

Courts must understand that ‘live-in’ relationships don’t need to conform to norms of marriage

Legal interventions by courts fail to make room for relationships whose creative existence is in the space between marriage and autonomy.

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Legal debates about live-in relations have circled around two poles of what can loosely be termed as the conservative and liberal views. (Express File)

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Last month, the Punjab and Haryana High Court made a very dramatic volte-face on the legality of live-in relationships among couples.

In a judgment on May 11 (Gulza Kumari), it held that live-in relationships are “morally and socially not acceptable”. But a week later, the court affirmed that such relationships are not prohibited by the law (Pradeep Singh).

This inconsistency in judgments is not surprising, given the moral and social complexity of this issue. While there is much hype about “live-in” relationships today, the concept has a peculiar cultural dissonance about it when understood from the perspective of legal discourse.

It must be clarified that this is not because the notion of couples living together outside marriage did not exist before this — if anything, it is precisely the opposite. For instance, the practice of mutah or temporary marriage in the community of Shia Muslims has always existed.

The radical claim that live-in relationships are now made legal by courts conceal and subdue pre-existing widespread practices of people living-together in relations of mutual care. The vocabulary that courts use to recognise live-in relations as a facet of some newfound liberal individuality seek to then invent an identity.

The result has meant that courts have failed to properly imagine this space and instead projected the narrow standard of a marriage to certify these relations.

Reading the decision in Pradeep Singh gives a sense of the tensions beneath progressive legal reform.

First, the court saw the couple's live-in relationship as an arrangement they intended outside marriage and that they were "sure of their feelings for each other". However, it is not clear if the couple had consciously and deliberately chosen this "non-formal" arrangement or were simply running away from family pressures. Moreover, there is no way the court could have gauged the degree of the couple's emotional commitment to each other.

The point here is that marriage continues to be the standard based on which the court upholds these relationships. The only difference between the Gulza Kumari judgment and this one is that, in Gulza Kumari, the court did not find the requisite future intention to marry but they surely did in this case.

Second, the court in Pradeep Singh observed that live-in relations have "crept into our society from Western nations" and found acceptance in metropolitan cities from where it slowly spread to smaller towns and villages. This line of reasoning implies that prior to this, romantic associations outside marriage did not exist in non-urban areas.

Legal debates about live-in relations have circled around two poles of what can loosely be termed as the conservative and liberal views. The conservatives uphold marriage as the only sacrosanct union of couples. But since this group is today largely outdated, it has instead taken its task of preserving marriage within the liberal order. Liberals champion the autonomy and dignity of couples to make their own choices outside marriage.

While Indian courts have been extending liberal rights of couples opting for a live-in relation, this is beset with confusion. It either sees live-in relations as a presumption of marriage or as an exercise of rights of self-determination between consenting adults.

But even in the second situation, an approximation of marital status is the standard for protecting their status as a couple and their rights, whether personal or under civil laws. Put this way, liberal views tethered to a quasi-marriage overlap with the earlier conservative approach of looking for ingredients of a marriage and related aspects of commitment and responsibility to determine the status of a live-in.

Judicial interpretation of live-in relations has been through two broad moments: The first is that of presumption of marriage and the second as part of the right to life, freedom and dignity.

The general perception of live-in relationships is as crude "walk-in-and-walk-out" arrangements about which the law dare not speak (Alok Kumar, 2010), but this is not how real-life contestations among couples play out, at least in courts. Courts have operated on the default mode of imposing the legal fiction of presumption of marriage when a man and woman have lived and cohabited for a number of years.

This has become important especially after the Domestic Violence Act, 2005, that recognised "relationship in the nature of marriage" in order to protect women who are subject to domestic violence. The courts in the cases of

Velusamy, Chanmuniya and Indra Sarma, have laid down guidelines when a live-in relation would qualify for protection. Some of these include aspects like presenting themselves to the world as spouses, the duration of the relationship, and sharing a household.

If the earlier line deemed live-in relationships as an adjunct to marriage, another line of reasoning has emerged that sees them as a legitimate alternative to marriage. Landmark decisions on the right to equality, freedom, life, and dignity of transgender people (National Legal Services Authority, 2014) and same-sex couples (Navtej Johar, 2018) have provided constitutional protection on the right to choose one's partner. In *Chinmayee Jena* (2020), the court accorded transgender people the right to live-in with a partner of their preference.

The legal intervention in "live-in" relationships undoubtedly protect victims of domestic violence, choices of same-sex couples and trans persons. Yet, the rights-oriented rationale creates a high expectation of autonomous choice-making by couples to self-consciously reject the option of marriage and declare they are in a "live-in".

This immediately throws up the difficulty of what distinguishes people in live-in relationships from other married couples. Should couples who live together under the same roof for a specific duration of time qualify? Further, does a live-in extend only to couples in a sexual union, or does it even include other relationships between family and friends who live together — for instance, parents, siblings, grandparents, flatmates and pets?

Judicial precedents show that a "live-in" relationship substitutes a legal marriage when couples choose not to get married, or in the case of same-sex couples for whom the law does not yet permit.

Individuals can live with their partners along with certain safeguards so they can opt out of the institution of marriage. However, there is really nothing profound about this other than a civil partnership of potentially marriageable individuals who have declared that they are in a committed relationship.

In the same way that society seeks to regulate property, family, and economy, it also aims to bring under its control desire and conduct that can go astray so it can make them productive and efficient (see generally, Michel Foucault, "Governmentality")

In relying on legal developments in Western countries, Indian courts have crucially glossed over the fact that those countries have had a very long and entrenched history in regulating marriage to which they are seeking alternatives.

This was unlike in India where colonial rule transformed living arrangements and codified social practices, whereupon, what was earlier in the moral and ethical domain in Indian society was transferred to the legal.

Such a legal categorisation empties out relationships whose creative existence was in the space between marriage and autonomy. In effect, although the law categorises "live-in" differently from wedlock, it nonetheless relies on the norms of a marriage to sanctify these relationships.

It is not simply that the contradictory judgments of the Punjab and Haryana High Court install courts as final arbiters of human relations, but more importantly, the way law conceives "live-in" relationships forecloses other modes of affiliation.

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