

ESSAY SERIES - ESSAY 7

SOCIO-LEGAL ASPECT OF LIVE-IN RELATIONSHIPS IN INDIA

*“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”<sup>1</sup>*

The social institution of marriage and family is the foundation of Indian culture and tradition. Irrespective of faith, people regard marriage as an integral part of their lives with a belief that moral values and traditions are to be followed and preserved for a healthy society. Though the economic position of India is booming with the advent of liberalization, privatization and globalization but has equally weakened the social system of marriage and family in India as more people are embracing the western thoughts and lifestyles and gradually shifting towards live-in relationships. **Though change is the only constant in this world, but this change is continuously under criticism and highly debated due to lack of legal and social recognition by society.** India recognises only those relations between a man and a woman to be legitimate where marriage takes place between the two based on existing marriage laws otherwise all other sort of relationships, are deemed to be immoral and illegitimate. Unlike marriage, couples in live-in relationships are not married to each other but live together under the same roof that resembles a relation like marriage. Thus, it may be defined as a living arrangement where the unmarried couples live together to conduct a long-term relationship similar to marriage. **Live-in relationships are de-facto union** in which couple share common bedrooms without solemnizing marriage. The main idea behind cohabiting without marriage is to check compatibility between couples before getting legally married. Since in India marriage is the union not only between two individuals but also two families, live-in relationships exempt the partners from the family drama chaos and lengthy court procedures in case the couple decides to

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<sup>1</sup> **Revanasiddappa and ors v. Mallikarjun and ors** (2011) 11 SCC 1.

part ways. In a religious country like India where marriage is considered to be sacred, the influence of live-in relationships raises several critical issues with regard to the impact of such relationships on society as more couples choose to have live-in relationships over marriage as a perpetual plan.

Marriage in India is practiced as a ritual since ages and occupies a sacramental position both philosophically and practically. The entire purpose of institution of marriage and family was to give legitimacy to the sexual relations between a man and woman and the children born out of such wedlock, thus it is a **social mechanism designed to foster social solidarity and provide support, companionship and security to the members of our society and ensure rearing of children**. Marital relationships give rise to several obligations and duties that play an important social function. The concept of marriage is so deeply engrossed in the Indian society that engaging in any other relationship is considered immoral and a taboo. The couples in a live-in relationship often have to face the crunch of society as doubts are raised not only on their character but also the upbringing of their family is questioned. Many consider live-in relations as a bad influence by the western world on the Indian society that makes a man and woman not shoulder their responsibilities thus making them careless. A social stigma is attached to partners of live-in-relationships or children born out of such relationship as they remain vulnerable and sometimes subjected to exploitation by partners due to no legal rights, duties and responsibilities arising out of such relationships.

Though there is no particular legislation on this subject matter that provides a legal definition of live-in relationships, lay down rights and duties of parties involved in such relations and status of children born to such couples but Indian judiciary has time and again through various judgments thrown light on the issues of live-in-relation in order to strike a balance between the general expectations of society and individual rights of people. **It may be considered immoral in the eyes of society but**

it is not illegal in the eye of the law<sup>2</sup>. Judiciary neither promotes nor prohibits such relations but extends protection against any abuse arising out of such relations in order to prevent miscarriage of justice. In *A. Dinohamy v. Wijetunge Liyanapatabendige Blahamy*<sup>3</sup> Privy Council stated that, "Where a man and a lady are proved to have lived together as man and wife, the law will presume, unless the contrary be proved, that they were living together as a result of a legitimate marriage and not in a state of concubine." In *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel*<sup>4</sup> court held that two people who are in a live-in relationship without a formal marriage are not criminal offenders. Treating long-term living relationships as marriage, Court in *Madan Mohan Singh v. Rajni Kant* held that such relations can't be termed as walk-in and walk-out relationships as there is presumption of marriage between the parties. The Court bringing such relationships under the ambit of Article 21 of Constitution observed that live-in relationships are permissible and the act of two major living together cannot be considered illegal or unlawful<sup>5</sup>. Extending the right to claim maintenance under Section 125 CrPC the Court held that women in live-in relationships are equally entitled to all the claims and reliefs which are available to a legally wedded wife<sup>6</sup>. In *Indira Sharma V. V.K. V Sharma*<sup>7</sup>, Supreme Court held that though live-in relationships are socially unacceptable in India but they are neither a crime nor a sin and further issued guidelines to include live-in relationships within the expression 'relationship like marriage' under Protection of Women from Domestic Violence Act, 2005. The Court further held that "Parliament has to ponder over these issues and enact proper legislation so that women and children born out of live-in relationships are protected from any societal wrong caused from such relationships."

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<sup>2</sup> Payal Sharma V. Superintendent Nari Niketan and ors AIR 2001 All 254.

<sup>3</sup> A. Dinohamy v. Wijetunge Liyanapatabendige Blahamy AIR 1929 PC 185.

<sup>4</sup> Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel (2006) 8 SCC 726.

<sup>5</sup> S. Khushboo v. Kanniammal (2010) 5 SCC 600.

<sup>6</sup> Chanmuniya v. Chanmuniya Kumar Singh Kushwaha (2011) 1 SCC 38, para 38.

<sup>7</sup> Indira Sharma v. V.K. V Sharma CRIMINAL APPEAL NO. 2009 OF 2013: (SPECIAL LEAVE PETITION (CRL.) NO.4895 OF 2012).

Judiciary also took steps to protect the rights of children born out of such relations by giving a broader interpretation to existing laws so that no child is bastardised for having no fault of his/her own. In *S.P.S. Balasubramanyam v. Suruttayan*<sup>8</sup> Supreme Court held that “If a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under **Section 114 of Evidence Act that they live as husband and wife and children born to them will not be illegitimate.**” Further Court found it in conformity with **Article 39(f) of Constitution** which confer obligation on State to provide children adequate opportunity for their development and further safeguarding their interest. In *Bharatha Matha v. R. Vijaya Renganathan*<sup>9</sup> Court held that child born out of live-in relationship may be allowed to inherit the property of the parents and thus be given legitimacy in the eyes of law. In *Revanasiddappa v. Mallikarjun*<sup>10</sup> Court observed that irrespective of the relationship between parents, child born out of such relation has to be viewed independently as such a child is innocent and entitled to all rights and privileges available to children born out of valid marriages<sup>11</sup>.

The whole notion of live in relationship is not as simple as it appears but is multi-dimensional bringing along with it many issues and complications and poses a direct threat to our country’s basic societal framework. In order to cope-up with this drastic change in lifestyle there is an urgent need of enacting a separate legislation on live-in relationships to define the ambit, nature, rights and obligations arising out of such relations while keeping in mind the basic structure of tradition that prevails in Indian society. Both law and society are dynamic and necessitates adopting new changes with changing time but not at the cost of damaging the essence of our social fabric and moral values thus efforts should be made to enlighten the present generation about the significance of marriage and family.

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<sup>8</sup> *S.P.S. Balasubramanyam v. Suruttayan* AIR 1994 SC 133.

<sup>9</sup> *Bharatha Matha v. R. Vijaya Renganathan* AIR 2008 SC 1193.

<sup>10</sup> *Revanasiddappa v. Mallikarjun* (2011) 11 SCC 1.

<sup>11</sup> Section 16(3) of amended Hindu Marriage Act, 1955