

LIVE IN RELATINOSHIP: LEGAL ISSUE IN INDIA

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Abstract

Live-in relationship is the most debated question after Supreme Court's recent observation on the issue of live-in relationship in the context of Tamil actress Khushboo's statement on premarital sex. Supreme Court held that, live-in relationship is not an offense. India is a country which having rich values, traditions, customs and beliefs are the important sources of law. Marriage is a sacred union, gets legal effects and high respect in society. Marriage is a social institution and one of the important parts of Indian culture. Our country, which has strong cultural roots, focuses on morality and social ethics. But with changing times, we have started to follow the Western culture, which is totally different than Indian culture. A certain section of India too seems to have followed the Western culture i.e. of live- in relationship. This article gives focus on decision delivered by the Supreme Court of India, its effects on the society and new challenges. Change in law for a small section would surely affect the country's whole population. Chances are fair that the coming generations might forget the importance of marriage and follow illegitimate relationships. Live in relationship directly affecting the status of wife, children, family and whole country. Our society has to play important role of watchdog to deny concept of live-in relationship and misinterpretation of marriage. Otherwise our identity, humanity and our rich ancient culture, tradition will be in grave danger.

Keywords: *live-in relationship, recent development in India, challenges.*

INTRODUCTION

Since Vedic period marriage in Indian society was considered as a sacrament. The Hindu marriage amendment Act 1976 introduced the various ground for divorce which incorporated the drastic change in the nature of sacrament (1). These sacraments were compulsory for legalization of such marriage. The Hindu Marriage Act 1955 u/s seven lays down for the ceremonies include the Saptapadi (that is taken seven steps by bridegroom and bride jointly before the sacred fire) the marriage becomes complete and binding when seven step is taken (2), but now days Indian society has observed drastic changes in its social pattern of sexual relationship without marriage. In 21st century upcoming generations are evolving more liberty in sexual relationship without marriage. Such concept of live in relationship is adopted by couples not only in India but all around the world. The relationships where two people cohabit without marriage, without martial obligation are called as live in relationship. Modern generations in metropolitan cities are undergoing on such concept in Indian society where there is unclear status of wife and child and have created legal issues. The right to maintenance is decided by Domestic Violence Act 2005 under section 20 (1) (d) not under section 125 Cr. P.C 1973 which is available to wife, though the common man is still hesitant in accepting such kind of relationship (3). Supreme Court of India time to time has laid down various guidelines through its judgments' in the way of justice.

Object of the Study

In simple term live in relationship can be explained a sexual relationship in nature of marriage where both parties enjoyed individual freedom and live in a share household without being married or without any

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Social rituals.

Cohabitation is continues without any legal obligation or social recognition. Children born out from such relationship are in unclear status for maintenance and succession. And status of women is unclear in Indian society, and many times they are harassed for such relationship.

Review of Literature

“Live in relationship and Indian judiciary” published on 23rd January 2019 SCC online blog by Astha Saxena Nirma University Ahmadabad (4), and concerning books Articles were consulted. “Live in relationship & Hindu Marriage a critical legal analysis” by Jayanta Ghosh (2015) (5), where author has explained the legal status of women living in relationship without marriage and facing the social harassment by relatives of husband many times neighbours. “Concept and legality of live in relationship in India: a moral dilemma” by Dr. Divya Sharma (6). Various landmarks Judgement of Supreme Court and High Court have been consulted during the study, where court has tried out to decide the status of women and provided the relief to such women and child victims.

Difference Between Marriage and Live In Relationship

Marriage is social rituals which legalized the relationship between spouses and create the legal obligation between the parties; Indian different religious societies had formed the different rituals, traditions and customs for validation of such marriage. Beyond the boundaries of such religious societies Special Marriage Act 1955 has been enacted for such marriage between different religious parties, but in live in relationship there is few recognition in some countries as United States, Australia, Canada, France, U.K. etc. Supreme Court however has current ruling that women who has lived in relationship for a long period in one roof should enjoy the same rights that a married women is entitled.

Apart from maintenance in personal law, Criminal Procedure Code 1973 under section 125 had made provision for maintenance to his wife, legitimate or illegitimate child, father or mother unable to maintain him / her. Women can also seek the maintenance from under section 20 (1) (d) Domestic Violence Act (7). There is no legal definition of live in relationship and no law for giving any right or obligation to the parties for live in relationship.

Principles Laid Down By Supreme Court

In absence of any such legislative enactment Supreme Court of India on time to time for requirement of justice enacted the various guidelines for concept of live in relationship to provide the justice to aggrieved party in different cases some of them follows

Badri Prasad vs. Dy Director of Consolidation & OR's (8)

It was the first case in which Supreme Court validated the relationship as marriage for a long time. In the order of this case Justice Krishna Ayer where a man and women as the fact in case lived as husband and wife for a long time. A special leave petition was moved to high court to challenge the strong presumption of wedlock and petition was dismissed court legalizing the long relationship of 50 years as a married couple.

¹Gandhi, BM, Hindu Law, Eastern Book Company: Lucknow, 3rd edn p 297, 2008.

²Hindu marriage Act, 1955 Section 7

³Code of Criminal Procedure 1973, Sec 125

⁴Saxena, Astha, S.C.C online blog Live in relationship and Indian Judiciary, Nirma University Ahmedabad: 23rd January 2019.

⁵Ghosh, Jayanta, Live in relationship & Hindu Marriage a critical legal analysis: Lambert Academic Publishing, April.

Justice V.R Krishna Ayer held that in our society a man and women who lives as husband and wife if they are asked to prove after half century later by eye witness evidence that they were married most of them couple shall failed to prove the validity of marriage. Court validated the relationship since a long time can be presumed as husband and wife.

Tulsa & Others vs. Durghatia & Others (9)

The Supreme Court provided the legal validity of a child born to such relationship. It was held that one of the crucial pre condition to born child born from live in relationship not to be treated as illegitimate are threat parent must have lived under one roof and cohabited for a long time for society to recognize the as husband and wife, in this case Supreme court provided property in succession to such child.

D. Velusamy vs. D. Patchaimmal (10)

The court held certain pre- requisites for validation of such live in relationship, provided that the couple must be of legal age to marriage, and couples have voluntarily cohabited. Court held that not all relationship will amount to a relationship in nature of marriage and get the benefit of Domestic Violence act. It further clarified if someone keeps women as servant and maintains her financially and uses for sexual purposes such relationship shall not amount to marriage in court of law.

S.Khushboo vs. Kanniammal & V Others (11)

In this famous case Supreme Court dropped all the charges filed against South Indian actress where she was alleged to be accuses of section 499 of I.P.C and also charged pre martial sex and live in relationship. The court held that living together is not illegal in eye of law even it may be considered as immoral in society. Court held that living together is right to life therefore it is not illegal.

Indra Sharma vs V.K.V Sharma (12)

Delivering its judgement Supreme Court decided five conditions where live in relationship can be considered or proved in court of law as follows

Relationship between an adult male and an adult female, both unmarried, it is the most uncomplicated sort of relationship

Relationship between a married women and a married man entered knowingly

Relationship between an adult unmarried man and married women entered knowingly.

Relationship between an unmarried adult female and married male, entered UN knowingly

Relationship between same sex partner (Gay or lesbian)

The court held that live in relationship will fall within the expression “relationship in nature of marriage” under section 2(f) of Protection of Women against Domestic Violence Act 2005, and provided certain guidelines to get an insight of relationship need to be taken into account including the individual factors.

In this case appellat entered into a relationship with the respondent despite of knowing that respondent was a married man having two children born out of wedlock who opposed the live in relationship between appellat and respondent. Court in this case affirmed that relationship in the present case in not a relationship in nature of marriage under section 2 (f) of Domestic Violence Act. Court decided the relationship between appellat and respondent was not a relationship in nature of marriage, hence the status of appellat was that of a concubine.

⁶Dr. Divya Sharma “Concept & legality of live in relationship in India: a moral Dilemma” Indian Bar Review Vol. 45 (2) p 83, 2018.

⁷Domestic Violence Act, 2005 Section 20 (1) (d)

⁸Badri Prasad vs. Director of Consolidation & Others 1978 119 AIR

⁹Tulsa & Others vs. Durghatia & Others 2008 SCC 520

Legitimacy of Children Born Out Live In Relationship

The question was raised before Supreme Court first time in the case of

S.P.S.Balasubramanyam vs. Suruttayan (13)

Where a man and women were living under same roof and cohabited for several years court decided that, here was strong presumption under section 114 of the Indian Evidence Act 1972 the children born-out of such long relationship can be considered as legitimate and court interpreted that under Article 39 (e) and 39(f) of the Constitution of India imposes the obligation to state Government to provide opportunity and facility to develop in healthy manner and in tender age of children are not abused, childhood youth protected against exploitation. Supreme Court considering above facts legalized the validity of children. Supreme Court in *Tulsa vs. Durgathia* held that children born out of such long relationship will consider as legitimate where husband and wife lived under same roof for a long time.

Bharatha Matha & Others vs. R. Vijaya Renganathan & Others (14),

Supreme Court held that children born out of live in relationship are not entitled to claim inheritance under Hindu joint family property they can only claim the share in parents self-acquired property.

Madan Mohan Singh & Others vs. Rajni Kant & Others (15),

Supreme Court held that law presumes in favour of marriage not in concubines where man and women cohabited continuously for years shall presumed as husband and wife and children are legitimate.

Ravinasiddappa & Others vs. Mallikarjun & Others (16),

Court held that children born in void or voidable marriage are not entitled to claim in inheritance in ancestral coparcenaries property but was entitled to claim only share self-acquired properties Supreme court held that such children are innocent and they possess same rights and freedom as of children born out of Marriage organized under rituals and sacrament

Conclusion

The Supreme court of India has stated that living with together is not illegal , however there is no separate legislation in India to decide the status of such concept of live in relationship which is immoral against the norm of society but as per law though it is not illegal .Supreme court has tried to determine the status of live- in relationship through its various judgments', and has tried to improve the condition of women and children born-out of such relationship by defining their status under section 2 (f) of Domestic Violence Act 2005, if the relationship is proved to be "relationship in nature of marriage in a case May 2005 Supreme court rejected the petitioners plea who was a bollywood worker contended that respondent could not claim for maintenance under Hindu Marriage Act 1955, Court held that cohabitation of a couple would give presumption of a valid marriage and if live-in relationship is breaks down man is bound to pay maintenance to women.

Suggestion

Modernization has brought new generation in an era where they want to freely enjoy in every sphere of life without any restrictions, live in relationship is one of the best example of it. Indian social structure rebukes such type of relationship but rights of women and child must be protected. There is requirement of more effective laws to protect the interest of such women and child victims.

¹⁰D. Velusamyvs. D.Patchaimmal

¹¹S.Khushboo vs.Kanniammal & other (2010) SSC 600

¹²Indra Sharma vs. V.K.V Sharma Criminal App No- 2009 of 2013 decided on 26/11/2013

¹⁴S.P.S Balasubramanyam vs .Suruttayan AIR 1994 SC 133

¹⁵Bharatha Matha & Others vs. R. Vijaya Renganathan & Others 17 May 2010

¹⁶Madan Mohan Singh & Othersvs. Rajni Kant & Others 2010 SCC 209

¹⁷Ravinasiddappa & Others vs. Mallikarjun & Others2011

¹⁸www.google.co.in