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# UNDERSTANDING THE CONCEPTION OF LIVE-IN RELATIONSHIPS IN INDIA THROUGH THE EYES OF THE INDIAN LEGAL SYSTEM

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Gurmehar Randhawa, BBA LLB, Symbiosis Law School, Hyderabad

## ABSTRACT

In India, living in partnerships causes a conflict between law and morality. Live-in relationships are lawful under the law, yet they are morally repugnant. A live-in relationship happens when two people live together before getting married. Domestic cohabitation occurs when two unmarried people live together.

When two individuals decide to live as husband and wife without marrying, they form a live-in relationship. We may categorise live-in relationships into three types to better understand their nature.

- An unmarried couple who is in a live-in relationship.
- A living arrangement between two people, one of whom is married.
- Living together in a live-in relationship as same-sex couples

In this research on live-in relationships in India, we will look at the legality of such partnerships and their benefits and drawbacks.

**Keywords:** live-in relationship, child abuse, and judgements

## **Introduction**

Indeed, the one constant in our life is 'change.' There has been a major transformation in Indian society in recent years. People are increasingly accepting of live-in relationships. However, this change has been repeatedly contested because such notions demand more legitimacy and public acceptance. The definition of live-in partnerships includes cohabitation. In India, relationships between a man and a woman are considered lawful if the two have married according to existing marital norms; nevertheless, all other sorts of partnerships based on such relations are ruled invalid. Before marriage, some choose a live-in relationship to evaluate their compatibility. When a relationship dissolves, the individuals are shielded from family pressure and lengthy legal proceedings. Whatever the cause, it is clear that in a conservative society like ours, where marriage is regarded as "holy," many couples prefer a live-in relationship over marriage, even as a long-term plan. As a result of these circumstances, various legal and societal difficulties have developed, causing debate. Numerous situations have lately come to light in which couples in live-in relationships or children born from such connections are at risk since such partnerships are unlawful.

## **CHAPTER - II**

### **Defining live-in relationship**

A live-in relationship is a domestic cohabitation between two unmarried people, typically among upwardly mobile young people. They permit separation without official intervention, which is especially important in nations where divorce is frowned upon and stigmatised. Couples that cohabit before marriage are generally viewed as culturally incorrect, immoral, and contradictory to conventional values since pre-marital sex is frowned upon in Indian society. In contrast, the Indian judiciary has regularly intervened and awarded relief to couples in live-in relationships while respecting the individual's right to liberty. The legal basis for live-in partnerships is established by Article 21 of the Indian Constitution, which grants the right and freedom to marry or have a live-in relationship with whomever one chooses.

### **The legal position of partners in a live-in relationship in India**

The Protection of Women from Domestic Violence Act of 2005 (PwDva) provides rights and protection to female partners who are not legally married but are living with a man in a similar relationship but not identical to marriage. This gives women the necessary rights to protect themselves against the abuse of phoney marriages and bigamous unions. The Criminal

Procedure Code of 1973 - Maintenance - Section 125 of the Criminal Procedure Code was enacted to save a wife, small children, or elderly parents from becoming homeless or impoverished. The Malimath Committee, officially known as the Committee on Criminal Justice System Reforms, proposed changing the definition of "wife" in Section 125 of the Criminal Procedure Code to include women previously in a live-in relationship. If a woman has been in a long-term live-in relationship, she has the legal rights of a spouse and is eligible for help under Section 125 of the Criminal Procedure Code.

According to the Indian Evidence Act of 1872, there is a presumption of marriage if a man and a woman live together for a lengthy period. This means their children will be considered genuine and entitled to a share of the family property. The fundamental right to life and personal liberty is protected by Article 21 of the Indian Constitution, and the Court construed the status and laws following Article 39(f) of the Indian Constitution, which establishes the State's commitment to providing opportunities for children to develop and protect their interests.

### **Legalization of live-in relationships by a court of law**

Since the 1970s, live-in relationships have been legal, with the Supreme Court finding in *Badri Prasad vs. Board of Consolidators* in 1978 that there is a presumption of marriage when a man and a woman have lived together for an extended time. In *Lata Singh vs. the State of UP*, the Supreme Court held in 2006 that two persons of the opposite sex living together do not break any laws. In *Indra Sarma v. VKV Sarma*,<sup>1</sup> the Supreme Court declared in 2013 that the woman partner in a live-in relationship is protected under the Protection of Women from Domestic Violence Act, 2005. The Supreme Court held in *Velusamy v. D Patchaimal*<sup>2</sup> that unmarried live-in partners must otherwise be able to participate in genuine marriage. At the same time, the Odisha High Court declared that same-sex partnerships are legal. Rape is defined under Section 375 of the Indian Penal Code (IPC) as an offence committed by a male against a woman, which means that the Indian judiciary has taken the initiative to fill the void left by the case of *Revanasiddappa v. Mallikarjun*<sup>3</sup> by creating regulations governing live-in relationships.

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<sup>1</sup> *Indra Sarma v. VKV Sarma*, AIR 2014 SC 309 (India)

<sup>2</sup> *Velusamy v. D Patchaimal*, AIR 2011 SC 479 (India)

<sup>3</sup> *Revanasiddappa v. Mallikarjun* AIR 2011 SC 2447 (India)

Although society may regard it as immoral, the law does not regard it as "unlawful." When live-in partners are abused, the Indian judicial system strives to bring them to justice. While making decisions in various situations, the judiciary has considered several factors, including societal traditions and constitutional ideals. The Privy Council said in *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Blaham*<sup>4</sup> (1921) that if a man and a woman are shown to have lived apart as a spouse, the law will infer that they were living apart as the result of a legitimate marriage. In the case of *Badri Prasad vs. Board of Consolidators*<sup>5</sup>, the Supreme Court awarded legal validity to a 50-year live-in partnership. The Allahabad High Court accepted the notion of a live-in relationship in *Payal Sharma v. Nari Niketan*<sup>6</sup>. In *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel*<sup>7</sup>, the court held that two persons in a live-in relationship who are not legally married are not criminal offenders. This judgement was ultimately extended to a wide range of situations.

### Presumption of marriage

The Supreme Court ruled that a long-term live-in relationship cannot be considered a "walk-in and walk-out" relationship and that the couples are presumed to be married. The Supreme Court ruled in the landmark case of *S. Khushboo v. Kanniammal and Anr.*<sup>8</sup> that the right to life protects a living connection. The Delhi High Court classified such a connection as a walk-in and walk-out partnership with no legal ramifications in *Alok Kumar v. State and anr.* The High Court ruled in *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*<sup>9</sup> that the appellant's wife was not entitled to support.

The Supreme Court overturned the lower court's decision and ruled in favour of the appellant, saying that Section 125CrPC must be read in conjunction with Section 26 of Pwdva, 2005. Women in live-in relationships have the same rights and responsibilities as legally married women. The Supreme Court emphasised the significance of expanding Section 2(f) of the Pwdva, 2005 to cover indigent and uneducated victims of illegal partnerships and their children born from such ties. To protect victims from partnerships, Parliament should pass new legislation. The Supreme Court issued the following guidelines:

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<sup>4</sup> *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Blaham*, 1927 SCC OnLine PC 51 (India).

<sup>5</sup> *Badri Prasad vs. Board of Consolidators*, [1978] INSC 119 (India)

<sup>6</sup> *Payal Sharma v. Nari Niketan* AIR 2001 All 254 (India)

<sup>7</sup> *Ramdev food products (P) Ltd. V. Arvindbhai Rambhai Patel* (2006) 8 SCC 726 (India)

<sup>8</sup> *S. Khushboo v. Kanniammal and Anr.* (2010) 5 SCC 600 (India)

<sup>9</sup> *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha* (2011) 1 SCC 141 (India)

(1) **Duration of connection** - Section 2(f) of the Domestic Violence (DV) Act uses the phrase "at any point in time," which signifies a reasonable term to sustain and prolong a connection that may vary from case to case, depending on the circumstances.

(2) **Shared Household** - The term has been defined in Section 2(s) of the DV Act and hence requires no additional explanation.

(3) **Resource Pooling and Financial Arrangements** - Financially supporting each other or any of them, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long-term business investments, separate and joint shares, and having a long-standing relationship may be guiding factors.

(4) **Domestic Arrangements** - Entrusting the responsibility, typically to a woman, to run the home and do household tasks such as cleaning, cooking, house maintenance or upkeep, and so on, denotes a marriage-like relationship.

(5) **Children** - Having children is a strong predictor of a marriage-like relationship. As a consequence, both partners intend to have a long-term relationship. Another important indication is sharing responsibilities for raising and supporting children.

(6) **Public Socialisation** - Acting out in public and socialising with friends, family, and others as if they are husband and wife is a perfect environment for maintaining a marriage-like relationship.

(7) **Intention and Conduct of the Parties** - The parties' common intention determines the character of a relationship as to what their relationship is to be and includes, as well as their respective duties and obligations.

In *Revanasiddappa v. Mallikarjun*<sup>10</sup>, the Supreme Court of India stated that regardless of the relationship between parents, the birth of a child from such a relationship must be assessed irrespective of the parent's relationship. The live-in relationship has long been a subject of dispute in India. The 2005 Protection of Women from Domestic Violence Act affirmed the ability of live-in partners to seek protection. The Supreme Court recently declared that couples living together are believed to be legally married and that if their partner dies, the woman in the relationship is entitled to inherit the property. A few legislative provisions guarantee a person's rights in a live-in relationship. However, these High Court decisions resulted in

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<sup>10</sup> *Revanasiddappa v. Mallikarjun* AIR 2011 SC 2447 (India)

findings contrary to the Supreme Court's legislation, making them unconstitutional under Article 141 of the Constitution.

### **High Courts' differing views**

The Punjab and Haryana High Court's single-judge Bench has ruled on a request for protection filed by persons living together. Another coordinating panel, comprising of the High Courts of Punjab and Haryana, as well as the High Court of Jammu and Kashmir, echoed a similar principle, noting that an individual's freedom to exercise their claim of choice is intrinsically related to the fundamental rights of liberty and dignity. However, a coordinating Bench of the same High Court denied protection to an equal marriage because doing so would undermine the country's social fabric. As a result, there needs to be clarity, with no definite court judgement to settle the matter. According to a recent Madhya Pradesh High Court decision, India is a conservative country where females do not engage in sexual activity unless the marriage is approaching. Society consensus validates our thoughts and conducts by accepting or rejecting them. Due to sociological trends, live-in relationships are now regarded as widespread cohabitation in metropolitan India. Divergent High Court decisions, on the other hand, are seen as an infringement on the public's right to live with persons of their choice without forming a formal partnership. This uncertainty has confused the general public and legal practitioners, with persons unfamiliar with legal complexity unsure if live-in relationships are permitted.

### **Recent judgments about live-in relationships**

In *Gulza Kumari v. State of Punjab*<sup>11</sup>, the Court ruled that non-marital relationships were neither culturally nor ethically acceptable. The Supreme Court has upheld the legality of live-in partnerships, but in *Gulza Kumari*, the Court should have examined its precedent. The Punjab and Haryana High Courts issued a different decisions with a different outcome. The case of *Pushpa Devi v. State of Punjab*<sup>12</sup> (2021) highlights the importance of achieving the age of majority and how it changes the way legal protection is offered. The petitioners, a girl of around 21 and a boy of about 19 wanted the Court to intervene to protect their live-in relationship from their families. The Court granted petitioners the right to life and personal liberty since both applicants had reached the age of maturity. This case illustrates the importance of achieving the age of majority and how it changes how legal protection is offered.

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<sup>11</sup> *Gulza Kumari v. State of Punjab*, (Cri) No.: 4199 of 2021 (India)

<sup>12</sup> *Pushpa Devi v. State of Punjab* 2021 3 RCR(Cri) 464 (India)

The Punjab and Haryana High Court ordered the Union Government to outline its policy for dealing with live-in relationships in *Rohit Kumar v. State of U.T. Chandigarh (2022)*. Noting that no Act governs these relationships and that it would be difficult for a court to reject the validity of a live-in relationship once an individual has attained majority under the Majority Act, the Bench of Justice Amol Rattan Singh attempted to elicit a response from the centre by stating that it is recommended that too many young people with developing minds do not begin living together and end up regretting such choices in life. In the case of *Abhishek Chouhan v. Madhya Pradesh State*, the Madhya Pradesh High Court determined that live-in relationships are an unintended consequence of the constitutional provision provided by Article 21 of the Constitution, which leads to sexual activity and lascivious conduct. According to the Court, India has a traditional culture in which unmarried girls engage in sexual acts with boys for pleasure only unless supported by a future promise of marriage. To accentuate her point, a victim should not be compelled to commit suicide, which is what happened in this case.

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