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Marriage versus Live-in Relationship in India and their Criticisms

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ABSTRACT

Following specific religious procedures and customs, Hindu weddings have been performed in India from the beginning of time. The term "live-in relationship" refers to a new type of marriage that has arisen in the contemporary period and is now prevalent in society. If a couple has been living together for some time, they would be granted all the privileges of a married couple, but there is a well-defined legal process for when marriage occurs.

A live-in relationship does not have any strict rules governing marriages, but the law is silent on a number of issues because there is insufficient legislation for it. In contrast, marriages are interpreted by laws in stricter ways and used to determine eligibility for certain rights attached to them. Both types of marriage have been criticised for affecting a wife's rights and preventing her from exercising them. Additionally, the law's understanding of a live-in relationship as constituting a marriage is flawed. According to the findings, it is necessary to change the Hindu marriage rules in India and to create new legislation or adapt the existing law to accommodate modern live-in relationships.

I. INTRODUCTION

In the past, Hindu Marriages were performed in accordance with the legal rituals defined by section 7 of the Hindu Marriage Act, 1955, with certain restrictions imposed by section 5 of the same act. The final of 10 sacraments that can never be violated, marriage will be solemnised by a competent institution.

With the changing times in the society a new form of relationship is emerged which paved the way for marriages into its other forms in the society. One trend that has been seen in the new age relationships is that of couples living together without tying the knot, which brings us to the question of its validity.

With the help of progressive judgements and judicial pronouncements judiciary has made few positive changes in the society, it recognised live in relationships as a legal and valid form of marriage, but the same is full of criticisms and there exists an ambiguity in the matter today.

Both live in relationships and marriages have their own psychological, ideological, emotional

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and social bearings. A one cannot distinguish between the better forms of marriage because the decision can be individual and personal or could be influenced by society. However studies have found that marriage rates have been gradually decreasing with the advent of live-in relationships in our country. The key difference between a marriage and a live-in relationship lies in the legal rights that a person can claim as someone's spouse versus as partners that live together is **critically answered below** in this paper.

In a Landmark case of *S. Khushboo v. Kanniammal & Anr*², the Supreme Court held that living together comes under Article 21, Right to life & Liberty and, therefore cannot be held illegal. It is the first time legal recognition to live in a relationship is given by categorising them as domestic relationships protected under the Protection of women from Domestic Violence Act, 2005.

II. MEANING & LEGAL STATUS OF MARRIAGE AND LIVE-IN RELATIONSHIPS

Marriage is a legally and socially sanctioned union between a man and a woman that is regulated by laws, rules, customs and beliefs that prescribe the rights and duties of the partners. A proper institution of marriage derives the performance of valid marriage ceremonies taking place to recognise marriage under the Hindu Marriage Act of 1955.

Hindu law includes particular requirements for marriage, including that both the bride and bridegroom be at least 18 years old at the time of the wedding and that all other requirements be fulfilled. Under the Hindu Marriage Act of 1955, the Hindu Adoption & Maintenance Act of 1956, and the Criminal Procedure Code, specific divorce processes and rights for maintaining partners and children are granted.

Whereas there is no precise definition of a "Live-in relationship", it refers to a relationship where couples decide to live together, and domestic cohabitation takes place. It includes constant living together between the accomplices with no duties and commitments towards each other.

In a landmark case of *S.P.S Balasubramanyam v. Suruttayan*³, The Supreme Court ruled that if a man and a woman live with each other under the same roof and cohabit together for a number of years, there will be a presumption of marriage under section 114 of The Evidence Act, 1872.

Live in relationship is mainly the product of western world, but now a days it has become popular in Indian society also. It is a kind of emotional and sexual arrangement, where no

² S. Khushboo v. Kanniammal & Anr, (2010) 5 SCC 600

³ S.P.S Balasubramanyam v. Suruttayan, AIR 1992 SC 756

forceful legal or social obligation is required.⁴

The Malimath Committee set up under Justice V.S. Malimath was the first to observe that if a man and a woman are living together as husband and wife for reasonably long period, the man shall be deemed to have married the woman.

In the case of *D. Veluswamy v. D. Patchaiammal*⁵, The Supreme court opined that a relationship in the nature of marriage is akin to a common law marriage. Common law marriages require that although not being formally married:

- 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.

Differences in the two

A more socially and legally acknowledged form of a connection between two people is marriage. But among young people, live-in relationships are a new and growing trend that provides them the flexibility to live with their partners without being subject to the pressure of planned weddings. Both love and relationships are social constructs that have advantages and disadvantages of their own.

Marriage is the legal union of a man and a woman; it is a public declaration of the couple's devotion to one another. A live-in relationship, on the other hand, is a type of arrangement where a couple chooses to live together as though they are married, religious divisions are typically not present in this form of partnership.

In case *Lata singh v. State of UP*⁶, It was held that live-in can be immoral but it is not illegal in nature.

Indian society's view:

The majority of people, especially those in older generations, have the belief that marriages are

⁴ Chatterjee Sangeeta, Legal Recognition of Live-in Relationship: An Emerging Trend of Social Transformation in India Part II: Special Issue on Law as an Instrument of Social Transformation: People's Movement and Social Change, *heinonline J.L. & Just.* 1 (2020), (June 25, 2022, 9:20 PM) https://heinonline.org.elibrary.nirmauni.ac.in/HOL/Page?collection=journals&handle=hein.journals/ijlj11&id=320&men_tab=srchresults

⁵ *D. Veluswamy v. D. Patchaiammal*, (2010) 10 SCC 469

⁶ *Lata singh v. State of UP*, (2006) 5 SCC 475

believed to be created in heaven. Couples in committed relationships work hard to maintain their union, and this notion is ingrained in their brains. Contrary to popular belief, there are increased chances of instability and insecurity when people are in committed partnerships with no limits.

Divorce under marriage is generally painful as it may involve false allegations and lot of trauma is involved. On the other hand, live in relationship is easier as a partner can move in and move out anytime, no such commitments been made. In a marriage, a child's rights are fully secured whereas it is very complicated in the case of live in relationships about child's rights if the partners move out of the relationship.

III. CRITICISMS

Inadequacy of law

As we've previously seen, the judiciary has taken a proactive role in legal activism to recognise marriages as live-in partnerships. Although there is no legislation or regulation in place, the judiciary has recognised widely accepted live-in partnerships in society with the aid of judicial declarations. However, this interpretation of the legality of live-in relationships in India remains ambiguous.

The Apex court lay down that the couples living together for long period would presume to be married as stated in the *S.P.S Balasubramanyam v. Suruttayan* has some obscurity. There is no particular frame or set amount of time period that must pass as decided by The Supreme Court to carry the relationship to presume it as marriage under live in relationship, and also it is ambiguous to follow the conditions laid down under *Veluswamy v. Patchaiammal* if it is uncertain to know after how much period of time the following conditions laid down in the case need to be followed to recognise marriage under live-in relationship.

In the case of *Badri Prasad v. Director of Consolidation*⁷, The Supreme Court legitimised a 50 year old relationship of a couple living together. The issue was whether such a couple must be given the legal status of married couple or not. The bench stated that since the couple had lived for a long period of time, strong presumption in favour of wedlock was made.⁸

In the aforementioned decision, the Supreme Court established the presumption that marriage occurred after 50 years of a couple living together. This raises the question of how long a couple must live together before they are recognised as being married under a live-in relationship.

⁷ *Badri Prasad v. Director of Consolidation*, (1978) 3 SCC 527

⁸ Auroshree, (2019 January 23), *Live-in-relationship and Indian judiciary*, SCC Blog, (June 27, 2022, 9:15 PM), <https://www.sconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/>.

Legitimizing a 50-year-old pair as a married couple does not provide a good model for all the current live-in relationships because it is still unclear when a live-in couple will acquire marital status.

It is also uncertain to determine the validity of live in relationships if the presumption of marriage has not taken place between the couple. As there is no legislation or law concerning the matter of live-in-relationships in India, It is solely on the judiciary to decide the validity of ongoing live in relationship and to presume it as marriage.

The court is playing a significant role in recognising weddings under live-in partnerships; as a result, it is at its discretion to interpret the same, but there is now some controversy around the issue. The judiciary plays a significant role in recognising marriages under live-in partnerships until a separate act on such relationships is in place, thus it is necessary to create a general rule for everyone including more precise phrases to avoid inconsistent treatment of the issue. To clear any ambiguity, it is anticipated that the court would make additional adjustments to the current interpretations.

IV. MAINTENANCE TO WIFE UNDER MARRIAGE AND LIVE-IN RELATIONSHIP

In accordance with section 125 of the CrPC, maintenance is given to wives in marriage and in live-in relationships. The problem covers a range of scenarios when the question of wife upkeep is relevant.

In a Landmark Case of *Savitaben Somabhai Bhatia v. State Of Gujrat & Ors*⁹, The Supreme Court held that Section 125 of CrPC has been enacted in the interest of a wife and one who intends to take benefit under sub-section (1) (a) has to establish the necessary condition, namely, that she is the wife of the person concerned and it needs to be proved to validate a marriage.

The Apex Court observed in the case above that when a marriage has been declared **null and void** under Section 11 of the Hindu Marriage Act then there will be no rights of maintenance grants given to the wife under Section 125 of CrPC.

In *Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr*¹⁰, The Supreme Court held that expression 'wife' used in Section 125 of the code should be interpreted to mean only a legally wedded wife.

It is observed by The Supreme Court in above cases, the legislative intent being clearly reflected in Section 125 of the Code, that there is no scope for enlarging its scope by introducing any

⁹ *Savitaben Somabhai Bhatia v. State Of Gujrat & Ors*, (2005) 3 SCC 636

¹⁰ *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr*, AIR 1988 SC 644

artificial definition to include woman 'not lawfully married' in the expression 'wife' i.e. if a woman is not considered as a legally wedded wife in the course of marriage, though she had lived for a long term with her husband, she would not be able to get the marriage rights and the maintenance rights after divorce.

On the other side, in situations of Live-in-relationships in India, in 2008, The National Commission of India recommended The Ministry of Women and Child Development to include female live-in partner for the right of maintenance under Section 125 of CrPC.¹¹

In case of *Chanmuniya v. Virendra Kushwaha*¹², The Supreme Court turned down the earlier decision of High Court saying that a woman under live-in-relationship has right to seek maintenance under Section 125 of CrPC.

Regarding all of the aforementioned case laws pertaining to maintenance to wife under live-in relationships and marriage, it is amusing to note that while the Indian judiciary has severely construed the law regarding marriage, it has a more lenient attitude toward live-in relationships. *Savitaben Somabhai Bhatia's* case involved the court seizing the benefit of maintenance to the wife in a null marriage and applying the definition of wife in its literal sense, but *Chanmuniya's* case involved the court granting maintenance rights to the wife subject to the requirement that the couple must have been in a live-in relationship and cohabited for years. In contrast to how it now interprets live-in marriages, the judiciary adheres strictly to the law when interpreting marriage laws.

Recently the Bombay High Court in a certain case holds the marriage void under Section 11 of Hindu Marriage Act as the proper ceremonies, rites, and rituals were not performed by the parties as per the marriage laws.¹³ The court opined that though there might be cohabitation for long years but if the marriage is void then the wife cannot seek maintenance. Here Bombay High Court missed to protect the rights of a woman seeking maintenance with the view that she does not come under the definition of 'Wife', simultaneously the husband is benefitted of doing no good.

Several Courts are following the same concept in India and following their procedures by adhering rigid statutes and its strict application has pointed out to a question of delivery of justice. The right of a woman in India are still subject to ignorance as the majority of people fail

¹¹ Rakhee, Marriage Or Live-in, Legal service India, (June 28, 2022, 4:35 PM), <https://www.legalserviceindia.com/legal/article-2643-marriage-or-live-in-.html>

¹² *Chanmuniya v. Virendra Kushwaha*, (2011) 1 SCC 141

¹³ Express News Service, (2022 February 17), Marriage not valid if not performed under accepted ceremonies: Bombay High Court, The Indian Express, (June 30, 2022, 5:40 PM), <https://indianexpress.com/article/cities/mumbai/marriage-not-valid-if-not-performed-under-accepted-ceremonies-bombay-high-court/>

to notice women's right to choose and consent given for a marriage. Saving a women's right should be of high importance whether she would get marital status or not is a secondary issue.

If a woman has followed the conditions for years laid down in *D. Veluswamy's* case and cohabited for a long time then she is entitled to claim maintenance under the code, but if a woman has chosen the alternative, to marry, then no matter if she has cohabited for long years with her husband under the same roof as a couple, if the marriage becomes null and void in a circumstance (by not performing proper marriage ceremonies, rites and rituals) then she would not get any right of maintenance under the code.

Since the legislation's primary goal is to protect everyone's rights, even though some of those rights have not been addressed, there has been widespread discrepancy in the law in this case. The judiciary has played a significant role in the current situation in recognising weddings in both forms and in preserving the rights of women in both types of marriage. The legal system has safeguarded a woman's rights in live-in relationships today, but it has failed to do the same for a woman in a marriage, and those who support its cause profit from the legal gaps. There is a need to modify the legislation as it now stands in this case.

Therefore, the literal interpretation of a marriage should not be as strict; once it is established that a marriage procedure has been followed and the couple has lived together as husband and wife, just like in a live-in relationship, it is a strong presumption that a marriage has occurred, and a wife would be granted the right to maintenance with the only requirement that she not be the one who caused the marriage to become void.

V. CONCLUSION

As of now, we've seen how live-in relationships and marriage are both legal in India and learned how they differ from one another. The judiciary has recognised this current trend and legalised it in our nation in response to the needs of society and the new rising tendency that has been observed in today's couples.

Presently, there is no legislation or set of rules & regulations concerning the live-in relationship in the country so the judiciary has actively participated in legitimising it. The Supreme Court has broadened the scope of live-in relationships and protected the rights of women by making them entitled to claim property and maintenance rights.

The situation has drawn a lot of criticism and controversy since, on the one hand, the judiciary has upheld women's rights in live-in relationships while, on the other, failing to uphold those same rights in void marriages for a wife's maintenance. Similar to how live-in partnerships now

receive the advantages of marriage, void marriages do not receive these advantages, even if the parties have lived together for a long time.

The court has played a major role in recognising live-in relationships because there is currently no adequate legal framework for such relationships. However, because there is no specific law governing such relationships, the court is still unsure of various aspects, including the duration of the relationship's validity. Due to the Supreme Court's improper interpretation or rule, there is currently some uncertainty which needs to be cleared.

Hence, there must be a separate statute dealing with the issue of live-in relationships so that the rights of living partners and children born out of such relationships should be protected. Certain basic requirements must be clearly interpreted so that there do not remain any questions about its validity period (time framework). Also, the more liberal interpretation of the term 'wife' under marriage laws should be made to avoid inconsistencies between live-in relationships and marriages, wife under void or voidable marriages should have the same rights as in live-in relationships.
