,
- Holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae' which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other.

<sup>1</sup> Mahabharata, Adi Parva, 74, 40-41.

<sup>2</sup> The Laws of Manu IX - Sacred Texts [www.sacred-texts.com/hin/manu/manu09.htm](http://www.sacred-texts.com/hin/manu/manu09.htm).

<sup>3</sup> In the above quotation the couple is invoking the blessings of the Gods to combine their hearts and souls, and to make their union inseparable like the union of the two sacred rivers Ganga and Yamuna. Despite the fact that they are two bodies they should be one in soul. (<http://wcd.nic.in/research/Directory%20of%20SC-HC%20Judgements.doc>)

If we talk about India Marriages take place either following the personal law of the religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is

also nationally and internationally recognized. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. Human beings are social beings whose humanity is expressed through their relationships with others. But it is also acknowledged that Entering into marriage is to enter into a relationship that has public significance as well. The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. The above fact of importance of Marriage and Family is also recognized and accepted by various International Charters.

Article 23 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that:

- "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- The right of men and women of marriageable age to marry and to found a family shall be recognized.
- No marriage shall be entered into without the free and full consent of the intending spouses.
- States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 16 of the Universal Declaration of Human Rights, 1948 provides that:

- "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- Marriage shall be entered into only with the free and full consent of the intending spouses.
- The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

With respect to "marriage and marital relationship" it is clear that the Law has distinguished between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage.

A married couple has to discharge legally various rights and obligations, unlike the case of persons having Live-in Relationship or, marriage-like relationship or de-facto relationship.

## Conflicting Trend from Marriage to Live In Relationship

From past few years there has been A Transitional shift from marriage to Live in Relationship. However neither it is being accepted nor denied absolutely by the society. LIVE In Relationship can be defined as a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage.<sup>4</sup> Live in Relationship is just a mutual understanding between two person of different sex to live together, share a common household luxuries and even indulge in sex with each other's consent. Legally they have no liabilities against each other, nor do they get any legal rights that they can enforce against each other which only a married couple have. 'Live-in' relationship, is initially viewed as one of the adverse affects of western culture on the Indian society. As such a relationship or an arrangement has always been under the ethical radar and vigil of moral law. The instances of live in can be seen in upper sections of Indian society or in so called modern and liberal class as an act of rebellion for the educated thinking humans against the marriage and its attendant shackles and trials.

## Law and Live In Relation

The Protection of Women from Domestic Violence Act, 2005 clearly recognizes live in partner and Live in Relationship in section 2 (a) and 29(f). In section 2(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent; and 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; no where it includes such live partners as one of my friend here has tried to misguide you & all by including such relationship in the definition of domestic relationship. The Supreme Court ruling in itself has its precedent in a 1927 judgment made by the Privy Council, (the Supreme Court's predecessor in pre-independent India). A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together.

The first among them is. *A. Dinohamy v. W.L. Blahamy*<sup>5</sup> wherein their Lordships of the Privy Council laid down the general proposition that:

"Where a man and woman are proved to have lived together as 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"

The Council made significant additions to the 1927 ruling in 1929 in *Mohabhat Ali v. Md. Ibrahim Khan*<sup>6</sup> their Lordships of the Privy Council once again laid down that:

"The law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years. For a live-in couple to be

<sup>4</sup> <http://legal-dictionary.thefreedictionary.com/Live-in+relationship>

<sup>5</sup> AIR 1927 P.C. 185

<sup>6</sup> AIR 1929 PC 135

considered validly married, the court wanted evidence of cohabitation for a number of years, without specifying the minimum number of years”

In *Gokal Chand v. Pravin Kumari*<sup>7</sup>, the Supreme Court observed that continuous co-habitation of woman as husband as wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long co-habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, that court cannot ignore them.

In *Badri Prasad v. Dy. Director of Consolidation and ors.*<sup>8</sup>, the Supreme Court recognized a Live-in Relationship as a valid marriage, accusing the authorities of questioning a relationship 50 years after the couple had begun living together, and were treated as a married couple even by their relatives.

In 2001, in *Payal Sharma v Superintendent, Nari Niketan, and others*<sup>9</sup>, the Allahabad High Court stated that a Live-in Relationship was not illegal. They forcefully asserted, “a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality.”

In *Tulsa v. Durghatiya*<sup>10</sup> the Supreme Court has conferred long-term live-in relationships parity with marriages. It refused to see the children born out of such a relationship as illegitimate. “Law inclines,” it added, “in the interest of legitimacy and thumbs down ‘whoreson’ or ‘fruit of adultery’.”

In *Koppiseti Subbharao Subramaniam v. State of A.P.*<sup>11</sup>, the accused was harassing his live-in partner for dowry. He defended himself saying that Section 498 A did not apply to him since (a) he was not married to his live-in partner and (b) he was married to someone else. The Court was not impressed. It said that ‘the nomenclature “dowry” does not have any magical charm written over it. It is just a label given to a demand of money in relation to a marital relationship’. Drawing parallels with the law which recognizes the legitimacy of children born of void and voidable marriages, it explained its stand asking: “Can a person who enters into a marital agreement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise?” Preferring a liberal construction of the law, the Court went on to explain why it had rejected a literal and technical interpretation saying. Such legal niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment of a woman over demand for money. This judgment went in a long way in saying that men can’t dodge either responsibility or liability to women they live with by simply not getting married to them. In 2008, the National Commission for Women sought a change in the definition of ‘wife’ in Section 125 of the Criminal Procedure Code dealing with maintenance of estranged woman – to bring woman in a Live-in Relationship on par with ‘wife’ as long as maintenance

is concerned. In 2003, Justice Malimath Committee<sup>12</sup> made a similar recommendation to the Law Commission of India. Also, the “Protection of Women from Domestic Violence Act 2005 provides protection to women at the hands of their husbands as well as live-in partners, and his relatives. The Supreme Court in *D. Velusamy v. D. Patchaiammal*<sup>13</sup> reflecting upon live-in relationships becoming frequent in India, the Court has pointed out that no legal entitlements occur by such relationship. The Supreme Court also commented on such relationships by describing them as common-law marriages and the popularity of live-in marriages as a social phenomenon (compared to it being considered a taboo earlier) and even recognised by the Parliament in terms of the Domestic Violence Act, 2005. Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

In *Lata Singh v. State of U.P.*<sup>14</sup> It was observed that a Live-in Relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral.

In *S.Khushboo v. Kammiammal*<sup>15</sup>, Supreme Court observed that Even Lord Krishna and Radha lived together according to mythology. The Apex Court underlined that there was no law which prohibits Live-in Relationship or pre-marital sex. With the Supreme Court validating long-term live-in relationships, live-in arrangements have received the legal tag and are increasingly becoming popular in India. But does it suit the Indian tradition. Indian culture still considers the concept disrespectful.

## Conclusion

However, it is the tradition and customs. Live-in relationships are essentially seen among urban, informed, elite, upper and upper-middle class people as a manifestation of freedom doing away with the ‘shackles of marriages’ that are too hard to overlook. Marriage as an institution is mainly held by a sacred aura, and overarching familial pressures and controls in a deeply patriarchal setup, both of which guide people to go for extra lengths to protect ‘sacredness’ of marriage by clinging to it against all odds and to keep the hallowed institutionalization of marriage in India. The children can grow up into adults in a nurturing atmosphere. Moreover Article 21 of the constitution of India, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Our society is formed with traditions and customs which are foundational pillars.

A society is said to be ruined when the culture is ignored. A society ruins when men ignore ethics and women ignore traditions. Picking up the holes in one's own tradition is very dangerous. IN India, Marriage is the sign of Indianism. But keeping in mind the present ratio of married couples and live in partners in India the sacredness of marriage and priority of personal freedom and escape from social responsibility are

<sup>7</sup> AIR 1952 SC 231

<sup>8</sup> AIR 1978 SC 1557

<sup>9</sup> AIR 2001 All. 254

<sup>10</sup> (2008) 4 SCC 520

<sup>11</sup> (2009)12 SCC 331

<sup>12</sup> Report of the Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, March 2003.

<sup>13</sup> AIR 2011 SC 479

<sup>14</sup> AIR 2006 SC 252

<sup>15</sup> (2010)5 SCC 600

standing on conflicting terms. Some believe it's a cultural violation and it would never gain respect and while the protagonists of individual freedom and liberty favors it and argues that we are moving with the times. In either of the ways the choice is yours and yours alone. Similar to it's said, "Nothing is right or wrong: Thinking makes it so", if you feel you can't handle the responsibility, the apparent monotonous

manner of married life and you need space, freedom, you may live-in; you might not be welcome but you won't be renounced either. The author is of the view that in order to avoid any further conflict the parliament should come up with an enactment to clarify the meaning or definition of Live-in relationship.

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