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LEGAL POSITION & LAWS RELATING TO LIVE- IN RELATIONSHIPS IN INDIA

AUTHORED BY - YAALESWAR THIRUNAVUKKARASU

Introduction:

In India, the legality of live-in relationships is yet to be clearly understood and interpreted. Although the term „live-in relationship“ is difficult to define, it refers to domestic cohabitation between two unmarried people¹

It is generally disapproved in Indian culture to a great extent. However with modernization and change in social dynamics, there appears to be some favorable improvements. Marriage in India is considered to be a foundation of a man – women bond, and a very essential institution to make a family, which is the basic unit of a society

While several youth population and millennial argue favorably to it, large fraction of the population, finds it culturally not appropriate and are hence opposed to it. Be it any religion prevalent in India, Hindu, Muslim, Christianity, Jainism; none of them approve live in relation between a man and woman. It must also be understood that, many first world countries like Switzerland, have been a pioneer in legalizing such relationships and making adequate laws to govern in effectively amidst the contemporary world.

In a countries like India, where marriages are seen as a societal foundation for legalising a man-woman connection, the notion of a live-in relationship has added a new dimension to the man-woman relationship. This gives rise a entirely new set of problems and questions with respect to individual, social and legal factors, which must be sort out by the way of legislation and interpretation. It is still considered to be a taboo in many parts of India which is why there are no defined laws laid down for it². The paper further discusses about several legal aspect of live in relationship in Indian context.

¹ Sepaha, Priya. (2021). Live-in Relationship in India: Laws and Challenges.

² LEGALITY OF LIVE-IN RELATIONSHIPS A COMPARATIVE STUDY BETWEEN INDIA AND USA, [Vol. 3 No. 2 \(2020\): Journal of Family and Adoption Law](#)

Understanding live in relationship

The meaning of live-in relation is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and/or sexually intimate relationship. The term live-in relationship is most frequently applied to couples who are not married³

The term 'wife' should include live-in partner too (according to Supreme Court)

The legal definition of live-in relationship is “an arrangement of living under which the couple which is unmarried lives together to conduct a long-going relationship similarly as in marriage.

Today, cohabitation is a common pattern among people in the Western world. There are a number of reasons behind living together. These may include:-

- Some couples may also choose cohabitation because they see their relationships as being private and personal matters, and not to be controlled by political, religious or patriarchal institutions
- Wanting to test the compatibility
- To establish financial security before marrying.
- It may also be because they are unable to legally marry, for instance, if they are of the same sex, some interracial or inter-religious marriages are not legal or permitted.
- living with someone before marriage is an effort to avoid divorce,
- a way for polygamists or polyamorists to avoid breaking the law,
- a way to avoid the higher income taxes paid by some two-income married couples (in the United States),
- Philosophical opposition to the institution of marriage and seeing little difference between the commitment to live together and the commitment to marriage.

Why live in relationship is opposed in India

Pre-marital sex, on the other hand, is frowned upon in Indian society. As a result, couples living together before marriage are frequently regarded as culturally improper, unethical, and repugnant to societal standards⁴. Cultural aspect plays a key role in people's mind to oppose such relationships.

However, in Indian society, pre-marital sex is highly looked down on.⁵ Therefore, couples

³ Pragmaan: Journal of Law" Volume 1: Issue 1, December 2011

⁴ Rachit Garg, Are live-in relationships legal in India September 13, 2022

⁵ The Times of India. Marriage vs. live-in relationship: Two different approaches to exploring love and companionship – Times of India.

cohabiting together before marriage is often deemed culturally inappropriate, immoral and repulsive to societal norms⁶

Legal Issues with live-in relationships

There are several issues regarding live-in relationships. These are as follows:

- Is Indian culture ready to embrace such a new type of relationship?
- What are the consequences of adopting or refusing such relationships for the continuation and advancement of society?
- Should new legislation be enacted in India to govern such relationships?
- What are the implications of legalising such a relationship for married couples?
- Should current rules governing the maintenance, guardianship, succession, and inheritance be changed to accommodate such relationships?
- What role does the Indian judiciary play in the development of such relationships?
- So far, the Indian judiciary has been the most constant in recognising such relationships. However, in terms of protecting women's claims in such relationships, the Indian judiciary stands ready to provide justice to the most vulnerable members of society.⁷

What makes a live-in relationship like a marriage under the law?

Courts, through various cases, have laid down certain conditions for live-in relationships to be considered as relationships in the “**nature of marriage**”. These are:

- **Duration of the Relationship** – The couple should have lived together for a significant period of time, like months or years. So, a few weeks, a weekend or a one night stand, do not count as a live-in relationship.
- **Socialisation in Public** – The couple must socialize publicly with friends, relatives and other people.
- **Age** – The couple must at the time of entering into the live-in relationship, be above the legally valid age of marriage i.e. 18 years.
- **Sexual Relationship** – A sexual relationship must be there between the couple that includes emotional and intimate support.
- **Financial Arrangement** – The couple must have a financial arrangement similar to that of a husband and wife. For example, pooling in resources together or financially supporting

⁶ Narayan CL, Narayan M, Deepanshu M. Live-In Relationships in India—Legal and Psychological Implications. *Journal of Psychosexual Health*. 2021;

⁷ Are live-in relationships legal in India, <https://blog.ipleaders.in/>, accessed on 25 December 2022

each other, through shared bank accounts, assets in joint names, long term business investments, etc.

- **Domestic Arrangement** – The couple must have a domestic arrangement. For instance, running the household and doing domestic work – cleaning, cooking, upkeep of the house, etc.
- **Intention and conduct of the parties** – Common intention of the couple as to what their relationship is and their respective roles and responsibilities, primarily determines the nature of that relationship.
- **Children** – Having children is a strong indication that the nature of the relationship is similar to that of a marriage, and that the participants have a long-term view of the relationship.⁸

Current Legal status of live-in relationships in India

Though the law is still ambiguous regarding the legality of such partnerships, a few rights have been provided by analysing and altering the laws so that the parties can avoid misusing such relationships. Several pieces of legislation are addressed below.

i. Article 21- Legally, live-in relationships find roots in Article 21 of the Indian Constitution. The right and freedom of choice to either marry or have a live-in relationship with an individual of one's own will, thus, emerges from this inalienable fundamental right⁹

ii. The Protection of Women from Domestic Violence Act, 2005-

A domestic relationship is defined in Section 2(f) of the Domestic Violence Act, 2005 as a relationship „in the nature of marriage“ between two people residing in a shared home.

There are certain circumstances in which courts have been asked to intervene in live-in relationships. The courts, while pronouncing judgments on live-in relationships, compare them to marriages to determine whether the relationship has the characteristics of a regular marriage. If such relationships are considered in the nature of marriage, the courts have been known to uphold certain rights, such as, the right of the female partner to file a domestic violence case against her male partner

⁸ Khushboo v. Kanniammal, (2010) 5 SCC 600; Nandakumar v. State of Kerala, (2018) 16 SCC 602.

⁹ UNDERSTANDING THE LAW ON LIVE IN RELATIONSHIPS IN INDIA, <https://nyaaya.org/> , (25 December 2022)

iii. In **Payal Sharma v. Nari Niketan**,¹⁰ the Supreme Court affirmed that a man and woman could live together upon their willingness even without getting married. Demarcating the difference between law and morality, the Court expressed that even if live-in relationships are regarded as immoral by society, it is neither illegal nor an offence. Two individuals cohabiting and staying in a live-in relationship are not criminal offenders.¹¹ It clarified that although socially unacceptable in parts of India, live-in relationships are neither a crime nor a sin.

iv. The Supreme Court first observed live-in relationships as legitimate in the case of **Badri Prasad v. Dy. Director of Consolidation (1978)**¹². The Court said that under Indian law, a live-in relationship between consenting adults is legal if the requirements of marriage, such as legal age of marriage, consent, and soundness of mind, are met. No rule permits or bans such connections.

v. **Khushboo case**¹³. The argument of the prosecution was that the comments of actress Khushboo allegedly endorsing pre-marital sex will adversely affect the moral fabric of society. The court, while quashing the charges framed on Khushboo, commented that there was no law which prohibits premarital relationship. A three judges' bench comprising of Hon'ble chief Justice K.G. Balakrishnan, Hon'ble Justice Mr. Deepak Verma and Hon'ble Justice Mr. B.S. Chauhan observed "*When two adult people want to live together what is the offence. Does it amount to an offence*"? The court further said, "*Please tell us what is the offence and under which section. Living together is a right to life*", thereby referring to the right to life guaranteed under Article 21. Though this was an obiter dictum, it provided a positive impetus to live-in relationship.¹⁴

On the other side, Delhi High Court, in a recent case, observed that a live-in relationship is a walk in and walk out relationship. Hon'ble Justice S.N. Dhingra noted, "*There are no legal strings attached to this relationship nor does this relationship create any legal-bond between the partners*". The court further added, "*People who choose to have live-in relationship cannot complain of infidelity or immorality as live-in relationships are also known to have been between a married man and unmarried woman or vice-versa*"¹⁵

¹⁰ Payal Sharma v. Nari Niketan, AIR 2001 All 254.

¹¹ Ramdev Food Products Ltd. v. Arvind bhai Ram bhai Patel, (2006) 8 SCC 726

¹² 1978 AIR 1557, 1979 SCR (1) 1

¹³ JT 2010 (4) SC 478

¹⁴ Pragmaan : Journal of Law" Volume 1 : Issue 1, December 2011

¹⁵ Alok Kumar v. State CrI.M.C.No. 299/2009

vi. In 2010, the Supreme Court in *Velusamy Vs D Patchaimal*¹⁶ laid down criteria for live-in relationships to be legal, which is the closest to the 'codification' of the question of live-in relationship, in the absence of any specific law on the subjects.

The Supreme Court laid down the following criteria:

- ❖ The couple must hold themselves out to society as being akin to spouses
- ❖ They must be of legal age to marry
- ❖ They must be otherwise qualified to enter into a legal marriage, including being unmarried
- ❖ They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time
- ❖ Therefore, certain live-in relationships, where two married persons or one married and another unmarried person are staying together, do not have legal basis.¹⁷

Women are also eligible for alimonies in live-in relationships, according to the 2016 Punjab High Court judgement in *Ajay Bhardwaj Vs Jyotsana* case.¹⁸

vii. In 2006, the Supreme Court in *Lata Singh Vs State of UP* ruled that two persons of opposite sex living together are not doing anything illegal. In 2010, the SC in *S. Khushboo Vs Kanniammal & Another*. reiterated the 2006 verdict and noted "A live-in relationship between two consenting adults of heterogenic sex does not amount to any offense (with the obvious exception of 'adultery'), even though it may be perceived as immoral".¹⁹

viii. **LEGAL STATUS OF CHILDREN:** The Supreme Court in *Tulsa v. Durgatiya*²⁰ held that a child born out of such a relationship would no longer be considered as an illegitimate child. The noteworthy prerequisite for the same is that the parents must have lived under the same roof and cohabited for a significant period which proves their sincerity towards the relationship.²¹ The Supreme Court in *Revanasiddappa v. Mallikarjun* approved the inheritance to the four children born out of the live-in relationship by considering them as 'legal heirs'. Therefore, the Court has guaranteed that no child may be denied their inheritance who are born out of a live-in

¹⁶ D.Velusamy vs D.Patchaiammal on 21 October, 2010

¹⁷ Live-In Relationships In India: Legal But Do They Have Enough Safeguards?, <https://www.outlookindia.com/> , 25 Dec 2022

¹⁸ Ajay Bhardwaj vs Jyotsna And Ors on 23 November, 2016

¹⁹ Live-In Relationships In India: Legal But Do They Have Enough Safeguards?, <https://www.outlookindia.com/> , 13 Jan 2022

²⁰ (2008) 4 SCC 520

²¹ Sepaha, Priya. (2021). Live-in Relationship in India: Laws and Challenges. 1. 1-12.

relationship of a significant period of time

ix. MAINTENANCE: In *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*,²² the Supreme Court turned down the judgment of the High Court which declared that appellant wife is not entitled to maintenance on the ground that only legally married woman can claim maintenance under Section 125 CrPC and awarded maintenance to the wife (appellant) pronouncing that provisions of Section 125 CrPC must be considered in the light of Section 26 of the PWDVA, 2005. The Supreme 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.

According to the **Justice Malimath Committee and the Indian Law Commission**, a female who has been in a live-in relationship for a long term should be entitled to the spouse's legal privileges. Similarly, the Committee proposed modifying Section 125 of the Criminal Procedure Code's definition of "wife." The word "wife" has been redefined to comprise women who had previously been in a live-in relationship. Now, against her will, his accomplice has abandoned her in order to provide the position of wife to a woman in a live-in relationship. And as soon as she is granted status, she is given the right of maintenance under section 125 of the CrPC, 1973.

Issue: However, there is a dispute that even if the wife's position is offered to women in a live-in relationship, the partners cannot divorce since they are not legally married. Therefore, how can women assert their right to be maintained under Section 125 of the CrPC, 1973.²³

x. LGBT couple: Commonly, society is indifferent towards providing benefits to the LGBT community and unwilling to accept their relationship. Even, in any laws and judgments of live-in relationship provision or discussion about for LGBT couple is lacking. No matter the Supreme Court has decriminalised consensual same-sex intercourse by scraping Section 377 of the Indian Penal Code, yet, India does not have sex marriage and live-in relationship. Despite such liberal interpretation by the honorable Courts in the recent past, there is still lack of any marital law for the LGBT community in the Indian framework²⁴

²² (2011) 1 SCC 141

²³ LIVE-IN – RELATIONSHIP: A STUDY ON LEGAL ACTIONS Ms. Anupama Yadav, Dr. Anand kumar, International Journal of Creative Research Thoughts (IJCRT), pg e402 www.ijcrt.org

²⁴ Sepaha, Priya. (2021). Live-in Relationship in India: Laws and Challenges. 1. 1-12

xi. The five sorts of live in relationship the SC court came across in Indra Sharma case²⁵ are as per the following:

- The initial one is a domestic relationship between an adult male and an adult female, both unmarried. This is the most uncomplicated kind of relationship.
- The second one is a domestic relationship between a married man and an adult unmarried woman, entered intentionally. This is a tricky hazy area. This one can prompt a conviction under Indian Penal Code for Adultery.
- The third one is a domestic relationship between an adult unmarried man and a married woman, entered knowingly entered purposely.
- The fourth one is a domestic relationship between an unmarried adult female and a married male, entered unknowingly.
- The fifth one is a domestic relationship between two gay or lesbian partners.

The Court has cleared up that the above are simply illustrative not Exhaustive. A Landmark Judgment on 13 April 2015 by the seat comprising of Justice MY Eqbal and Justice Amitava Roy, the Supreme Court decided out that couples living in live in relationship will be presumed legally married.²⁶

Conclusion

Cohabitation or live in relationship often tends to be a human rightist and individualistic approach. Due to legislative ignorance, individuals in live-in relationships are not given protection under a prescribed set of rules or regulations. The current Indian legal framework surrounding live-in relationships is primarily a result of a series of relatively progressive judicial precedents.

The Indian judiciary, on multiple instances, has delineated the difference between social morality and constitutional morality by legitimising live-in relationships and upholding their rights.

The Supreme Court and various high courts have read the legitimacy of live-in relationships within the scope of statutes such as the Domestic Violence Act, Cr.P.C., Evidence Act. Thus, as per the current legal position, women in live-in relationships are entitled to maintenance and property.

²⁵ Indra Sharma Vs. VKV Sharma, Criminal Appeal No. 2009 of 2013 arising out of Special Leave Petition (Criminal) No. 4895 of 2012

²⁶ Sakshi Kansal & Shubham Bhargava, JUDICIAL INTERPRETATION AND CHANGE IN STATUS OF LIVE IN RELATIONSHIP IN INDIA, Journal on Contemporary Issues of Law Volume 3 Issue 4, pg 7.

While these judicial precedents lay a framework for regulating and guiding legal affairs from live-in relationships, they are not enough. Recent events have proven that the lack of definite legislation and corresponding ambiguity has led to differing and deviating judgements amongst the judiciary. Thus, the Legislature must consider the prevalence of live-in relationships and enact a comprehensive law delineating the rights and duties of parties.

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