

## **Does morality affect the right to protection of live-in couples?**

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**Abstract:** In India, marriage is considered sacred and a holy association that holds great social value in the minds of people. But a society is vulnerable to changes and hence the concept of live-in relationship is prevailing. A Live-in relationship is a relationship between two people who lives as a couple without getting married to each other in a legal way. Such relationships have not received the consent of major part of the Indian society and this unacceptance has dire consequences on those who are in such relationships. As no legislation, rules, or customs are there that regulates this relationship in India, the Indian judiciary has taken the responsibility of regulating these relationships. This paper deals with the rights of a live-in couple and whether they have a right to protection when their lives are being threatened by their parents and relatives and what are the conditions where they are not entitled to protection to be granted by the courts.

*Key Words: marriage, live-in, right to protection*

### **I. INTRODUCTION**

Country like India gives grave importance to morals and social values but it is a fact that society is dynamic and with advent of time, social aspects like marriage, relationships, family structure also changes. People have now started adopting an alternative to marriage i.e., cohabitation without entering into a wedlock which is known as a 'live-in relationship'. Marriage, being considered as sacred, is accepted legally as well as socially unlike live-in relationships. The concept of live-in relationships is not accepted generally by the older generations as they believe it to be immoral and against the social norms. This social acceptance leads to opposition by the family, relatives etc. in the form of threats to the lives of live-in couple and causing physical harm to them. But each and every citizen of India is entitled to the right to protection of life and personal liberty and the live-in couple are also the citizens of India. "Continuous cohabitation for a significant period of time, between partners who are not legally married to each other and are sharing a common household," is one definition of a live-in relationship.<sup>1</sup> The judiciary have also laid down some guidelines to recognize a relationship as 'live-in'. In the landmark case of Indra Sharma vs. V.K.V. Sharma 2013 (14) SCALE 448<sup>2</sup>, the Hon'ble Supreme Court laid down some guidelines for a live-in relationship to

be recognized ‘in the nature of marriage’ under the Protection of Women against Domestic Violence Act, 2005:

1. A reasonable amount of time that the man and woman were together.
2. They both live in the same household.
3. The pooling of assets and funds through joint ownership, joint accounts, etc. to live as a single unit.
4. Domestic arrangements and the division of household duties.
5. Relationships that are intimate and sexually intimate are not just for pleasure but also for emotional and intimate support.
6. Raising and educating children collectively.
7. Socializing and interacting with the general public as a married couple.
8. Intention and behavior of both parties that reflect their shared objectives for a distant future.

Those live-in couple who does not satisfy or fulfill the above mentioned conditions are not recognized by the judiciary to be in a live-in relationship.

## **II. LITERATURE REVIEW**

### **How Does the Law Protect People in Live- in Relationships?**

In this article, author Ananya Singh talks about the protection of women in a relationship when they are abused and abandoned by their partners. Even though live-in relationships are legal, they are still denied of their rights due to societal view of it being immoral. Live-in relationships are regulated by various interpretations of law rather than single legislation.

### **Can ‘Right To Life’ Be Denied To Married Individuals In A Live-In Relationship?**

Author Vidhan Malik and Saurav Gupta observed that the fundamental right to which every member of society is entitled is the right to live in peace and safety. Even while live-in relationships between people who are already married cannot be given the same status as a marriage institution, they must nevertheless be given the right to life protection.

## **III. RESEARCH METHODOLOGY**

## **Research Question**

1. Whether a live-in couple is entitled to the right to protection or not and is it fair in the eyes of the law to deny protection to the live-in couple just because the concept is not accepted by the society yet and is considered immoral?
2. All such live-in couples whether legal or illegal are entitled to protection or not?

## **Research Terminology**

With regard to right to protection, the Indian Constitution provides under Article 21 that ‘No person shall be deprived of his life or personal liberty except according to the procedure established by law’ and the apex court has held that, ‘a living relationship comes under the ambit of right of life under Article 21 of the Constitution of India.’<sup>3</sup>. Thus, restriction on pre-marital sex and live-in relationship violates Article 21 of the Indian Constitution and also the right to privacy which comes under the scope of Article 21. It can also be said that, if any threat to life or physical harm is given to the live-in couple by their relatives, families etc., it would violate their right provided under Article 21 of the Indian Constitution.

In this research, the researcher has mainly opted for doctrinal research methodology and the sources are collected beneath through secondary data.

## **Chapterisation**

### **Social Acceptance Of Live-In Relationship In India**

Live-in relationships are considered as a taboo since British era that is why adopting such relationships causes trouble to live-in couples from those who believes that marriage hold a great religious value and is considered as religious sacrament in Hindu mythology. People believe that such live-in relationships does not fulfill the purpose of marriage and free one from responsibilities and parents, family, etc. and relatives continue to live in denial of the idea of live-in relationships due to this mind set. But with globalization in all aspects, Indians have also started accepting and adopting the western culture and have developed an understanding behind the reason of entering into a live-in relationship which are to check compatibility of each other in order to avoid divorce, to avoid financial responsibilities, to exempt from statutory obligations unlike marriage, to avoid social pressure. But still, some people, mostly in rural areas, have not accepted this

idea at all and continue to oppose it by threatening lives of live-in couples and in order to protect these couples from such threats, the judiciary and the legislature must take a step forward.

### Live-In Relationship And The Indian Law

The terms 'live-in relationship' and 'live-in couple' has been defined nowhere in the Indian law and as a result no rights and obligations have been defined for such live-in couples in any statute or law. The absence of any law to regulate the live-in relationships is also one of the reasons why people oppose such relationships and threaten live-in couples. Although the status of live-in relationship is not clear under any law but there are some legislations which grants some rights so that such relationships cannot be abused by the partners. Some of these legislations are:

1. Protection of Women from Domestic Violence Act, 2005- It protects the female in a live-in relationship 'in the nature of marriage' from abuse by her partner.
2. Code of Criminal Procedure, 1973- It provides privileges to a female under Section 125 who was in a live-relationship and is being abandoned by her partner at his will.
3. Indian Evidence Act, 1872- The court may assume the existence of any truth that it believes is likely to have occurred while taking into account the usual progression of natural events, human behavior, and public and private business in relation to the specific facts of the case. As a result, where a man and a woman live separately for an extended period of time as a pair, marriage is assumed.<sup>4</sup>

### Individual Rights Vs. Public Morality

The extent to which public morality affects an individual's rights which are guaranteed by the Constitution of India is an important factor to be considered. The decriminalization of Section 377 of the Indian Penal Code, 1860 in the case of Naz Foundation vs. Govt. of NCT of Delhi, WP(C) No. 7455/20015, made distinction between public morality and constitutional morality. "Enforcing public morality does not amount to a 'compelling state interest' to justify invasion of the zone of privacy of adult homosexuals engaging in consensual sex in private without intending to harm each other or others," the court said.

Popular morality or widespread disapproval of specific behaviors cannot be used as justification for restricting Article 21's fundamental rights. Popular morality is based on changeable and arbitrary ideas of right and evil, as opposed to a constitutional morality established from constitutional values. It must be

"constitutional" morality rather than popular morality if any kind of "morality" may survive the test of compelling state interest.

Thus, where it comes a question of fundamental right of an individual, constitutional morality must be upheld.

## JUDICIARY ON GRANT OF PROTECTION TO LIVE-IN COUPLES

### **A. High Court on Grant of Protection to live-in couple**

The **High Courts** have identified the right to protection of live-in couples in various petitions filed, except in some cases. A while ago, the Punjab and Haryana High Court had granted protection to a live-in couple and observed that, 'It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage and such persons have to face dire consequences at the hands of persons from whom protection is sought. In the event that such a course of action is taken and protection is refused, the courts would also be failing in their responsibility to provide its citizens with a right to their life and liberty as guaranteed by Article 21 of the Indian Constitution and to defend the Rule of law. The court also expressed its view on the denial of protection by the coordinate benches and said that it cannot adopt the same view.

The coordinate benches of High Court while dismissing petitions of protection to live-in couples has stated that:

- Their live-in relationship is ethically and socially unacceptable, and the petition asks for approval of it, thus no protection order can be granted. <sup>6</sup>
- In such petitions there is no actual or real existence of threat and such cases is time consuming at cost of many other cases. <sup>7</sup>

Thus, it can be observed that the reasons behind denial of protection to live-in couples by the High Court is the social unacceptance and immorality of the concept of live-in relationship. Although, this concept may be immoral but the courts should keep law and morality apart from each other and deal with such cases accordingly. Thereby, denial of protection merely on the ground of immorality is not a valid ground. Also, the High Court of Punjab and Haryana has held that the 'social acceptance of live-in relationships is on the increase'. <sup>8</sup>

### **B. Protection to inter caste couple vs. Protection to live-in couple**

People who marry in different caste also faces the same threat as of a live-in couple because an inter faith or inter caste marriage is also not accepted socially by the society and the inter caste couple also receives threats of life by their parents and relatives who does not accept their marriage. It was high time, however, "society learns to accept inter-caste and inter-faith marriages," the Supreme Court said in granting protection to the inter-caste couple. Parents rejecting their offspring just because they choose to wed someone outside of their caste or tribe would "hardly be a desirable social exercise," the article continued. The court placed additional emphasis on training and counseling for police officers on how to deal with inter-caste marriage cases. The court stated that although society and parents may see educated young people choosing their life partner independently as a deviation, police authorities have a duty to keep such couples safe provided there is no breach.<sup>9</sup> Therefore, a similar view is required in the case of live-in relationship and people need to accept the idea of live-in relationship so that the rights of a live-in couple to live life peacefully is not exploited.

### **C. Supreme Court on grant of protection to live-in couple**

Many couples approach the Honourable Supreme Court after feeling offended by the High Court's rulings. Recently, the apex court had ordered the Punjab police to grant protection to a live-in couple whose plea was dismissed by the High Court and the Hon'ble Court stated that, 'Needless to state that since it concerns life and liberty, the superintendent of police is required to act expeditiously in accordance with law, including the grant of any protection to the petitioners in view of the apprehensions/ threats, uninfluenced by the observations of the high court.'<sup>10</sup>

The Supreme Court stressed the value of choice in choosing a spouse in the case of *Shakti Vahini v. Union of India* (2018) 7 SCC 192 11<sup>11</sup>, which dealt with the "honor killings," and declared that courts must protect young couples and families trying to flee such violence.

Therefore, the aforementioned views of the Supreme Court indicates that the live-in couples have a right to protection regardless of morality or social acceptance of the concept.

### **When Courts Can Deny Them Protection?**

Some people enter into a live-in relationship that have legal recognition but some of such relationships are not considered legal by the Indian judiciary. This illegal relationship gave rise to a ground for courts to not grant protection to the live-in couples.

A live-in couple was denied protection by the Allahabad High Court since the woman was already married. "Can we grant protection to those who want to engage in what might be considered an act that is contrary to the requirements of the Hindu Marriage Act?" the court asked. In accordance with the provisions of the law that apply to them, a person may use their own liberty under Article 21 of the Indian Constitution. A married person and an unmarried person living together is not permitted, according to the Rajasthan High Court. <sup>12</sup>

Therefore, courts have denied protection to those live-in couple in which one is married and has not been divorced legally because such relationships promote illegality in the society and it is also against the Hindu Marriage Act for a married person to enter into a live-in relationship with another until his/her first marriage is terminated. There is no doubt as to the illegality of such type of relationships but the question here is not that, whether a live-in relationship is illegal or not but it revolves around whether every person who enters in a live-in relationship is entitled to protection or not.

The fact that a live-in relationship is an illegal one should not impact the live-in couples' right to protection. In India, the whole criminal jurisprudence provides various rights to every criminal or accused under the Constitution of India and other criminal laws. The objective behind providing various rights to a criminal is the 'presumption of innocence of an accused until proven guilty'. Until and unless an accused is proven guilty, he must not be denied of his basic fundamental rights as it is believed that hundreds may go unpunished but an innocent must not be punished.

Even a prisoner is provided with the right to live with human dignity as it has been held in the case of State of Andhra Pradesh v. Challa Ramakrishna Reddy, Therefore, when a prisoner is provided with such rights, a live-in couple cannot be deprived of their right to life and right to protection only by the reason that they enter into an illegal live-in relationship and are considered as offenders. Even if such relationship is illegal, people opposing such relationship must not take law in hand and punish the couple by depriving them of their lives and physically abusing them. It is the duty of the judiciary to grant them protection to protect their lives as people can also take help of the law to punish such couples instead of punishing them themselves.

#### **IV. CONCLUSION**

The idea of live-in relationship is an idea of western culture and the Indians tend not to adopt the western culture because of their religious and moral values. Thereby, the consequences are to be faced by the live-in

couples but as citizens of India, they are entitled to the right to protection of life and the judiciary has played a great role in recognizing and granting the rights to live-in couple. If they are denied of their rights, it will harm the democratic set-up of the country. Denial of protection only on the ground of immorality is not a valid and fair ground and just because a person is doing an immoral act, it doesn't mean that he/she does not have a right to live or even if a live-in relationship is illegal in the eyes of law, the live-in couple still cannot be denied their right to life and protection. Thus, in a live-in relationship, whether illegal or legal, immoral or moral, a live-in couple is entitled to right to protection. However, despite of recognition by the judiciary, there is still hatred in minds of people regarding the concept of live-in relationship. Thus, along with the judiciary, the Indian legislature should also recognize this concept and statutory rights and obligations of live-in couple should be enshrined in the Indian statutes or law so that people will start adopting this concept and no violation of rights of live-in couple shall take place.

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