



Live in relationship in India: Legal Perspective

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Abstract

Live in relationship is one of the emerging changes taken place in society that has legal as well as societal ramifications. Live in relationship has been a matter of debate for a long time. It has created lively debate in international and national levels. The Supreme Court of India has recently opined that that live in relationship is neither a sin nor a crime. Keeping in mind this lively debate, an attempt has been made to through a light on the legal aspects of live in relationship. The paper is based on both primary and secondary sources. The primary sources include the Acts and decisions of the court. The secondary sources include the books and journals.

Key words: - Live in relationship, society, court

Introduction:

Change in a society is a universal truth. The change in the society may be due to a variety of reasons be it change in the social mores, or other changes like technological, economic changes. Social institution of marriage has also undergone a sea change in the recent years. Marriages are now being replaced by cohabitation or live in relationship. This transition in the society has been viewed differently by the legal systems and societies of the world. India is also not an exception to this form of transition. The proactive judiciary of India has been instrumental in protecting the rights of the partners of live in relationship. The recent judgment of the honourable Supreme Court of India that live in relationship is neither a sin nor a crime has created a lively debate as to the acceptability of the live in relationship by judiciary as well as by society. Here an attempt has been made to give a comparative picture of the legal status of live in relationship in USA, UK and India. Attempt has also been made

to analyse the socio legal impact of the live in relationship in India.

Concept of Live in relationship:- To define live in relationship is a difficult task. It may be qualified by the person who defines it and upbringing of that person, society in which he lives. While women may view it as a committed relationship moving towards marriage and a man may view it as an alternative to marriage. David Knox and Caroline Schacht have defined live in relationship as "two unrelated adults involved in an emotional and sexual relationship who sleep overnight in a same residence on a regular basis."¹ The authors have given eight types of cohabitation relationships.

These are – 1. Here and now type of relationship in which partners are

¹ David Knox and Caroline Schacht, *Choices in Relationships: Introduction to Marriage and the Family*. 11th Edition (Belmont:Thomson Higher Education 2012) at 120



focused on here and now and not on the future relationship.

2. Tester type of relationship in which the partners want to assess whether they have a future together.
3. Engaged type of relationship in which the partners are in love and planning to marry.
4. Money saver type of relationship in which the couple live together primarily to save money.
5. Pension partners type of relationship in which partners are generally old and have been married before and derive benefits from previous relationship. In such type of relationship, the pensioners want to retain the previous earning from the previous relationship but still want to enjoy a family life. So, they choose live in relationship.
6. Security Blanket cohabiters.
7. Rebellious Cohabitors
8. Marriage never type of live in relationship in which partners believe in the commitment of heart and of not a legal document. They are the persons who need companionship and sexual life outside the marital relationship.

Live in relationship In international level:- The institution of marriage in all over the world has undergone a sea change and gradually being replaced by live in relationship. The countries of the world be it European, American or Asian have witnessed the phenomenon of live in relationship. This type of change in the society has not only created complexities for the society but also posed a challenge to the legal system. The socio legal problems of varying dimensions have occurred due to live in relationship. Keeping in mind the limitation of the study, an attempt has

been made to analyse the legal status of the live in relationship in United States of America and United Kingdom.

United States of America:- In United States of America, unmarried partner households made up at least 5.2 percent of total households and included some 5.5 million people, 4.9 million in opposite-sex households.² Except three states of United States (Mississippi, Florida, and Michigan) the cohabiters are regarded as domestic partners. It was after the judgment of the *Marvin v. Marvin*³. The facts of the case are such that Lee Marvin, the Hollywood actor and his companion, Michelle, who lived together as a couple, having begun that relationship while Lee was married to another woman. Early in the relationship, Lee divorced his wife and continued living with Michelle who changed her name legally to Michelle Marvin. Lee and Michelle lived together for six years, never having gone through a formal marriage ceremony. The Supreme Court of California recognized the rights of non-marital couples to sue each other for compensation if the facts support either contract or some equitable doctrine. Marvin laid the predicate for Registered Domestic Partnership legislation in the United States. The main feature of a registered partnership is that it formalizing a non-marital relationship that would otherwise have to be proven in order for the individuals in that relationship to have rights and responsibilities. It is a model for same-sex couples to use to formalize their

² Cynthia Grant Bowman, *Legal Treatment of Cohabitation in the United States*. Cornell Law Faculty Publications. Paper 148. Available at <http://scholarship.law.cornell.edu/facpub/148>
³ 557 P.2d 106 (Cal. 1976).



relationship. The preamble of the New Jersey Domestic Partnership Act (2003) succinctly summarizes the rationale behind extending the benefits and obligations of marriage to cohabitants who fall within the qualifying characteristics of mutual caring and economic responsibility for one another's welfare. It acknowledges both the existence of substantial numbers of cohabitants and the functions they perform for the state by privatizing support for the welfare of its citizens, reaching the conclusion that the state should therefore support these couples in their performance of these functions.

Apart from Registered Domestic Partnership legislation, express contracts between partners are also taken into consideration while dealing with live in relationship. With the exception of Illinois, Georgia and Louisiana, almost every state recognize express contracts between cohabitants, especially if they are written.

Some of the states in USA extend rights based upon the status of cohabitation, either by imposing that status upon cohabitants at the termination of their relationships or by providing for entrance into civil unions or domestic partnerships.

United Kingdom:- The 2001 Census records just over two million cohabiting couples in England and Wales, an increase of 67% on the figures from the 1991 Census. The 2001 Census for England and Wales further records that:

- (1) 1,278,455 children were dependent on a cohabiting couple;
- (2) Of those, 558,426 children were in cohabiting step-families; and

- (3) 741,880 cohabiting couples had a dependent child or children.

In UK generally, couple can make cohabitation contracts and can also make express trusts of personal property. Apart from that legislations also govern live in relationship in UK. One such legislation dealing with live in relationship in UK is the Civil Partnership Act, 2004. In order to form a civil partnership in the UK, both parties must be over the age of 16, of the same sex, not already in a civil partnership or marriage, and not be within the prohibited degrees of relationship. If of the age of 16 or 17, the consent of the individual's parent or guardian will be required, except in Scotland, where marriages and civil partnerships can take place from the age of 16 with no need for parental consent. In order to complete the registration process, the couple must each give notice of their intention to the registry office. After 15 days they can complete the registration process. The couple can also enjoy a ceremony if they choose but this is not a requirement of the Act. The first date on which notice could be given was 5 December 2005 and the first registration was on 21 December 2005. The 15-day notice period allows the registrar to check that the couple is eligible to go ahead with the registration.

International Law:- 1. Article 16(1) of UDHR states 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

Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) gives the



right to respect for private and family life. It provides that

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

India:- In Indian context, judgements of the Supreme Court have clearly established that partners of the live in relationship are protected under domestic violence Act, 2005.

In *D.Velusamy vs D.Patchaiammal* Criminal Appeal Nos. 2028-2029__of 2010, the Supreme Court through justice Markandey Katju held that in order to get benefit of Domestic Violence Act, 2005 a couple in live in relationship has to fulfill the following conditions.

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In *Aysha Vs. Ozir Hassan* CrI.R.C.No.674 of 2007 the Supreme Court of India held that a valid marriage does not necessarily mean that all the customary rights pertaining to

the married couple are to be followed and subsequently solemnized. In this instance case the petitioner has been a spinster before she gave birth and that the respondent was a bachelor before developing sexual relationship with the petitioner. Both of them led their marital life under the same shelter and begot two children. Therefore, the petitioner's rank has been elevated as the 'wife' of the respondent and likewise the respondent's rank had been elevated as the 'husband' of the petitioner. The Court accordingly granted maintenance to the wife.

In *Indra Sarma v. V.K.V. Sarma* Criminal Appeal No. 2009 of 2013, the Supreme Court of India held that 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. The chief question before the Supreme Court of India was whether a live-in relationship would amount to a relationship in the nature of marriage falling within the definition of domestic relationship under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005. All live-in relationships are not relationships in the nature of marriage. The court opined that if the relationship has no inherent or essential characteristic of a marriage, but a relationship other than in the nature of marriage then that relationship would not fall within the definition of domestic relationship under Section 2(f) of the Domestic Violence Act, 2005.

The general perception of the Indian society towards the live in relationship is that it is immoral to cohabit without undergoing the ceremonies of marriage. However, it is



getting prominence in the big cities of India. A substantial portion of the Indian population is LGBT and they are more prone to exploitation. One argument is often given that in live in relationship stability of the relationship is uncertain. However, it is not true, even in cases of marriages the rate of divorce is increasing day by day. Kerala, the most developed state in terms of education in India has witnessed registration of 1937 no's of cases in three months period (January 2013 - March 2013). In a recent study reported in Indian express newspaper, researchers has revealed that couples who live together before getting married could be helping to lower divorce rates.⁴ In case of India, the old age people who are neglected by their child may resort to live in relationship as it will give comfort to them.

Conclusion and Suggestions:- From the above analysis, it appears that the judgments of the Supreme Court has created many paradoxes. It has both legal and social ramifications. However, it is up to the society to accept or to decline live in relationship. The following suggestions may be put forwarded in the light of above discussion.

1. In census, data should be collected as to the status of domestic relationship, live in relationship so that policy measures may be directed towards them.
2. The LGBT population should be identified through census so that HIV and AIDS prevention policies,

health benefit may be extended to such population.

3. There is a need to enact special laws regulating live in relationship. It may be in the model of Civil Registration Act, 2004 of UK.



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⁴ Available at:- <http://archive.indianexpress.com/news/livein-relationships-behind-falling-divorce-rates-study/851231/>