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## **Live-in Relationship in India**

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### **ABSTRACT**

In Indian society, live-in relationships are a developing notion. The society, on the other hand, does not value live-in relationships and considers them taboo. Despite this, such partnerships are becoming increasingly popular among today's youth. Many legal concerns occur as a result of this, the most serious of which is the lack of particular legislation governing live-in relationships. In this backdrop, the courts are actively working to ensure that justice is served to everybody. With the use of determined case laws, this article attempts to understand the current legal status of live-in relationships in India.

### **INTRODUCTION**

The concept of a live-in relationship isn't indigenous to India. It is based on the western way of life. Live-in relationships are becoming increasingly popular in India, particularly in metropolitan areas. To avoid the difficulties of divorce, the younger age prefers such relationships to evaluate compatibility. It also appears to be a secular concept. In most parts of India, this concept is mostly disapproved.

The majority of Indians, particularly the older generation, believe that marriage is a sacrament that is required for legalizing sexual relationships between men and women. They argue that live-in relationships destroy the social fabric of society, causing confusion, and thus should not be recognised.<sup>1</sup> Persons who have not solemnised a marriage cannot have their safety, security, or liberty jeopardised for social or moral reasons.<sup>2</sup>

Article 21 of the Indian Constitution protects live-in relationships by guaranteeing the right to life and personal liberty. Such relationships are not governed by any laws. However, the courts through various case laws have repeatedly attempted to build on this concept while upholding the sanctity of the Indian Constitution. This article focuses on the concept of live-in relationship as

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<sup>1</sup> Lakshay Kumar, "Live-in Relationship and its impact on Indian Society", available at: [https://fastforwardjustice.com/live-in-relationship-and-its-impact-on-indian-society/#\\_ftn3](https://fastforwardjustice.com/live-in-relationship-and-its-impact-on-indian-society/#_ftn3) (Visited on June 6, 2021).

<sup>2</sup> Live-in is not living in sin, available at: <https://indianexpress.com/article/opinion/columns/live-in-is-not-living-in-sin-7325262/> (Visited on June 9, 2021).

developed by the courts in India. Further it throws some light on the pros and cons and challenges of live-in relationships.

### **MEANING**

In Indian law, live-in relationships were often analysed through the viewpoint of the English concept of a 'common law marriage'.<sup>3</sup> In contrast to a marriage, couples in a live-in relationship are not married to each other, but they do live under the same roof, which is similar to a marriage. It's referred to as cohabitation in legal terms.<sup>4</sup> The literal definition of live in relationship is two people living together without the intention of forming a long-term relationship. This type of partnership arose mostly for the sake of convenience. A live-in relationship is a consensual arrangement in which two people agree to live together for the duration of a long-term relationship similar to marriage. There are no stipulations in these relationships because the participants are not bound by any formal agreement. The lack of legal duties in such a relationship produces a situation in which the two parties are neither obligated to keep any commitments made to each other during the relationship nor permitted to file a complaint if such commitments are broken. The court stated that two people who live together but do not have a formal marriage are not criminals.<sup>5</sup>

### **PROS AND CONS OF LIVE IN RELATIONSHIP**

The benefits of live-in relationship are:

1. There are fewer social or financial obligation to the relationship.
2. There are no concerns of divorce because the parties have no legal connection.

The cons of live-in relationship are:

1. As society does not recognise such unions, survival becomes difficult.
2. Because there is no commitment between the partners, the women are more likely to be exploited or abandoned.

### **LAWS REGARDING LIVE-IN RELATIONSHIP**

Many changes have occurred in the institution of marriage in recent years. Other than planned marriages, no other types of marriage were accepted in society. With the passage of time, the public's perception of society has shifted. Other types of marriage, such as love marriage, have become acceptable in society. All of this was a result of Western culture. A new arrangement for living together as husband and wife, known as a live-in relationship, is gaining popularity among

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<sup>3</sup> Sarthak Wadhwa, "The Right to be in a Live-in Relationship", available at <https://lawschoolpolicyreview.com/2020/10/30/the-right-to-be-in-a-live-in-relationship/> (Visited on June 6, 2021).

<sup>4</sup> Sanjhna Vivekanand & Nandita Sridhar, "Live-in Relationship", available at <https://www.lawaudience.com/live-in-relationship/> (Visited on June 6, 2021).

<sup>5</sup> Ramdev Food Product (P) Ltd. v. Arcindbhai Rambhai Patel, (2006) 8 SCC 726.

the youth population. The social structure of society is being affected by this transformation. This new lifestyle has resulted in many of the legal problems.<sup>6</sup>

Despite the fact that a live-in relationship is the same as marriage, neither the Hindu Marriage Act of 1955 nor the Muslim Personal Laws cover it. Live-in relationships are currently unregulated by law. There are, however, some safeguards in designed to safeguard women in such situations. The Protection of Women from Domestic Violence Act of 2005 was the first act to legitimise live-in partnerships by providing rights and protection to women who are in such partnerships. The Act provides that “a relationship between two persons who live or have, at any point of time, lived together in a shared household, marriage, or through *a relationship in the nature of marriage*, adoption or are family members living together as a joint family”.<sup>7</sup> Though the act does not mention live-in relationships expressly, the phrase "a relationship in the nature of marriage" indicates as much. It is up to the court to decide how to interpret it. This rule protects women from exploitation in these types of relationships.

Another such law is Section 125 of the Code of Criminal Procedure, where judicial interpretations have expanded the definition of "wife" to include female partners in live-in relationships. In November 2003, a committee on criminal justice reforms was formed.<sup>8</sup> The committee made several recommendations, one of which was to change the definition of "wife" to include women who were formerly in a live-in relationship but who have since been abandoned at the will of their partner, so that a woman in such a relationship can get the status of wife. This clause protects the lady from destitution and vagrancy by allowing her legitimate rights.

Another such provision is Section 114 of the Indian Evidence Act, 1872, which states that if a man and a woman live together for a long period, their marriage will be presumed.

## **JUDICIAL ENDEAVOUR**

The Supreme Court granted the partner of a live-in relationship the status of wife in *Chellamma v. Tillamma*<sup>9</sup>. The court stated that, in their perspective, a man and a woman can live together even if they are not married. Although this is considered unethical by society, it is not prohibited. There is a distinction to be made between law and morality. The bench went even farther, stating that children born to such a parent would be considered legitimate. They have ownership of their parents' belongings.

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<sup>6</sup> Antariksh Anant, “Live in Relationships: Changing Dimensions of the Institution of Marriage”, available at: <https://www.legalbites.in/live-in-relationships/> (Visited on June 6, 2021).

<sup>7</sup> Section 2(f), Protection of Women from Domestic Violence Act, 2005.

<sup>8</sup> Committee on Reforms of Criminal Justice System, available on [https://www.mha.gov.in/sites/default/files/criminal\\_justice\\_system.pdf](https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf) (Visited on June 7, 2021).

<sup>9</sup> AIR 2009 SC 112.

In *Alok Kumar v. State of Delhi*<sup>10</sup>, the court referred to a live-in relationship as a "walk-in walk-out" relationship since there are no strings tied to it and it does not create any legal commitment between the parties like marriage does. As a result, if people want to have such relationships, they cannot afterwards complain about infidelity or immorality.

On the contrary, in *Madan Mohan Singh & Ors. v. Rajni Kant & Anr.*<sup>11</sup>, the court determined that a long-term live-in relationship cannot be classified as a "walk in, walk out" relationship, and that there is a presumption of marriage between the parties. In relation to the legality of live-in relationships, the court upheld Section 114 of the Indian Evidence Act, 1872, which states that "the court will presume a relationship between an adult man and an adult woman to be of the nature of marriage if the two individuals have lived together for a satisfactory period of time and reliable evidence supports such a cohabitation".

A remarkable decision given in *S. Khushboo v. Kanniammal & Anr.*<sup>12</sup>, a three-judge divisional court confirmed the legitimacy of live-in partnerships under Article 21 of the Indian Constitution. Even if cohabitation between consenting adult male and female is regarded immoral in conventional culture, the bench found that it cannot be characterised as criminal or immoral. Furthermore, every Indian citizen has a fundamental right to life and personal liberty, which cannot be taken away in the case of consenting people cohabiting.

The High Court denied the appellant maintenance under Section 125 of the CrPC, stating that only married women are entitled to maintenance in *Virendra Chanmuniya v. Chanmuniya Kumar Singh Kushwaha & Anr.*<sup>13</sup>. The matter was taken all the way to the Supreme Court, where it was dismissed. After that, the lady was given support. The Court also determined that women in live-in relationships are entitled to all of the same rights and reliefs as legally married wives.

In the case of *Indra Sarma v. VKV Sarma*<sup>14</sup>, the Supreme Court stated that not every live-in relationship is equivalent to marriage. It was held that "when the woman who already has a legally wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife". However, in order to offer justice to victims of illegal relationships and children born into such relationships who are without a source of income, the court established guidelines for determining the connection, which are based on the following criteria:

1. The duration of relationship;
2. Sharing household within the meaning of Section 2(s) of the Domestic Violence Act;
3. Sharing of resources;
4. Domestic arrangements;

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<sup>10</sup> 2010 SCC OnLine Del 2645.

<sup>11</sup> (2010) 9 SCC 209.

<sup>12</sup> (2010) 5 SCC 600.

<sup>13</sup> (2011) 1 SCC 141.

<sup>14</sup> (2013) 15 SCC 755.

5. Sexual relationship;
6. Children;
7. Intention of the parties;
8. Manner of socializing of the parties.

### **STATUS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP**

The Supreme Court in *S.P.S. Balasubramanyam v. Suruttayan*<sup>15</sup>, held that “if a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate”. The Court further stressed Article 39(f) of the Indian Constitution, which requires the state to provide enough opportunities for children to develop properly and further protect their interests.

Even in the absence of particular legislation, the Indian judiciary has taken an active role in safeguarding the rights of such children. The courts have given the term a broader meaning, ensuring that no youngster is labelled a "bastard" without cause. In *Bharatha Matha v. R. Vijaya Renganathan*<sup>16</sup>, the Apex Court ruled that a baby born from a live-in relationship can inherit the parents' property and thus will be legitimate in the eyes of law.

### **CHALLENGES**

The lack of any separate legislation governing the laws and identifying the rights of the partners is one of the most significant challenges for live-in relationships. Children born into such situations face major consequences. They may deal with the social shame of being labelled as illegitimate by society. In the instance that their parents separate, they will be vulnerable to custody disputes. Another big problem is overcoming the conservative Indian society's social stigma and harsh condemnation of live-in arrangements. When same-sex partners are involved in a relationship, the severity of criticism increases. In addition, prenuptial agreements for live-in partnerships are not recognised in India.<sup>17</sup>

### **CONCLUSION**

The Indian society is no longer unfamiliar with the concept of a live-in relationship. It is, nevertheless, regarded as a threat to the societal framework. Such a connection is not illegal in law, nor does it constitute the commission of any crime, and so such people are entitled to the

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<sup>15</sup> (1994) 1 SCC 460.

<sup>16</sup> AIR 2010 SC 2685.

<sup>17</sup> Saachi Shukla, “Live-in relationships in India: pervasive myths, social stigma and legal status”, available at: <https://www.samvidhi.org/post/live-in-relationships-in-india-pervasive-myths-social-stigma-and-legal-status> (Visited on June 9, 2021).

same legal protection as any other citizen of the country.<sup>18</sup> The Indian judiciary has recognised live-in relationships under Article 21 of the Constitution and provided justice to those who have been victims of such relationships through various case laws. After a specified period of time, live-in relationships should be granted legal status. The formulation of law in this area will be effective in providing security to women and removing other related uncertainties. The law must address issues such as inheritance, succession, legitimacy, custody, and maintenance, as well as the parties' rights and obligations.

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<sup>18</sup> Available at <https://indianexpress.com/article/india/live-in-relationships-punjab-haryana-court-7323257/> (Visited on June 8, 2021).