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## Live-in relationships: An ethical and a moral dilemma?

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### Abstract

Of late, live in relationships have emerged as a substitute for marriages. The number of people opting for live in relationships seems to be increasing especially in the metros. The change is evident from the court rulings which have recognized these relationships and have ushered in provisions to protect women from undue harassment as these relations guarantee very little in terms of security. By its very nature, these relationships stand a fair chance of success and failure. In cases of failure, these relationships have been accompanied by a disturbing trend of rape charges ruthlessly slapped by women against men, which results in arbitrary harassment of one sex by the other, in most of the cases. This trend is continuously increasing and the courts have also expressed anguish over it. Though this trend is mostly seen in the urban areas but is considered a legal whirlpool once the relation falls out. In this light, this paper attempts to analyze and examine the growing trend of rape cases in live in relationships in India.

However, the moral and the ethical angle to the concept of a live-in relationship is a subjective one, especially in a country like India, where a certain section of the society considers it to be a sin. However, the young generation in metros has termed a live-in to be more democratic, offering them a reprieve from the inherent shackles of marriage, citing the malaise of domestic violence as a major argument against marriage. On the other hand, youngsters from smaller setups are still apprehensive about the concept of a live-in relationship.

The researchers will look through the lens and evaluate the legal implications for an open, moral and ethical interpretation.

**Keywords:** Live-in relationships, ethical, moral dilemma.

### 1. Introduction

Traditionally India is a country where marriage is considered as a sacrosanct institution whose foundation is laid upon commitment and tolerance. With changing times the dimensions of commitment have changed as a result people are exploring for alternatives to marriage. Of late, live in relationships have emerged as substitutes of marriage. The number of people opting for live in relationships is increasing notably in the metro cities.

This change is evident from the various court pronouncements which accord legal recognition to these relationships and have laid down the provisions to ensure that vulnerability of women is eliminated as these relations guarantee very little in terms of security. By its very nature these relationships stands a very fair chance of success and failure. In instances of failure, these relationships have been accompanied by a disturbing trend of rape allegations ruthlessly slapped by women against men, which results in arbitrary harassment of gender by the other, in majority of cases.

Unfortunately this trend is continuously increasing and courts have expressed anguish over it. Though this trend is mostly seen in urban areas notwithstanding it is considered as a legal whirlpool once the relationship goes out of place.

The moral and ethical angle to the concept live in relationship is a subjective one, especially in a country like India. On one hand, a section of society is of the view that it will dilute the sacred institution of marriage as it encourages a pre-marital sexual relationships, in fact they consider it to be a sin. On the other hand the liberal minds of the society considers it as a progressive and forward looking concept which allows the younger generation to check their compatibility with their partners before entering permanent commitment through valid legal marriage.

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## 2. Legality and Legal Implications of Live-In Relationships

Live in relationships is a voluntary arrangement whereby two adults mutually agree to live together to conduct a long term relationship that resembles to a marriage<sup>[1]</sup>. “Live in relationships are a walk in walk out relationship. There are no strings attached to these relationships as the relationship is free from any legal bond between the parties”<sup>[2]</sup>. This relationship does not impose the typical responsibilities of a marriage. The founding notion behind opting for live in relationships is to test one’s compatibility with the other person before entering any sort of legal commitment.

Live in relationships in a country like ours is often considered a social taboo. Moreover none of the legislation that deals with marriage or succession expressly extends recognition to live in relationships. However, courts have come forward to fill the void that was created in the absence of any specific statute. Allahabad High Court in *Payal Katara v. Superintendent, Nari Niketan and Anr*<sup>[3]</sup>. Held that live in relationship is not illegal.

The Court said that a man and a woman can live together as per their wish even without getting married. It further said that it may be immoral for the society but is not illegal. The Supreme Court in *Badri Prasad v. Deputy Director of Consolidation*<sup>[4]</sup> has upheld the validity of a fifty year live in relationship. Justice Krishna Iyer in this case remarked that “a strong presumption lies in favour of wed lock where partners have lived together for a long spell as husband and wife as law. Law leans in favour of legitimacy and frowns upon bastardy”<sup>[5]</sup>.

The Supreme Court of India has held by virtue of section 114 of the Indian Evidence Act, the courts can raise a presumption of marriage that the partners in the live in relationships are married to each other<sup>[6]</sup>. In the case of *S. P. S. Balasubramanyam v. Surruttayan*<sup>[7]</sup> the Apex court held that if a man and women are living under the same roof and cohabiting for number of year, 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. This is in fact in accordance with section 50<sup>[8]</sup> the Indian Evidence Act<sup>[9]</sup>.

It is a settled law that where a man and women cohabit as husband and wife for a long term then the law shall presume they were legally married, unless the contrary is proved. Therefore, it can be inferred that the courts are keen towards recognising and protecting the rights of the individuals in a live in relationship.

### • Rights of Women in a live in relationship

The supreme court in *Indra Sarma v. V.K.V. Sarma*<sup>[10]</sup> has held that “relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the Domestic Violence Act and in case, there is any domestic violence, the same will fall under Section 3 of the Domestic Violence Act and the aggrieved person can always seek reliefs provided under Chapter IV of the Domestic Violence Act”. It is clear from the above judgement that a woman in a live in relationship can seek relief by invoking the provisions of protection of women from domestic violence act.

In the case of *Chanmuniya v. Virendra Kumar Singh Kushwaha*<sup>[11]</sup> the apex court held that “in those cases where a man, who lived with a women for a long time and even

though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the women maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations.” Court also wanted to interpret the meaning of “wife” broadly under Section 125 of CrPc. for claim of maintenance, so that even women in live-in relationship can claim maintenance.<sup>40</sup> The Court further declared that a woman in a live-in relationship in entitled to claim any relief mentioned under Protection of Women from Domestic Violence Act, 2005.

However, in the case of *Velusamy v. D. Patchaiammal*<sup>[12]</sup> the Supreme Court held that a women in a live in relationship is not entitled to maintenance under section 125 CrPC, unless she fulfils certain criteria, the Supreme court had observed that merely spending weekends together or a one night would not make it a domestic relationship. The bench of Justice Markandey Katju and T S Thakur laid down the parameters that a woman, who is not married, needs to fulfil, to get maintenance and these requirements are:

- a) They must be of legal age to marry
- b) They must be otherwise qualified to enter into a legal marriage.
- c) They must be voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time<sup>[13]</sup>.

The Supreme Court observed, “in our opinion not all Live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Protection of Women from Domestic Violence Act, 2005”. To get such benefit the conditions mentioned above must be satisfied, and this has to be proved by evidence. “If a man has a ‘keep’ that he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage”<sup>[14]</sup>. The Apex court also observed, “No doubt the view we are taking would exclude many women who have had a Live-in relationship from the benefit of the 2005 Act (Protection of Women from Domestic Violence Act), but then it is not for this court to legislate or amend the law. Parliament has used the expression ‘relationship in the nature of marriage’ and not ‘Live-in relationship’. The court in the garb of interpretation cannot change the language of the statute,” the bench observed<sup>[15]</sup>.

### • Legitimacy and the Rights of the children born out of live in relationships

In the case of *SPS Balasubramaniam v. Sruttayan*<sup>[16]</sup> the apex court observed that “if a man and a women are living under the same roof and cohabiting for a number of years, there will be a presumption under the Indian Evidence Act that they live as husband and wife and held that the child born to them will not be illegitimate”<sup>[17]</sup>.

This was the benchmark case in which the Supreme Court upheld the legitimacy of the children born out of live in relationships and further put stress on the responsibility of the state in directing its policy in concurrence with article 39F<sup>[18]</sup> of the Constitution of India.

In the case of *Bharata Matha v. R. Vijaya Renganathan*<sup>[19]</sup> the apex court clarified while deciding this case that a child born out of live in relationship may inherit the property of his parents but he does not have any birthright in the Hindu undivided ancestral property.

Notwithstanding the Supreme Court in *Revanasiddappa v. Mallikarjun* <sup>[20]</sup> held that Section 16(3) of the Hindu Marriage Act, 1955 as amended, does not impose any restriction on the property right to such children that are born out of illicit relationship/ void marriage except limiting it to the property of their parents. Therefore, such children will have a right to whatever becomes the property of their parents whether self-acquired or ancestral.

The Supreme Court in *Dimple Gupta v. Rajiv Gupta* <sup>[21]</sup> held that a child born out of an illicit relationship is entitled to maintenance under section 125 CrPC while they are minors and after they attain majority where such child is unable to maintain himself.

### 3. Increase in the Trend of Rape Allegations In Case Of Failure of Live In Relationships

As the Delhi High Court in *Alok Sharma v. State* <sup>[22]</sup> observed that live in relationships are walk in and walk out relationships. We must understand that by the very essence of live in relationships pose an even chance of failure or success. Unfortunately, in case of failure of these relationships a dismaying trend is common these days where rape allegations are maliciously slapped by women against men, which results in harassment of one gender by the other, in majority cases. Under this sensitive subject we aim to bring out the true picture as there is a need to scrap the gender biased law and adopt strict gender neutral laws.

The Supreme Court in one of its observations has expressed anguish over this trend.

The Delhi High Court in *Ravi Kumar v. State* <sup>[23]</sup> observed that “the economic and social dynamics of the society are changing very fast. This can be witnessed by the increasing number of live-in relationships which are justified by the young generation on the ground that the institution of marriage is too burdensome as proven by the increasing divorce cases. Moreover, with the changing times these live-in relationships have acquired a legal mandate and are slowly becoming socially accepted.

Therefore, the need of the hour is that the boys and more importantly girls have to be very careful and cautious before taking such an important decision concerning their lives before entering into the most sanctimonious relationship of marriage or even to have live in relationship. One of the major reasons contributing increase in the rape cases is a failure of live in relationship or any immature decision on the part of such young adults which more often end up in a broken relationship but sometimes after indulging into physical relationship”.

Conclusively, we can see that courts have started to reflect light on the other side of the issue which is least talked about and perhaps that's the first stage towards recognition of the need of gender neutral laws so that the fabric of society is not damaged.

### 4. Live-In Relationships: An Ethical and a Moral Dilemma?

The evolution of the concept of marriage is a difficult thing to trace because birth of a man is birth of marriage. It is a practise that seems as old as the human race itself. Marriage and family are closely associated with the being of each other.

In the Indian society, marriage is one of the deepest and most complex web of human relations.

It is considered a unison of man and woman in a rite defined

by social custom and law carrying with it specific economic, sexual and child-care responsibilities.

In the dictionary of sociology <sup>[21]</sup>, Duncan Mitchell defines marriage as ‘socially sanctioned sex relationship involving two or more people of the opposite sex whose relationship is expected to endure beyond time required for gestation and the birth of children.

Tracing the roots in ancient India, marriage was considered necessary for the complete fulfilment of the purpose of life of men and women without it was believed they could not achieve ‘Moksha’ <sup>[22]</sup>

It was considered necessary for women due to the tradition, culture and the complete economic dependence of women on men.

The four purposes of human existence according to hindu religion are Dharma, Artha, Kama and Moksha. Dharma means religious duty towards the society, Artha means economic activity, Kama means the satisfaction of the sexual desires and Moksha means salvation.

Thus, according to the hindu view of life, it is very necessary for a man and a woman to marry, in order to achieve the four Purusharthas <sup>[23]</sup>- Dharma, Artha, Kama and Moksha, the four ideals of life <sup>[24]</sup>.

The traditional concept of a hindu marriage is that of a religious sacrament. It is a life-long commitment, the true purpose being a complete companionship in fighting the battle of life together. In India, marriages had more of a social origin and reason rather than individual origin and purpose.

On the other hand, the western ideology of marriage regards marriage as a personal matter concerned with love-making, home making and living together but the Indian philosophy views the concept of marriage as a religious sacrament and as fulfilling obligations towards the family and the society while keeping it at a central position in the Hindu view of living.

Hence, the concept of a live-in relationship, which is averse to the religious significance marriage holds in the hindu mythology, faced resentment from the commoners living in India.

In India, live in relationships have been a taboo right since the British raj. However, this trend is changing amongst young couples in big cities like Bangalore, Mumbai, Delhi, etc. However, it cannot be denied that maintaining such relationships in country's rural areas would land you in trouble due to the deeply embedded concept of marriage as a religious sacrament in people's mindsets.

The parents continue to live in denial and cringe at the idea of a live-in because for them, it hints at sex for pleasure instead of for procreation, which marriage implies. They see marriage as a religious sacrament, as having been conditioned like that since time immemorial.

Live-in relationships have always been considered as the shrugging of taking up of a responsibility. Thereby leading people who are still conditioned to the mindset of previous generations to resent the very concept of a live-in relation which they label as being western influenced and a destroyer of our culture and social values.

However, with the surge in the process of globalisation and the intrusion of the western culture in the Indian society has led the younger generation to have a broad opinion and rationally figure out what they want.

It has to be understood that emotional bindings and relationships cannot be pressed upon by the society to mould

into a socially accepted union unless and until the couple wants it to be. The freedom of choose what one wants without the cringe of a moral and ethical question is the basic essence of a democratic country like India.

### 5. Conclusion

Evaluating the origin of the concept of marriage as a religious sacrament in ancient India, it can be said that the resentment of a live-in relationship by the people is not arbitrary. They have been conditioned into such mentality by their ancestral generations.

However, it has to be realized by the people that with the rapid increase in the influence of globalisation, the world has become a smaller place.

The intrusion of western culture into the Indian fabric is inevitable which will, undoubtedly modernise the way how the young generation thinks. They think rationally and differently as compared to the previous generations.

The concept of analysing the level of compatibility before a couple formally ties the knot and gets into a socially more acceptable bond is practical in today's times when the rate of divorces and broken marriages is at an all-time high.

A live-in relationship is often regarded a human rightist and an individualistic approach. Despite being highly prevalent in majority of the western countries, the reality with regard to the social fabric of India is drastically different. This societal web has been developed since the inception of the Hindu dharma.

This can be comprehended from the fact that in India, marriage continues to be the institution that is preferred to any other form of union. But it has to be realised and understood that adult unmarried couples who wish to live together under the same roof, should not be prohibited or victimised. This will harm the democratic setup of the country we all live in.

The judiciary's pro-active efforts to safeguard the interest of such couples and protect them from the outburst of the primitive and conditioned mindset of the people is a welcome step.

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