

# Changing Dimensions of Institution of Marriage –Live-In Relationship

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## Abstract

*Marriage is an institution which is prevalent since ancient times. Marriage is a state of being united to a person of the opposite sex as husband or a wife in a consensual and contractual relationship recognized by law. In Hindu law it is considered as a sacrament while in Muslim law it is considered as a contract. But as the society has progressed, the meaning of marriage has undergone a change. The changing living patterns and habits can be observed among individuals in the society.*

*India has strong cultural roots that focus purely on morality and ethics. But things are changing now. The definition of marriage given under different personal laws does not carry that much influence in the eyes of present generation, as a new concept called live-in-relationship has been introduced in the society by them. Same is true in cases of homosexually.*

*The question is that whether the new dimensions of marriage i.e. cohabiting and living together of couples without marriage or even same sex couples can be considered at par with the meaning of marriage as defined in personal laws and whether it is in line with the laws of the land or not.*

*The Supreme Court has played a significant role and has been really active in the recent past in the cases involving live in relationship where couples live together without marriage. The Apex Court in many of its landmark judgements has upheld the validity of live in relationships and has talked about the freedom of choice of every individual.*

*This paper talks about how live in relationships has changed the dimensions of marriage.*

**Keywords:** *Marriage, Consensual Relationship, Society, Morality, Cohabiting.*

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## Introduction

The live-in relationship is an arrangement in which the couple lives together without getting married. The relationship is somewhat similar to a marriage as it gives a picture to the world that they are living as husband and wife and that there is a stability in the relationship. As the Indian society developed, people started adopting the foreign ideas and their culture including the concept of live in relationships. Any relationship between man and woman outside marriage was totally regarded with disgust and horror. It has been condemned by the society from the very beginning.

Countries all over the world have different provisions with respect to live in relationships. They have different statutes that protect property rights, housing rights, rights of children, etc. Some countries like France and USA provide for cohabitation agreements i.e. live-in relationship contracts in which partners can determine their legal rights and obligations. However, law of various countries excludes a uniform protection and rights when it comes to the rights of child born under such relationships and thus discouraging non-marital living together relationships with legal sanction.

India as a country has various ancient beliefs, customs, traditions. Marriages in India is considered as a combination of sacrament and contract. In Hindu law it is considered as a

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sacrament and in Muslim law it is considered as a contract. In a country where marriages are considered as a sacrament it is really difficult for people to accept the concept of live in relationships. Marriage gives both husband and wife certain rights and few obligations. However, live in relationships in India fall under the category of presumption of marriage. The Indian Evidence Act provides long cohabitation as a presumption of marriage.<sup>1</sup> The traditional society might not have accepted the concept of unmarried couples living together without marriage but the increasing number of live in relationships gives a clear indication of the acceptance by the modern Indian society. Live in relationships is much more common in big metro cities where people working together find it feasible and convenient to live together and know each other better without having the tag of husband and wife i.e. cohabiting together without any responsibility of rights and obligations that prevails in a bond of marriage. But there are pros and cons of everything. In live in relationships, problem occurs if a child is born. The questions regarding the legitimacy, inheritance and custody of a child occurs.<sup>2</sup>

The Supreme Court has in some of its landmark rulings have resolved all such problems. In its decision in *Indra Sarma v VKV Sarma*, the Supreme Court held that domestic Violence covers live in relationships. In other judgements as well, Supreme Court has covered section 125<sup>3</sup>, maintenance of children born out of the relationship, Article 14, Article 15<sup>4</sup>, Protection of Women from Domestic Violence Act<sup>5</sup>, etc.

## Literature Review

Malimath Committee Report on Reforms of Criminal Justice System was set up in November 2002 under the chairmanship of Justice Malimath, former Chief Justice of Kerala & Karnataka High Court, submitted its report in 2003. It made many recommendations on offences against women. One of such recommendations was to amend section 125 of Code of Criminal Procedure, 1973 and to change the meaning of the term wife so as to include women of live in relationships whose partner has abandoned her at his will. Basically, the recommendation was to give the status of wife to a woman of a live-in relationship so that she can claim all the privileges of a wife such as maintenance under section 125 of Code of Criminal Procedure, 1973.

Justice Katju & Justice R.B Mudra in *Payal Sharma v. Nari Niketan* observed that law and morality are two different concepts and that a man and a woman can live together as long as they wish to without being married. This may be regarded as immoral for some people in the society, but it is definitely not illegal.

Law Commission of India in its 71st report, 1978 recommended for the amendment of Hindu Marriage Act 1955 and Special Marriage Act 1954 for the divorce provision, because it is also a cause to adopt live-in relation by the parties.

Recommendations of The National Commission for Women to the Ministry of Women & Child Development, in 2008 was made to treat the live-in couples at par with the legally married couples to safeguard the interest of women suffering from domestic violence.

Knab & McLahanan, (2006). Cohabiting is not a restricted concept and fitting it into a single concept has proven to be difficult as well as against the development of society. Instead it is there in multiple institutions serving different meaning to different couples and different relationships.

Wilson, 2004 describes four types of cohabitation. The research shows that cohabiting is not a uniform phenomenon, but it can be casual, cautious, committed, and conventional. Casual cohabitation is usually for sexual and financial convenience. Cautious cohabiters are much

more serious about marriage and move towards future. Committed cohabiters have made their decision to stay together and hope that it will be for a lifetime. Conventional cohabiters are not conventional but are sometimes very committed. They have the view that formal marriage is not going to make much of a difference to their relationship.

## Conclusion & Findings

### Law and Live-in-Relationships in India

There exists no law which directly recognizes the live-in' relationship. However, two legal moves have brought such relationship into sharp focus in India during the last decade. First, in 2008, the Maharashtra Government's attempt to amend Section 125<sup>6</sup> brought this issue to the fore. The amendment focused to broaden the meaning of the term "wife" in Section 125 by including a woman who was living with a man "like his wife" for a reasonably long period. This move followed the recommendations of the Malimath Committee (2003). Second, the Protection of Women from Domestic Violence Act<sup>7</sup> (hereinafter referred as PWDVA), is considered to be the first piece of legislation that, is having covered relations 'in the nature of marriage', provided a legal recognition to relations outside marriage. In the following discussion, an attempt has been made to examine the context and implications of these two legal moves on different forms of non-marital cohabitation.

### Judicial Response

The Fundamental right under Article 21<sup>8</sup> grants to all its citizens "right to life and personal liberty" which means that one is free to live the way one wants. Live in relationships is an example of right to life where every individual has a right to lead a proper life by choosing a partner of his choice and live in a way he desires.

In *A.Dinohamy v. W.L. Blahamy*<sup>9</sup> the Privy Council held that where a man and a woman are proved to have lived together as a man and wife, the law will presume, that they were living together in consequence of a valid marriage, unless the contrary can be proved.

In *Malti v. State of Uttar Pradesh*<sup>10</sup>, the Allahabad High Court held that a woman living with a man could not be equated as his "wife".

The Supreme Court in *Lata Singh v. State of UP*<sup>11</sup> held that live-in relationship is permissible only in unmarried major persons of opposite sex. The live-in relationship if continued for such a long time, cannot be termed in as "walk in and walk out" relationship and there is presumption of marriage between them.

In 2013, Supreme Court of India in the famous case of *Indira Sarma v. V.K.V. Sarma*<sup>12</sup> declared that live-in or marriage like relationship is neither a crime nor a sin though socially and morally unacceptable in this country. In this landmark judgment, the Supreme Court framed guidelines to take along the live-in relationship within the expression "relationship in the nature of marriage" for the protection of women from Domestic Violence Act 2005.

## Conclusion

In a country like India with such vast cultures and traditions, the most important part has been the respect for the democratic system, the rights, duties and freedom. Such freedom includes the right to live freely, the right to choose the partner of choice, and even right to marriage. The married gives the sense of commitment. It provides the recognize both socially as well as legally.

The changing scenario of people moving into live-in-relationships is an issue of individual right and privacy. Though the number of people supporting such practice may be less in number but there is a genuine concern that in future people may prefer it for marriage. There is no proper legislation for live in relationships and therefore the judiciary has played a very active role and has contributed in giving new dimensions to live in relationships by maintaining the balanced position. The concept of live-in-relationships may seem to be very attractive and sorted but in reality, the problems are manifold and challenging. Encouraging live-in-relationships in the existing circumstances will invite problems like bigamy, multiple partner relationships which will destroy the social structure of this country. The status of the women in such relationship is not that of a wife and lacks social approval or sanctity. The chances of exploitation of women in such relationships will be in rise due to lack of proper law. On the other hand, couples having children in live in relationships and not continuing the relationship will surely affect the interest of the children due to lack of proper custody. The litigation related to maintenance, inheritance, custody and legitimacy of children will increase. There is no denying of the fact that society must evolve according to the changing times but at the same time the moral values and culture and tradition of the society must not be compromised. Hence the conclusion is that the present generation needs to be given proper education with moral values that includes respecting our rich heritage and culture comprising of importance of family, relationships and marriages. This is possible only when both the parents and children respect each other's choices as well as limitations.

## Suggestions

Live-in relationships in India have still not received the consent of the majority of people. They are still considered a taboo to the Indian society. The majority of the people consider it as an immoral and an improper relationship. At present there is no specific legislation that deals with concept of live in relationship and the rights of the parties and the children of the live-in partners. It was a very unambiguous concept until the Supreme Court of India took the initiative and declared that live in relationship though considered immoral, but it is not illegal.

Through its various decisions the judiciary has tried to accord legality to the concept and protect the rights of the parties and the children of live in couples.

1. At present there is a need to formulate a law that would clarify the concept and meaning of live in relationship.
2. There should be clear provisions with regard to the time span required to give status to the relationship, registration and rights of parties and children born out of it.
3. The most important need of the hour is to secure the future of the children born to live in couples.
4. Though the live-in relations provide the individuals individual freedom but due to the insecurity it carries it with, there needs to be a law to curtail its disadvantages.

## Footnotes

<sup>1</sup> <https://www.google.com/amp/s/www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/amp/>

<sup>2</sup> <https://www.legallyindia.com/views/entry/right-of-maintenance-to-women-in-live-in-relationships>

<sup>3</sup> Code of Criminal Procedure,1973

<sup>4</sup> Constitution of India,1950

<sup>5</sup> 2005

<sup>6</sup> Supra Note1

<sup>7</sup> Supra Note3

<sup>8</sup> The Constitution of India

<sup>9</sup> AIR 1927 PC185

<sup>10</sup> 2000 CriLJ 4170, I (2001) DMC 204

<sup>11</sup> (2006) 5 SCC 475

<sup>12</sup> (2013) 15 SCC 755