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## **AN ANALYSIS OF LIVE IN RELATIONSHIPS IN INDIA**

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Shraddha Mudgal, Disha Law College

### **ABSTRACT**

The idea of live-in relationships is legal in western nations, however it is still debatable if such relationships are lawful in developing nations like India. One of the more contemporary ideas that couples utilise to test their compatibility before getting married is the live-in relationship. One of the subjects that receives the most attention these days is living together. Although there is currently no legal definition of a live-in relationship, the concept has been widely explained in numerous court decisions. In essence, a live-in relationship is when a couple or two persons want to live together but do not plan to be married. The premise that live-in relationships can be viewed as immoral but are not necessarily unethical was acknowledged by the Allahabad High Court.

With the aid of secondary sources, the article's main objective is to understand the concept of live-in relationships sources. Then, using descriptive and analytical methodology, an effort was made to analyse the issues and difficulties that the couples encountered. The paper concludes by making the case for the creation of a distinct, secular and gender-sensitive legislation for a live-in relationship between a couple who choose to cohabit.

## **Introduction**

A live-in relationship is a situation in which two people live together but are not married. Many nations around the world have already legalised and approved the idea. According to the Apex Court, living together out of love is a part of the right to life, hence having a live-in relationship is no longer illegal. The Malimath Committee opened the door for making significant recommendations in 2003. It is important to note that the term "wife" is primarily clarified, and a woman in a live-in relationship is treated similarly. After that, the Protection of Women from Domestic Violence Act (PWDVA), which is recognised as the first piece of legislation to give legal status to relationships outside of marriage by including them in its ambit, was passed in 2005.

To control the dynamics of this new social order, numerous attempts have been made to include it under the ambit of certain laws, including as those governing domestic abuse, maintenance, property, and children's legal status order. It remains controversial and taboo in India on moral and societal grounds. In India, there are no explicit laws, societal norms, or traditions governing live-in relationships. As a result, the Supreme Court has taken the initiative to enlarge on the idea through its decisions at various points in time and has released rules for handling such relationships<sup>1</sup>. This article attempts to evaluate earlier rulings made by the Supreme Court and determine the current legal views on cohabiting couples. There is also a quick examination of the psychosocial aspects of such a partnership.

## **Marriage v/s Live in relation in India**

Since the time of the Vedic culture, marriage has been revered in India as a sacred union. In India, marriages take happen in accordance with the Special Marriage Act's requirements or the personal law of the parties' respective religions. According to the law, marriage is a contract between a man and a woman, in which the two promise to support and live together.

Marriage as a concept has evolved over time. After the formal ceremony, marriage is typically regarded as one of the fundamental civil rights. It has legal significance and entails a number of duties and commitments regarding succession, property inheritance, and other issues. Contrary to many other nations, India still does not regard live-in relationships as socially

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<sup>1</sup> 2022. [online] Available at: <<https://journals.sagepub.com/doi/full/10.1177/2631831820974585>> [Accessed 15 August 2022].

acceptable.<sup>2</sup> However, in order to establish a long-lasting conjugal connection that is similar to marriage but apart from it, people are increasingly choosing an alternate institution like a live-in relationship.

### **Live in relationship legality in India**

According to Indian law, living together as consenting adults is not deemed to be unlawful. Despite being viewed as immoral, a live-in relationship between two consenting adults of opposite sex is not illegal, according to a 2006 ruling in the case "Lata Singh v. State of U.P." Although the concept of a live-in relationship is viewed as sinful by society, it is unquestionably legal in the eyes of the law, as the Supreme Court noted in the significant case of *Khushboo vs. Kanaimmal and another*. Living together cannot be considered unlawful because it is a right to life. Long-term live-in relationships can become legally recognised as marriages if the couple presents themselves to society as husband and wife during that time. The statement "If man and woman who live as husband and wife in society are required to establish, after half-a-century of wedlock by eye-witness testimony that they were legitimately married fifty years ago, few will succeed" was made in the 1978 case "*Badri Prasad Vs Deputy Director Consolidation*." Where the couples have lived together for a significant amount of time as husband and wife, there is a strong presumption in favour of wedlock. Although the presumption can be refuted, the burden of proof falls heavily on the person who wants to strip the connection of its legal foundation. and disapproves of idiocy.

If a relationship is solely sexual in nature, neither partner may profit from the formal marriage. Another famous live-in relationship case that looked at the effects of various forms of partnerships was "*Indra Sarma vs. VKV Sarma*." <sup>5</sup> It is not illegal for two people who are not already married to get together and start dating. Prior to 2018, Section 497 of the Indian Penal Code considered domestic cohabitation between a married or unmarried man and a married woman to be "adultery" for the man alone (IPC). However, in the case of "*Joseph Shine vs. Union of India*" in September 2018, the Supreme Court of India decided to invalidate this clause. Furthermore, only the woman's husband had the authority to bring charges against the perpetrator; the lady could not bring an adultery case against her husband. <sup>6</sup> While cohabitation with any married man or woman may be a subject of civil issues constituting a reason for

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<sup>2</sup> India, I., 2022. *Latest legal Articles written by imminent writers and legal experts - law library - legal Resources*. [online] Legalserviceindia.com. Available at: <<https://www.legalserviceindia.com/articles/articles.html>> [Accessed 15 August 2022].

divorce, in which case it would be gender neutral, even though adultery is no longer a crime. Prior to 2018, Section 377 of the IPC also considered cohabitation with sexual contact between two adults of the same sex to be an unnatural offence. However, in "Navtej Singh Johar v. Union of India," the situation was reversed.

### **Factors that mark Live in relationship legal**

According to the 2005 Act, a connection must meet certain requirements that were outlined by the Supreme Court in the cases of *D Patchaiammal v. D Velusamy*<sup>5</sup> and *Indra Sarma v. V.K.V. Sarma*<sup>6</sup>. To qualify for benefits under the PWDA, women in these partnerships must meet certain requirements, such as:

#### 1. Age

According to Indian law, the intending couple must be majors in order to be able to legally wed. In the case of *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Ors.*<sup>7</sup>, the Allahabad High Court ruled that "a lady of about 21 years of age being a major, has right to roam anyplace and that anyone man and woman even without getting married can live together if they wish." Despite this, the Kerala High Court recently ruled in *Nandakumar v. The State of Kerala*<sup>8</sup> that an adult couple might live together even if the guy was under the legal marriage age of 21.

#### 2. A significant period of time

Section 2(f) of the PWDA uses the phrase "at any point of time," which refers to a considerable or acceptable amount of time to establish and continue a relationship. Although it may vary from case to instance based on the factual situation (Rajagopal, Krishanadas, 2010). You shouldn't take the connection for granted. To demonstrate that the relationship is lawful, there must be some sincerity and seriousness towards it. A one-night stand or a weeklong stay cannot be considered a domestic partnership.<sup>3</sup> There is a presumption of marriage between the parties, as established in the *Madan Mohan Singh v. Rajni Kant*<sup>9</sup> case, and the live-in relationship cannot be described as a "walk-in and walk-out" relationship if it lasts for a significant amount of time.

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<sup>3</sup> Tripaksha Litigation. 2022. *LEGALITY OF LIVE IN RELATIONSHIP IN INDIA - Tripaksha Litigation*. [online] Available at: <<https://tripakshalitigation.com/legality-of-live-in-relationship-in-india/>> [Accessed 15 August 2022].

3. The pair have to have chosen to live together

One of the primary requirements for a live-in relationship is the couple's independent choice to reside together. To demonstrate their commitment to and durability of their partnership, they support one another and share their individual tasks and obligations, financial arrangements, public socialisation, and other activities. If a man has a "keep," whom he maintains financially and employs primarily for sexual purposes or maybe as a maid or slave, it would not be seen as a relationship in the nature of marriage or equal marriage.

### **The rights of the born child of the live in relationship**

The Supreme Court noted in "Tulsa vs Durghatiya"<sup>13</sup> that children born from live-in relationships would not be treated as illegitimate if their parents would have lived under one roof and cohabitated for a significant amount of time in order to be recognised as husband and wife and it must not be a "walk in and walk out" relationship. Children born out of void and voidable marriages are given legitimacy by Section 16 of the Hindu Marriage Act, 1955 and Section 26 of the Special Marriage Act, which states that children born out of marriages that are void and voidable or where a decree of nullity is granted in respect to voidable marriages shall be legitimate or deemed to be legitimate, respectively. However, the right of inheritance of such children is restricted to the property of the parents exclusively, in accordance with Subsection (3) of the same provisions of the Act. Therefore, if their parents were not legally married to one other, such children do not have coparcenary rights in the Hindu Undivided Family. The provisions of these Act parts have therefore been put into practise to grant the children born into live-in relationships the ability to inherit the parents' independently acquired property. They cannot, however, assert coparcenary rights to the assets of their father's HUF if their parents are not lawfully wed. As the law itself specifically says "both legitimate and illegitimate child," dependent children born out of live-in relationships have every right to file a support claim under Section 125 of the Cr. P.C. Mother is considered to be the children's natural guardian when it comes to guardianship decisions.

### **Conclusion**

Although it may be a controversial and novel idea outside of India, live-in relationships are becoming more common.

People are not prepared to take on obligations and engage in a full-time committed relationship in this modern lifestyle, which is partially emerging as a result of the rapid influence of globalisation. The acceptance of pre-nuptial agreements, a broader knowledge of domestic

cohabitation, and general tolerance for sexual orientations, among other things, is a new draw for young people. They see a live-in relationship as a better way to live—a marriage without the complexities and worries—but it actually requires far more responsibility and understanding of socio-legal perspectives.

But there are still a lot of murky areas that demand important discussion.

To address the difficulties that still surround live-in relationships, it is necessary to create a separate law that emphasises sociological, legal, and secular considerations.