

Want To Get Into A Live-In Relationship? Because It's No More A Social Terrorism

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In an observation that will cheer votaries of pre-marital sex and live-in-partners, the Supreme Court opined that a man and woman living together without marriage cannot be construed as an offence.

India has witnessed a drastic change in the way the present generation perceive their relationships. It was believed that marriage, despite its ups and downs, provides sanctity to a relationship and a modicum of purpose in life. On the other hand, a live-in relationship is one with no strings attached. The taboo that used to haunt partners in live-in relationships has also started to fade away with society opening up about the idea of pre-marital sex and live-in relationships.

This improved mindset is a result of freedom, privacy, profession, education and also globalisation. Moreover, for most of us – it is not an escape from responsibilities but a way to understand our partner and to check if at all we are compatibility.

Marriage :

The institution of marriage is a socially and ritually accepted union and a contract between spouses that institutes rights and legal obligations towards each other. In light of the diverse culture in India, separate laws have been formulated which lay down the procedure and guidelines for proper execution of marriages in various religions. Marriage laws have been created to provide remedies for disputes arising out of marriage in different religions.

In addition to the law of maintenance under personal laws, Section-125 of the Code of Criminal Procedure² also provides for maintenance if the wife is cannot maintain herself. Women can also seek extra-maintenance apart from the maintenance received by her under

any other law as per Section- 20 (1) (d) of the Protection of Women from Domestic Violence Act.³

Live-in relationship:

There is no law binding the partners together, and subsequently, either of the partners can walk out of the relationship, as and when they wish to do so.

There is no legal definition of live-in relationship, and therefore, the legal status of such type of relations is also unconfirmed. The right to maintenance in a live-in relationship is decided by the court by the Domestic Violence Act and the individual facts of the case.

Though the common man is still hesitant in accepting this kind of relationship, the Protection of Women from Domestic Violence Act provides for the protection and maintenance thereby granting the right of alimony to an aggrieved live-in partner.

“When two adult people want to live together what is the offence. Does it amount to an offence? Living together is not an offence. It cannot be an offence,” a three judge bench of Chief Justice K G Balakrishnan Deepak Verma and B S Chauhan observed.⁴

It has to be stated at the very outset that in a landmark judgment with far reaching consequences, the Supreme Court on May 6, 2018 in *Nandkumar & Anr v The State of Kerala & Ors*⁵ in Criminal Appeal No. 597 of 2018 arising out of SLP (Crl.) No. 4488 of 2017 held that an adult couple has a right to live together without marriage. They cannot be stopped from exercising their right by anyone. The decision came while asserting that a 20-year-old Kerala woman, whose marriage had been annulled, could choose whom she wanted to live with.

As it turned out, the Bench of the Apex Court held that, “It would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself and they had found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.” The Supreme Court recently set aside a Kerala High Court order that entrusted custody of a major girl to her father, observing that she has freedom of choice as to with whom she wants to live. This landmark judgment was very rightly welcomed widely in the

legal circles and legal fraternity. It would be pertinent to mention here that the observations came while the Apex Court was hearing a plea filed by one Nanda Kumar against a Kerala High Court order annulling his marriage with Thushara on the ground that he had not attained the legal age of marriage. It must be noted here that Prohibition of Child Marriage Act⁶ states the age of 18 for girls and 21 for boys for marriage. Nanda Kumar who had approached the court turned 21 on May 30 in 2018. We thus see here that the girl Thushara had eloped with a boy Nanda Kumar who was not of marriageable age (21), though was of major age. The father of the girl filed a habeas corpus plea, upon which the Kerala High Court took note of the age of the boy. It also observed that there was no evidence to show that a valid marriage was solemnized between the parties and that Marriage certificate issued by the local authority was also not produced. The Kerala High Court then entrusted custody of Thushara to her father after noting that she was not Nanda Kumar’s “lawfully wedded” wife. Be it noted, the boy Nanda Kumar promptly approached the Supreme Court contending that since the girl is admittedly a minor, she has the right to live wherever she wants to or move as per her choice and the High Court could not have entrusted the girl to her father. The Bench of Justice AK Sikri and Justice Ashok Bhushan of the Supreme Court agreed

with these contentions made. The Bench then observed that the marriage is not a void marriage under the Hindu Marriage Act, and, at the most, the marriage would be a voidable marriage.

Going forward, the Bench further observed that, “For our purposes, it is sufficient to note that both appellant No. 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.” The Bench also quoted relevant observations made in Hadiya case including this observation made by Justice Chandrachud in his concurring opinion: “The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father.” The Bench also said while allowing the appeal that, “We make it clear that the freedom of choice would be of Thushara (the Girl) as to whom she wants to live.”

It also referred to a recent case involving a woman from Kerala, Hadiya, where it had restored her marriage with Shafin Jahan on the ground that it was a marriage between two consenting adults.⁸ The SC had also clarified that a court cannot interfere in the marriage of two consenting adult and cannot annul the marriage in a habeas corpus (a writ requiring a person under arrest to be brought before a judge or into court, for securing the person’s release) petition.

Needless to say, the Apex Court emphasized due importance to the right of choice of an adult person which the Constitution accords to an adult person. In its concluding part, the Bench of Apex Court very rightly held that, “It may be significant to note that in so far as

Thushara is concerned, she has expressed her desire to be with appellant No. 1. Accordingly, we allow this appeal and set aside the impugned judgment of the High Court. However, since Thushara has not appeared as she was not made party in these proceedings, while setting aside the directions of the High Court entrusting the custody of Thushara to respondent No. 4, we make it clear that the freedom of choice would be of Thushara as to with whom she wants to live." All said and done, this landmark judgment now makes it absolutely clear that adult couple have every right to live together even without marriage. They cannot be denied permission to live together just because they are not married. This landmark judgment will act as a beacon of hope to all those couples whose parents and relatives don't want them to stay together at any cost and under any circumstances.

Pre-marital sex and live-in relationship is not an offence. The fundamental right under Article 21 of the Constitution of India grants to all its citizens the right to life and personal liberty which means that one is free to live in a way one wants.⁹ But the personal liberty of oneself should not cause any terror or danger to other citizens in India. Live-in relationships maybe considered to be immoral in the eyes of the Indian conservative society but it is not illegal in the eyes of law.

Section 114 of the Indian Evidence Act, 1872¹⁰ lays down that where independent evidence of solemnisation of marriage is not available, it will be presumed to be valid marriage by continuous cohabitation between the parties unless the contrary is proved.

In *Gokal Chand v/s Parvin Kumari*¹¹, the Supreme Court held that prolonged cohabitation raises a presumption in favour of marriage.

The presumption of legitimacy of children born out of such relationship was held in the case *Radhika v/s State of MP*.¹² It was held that in a case of live-in relationship not only does the law

presume in favour of a valid marriage but also it deems the child born out of such relationship to be legitimate. The court also held that such children will have their right in their parent's property. The same approach was adopted by the SC in the case of *D. Veluswamy v/s D. Patchiammal*.¹³

A woman in relationship may also claim maintenance. Domestic Violence Act, 2005 is an act enacted with an object of protecting woman against domestic violence. It is proposed that if a woman has been in a live-in relationship for a reasonable period, she should enjoy the legal rights of the wife.

Protection of women and child rights in live-in relationships

- ❑ Section 125 of the Criminal Procedure Code has been provided to give a legal right of maintenance to lady partners in or out of a marriage.¹⁴
- ❑ As per Section 2 (f) of the Domestic Violence Act not only applies to a married couple, but also to a 'relationship in nature of marriage'.¹⁵
- ❑ Section 16 of the Hindu Marriage Act, provides the legal status of legitimacy even to illegitimate children (those born out of marriage) for the sole purpose of inheritance. Therefore, inheritance rights have been granted to children born out of a live-in relationship. These rights are available in both ancestral and self-bought properties.¹⁶

The reasons for live-in relationship is freedom, privacy, profession, education, lifestyle (standard of living), age of marriage, economic independence, urbanisation and also globalisation.

A live-in relationship not only gives the couple an opportunity to know the partner without having to engage into a legally binding relationship but also excludes the chaos of family drama and lengthy court procedures in case the couple decides to break up.

It will also give them a legal cover with full sanctity and will always be cited by them whenever any of them are harassed by their parents or their relatives to prevent them from staying together. It will certainly not be an exaggeration from any angle if I say this with full responsibility that it is a very well written judgment and it has ensured that the freedom of adult couples to live together is protected always under all circumstances. This is exactly what makes this landmark judgment so special from all angles.

(Endnotes)

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