



LEGAL STATUS OF RELATIONSHIP AND RIGHTS CONFERRED: INDIAN PERSPECTIVE

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ABSTRACT

Live-in relationships, an evolving social concept, refer to the domestic cohabitation of unmarried adults. While these relationships are gaining acceptance in urban areas due to changing lifestyles and societal attitudes, they continue to be forbidden in many parts of India due to traditional beliefs and cultural norms. Despite receiving an explicit legal framework, it is shaped by judicial interpretations and existing statutes. Several provisions indirectly acknowledge and protect individuals in live-in relationships. Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which extends to living with a person they choose. The Domestic Violence Act, of 2005, recognizes the rights of women in live-in relationships by granting them protections similar to those available in marriage. Section 125 of the Criminal Procedure Code (CrPC) also allows women and children in such relationships to claim maintenance, ensuring financial security. Although live-in relationships may appear to be free from legal obligations, they come with complexities, responsibilities, and legal liabilities. Issues such as property rights, inheritance, child custody, and the increasing prevalence of such relationships, there is a growing need for comprehensive legislation to provide clear guidelines and protect the rights of individuals involved. This article explores the legal status of live-in relationships, the benefits provided by existing laws, and the need for legislative reforms to address associated challenges.

Keywords: Live in Relationship, Factors, Supreme Court, Rights, Personal Laws, Society.

INTRODUCTION

Living in a relationship is the cohabitation of two individuals without entering into the institution of marriage. This form of relationship does not believe in the responsibility arising

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from marriages, The judiciary plays the role of shaping the land space for the legality of this relationship. Certain factors will give legality to this relationship.

However, India has less history in this relation, which harder for the society to accept the concept. Due to evolving Western culture, this may become casual in decades. The family and society refused individuals involved in this relationship. Protection of Women from Domestic Violence Act, 2005 is the act that expands the meaning by including women in live-in relationships. Due to various interpretations by the judiciary over the years, they provide property rights and the right to maintenance to women and the child. By bringing Legislative or regulation for live-in relations can be brought in India as a whole to regulate and register, this will ultimately reduce the crimes that come from this relationship.

CONCEPT OF LIFE IN RELATIONSHIP IN INDIAN SOCIETY

Living in a relationship is an arrangement of staying together by two individuals with consent and without entering into the institution of formal marriage.¹ Unmarried partners resemble marriage without formally getting married. This concept is not a novel idea, they have evolved with human civilizations. The partners in the relationship will not have any formal responsibility to maintain the partner and will enjoy freedom in that relationship.

In India, the concept of a live-in relationship is taboo. Living together before marriage was considered a crime or offense for a long time. Before this, it was considered adultery. Socially, this was not accepted among the people. However, due to human evolution, this was practiced in urban areas like metropolitan citizens. The persons in that relationship face much opposition from society, even from their family, because Indians do not have any history of living in a relationship.

STATUS UNDER DIFFERENT PERSONAL LAWS

Christians: Believe that the Christian were woman (Eve) was created from the rib taken out of a man, that is why a man leaves his father and mother and lives with his wife and they become one flesh. In the bible nowhere does it state that living in relation is an acceptable practice, they have said about some morality and control that people should follow. Paul states that they “*cannot control themselves, they can marry*”².

¹ Dr. Rajesh M Dave, ‘Legal Status of Live In Relationship In India’ [2019], (IJAR vol 9 issue 12) 17

² I Corinthians 7: 9

Hindus: Gandharva marriage is one of the eight types of marriage in Manusmirti, this marriage is about a couple living together, and a woman chooses her spouse. This type of marriage does not need the consent of the parents or to follow rituals. In Hindu law men and women cannot have sexual intercourse outside the institution of marriage and these types of relations have been strongly condemned and seriously punished. “Men who indulge in committing adultery with the wives of others, the king shall cause them to be marked by punishment such as cutting nose and lips which cause terror and afterwards banish them”³. According to Manu premarital relationships existed in the Vedic period and afterwards, but were a rare occurrence.⁴ The concept of living in a relationship is not novel in India, this is a Western concept, that is evolving in Indian society. Hindus consider marriage as sacred and they have strong presumptions about marriage and the legitimacy of its offspring from the time of marriage. *Kamesh Panjiyer V. State of Bihar*⁵, in this case, the Supreme Court held that marriages are made in heaven.

Muslims: In Islam, this type of illicit sexual relation is an evil per se which is known as zina. Zina means sexual intercourse outside the marriage stands for both adultery and fornication.

*Nor come nigh to adultery: for it is a shameful deed and an evil, opening the road to other evils.*⁶ *The woman and the man guilty of adultery or fornication flog each of them with a hundred stripes: let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the last day: and let a party of the believers witness their punishment.*⁷

Allahabad High on May 8, 2024⁸ The court states that “the Islamic tenant does not permit live-in relationships during the subsisting marriage. The position may be different if two persons being adults choose to lead their lives in a way of their own”

LEGAL STATUS OF LIVE-IN RELATIONSHIP

No law specifically addresses the live-in relationship. They were not protected or recognized by any of the personal laws like the Hindu Marriage Act, of 1955, the Special Marriage Act, of

³ Manusmirti IX:9

⁴ Wazida Rahman, ‘live in relationship and personal laws: a contemporary study’, [2018], NUJS journal of regulatory studies, vol.3, issue 3-4, 31

⁵ 2005) 2 SCC 388: 2005 SCC (Cri) 511

⁶ Quran 17: 32

⁷ Quran 24:2

⁸ ‘Muslims cannot claim rights in live-in relationship when having spouse: Allahabad HC’ (May 09, 2024 Lucknow) <https://www.thehindu.com/news/national/uttar-pradesh/muslims-cannot-claim-rights-in-live-in-relationship-when-having-spouse-allahabad-hc/article68156917.ece>. Last accessed on 16.12.2024

1954, or the Indian Succession Act. However, the legal status of live-in relationships was developed by the Indian judiciary in many cases over the years. *A Dinohamy v. WL Blahamy*⁹, the Privy Council laid down that “where a man and women are proved to have lived together as a husband and wife, the law will presume, unless the contrary be proved that they were living together in consequences of a valid marriage”. *Badri Prasad v. Dy. Director of Consolidation*.¹⁰ This case held that in India live relationships are legal but subject to caveats like age of marriage, consent, and soundness of mind. In 2006, in *Lata Singh v. State of UP*¹¹ The Supreme Court ruled that 2 people of the opposite sex living together are not doing anything illegal. *Tulsa v. Durghatiya*¹² Also upheld the same.

In the case of *S.Khushboo v. Kanniammal*,¹³ the Supreme Court of India has said that living in a relationship is not a criminal offense or immoral and that adults have the right to live together even if they are not married. This case recognizes the live-in relationship. In many other cases court provided certain rights to the person living in a relationship. These rights were limited to the conditions. Live-in relationship partners do not have the same legal rights as married couples. National Commission for Women 2008¹⁴ Has recommended amending the definition of wife in sec 125 of CrPC to include women in live-in relationships aiming to extend legal protections. The Justice Malimath committee¹⁵ Advocated for long-term cohabitation as marriage a suggested amending the CrPC to allow maintenance for the woman in a live-in relationship. This expands the definition of wife which also includes women in live-in relationships.

THE FACTORS FOR LEGAL LIFE IN A RELATIONSHIP

Not all living in a relationship will be considered as the legal one there are certain conditions to attain legal status and rights. Supreme Court laid down certain criteria in *Velusamy v. D Patchaimal, and Indra Sarma v. V.K.V Sarma*.¹⁶

⁹ (1928) 1 MLJ 388 (PC)

¹⁰ AIR 1978 SC 1557

¹¹ Choudhary Laxmi Narayan, Mridula Narayan, and Mridul Deeoanshu, 'Live In Relationship In India- Legal And Psychological Implementations, [2021](Journal of psychosexual health) 9

¹² (2008) 4 SCC 520

¹³ (2010) 5 SCC 600

¹⁴ Uzma Abbas, 'Live In Relationship In India: A Critical Study, [2024], (IJCLLR) 140

¹⁵ Pro: Dr.Priya Setaha, 'Live In Relationship In India: Laws And Challenges', [2021], (LCJLS, vol I, issue II) 9

¹⁶ CrI. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448.

Age: The intended couple should attain the age of majority.¹⁷ As per Majority Act 1875, if they do not attain a majority and enter into the relationship that will attract the POCSO Act. Not only the majority they should have legal age to marriage i.e. for men 21 yr. For girls 18 yrs. However, in the case of *Nandakumar vs The State of Kerala*,¹⁸ The Kerala Court held that an adult could be in a relationship even if the man's age is below 21 years. Which is the legal age for marriage but this was overruled in *Pushpa Devi v. State of Punjab*.¹⁹

Significant period and voluntarily cohabited: At any point of time mentioned under sec 2(f) PWDA, which means a significant or reasonable period to maintain and continue a relationship in such period party should voluntarily cohabit. *Madan Mohan Singh v. Rajni Kant*²⁰ The live-in relationship if continued for a long time, can't be termed as a walk-in and talk-out relationship and there is a presumption of marriage between the parties. Spending a week or a one-night stand cannot come under the preview of domestic violence.

Marital Status: The Supreme Court has given 5 illustrative categories where the concept of life in relation can be considered and proved in a court of law in the case of *Indra Sarma v. V.K.V Sarma*.²¹

- a) Live in a relationship between an unmarried man and a woman, which is an uncomplicated relationship.
- b) Live in Relation between married men and unmarried women where unmarried women knowingly enter into relationships with married adult men.
- c) Live in Relation between married women and unmarried men where Unmarried men knowingly enter into a relationship with married women.
- d) Live in a relationship between unmarried women who unknowingly enter into a relationship with a married adult male.
- e) Live in a relationship between same-sex partners (gay and lesbian) although PWDA does not recognize such a relation and that can't be termed as a relationship like marriage under the act.

Where 2 married persons or one married and another unmarried person knowing are staying together do not have a legal basis.

¹⁷CRWP-8809 of 2021 <https://indiankanoon.org/doc/169608533/> Last accessed on 16.12.2024

¹⁸ CrI. App. No. 597 OF 2018

¹⁹ CWP 10878 of 2021

²⁰ 2010) 9 SCC 209; AIR 2010 SC 2933

²¹ CrI. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448.

RIGHTS CONFERRED TO WOMEN AND CHILD

Provisions that relate to live-in relationships:

Constitution of India: The foundation for the legal recognition of live-in relationships in India from Art 21, which guarantees the right to life and personal liberty, this has been expended by the interpretation of the court that right encompasses the right to live with a partnered one's choice, irrespective of marital status. This right to life emphasizes the freedom of an individual to enjoy life by all means unless prohibited by law.

The Hindu Marriage Act 1955: To recognize the right of women to maintenance from their husbands in case of separation. In *Payal Sharma v. N. Talwar* 2018, the Delhi High Court held that under the Hindu Adoption and Maintenance Act, 1956 a child born out of such a relationship is entitled to maintenance, and under the Hindu Marriage Act, 1955 a woman in a live live-relationship is entitled to the same rights as a legally wedded wife.

Protection of Women from Domestic Violence Act, 2005: Domestic Violence Act protects women in domestic relationships. In the first legislation that recognizes the right of the person in the relationship²² *D. Velusamy v. D. Patchaiammal*²³, the Supreme Court laid down certain to determine whether a relationship between 2 adults who are not married, qualifies as a “relationship the nature of marriage” and is within the orbit of domestic relationship under this act. Sec.2 (f) defines domestic relationships including live-in relationships. *Indra Sarma v. V.K.V. Sarma*²⁴ In this case, the court also held that women alive in a relationship are entitled to protection under the Domestic Violence Act. Sec 2(ha) of the amendment bill 2022 defines “live-in relationship as a domestic relationship between two persons cohabiting for a reasonable period without marriage and who adults are as per the majority act, 1875 and have legal age to marriage”. Protection of Women from Domestic Violence Rules, 2006 The rules made under the Domestic Violence Act provide for the procedure for application for protection orders, residence orders, and monetary reliefs by women. This act also extends certain economic rights to female partners in live-in relationships.

Sec. 125 of the Criminal Procedure Code: Irrespective of religion one can claim for the maintenance under sec 125 of CrPC. *Ajay Bhardwaj v. Joytsna*²⁵ The court extended the

²² Manju Jamwal, ‘live in relationship in India: legal moves and judicial attitudes: some observations’, [2014], (RGNUL Law Review, vol IV) 1

²³ (2010) 10 SCC 469

²⁴ CrI. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448.

²⁵ CrI. Revision No. (F) 166 of 2015 (O&M) Date of Decision: November 23rd, 2016

protective ambit of section 125 CrPC to partners in live-in relationships. In the case, *Abhijit Bhikaseth Auti v. State of Maharashtra*²⁶ Held that women are not required to prove marriage to seek maintenance under sec 125 CrPC of women in live-in relationships are also entitled to maintenance.

Not only women but also children can claim maintenance under sec 125 of CrPC. The child born in that relationship is not considered to be an illegitimate child. They were considered to be legitimate and have inheritance rights. *Tulsa v. Durghatiya*, if the parents lived under the same roof in cohabited for a considerable time, the child would not be considered illegitimate.

Property Right: There is no express or automatic right to inheritance for live-in partners. *Velusamy v. D. Patchaiammal*²⁷ The Supreme Court held that a partner may have the right to property acquired during the substance of the relationship if she has contributed to its acquisition. *Revanansiddappa v. Mallikarjun*²⁸ The Supreme Court approved the inheritance to the 4 children born out of living in a relationship are legal heirs, not denied for inheritance. *Bharatha Matha v. R. Vijaya Renganthan*²⁹ held inheritance allowed to parents' ³⁰Self-acquired property but not ancestral property.

IMPACT IN TRADITIONAL INSTITUTION

Due to this live-in relationship the institution of marriage was affected, marriage is one of the traditional institutions that control the social orders like “one for one”, but this live-in relationship changed the notion of marriage as the primary institution for the intimate relationship and family institution. They feel they have less responsibility compared to marriage, this may impact the rate of marriages because this cohabitation mainly focuses on intimation and reduces the responsibility in that relation. This will also reduce the rate of divorce because this serves as a trial for the couple before marrying. This will lead to a more diverse family structure; this will also influence how society defines family roles and parenting.

²⁶ AIR 2009 (NOC) 808 (BOM.)

²⁷ (2010) 10 SCC 469

²⁸ (2011) 11 SCC 1

²⁹ (2010) 11 SCC 483

³⁰ Hindu Succession Act 1956, sec 16

THINGS TO WATCH OUT

Live-in relations are increased nowadays which also pay the way of many offenses like rape, murder, etc., for example, the murder of shraddha walker at 26 yrs. Old ³¹ Was butchered into 35 pieces by her boyfriend in Delhi and her boy was stored in a refrigerator planned to be disposed of around the city. And many other cases. These offenses are increasing because no law binds them, they do not need to register their relationship as like marriage, and they don't have any responsibility.

Abhishek Chouhan v. State of Madhya Pradesh 2022:³² MP High Court described the live-in relationship as a byproduct of Art 21 of the constitution. Court also above that such relationships foster sexual activity and lascivious behavior giving rise to sexual crime.

Chawali v. State of UP:³³ Allahabad High Court stated that “in some cases living in a relationship may lead to negative outcomes, such as sexual exploitation, physical violence, emotional abuse or involvement in crimes” A Public Interest Litigation (PIL) was filed in the Supreme Court for registration of live-in partners in India. The PIL submits that since there are no rules and guidelines covering live-in partnerships, there has been a vast increase in crimes by live-in partners, including major crimes like rape and murder court held that ‘Even if a law is made, enforcing it doesn't guarantee lower crime rates within live-in relationships’.

Many countries have regulations or legislation to confer the right of individuals in that relationship following countries like,

Canada: Living together in an unmarried union is recognized as a “Common law relationship” in Canada. However, they have to live together in the same household for a period of a minimum of 12 months without an interval. The persons involved in this cohabitation have to enter into an agreement in which they agree on their rights and responsibilities which is said under sec 53³⁴ Of Family Law Act, 1990. In most of the cases, they enjoy the same rights as married partners.

³¹ (New Delhi, July 23, 2024) <https://indianexpress.com/article/cities/delhi/shraddha-walkar-murder-case-court-dismisses-aaftab-poonawala-plea-9469849/> Last accessed on 16.12.2024

³² Misc. CrI Case No. 10627 Of 2022 <https://indiankanoon.org/doc/52221880/> Last accessed on 16.12.2024

³³ <https://indiankanoon.org/doc/81850711/> Last accessed on 16.12.2024

³⁴ Law Document English View (Ontario 14 April 1, 2015) available at: <https://www.ontario.ca/laws/statue/90f03#BK62> Last accessed on 16.12.2024

USA: In the United States of America, there exists the concept of a ‘cohabitation agreement’ which is a legal agreement that can be made by couples who wish to live together, comprising the specific mention of rights and liabilities under such agreements. This should have a valid requirement for a valid contract.

France: According to the French civil law article 515-8, cohabitation is defined as two same-sex or different people, who are unmarried or not in a civil partnership living together in a long-term relationship. On October 13, 1999, the French National Assembly passed the Bill amending the French Civil Code by inserting provisions for Civil Solidarity Pacts. A live-in relationship is governed by a civil solidarity pact in France known as ‘pacte civil de solidarité’, which defines cohabitation as stable and continuous of a couple of different sexes who stay together. They have to enter into a contract that should be signed before the court clerk.

India: Uttarakhand live-in relationship law.³⁵, which comes under the uniform civil code, 2024 part 3 exclusively deals registration of live-in relationships. This should be made applicable to the whole of India, this relationship to reduce the crime arising out of this. However, in India, it will take time to adopt this relationship as recognized in Western countries. Law should be made by considering the present existing problem and the problem which may likely arise, ensuring that a clear definition for life in relation should be provided which should reduce the myths that exist in the society, also considering this should not impede upon the institution of marriage. For registration, more than 3 months of cohabitation could be better because one is very short to know the intention.

“Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law and justice”-Aristotle. Accordingly, regulations should be made to bring humans into the social order.

CONCLUSION

It is characterized as a household cohabitation between a grown-up couple who are not hitched. Clearly, it shows up like a stress-free companionship without any legitimate commitments; alternately, it has numerous complications, duties, and legitimate liabilities. Live-in connections straightforwardly influence the status of spouses, children, and families. Nation

³⁵ Soutik Biswas, ‘Uttarakhand UCC: Indian state wants to govern live-in relationships’ 7 February 2024 <https://www.bbc.com/news/world-asia-india-68224969> Last accessed on 16.12.2024

like India, where non-marital cohabitation is not prevalently acknowledged, picking a live-in relationship may lead to the crumbling of familial ties in a young person's family.

This leads to a rise in criminal offenses and mental impacts on the up-and-coming eras. We can't entirely fault the nonattendance of the law, not as it is where the law can fathom this issue, which is very troublesome to make the law on this subject. Living in a relationship is not a lasting institution. It is transitory for a certain period. This relationship diminishes the commitment that emerges from marriage. Presently the more youthful era does not need any duty or commitment they need to live their life openly without making struck cultural standards like marriage. There is a thought that living in a relationship will decrease their duty and increase their flexibility in life. This mindset may lead to clutter in society, where marriage is as it were a social standard that directs society.