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## LIVE-IN RELATIONSHIP IN INDIA: LAWS AND CHALLENGES

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### ABSTRACT

In India, live-in relationships are becoming more common as a simple alternative to marriage. It is characterized as the residential cohabitation of an unmarried adult couple. On the surface, it seems to be a stress-free friendship with no legal responsibilities, but in reality, there are a lot of complexities, obligations, and legal liabilities. There have been recent attempts to include it under the purview of some laws. It is no longer illegal in India, and numerous rulings by the Apex Court have established rules on child support, property, and legal standing. In India, the matter is still up for debate. Numerous grey areas, such as official documents, cultural difficulties, property rights, will and gift rights, anti-religious status, the LGBT community, and so forth, require the required care. The article's main goal is to use secondary sources to assist readers understand what a live-in relationship is. After then, an effort was made to use descriptive and analytical methodology to research the issues and difficulties that the couples were facing. Finally, the paper makes the case that if a couple decides to live together, a second, secular regulation that takes gender equality into consideration must be drafted. Keywords: same-sex, property, upkeep, live-in relationship, and kid rights

## **INTRODUCTION**

A live-in relationship is one in which two individuals live together without being married. Numerous nations worldwide have already adopted and legalised the idea. According to the Supreme Court, a live-in relationship between a man and a woman who are in love is no longer illegal because it is considered a part of their right to life. In 2003, the Malimath Committee cleared the path for the historic recommendations that followed. It is important to note that it clarified the meaning of the term "wife" and treated a woman living with her partner as a wife.

Afterwards, relationships outside of marriage were given legal legitimacy by the Protection of Women from Domestic Violence Act (PWDVA) 2005, which is recognised as the first piece of legislation, by classifying them as relationships "in the nature of marriage" (Anuja Agrawal, 2012). In an effort to control the dynamics of this new social order, numerous attempts have been made to include it under the jurisdiction of laws pertaining to domestic violence, maintenance, property, and children's legal status. However, morally and socially it is always questionable and remains forbidden in India. Since the Vedic era, marriage has been revered as a sacred union in Indian culture. Over time, the concept of marriage has continuously evolved. The idea of marriage and relationships has evolved along with society and human psychology's constant advancements. When it comes to cohabitation, the current age is more giving and tolerant. Contrary to appearances, it also includes a lot of complexities, obligations, and legal duties, even though it appears to be a peaceful, easygoing relationship free from mutual obligations.

### **Research Techniques**

The research approach used in this study is doctrinal in character. Understanding the notion, legislation, Act, literature, news, and cases relating to cohabitation in India is the main goal, along with comprehending the workings of this emerging social structure. After then, an effort was made to use descriptive and analytical methodology to research the issues and difficulties that the couples were facing. Lastly, the paper makes the case that a distinct, secular rule that takes gender equality into consideration should be framed for couples who choose to live together, given the challenges encountered by individuals who volunteer to follow this new

trend of cohabitation.<sup>1</sup>

### **Live-in relationship under Indian law**

1. A significant unmarried female and a significant unmarried male living together in the home. It is thought to be the most basic type of relationship there is.
2. A large unmarried woman and a married man mutually went into domestic cohabitation. a mutually agreed-upon home cohabitation between a significant single guy and a married woman. In India, these two are the most common kinds of live-in partnerships. Furthermore, a relationship type that is illegal under the Indian Penal Code, 1860, is adultery.
3. The Indian Penal Code, 1860, likewise prohibits the unintentional entry of a married man into a household cohabitation between a substantial unmarried woman.
4. It is not possible for homosexual partners living together in the same home to get married. There is now no specified matrimonial legislation for homosexuality, just like in India.<sup>2</sup>

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### **Essential Factors to mark live-in relationship legal:**

A relationship 'like marriage' under the 2005 Act must consent to some essential criteria which were stated by the Supreme Court in *D Patchaiammal v. D Velusamy*<sup>5</sup> and *Indra Sarma v. V.K.V.Sarma* case. Women in such relationships need to fulfil specific criteria to be benefited

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<sup>1</sup> Domestic Violence Act (PWDVA) 2005

<sup>2</sup> "AN ANALYSIS LIABILITY OF GOVERNMENT IN TORT"

under PWDA,

**Age:** In accordance with Indian law, the intending couple must be majors and of legal age to marry. In the case of *Payal Katara v. Superintendent NariNiketan Kandri Vihar Agra and Ors.*<sup>7</sup>, the Allahabad High Court declared<sup>3</sup> that "a lady of about 21 years of age being a major, has right to go anywhere and that anyone man and woman even without getting married can live together if they wish". Though the Kerala High Court recently ruled in *Nandakumar v. The State of Kerala*<sup>8</sup> that an adult couple could cohabit even if the man's age is under 21, which is the legal marriage age.

**A considerable period:** Section 2(f) PWDA refers to "at any point of time," which denotes a significant or acceptable amount of time to sustain and extend a relationship. Though it may differ from case to case based on the factual circumstances (Rajagopal, Krishanadas, 2010). One should not take their partnership for granted. To establish the legality of the relationship, there must be some sincerity and seriousness about it. A one-night fling or a week-long affair cannot be considered a domestic partnership preview. As per the ruling in *Madan Mohan Singh v. Rajni Kant*<sup>9</sup>, a long-term live-in relationship cannot be classified as a "walk-in and walk-out" relationship because there is an assumed marriage between the parties.

**The pair must have chosen to live together voluntarily:** This is a key requirement for a live-in relationship. The couple must have made the decision on their own and had the same objective. To demonstrate their commitment to one another and the longevity of their partnership, they should assist one another, share roles and responsibilities, make financial agreements, socialise in public, and take other actions (Auroshree, 2019).

### **Legal Status of Live-In Relationship In India**

The phrase "live-in relationship" describes the home cohabitation of two single people, despite its lack of a defined definition. Living together is a growingly common idea among couples. On the other hand, it may be argued that tier 1 and metro areas have higher prevalence, particularly among young people who aspire to be upwardly mobile. For a variety of reasons, people choose live-in relationships over marriage.

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<sup>3</sup> *Payal Katara v. Superintendent NariNiketan Kandri Vihar*

Before tying the knot, couples frequently turn to live-in relationships as a way to see if they are compatible. It gives them a greater chance to get to know one another and make wise choices when it comes to important commitments like marriage.<sup>4</sup>

In nations such as India, where divorce is socially disapproved of and stigmatised, live-in partnerships provide for separation free from government intervention.

Nonetheless, premarital sex is strongly frowned upon in Indian society. As a result, living together prior to marriage is frequently seen as morally dubious, culturally improper, and against accepted social norms. As a result, despite the fact that some people have publicly welcomed the idea, live-in couples nevertheless encounter social hostility because of conservative mentalities.

However, the Indian court has repeatedly stepped in and given couples who are living together a break, protecting each person's right to privacy.

Article 21 of the Indian Constitution establishes the legal foundation for cohabitation. This unalienable fundamental right consequently gives rise to the freedom and right to choose to live with someone or get married.

## CASE LAW

The Supreme Court upheld the notion that a man and a woman could cohabit voluntarily even in the absence of marriage in the case of **Payal Sharma v. Nari Niketan**. Distinguishing between legality and ethics, the Court stated that although cohabitation may be viewed as unethical by some, it is neither unlawful nor criminal. Living together and continuing a live-in relationship does not make two people criminal. It made clear that live-in relationships are neither illegal nor sinful, despite the fact that they are socially unpleasant in some areas of India.

A couple's 50-year relationship was given legal recognition by the Supreme Court in the case of **Badri Prasad v. Director of Consolidation**. The bench declared that there was a strong presumption in favour of wedlock because the couple had lived together for a considerable amount of time. Additionally, the law supported the validity of their partnership.

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<sup>4</sup> Superintendent Nari Niketan Kandri Vihar Agra and Others v. Payal Katara.

Furthermore, a great responsibility is on any third party attempting to refute such an assumption.

**Indra Sarma v. V.K.V. Sarma** is a notable case in which the Supreme Court discussed live-in relationships in great detail. The ruling in this case provides a fundamental framework or guidebook for issues pertaining to cohabitation.

The Court cited Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (henceforth referred to as the "Act"), which defines the phrase "domestic.<sup>5</sup>

Relationship," in its explanation of the legal sanctity accorded to live-in couples.

The Act's definition of "domestic relation" states that

*“(a) relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”*

The bench in the aforementioned case determined that live-in partnerships are included under the definition of "relationship in the nature of marriage."

It is important to remember that not all live-in relationships are covered by the Act's requirements. In this context, the Court upheld the standards established in Velusamy, which were: (i) presenting oneself to society as akin to a spouse; (ii) being of legal age; (iii) otherwise competent to enter into a legal marriage; and (iv) voluntarily cohabiting for a substantial amount of time.<sup>6</sup>

## RESEARCH OBJECTIVE

- To ascertain the reason behind cohabitation.
- Examine the sociocultural implications of these relationships.
- To examine the legal aspects of cohabitation and the legal standing of cohabiting couples

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<sup>5</sup> Payal Sharma v. Nari Niketan.

<sup>6</sup> FAMILY LAW 2

and their children.

- To learn about live-in couples' joint rights and level of commitment.
- The Impact of Live-in-Relation among the young generations in India.

Participants in the research study

People from various Indian cities will be included in the research study's population in order to better understand the factors and motivations behind people's decisions to choose or not choose to live together. These people could be of any age group.

### **Legal Status of Children Born Out of Live-in Relationship**

For the first time, children born out of live-in partnerships were granted legal validity in the **Balasubramanyam v. Suruttayan case**. The Supreme Court ruled that Section 114 of the Evidence Act will presume marriage for a man and woman who share a roof and live together for a significant amount of time. As a result, any children they have will be regarded as legitimate and entitled to a portion of their ancestral property.

The Supreme Court gave children born into live-in partnerships a share of their parents' property in the **Bharatha Matha v. Vijeya Renganathan case**. The Court ruled that children born within live-in couples could not be considered illegitimate if the relationship lasted long enough.

The Kerala High Court has recognised a kid born within a live-in relationship as a child born to a married couple for adoption purposes, in an noteworthy ruling.

### **Conclusion**

People in live-in relationships are not protected under a set of rules or regulations because of legislative ignorance. A string of comparatively progressive court rulings is largely responsible for the current live-in legal structure in India.

The Indian judiciary has demonstrated the distinction between constitutional morality and societal morality on several occasions by preserving the rights of those in live-in relationships and legitimising them.

The validity of cohabitation has been interpreted by the Supreme Court and several other higher courts in respect to laws including the Evidence Act, the Domestic Violence Act, and the Criminal Procedure Code.

Therefore, women in live-in partnerships are entitled to property and maintenance under current legal positions.



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