

Live in Relationship in India

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Abstract – The live in relationship is an arrangement in which two people decided to live together under the same roof without getting married. It's a conduct of long –term relationship which is similar to marriage. The term live in relationship is the kind of relationship which is free from commitments and responsibilities unlikely traditional marriage. It is not recognized by the Hindu marriage Act, 1955 or by any other statutory law. The supreme court of India recognized live in relationship as legal relationship and is not considered as prohibited relationship.

Keywords: Live-in Relationship- Staying together- without Marriage-Maintenance to Female Partner.

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INTRODUCTION

India is a country, which is slowly opening its doors to western ideas and lifestyles, one of which is the concept of live in relationships. A relationship of a man with a woman in legal parlance is legitimate if it is based on proper marriage and illegitimate if not as per Marriage Laws. The live in relationship is a living arrangement in which an unmarried couple lives together in a long term relationship that resembles a marriage. In every day parlance, it is cohabitation. The basic idea of conducting a live-in relationship is that the interested couple wants to test their compatibility for each other before going for some commitment.¹

Today, cohabitation is a common pattern among people in the Western World. People may live together for a number of reasons. These may include wanting to test the compatibility or to establish financial security before marrying.² It may also be because they are unable to legally marry, for instance, if they are of the same sex, some interracial or inter-religious marriages are not legal or permitted. Other reasons include living with someone before marriage in an effort to avoid divorce, a way for polygamists or polyamorous to avoid breaking the law, a way to avoid the higher income taxes paid by some two income married couples (in the united states), negative effects on pension payments (among older people), philosophical opposition to the institution of marriage and seeing little difference between the commitment to live together and the commitment to marriage. Some individuals may also choose cohabitation because they see their

relationships as being private and personal matters, and not to be controlled by political, religious or patriarchal institutions.³

In most places, it is legal for unmarried people to live together, although some **zoning** laws prohibit more than three unrelated people from inhabiting a house or apartment. A few states still prohibit fornication, or sexual relations between an unmarried man and woman, but such laws are no longer enforced⁴. The law traditionally has been biased in favor of marriage. Public policy supports marriage as necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Cohabitation carries none of those rights and privileges. It has been said that cohabitation has all the headaches of marriage without any of the benefits.

Live in relationship is a voluntary arrangement whereby two adults mutually agree to live together to conduct a long term relationship that resembles to a marriage.⁵ "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."⁶ This relationship does not impose the typical responsibilities of a marriage. The founding notion

¹. Mohit Chhibber, Aditya Singh : Live in Relationships : An ethical and a moral dilemma? At p.74.

². Kirti Daga, Short Essay on Live in Relationship.

³. <https://www.Vakil no. 1.com/legal views/live-relationship-India-closer-look.html>.

⁴. Menski F. Werner, Modern Indian Family Law, surrey, UK

⁵. Live in relationships : recent development and challenges by Dr. Kalpana v. Jawada (24/3/15)

⁶. Obsertains made by Delhi High Court in Alok Kumar v. State (crl. MC No. 299/2009Manu/DE/2069/2010)

behind opting for live in relationships is to test one's compatibility with the other person before entering any sort of legal commitment. 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.⁷ In the case of *S.P.S. Balasubramanyam v. Suruttayan*⁸ 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 of the Indian Evidence Act.

REVIEW OF RELATED LITERATURE:

Cohabitation is defined as an intimate sexual union between two unmarried partners who share the same living quarter for a sustained period of time (Bacharach et. al., 2000). The rise in cohabitation represents one of the most significant changes in union formation patterns in many developed and developing economies. The increase in cohabitation has occurred alongside other, related, major demographic shifts, including rising levels of divorce and delay in entry into marriage and child bearing (Coast, 2009) Research or cohabitation was relatively rare until the late 1980s, but it has dramatically increased in the past decade (Smock, 2000). Beyond documenting trends in cohabitation, much of research focuses on the meaning of cohabitation (e.g., whether it is a prelude or alternative to marriage), how cohabitation affects union formation and dissolution, and how it affects children and child bearing (Hatch, 1995; Smock, 2000). Only recently have researchers begun to examine factors such as relationship quality and interaction within cohabitating unions (Brown & Booth, 1996; Brown 2003).

Despite the similarities, a lot of differences have also been found. Previous research generally finds lower levels of commitment and relationship quality in cohabiting relative to marital relationships (e.g. Brown 2003, 2004; Stanley, Whitton & Markman, 2004; Hansen, Moum & Shapiro, 2007).

Relationship quality has been the focus of numerous studies of which the majority conclude that married individuals are more satisfied with their relationship than cohabiters (e.g. Brown & Booth, 1996; Brown 2003, 2004; Stanley et al., 2004). Nock (1995) reported lower levels of commitment among

cohabiting relative to married couples. Further, comparing currently married individuals with cohabiters without definite marriage plans, Stanley et. al., (2004) found that the first group was significantly more dedicated to their relationships (i.e. a desire to prioritize the relationship). On average, cohabiters have been found to report less commitment to their relationships, lower levels of happiness, less satisfaction with their sex lives and more disagreements (Nock 1995; Waite 1995; Brown & Booth 1996).

The findings of these aforementioned studies, however, have to be looked upon with caution. Some scholars have cautioned against drawing such conclusions based on current social science data (Huston & Melz, 2004). As Penman (2005) points out, it is less certain that differences can be attributed to the state of being married per se. Huston and Melz (2004) flagged a number of methodological issues that they suggest would need to be addressed in order to confidently argue that such a case exists. With declines in marriage rates and rises in the rates of cohabitation (Kieman, 2000; Whitehead & Popenoe, 2006), it makes sense of focus attention on cohabiting couples as a discrete unit of analysis whenever possible. There are value differences in many domains that likely affect couple interactions and individual well-being. Cohabiters tend to be less traditional and more individualistic than their married counterparts (Musick & Bumpass, 2006). The less structured roles and less traditional orientations of cohabiters may make it more difficult for partners to establish who does what in the relationship. The negotiation of new rules and meaning has the potential for greater conflict, but the greater flexibility of roles also leaves room for more rewarding, more egalitarian relationships (Brines & Joyner 1999; Cherlin, 2004). Corresponding to these findings, in a recent study, Musick (cf : The Times of India, July 2012) pointed out that the idea that marriage has health and happiness advantages over cohabitation is overrated.

Research on cohabitation in India has been almost non-existent and has largely been restricted to non-representative surveys and opinion based articles. Cohabiters not willing to talk about it openly could be one of the reasons for this state. The recent introduction of laws of domestic violence and property rights has not able to bring about too much of a change in people's attitudes towards cohabitation. According to Kojima (cf : Times of India, November 2010), while making a comparative analysis of cohabitation in East Asia and in the West, cohabitation may spread in big cities of India with further economic growth and change in social norms and values. He further stated that in mega cities of India, the economy had been growing as fast as mega cities in coastal China and Social norms and values could be

⁷. [http://lawwsieindia.com/2014/07/legality-live-relationships.india/more-344\(assessed on 24/3/15\)](http://lawwsieindia.com/2014/07/legality-live-relationships.india/more-344(assessed on 24/3/15).). In *Bharatha Matha and Another v. R. Vijaya* AIR 2010 SC 2685 by Dr. B.S. Chauhan.

⁸. AIR 1992 SC 756.

changing even faster than in the Chinese counterpart because of India's democratic political society.

The Scandinavian countries are, for instance, often cited as examples of countries where cohabitation is largely identical of marriage (Wiik, Keizer, & Lappegard, 2012). In Southern and Eastern Europe, on the other hand, this living arrangement is far less common. Scandinavian countries, especially Norway and Sweden, are countries where cohabitation is more widespread than in most other countries, including America and where the living arrangement is essentially equal to marriage in terms of public policy and nearly completely socially acceptable (Wiik, Bernhardt, & Noack, 2009).

Keeping in mind how differently cohabitation is viewed in all parts of the world, research in cohabitation should move beyond prevalence and comparisons with marital relationships. Cohabitation should be seen as a separate and distinct entity. For a better understanding there needs to be a lot more research done in cohabitation in countries like India, where cohabitation despite on the rise is seen as unacceptable. Cohabitation is something that has become a part of the existing family system. However, caution should be taken while doing research on it. Typologies of cohabitation continue to evolve (Haskey, 2001; Martin and Thery, 2001), reflecting the changing nature of living arrangements in general and cohabitation in particular (Coast, 2009).

As both a demographic process and event, cohabitation is fuzzy (Knab, 2005), elusive (Teitler and Reichman, 2001), and heterogeneous (Oppenheimer, 2003). Cohabitation is characterized by increasing number and complexity, with the duration of cohabiting union appearing to be lengthening (Haskey, 2001).

Sociologist Kristi Williams of Ohio State University says that sometimes a unintended pregnancy is what pushes a couple to move in together or to marry. In a recent study of married and just living – together couples, a researcher at the University of Virginia found that the brains of spouses responded differently to stress than the brains of living-together couples.

Humans, particularly adolescents get involve in romantic relationships with variety of reasons. According to Aristotle, humans are "Social Animals" which made them long to form an intimate relationship in which love can be given and received freely which the psychologists called "the need to belong" (Myers, 2010)

Badri Prasad vs. Dy. Director of Consolidation, 1978⁹

This was the first case in which the Supreme Court of India recognized live in relationship and interpreted it as a valid marriage. In this case, the Court gave legal validity to a 50 year live in relationship of a couple. It was held by justice Krishna Iyer that a strong presumption arises in favour of wedlock where the partners have lived together for a long term as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy.

Tulsa & Ors vs. Durghatiya & Ors, 2008¹⁰

The SC provides legal status to the children born from live in relationship. It was held that one of the crucial pre-conditions for a child born from live-in relationship to not be treated as illegitimate are that the parents must have lived under one roof and cohabited for considerably long time for society to recognize them as husband and wife and it must not be a "walk in and walk out" relationship. Therefore, the court also granted the right to property to a child born out of a live in relationship.

D. Velusamy Vs. D. Patchaiammal, 2010¹¹

The judgment determined certain pre requisites for a live-in relationship to be considered valid. It provides that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into legal marriage, including being unmarried. It was stated that the couple must have voluntarily cohabited and held themselves out to the world as being akin to spouses for significant period of time. The court held that not all relationships will amount to a relationship in the nature of marriages and get the benefit of the Domestic violence Act. It further clarified that, if a man keeps women as a servant and maintains her financially and uses mainly for sexual purposes, such relationship would not be considered as marriage in the court of law. Therefore to get such benefit the conditions mentioned by the court must be satisfied, and has to be proved by evidence.

⁹. Judgment delivered by Bench of Krishnaiyer, V.R. Desai, D.A. Reddy, O. Chinnappa (J) dated 1 August 1978. 1978 (3) SCC 527

¹⁰. Judgment delivered by Bench of Dr. Arijit Pasayat & P. Sathasivam (J) dated 15 January, 2008. (2008) 4 SCC 520.

¹¹. Judgment delivered by Bench of Markandey Katju, T.S. Thakur (J). Dated 21 October 2010. (2010) 10 SCC 469.

S. Khushboo vs. Kanniammal & Anr, 2010¹²

The Supreme Court in this case dropped all the charges against the petitioner who was a south Indian actress. The petitioner was charged under section 499 of the IPC and it was also claimed that the petitioner endorsed pre-marital sex and live in relationships. The court held that living together is not illegal in the eyes of law even if it is considered immoral in the eyes of the conservative Indian society. The Court stated that living together is a right to life and therefore not illegal.

Now a day's Live-in relationship is no more substitute to the marriage. It is having its own stand in society and in law of the country. Five kinds of live-in relationship were identified by the court in - *Indira Sarma vs. V.K.V. Sarma*¹³

1. Domestic relationship between an adult male and an adult female, both unmarried. It is the most uncomplicated sort of relationship.
2. Domestic relationship between a married man and an adult unmarried woman, entered knowingly.
3. Domestic relationship between an adult unmarried man and a married woman, entered knowingly. Such relationship can lead to a conviction under Indian Penal Code for the Crime of adultery.
4. Domestic relationship between an unmarried adult female and a married male, entered unknowingly.
5. Domestic relationship between same sex partners (gay or lesbian)

The Court stated that a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the Protection of women Against Domestic Violence act, 2005 and provided certain guidelines to get an insight of such relationships. Also, there should be a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account, including the individual factors.

The Court in this case affirmed that the relationship in the present case is not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of

¹² Judgment delivered by Bench of K.G. Balakrishnan, Deepak Verma, B.S. Chauhan (J) dated 28 April, 2010. (2010) 5 SCC 600.

¹³ Judgment delivered by Bench of K.S. Radhakrishnan, Pinaki Chandra Ghose (J) dated 26 November, 2013. Criminal App. No. 2009 of 2013.

"domestic relationship" under Section 2(f) of the DV Act. In this case the appellant admittedly entered into a relationship with the respondent despite of knowing that the respondent was a married man with two children born out of the wedlock who opposed the live in relationship since the inception. The court further added, "If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act, as there is also no evidence of a live-in relationship between the appellant and the respondent as per the given guidelines". The Court held that the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. Furthermore, the Domestic violence Act does not take care of such relationship which may perhaps call for an amendment of the definition of section 2(f) of the DV Act, which is restrictive and exhaustive.

CONCLUSION:

A separate legislation should only be competent enough to grant assistance to the female partners aggrieved by such relationships. At last, the sooner our society accepts live-in relationships, the better chances the Indian Judiciary has for passing judgments which are in the righteous spirit of law and in the interest of justice, equity and good conscience. But the most important is in case. of live in relationship is the how society accepts these type of relationship? It is true that the due to globalization society are changing very fastly but not with the pace to accept such relationship as part of society in which the marriage is a sacred and considered as relationship of many years.

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