

## **Live-in Relationship in India: Laws and Challenges**

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### **Abstract**

Live-in relationship is prominently increasing in India as an easy way similar to marriage. It is defined as a domestic cohabitation between an adult couple who are not married. Apparently, it appears like a stress-free companionship without any legal obligations; conversely, it has many complications, responsibilities and legal liabilities. Recently attempts have been made to bring it in the ambit of some laws. It is no longer an offence in India and many guidelines pertaining to maintenance, property, the legal status of a child have been issued in various decisions of the Apex Court. Still it is a debatable issue in India. There are many grey areas which need appropriate attention like, official documentation, cultural issues, property rights, will and gift rights, anti-religion status, LGBT community and so on.

The primary focus of the article is on to comprehend the concept of live-in relationship with the help of secondary sources. Thereafter, an attempt has been made to study the problems and challenges faced by the couples with the help of descriptive and analytic methodology. Lastly, the article argues on the need for framing a separate, secular and gender-sensitive law for the couple opting to cohabit in a live-in relationship.

**Keyword:** live-in relationship, property, maintenance, same-sex, child rights

## **Introduction**

Live-in relationship is an association where two people cohabit outside marriage. The concept is already accepted and legalised in many countries around the world. As per the Apex Court, for a man and a woman in love to live together is part of the right to life'; therefore, a live-in relationship is no longer an offence. The Malimath Committee in 2003 paved the way for providing landmark recommendations. It is pertinent to mention that primarily it shed light on the term 'wife' and consider a woman in a live-in relationship alike wife. Thereafter, the Protection of Women from Domestic Violence Act (PWDVA) 2005, which is regarded as the first piece of legislation provided legal recognition to relations outside marriage, by covering it under the ambit of relations 'in the nature of marriage' (Anuja Agrawal, 2012). Many attempts have been made to bring it in the purview of some laws like domestic violence, maintenance, property, the legal status of a child, in order to regulate the dynamics of this new social order. Still, on moral and societal grounds it is always debatable and is yet a taboo in India.

Marriage in the Indian culture has been considered as a holy bond since the Vedic times. The idea of marriage has consistently advanced with time. With the continual development in society and human psychology, the concept of marriage and relationship has likewise advanced. The present generation is more generous and liberal about the idea and concept of cohabitation.

Though it seems like a quiet, comfortable and relaxed companionship and without any legal obligation towards each other, on the contrary, it also has many complications, responsibilities and legal liabilities.

## **Research methodology**

In this article, the research methodology is doctrinal in nature. The primary focus is on to comprehend the concept, laws, Act, books, news, and cases pertaining to a live-in relationship in India and understand the dynamics of this new social order. Thereafter, an attempt has been made to study the problems and challenges faced by the couples with the help of descriptive and analytic methodology. Lastly, in the context of the problems being faced by those who volunteer to embrace this emerging trend of cohabitation, the paper argues on the need for framing a separate, secular and gender-sensitive law for the couple opting to cohabit in a live-in relationship.

## **Marriage and live in**

In India marriage, since the Vedic period has been considered as a sacred bond. Marriages in India take place either following the personal law of the religion to which a party belongs or following the provisions of the Special Marriage Act. Marriage, as per the law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other.

The notion of marriage has advanced with time. Marriage is usually defined as one of the fundamental civil rights after the official ceremony. It has legal significance and envisages several obligations and responsibilities, in the matter of inheritance of property, successorship, and so on. Marriage, consequently, includes lawful prerequisites of custom, exposure, selectiveness and all the lawful outcomes that stream out of that relationship.

A live-in relationship has yet not been socially accepted in India, unlike many other countries. Nevertheless, with steady societal advancement and far-reaching intricacies of marriage, people are opting for an alternative institution like live-in-relation to form a lasting conjugal relationship, which is like marriage but out of marriage.

## **Live-in relationship is not an offence**

The Apex Court in its various judgments has stated that if a man and a woman living like a husband and a wife in a long-term relationship and even have children, the judiciary will presume that the two were married and same laws would be applicable to them and their relationship. The concept of a live-in relationship was recognised in *Payal Sharma v. Nari Niketan*<sup>1</sup> by the Allahabad High Court, where it is observed by the Bench consisting of Justice M. Katju and Justice R.B. Misra that, "In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but it is not illegal. There is a difference between law and morality." Afterwards, in *S. Khushboo v. Kanniammal & anr*<sup>2</sup> case, the Supreme Court observed that live- in relation between two adults without formal marriage cannot be construed as an offence. Further, it is added that there was no law prohibiting live-in relationships or pre-marital sex.

Article 21 of the Constitution of India guarantees right to life and personal liberty as a fundamental right. In *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel*<sup>3</sup>, the Court observed that two

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<sup>1</sup> 2001 SCC OnLine All 332.

<sup>2</sup> (2010) 5 SCC 600

<sup>3</sup> (2006) 8 SCC 726.

people who are in a live-in relationship without a formal marriage are not criminal offenders. Therefore, live-in relationships are legal in India.

## **Protection of Women from Domestic violence Act 2005**

The Protection of Women from Domestic violence Act (hereinafter PWDVA) 2005 was perhaps the first legislature which has acknowledged live-in relationships by giving rights and protection to those females who are not lawfully married, nonetheless, they are living with a male under the same roof in a relationship, which is like marriage but not marriage, furthermore akin to wife, though not equivalent to wife (Auroshree, 2019).

Section 2(f) of the Domestic Violence Act, 2005 defines:

Domestic relationship means 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<sup>4</sup>.

Live-in relationship is not categorically defined in the Act but left to the courts for interpretation. The Court interprets the expression 'relationship in the nature of marriage' by virtue of the aforementioned provision. Presently, the provisions of PWDVA validate the individuals who are in live-in relationships and provides some fundamental rights to women to protect themselves from the abuse of fraudulent marriage, bigamous relationships and so on.

## **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*<sup>6</sup> case. Women in such relationships need to fulfil specific criteria to be benefited under PWDA, such as:

### **1. Age:**

The intended couple must be of legal age to marry, i.e., the couple should be major according to Indian law. The Allahabad High Court, stated "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"

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<sup>4</sup> S. 2(f) of the Domestic Violence Act, 2005.

<sup>5</sup> AIR 2011 SC 479.

<sup>6</sup> CrI. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448.

in Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Ors.<sup>7</sup> case. Although in a recent judgement of Nandakumar vs The State of Kerala <sup>8</sup>, the Kerala High Court held that an adult couple could be in a live-in relationship even the man's age is below 21 years, which is the legal age for marriage.

## **2. A significant period:**

The expression 'at any point of time' is mentioned under section 2(f) PWDA, which means a significant or reasonable period to maintain and continue a relationship. Although depending upon the factual situation, it may vary from case to case (Rajagopal, Krishanadas, 2010).

The relationship should not be taken for granted. There must be some sincerity and seriousness towards the relationship to prove it legal. Spending a week or a one-night stand cannot come under the preview of a domestic relationship. The live-in relationship if continued for a long time, cannot be termed as a "walk-in and walk-out" relationship and that there is a presumption of marriage between the parties stated in the Madan Mohan Singh v. Rajni Kant<sup>9</sup>. This approach indicates the intention of the Court in favour of treating long-term living relationships as a marriage rather than making it a new concept like a live-in relationship.

The Supreme Court, for the first time, recognised live-in relationship and gave legal validity to a fifty-year live-in relationship of a couple in the Badri Prasad v. Dy. Director of Consolidation. Justice Krishna Iyer held that a strong presumption arises in favour of wedlock where the partners have lived together for a long term as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin (Anuja Agrawal, 2012).

## **3. The couple must have voluntarily cohabited:**

Independent decision of the couple with a common intention to cohabit with each other is an essential criterion of live-in relationship. It includes supporting each other, sharing their respective roles and responsibilities, financial arrangements, socialisation in public and so on to prove the loyalty and endurance of their relationship (Auroshree , 2019).

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<sup>7</sup> 2001 SCC OnLine All 332.

<sup>8</sup> Nandakumar vs The State Of Kerala on 20 April, 2018, CRIMINAL APPEAL NO. 597 OF 2018 (Arising out of SLP (Crl.) No. 4488 of 2017)

<sup>9</sup>(2010) 9 SCC 209 : AIR 2010 SC 2933

If a man has a 'keep' whom he uses principally for sexual reasons or possibly as a maid/slave and maintains her financially, it would not be considered, as a relationship in the nature of marriage or equal marriage.

#### **4. Who may live together without marriage?**

The Supreme Court has illustrated five categories where the concept of live-in relationships can be considered and proved in the Court of law, as stated in *Indra Sarma v. V.K.V.Sarma*, case, 2013. They are:

- a) Live-in relationship between an unmarried adult woman and an unmarried adult male, which is a less complicated relationship.
- b) Live-in relationship between an unmarried woman and a married adult male, where an unmarried adult woman knowingly enters into a relationship with a married adult male.
- c) Live-in relationship between a married adult woman and an unmarried adult male where an adult married woman, knowingly enters into a relationship with an unmarried adult male.
- d) Live-in relationship between an unmarried woman unknowingly enters into a relationship with a married adult male.
- e) Live-in relationship between same-sex partners (Gay and Lesbians), although PWDA does not recognise such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act.

#### **Adultery**

The third category defined under above-mentioned categories is debatable as it approves the live-in relationship between a married adult woman and an unmarried adult male which was earlier treated as an offence under section 497 of the Indian Penal Code. However, in *Joseph Shine vs Union of India*<sup>10</sup> a five-judge Constitution bench of the Supreme Court on 27 September 2018 unanimously ruled to scrap Section 497, and it is no longer an offence in India.

It has been argued that the section violates two articles of the Constitution of India; Article 14, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" and Article 15 "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

While reading the judgment, Chief Justice Dipak Misra said, "it (adultery) cannot be a criminal offence," however it can be a ground for civil issues like divorce.

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<sup>10</sup> *Joseph Shine vs Union Of India* on 27 September, 2018, WRIT PETITION (CRIMINAL) NO. 194 OF 2017.

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

### **a. Legal status:**

The Supreme Court in *Tulsa v. Durghatiya*<sup>11</sup> held that a child born out of such a relationship would no longer be considered as an illegitimate child. The noteworthy prerequisite for the same is that the parents must have lived under the same roof and cohabited for a significant period which proves their sincerity towards the relationship.

*S.P.S. Balasubramanyam v. Suruttayan*<sup>12</sup> was the first case which approves the legitimacy of children born out of a live-in relationship. The Supreme Court 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." Additionally, the Court also interpreted Article 39(f) of the Constitution of India which direct its policies towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

### **b. Property rights:**

The Supreme Court in *Revanasiddappa v. Mallikarjun* approved the inheritance to the four children born out of the live-in relationship by considering them as 'legal heirs'. Therefore, the Court has guaranteed that no child may be denied their inheritance who are born out of a live-in relationship of a significant period of time.

In *Bharatha Matha v. R. Vijaya Renganathan*<sup>13</sup>, case also the Supreme Court provided legitimacy to a child born out of a live-in relationship in the eyes of the law and held that he might be allowed to inherit the property of the parents.

The Supreme Court held that a child born out of parents in a live-in might be allowed to inherit the property of the parents if any, but does not have any claim upon Hindu ancestral coparcenary property.

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<sup>11</sup> (2008) 4 SCC 520.

<sup>12</sup> 1994 AIR 133, 1994 SCC (1) 460

<sup>13</sup> (2010) 11 SCC 483 : AIR 2010 SC 2685.



## **Maintenance**

The Malimath Committee, i.e. the Reforms of Criminal Justice System was set up in November 2000, it submitted the report in 2003 after making several recommendations for 'offences against women'. One of the significant recommendations proposed was, to amend Section 125 of the Criminal Procedure Code (hereinafter CrPC) which is related to the maintenance rights of the 'neglected and dependent wife, children and parents (Anuja Agrawal 2012).'

The committee also pursued to extend the definition of 'wife' mentioned under Section 125 of CrPC to include a woman who was living with the man akin wife under the same roof for a reasonably long period.

However, the aforesaid criteria are necessary for any women who want to take benefit of PWDVA, which consist; right age, mutual and independent consent, a significant period and social status.

The objectionable conditions are if they are living for the period of a week, a month, a couple of months, one-night stand many relationships at a time, only for the sexual desire which does not show sincerity in the relationship.

In *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*,<sup>14</sup> the Supreme Court turned down the judgment of the High Court which declared that appellant wife is not entitled to maintenance on the ground that only legally married woman can claim maintenance under Section 125 CrPC and awarded maintenance to the wife (appellant) pronouncing that provisions of Section 125 CrPC must be considered in the light of Section 26 of the PWDVA, 2005. The Supreme Court held that women in live-in relationships are equally entitled to all the claims and reliefs which are available to a legally wedded wife.

Similarly, in *Abhijit Bhikaseth Auti v. State of Maharashtra and Others*<sup>15</sup>, the Supreme Court observed that a woman in a live-in relationship might also claim maintenance under Section 125 CrPC, it is not necessary to strictly establish the marriage to claim maintenance under section 125 of Cr.P.C.

Although, in *Indra Sarma v. V.K.V. Sarma*<sup>16</sup> a two-Judge Bench of the Supreme Court constituting of K.S.P. Radhakrishnan and Pinaki Chandra Ghose, JJ. held that "when the woman is aware of the fact that the man with whom she is in a live-in relationship and who already has a legally wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife and also to those who enter into a relationship in the nature of marriage" as per provisions of PWDVA, 2005.

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<sup>14</sup> (2011) 1 SCC 141.

<sup>15</sup> AIR 2009 (NOC) 808 (Bombay.)

<sup>16</sup> Crl. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448.

Nevertheless, then again in the same case only, the Supreme Court felt that denial of any protection mentioned under PWDVA, 2005 may be unjust for the victims. Therefore, the Supreme Court highlighted that the need of the hour is to extend the scope of Section 2(f) which deals with 'domestic relationships' in PWDVA, 2005 specially for a dependent, poor, illiterate along with their children.

## **Issues and challenges of live-in relationship**

Although, the live-in relationship has been legalised and many judgements are in favour of it, yet even now there are many issues which need a pivotal discourse. Some of the most complexed grey areas that still need to be addressed amicably are discussed below:

### **1. Societal and moral acceptance:**

Though a live-in relationship is legalised, it is still a taboo in Indian society and is considered as morally and ethically wrong. Indian society is sceptical about live-in relationship; therefore, couples usually face multifold problems like rejection from family, a problem in getting home for rent, refusal by the society, negativity at the workplace and so on.

### **2. Official documents**

In India, for all official documents, there is still no column for a live-in relationship. The couple face problems in having joint accounts, nominees name, insurance, visas and so on.

### **3. Cultural issues**

India is known for its diverse culture and religion. The impact of globalisation on human relations in our country has been unprecedented. The formally dominant family ties and values are witnessing rampant changes. Every religion has its perspective towards a live-in relationship. Anti-religion marriage is still a complicated issue and is only allowed under the Special Marriage Act, 1955. Live-in relationship is a step ahead, and Hinduism and Islam do not accept the concept, although Christianity somehow accepts it. In India belief, custom, usages and culture have a significant impact on people's mindset (Avantika Sarkar 2015). Subsequently, acceptance of new norms depends upon the prominence of their belief rather than any law. The emphasis must be given to address the complications of anti-religion live-in relationship, which is still a sensitive issue.

### **4. LGBT couple**

Commonly, society is indifferent towards providing benefits to the LGBT community and unwilling to accept their relationship. Even, in any laws and judgments of live-in relationship provision or discussion about for LGBT couple is lacking. No matter the Supreme Court has decriminalised consensual same-sex intercourse by scraping Section 377 of the Indian Penal Code, yet, India does not recognise same-

sex marriage and live-in relationship. Despite such liberal interpretation by the honorable Courts in the recent past, there is still lack of any marital law for the LGBT community in the Indian framework.

### **5. Property rights related to anti-religion and the LGBT community**

The major problem of live-in relationship is of inheritance and property rights. Presently, only under Hindu law property rights have been given to the child born out of a live-in relationship and that too of self-acquired property and not the ancestral property. Muslim law has its mechanism for distribution of property, and it has till date not made any attempt to initiate any debate on time. There is no provision for the LGBT community as well as pertaining to property rights. A LGBT couple cannot gift their property or cannot make a will for their live-in partner if they want. Without properly resolving such upcoming issues and codifying appropriate laws, there may be room for cheating, fraud and it may give rise to criminal battles in families over property issues<sup>17</sup>.

### **6. Gender biased**

PWDVA 2005, approves woman as a wife who is living with a man for a significant of time akin wife and many provisions are also in her favour, like, maintenance and property. Unfortunately, it does not provide any provision for men and LGBT couple. It is observed that many times men are charged with sexual abuse and taking advantage of a woman by making a false promise of marriage. It might be contradictory; in that case, there is no strengthen provision in favour of men. Similarly, there is no provision for sexual abuse of a same-sex partner. These are some sensitive issues which need to be adequately flagged by codifying separate law on a live-in relationship.

## **Conclusion**

A live-in relationship might be an objectionable and new concept in India, but it is burgeoning all over. In this contemporary lifestyle, which is partially emerging due to the rapid impact of globalisation, people are not ready to take responsibilities and indulge in a full-time devoted relationship. For the youth voluntary relationship between couples based on the broader understanding of domestic cohabitation as well as recognition of pre-nuptial agreements, overall tolerance towards sexual preferences, etc. is a new attraction. Live-in relationship attracts them as a better way to live like marriage without marriage and any complications and worries, on the contrary, it needs much more responsibility and awareness on the socio-legal perspectives.

Today, the society and other organisations have also joined the judiciary in facilitating the legitimisation of the concept of live-in relationship, as the country is slowly opening its door to western culture, ideas and lifestyles. A notable step has been taken by the Madhya Pradesh State Women's Commission which

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<sup>17</sup> Ibid.

recommended that such unions be accorded legal status to secure the rights of tribal women in live-in relationships. Moreover, a unique event was organised by an NGO in Ahmedabad to help willing single senior citizens find companions.

The concept is gradually being accepted by the society now as a substitute for marriage but as an increasingly viable alternative. It is now legalised, and PWDVA 2005 protects some of the rights of women in this relationship. Nonetheless, there are many grey areas which need a pivotal discourse. There is a need for a separate law which should emphasize socio, legal and secular aspects also to solve these complexities which still exist in the live-in relationship.

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## **References:**

1. Avantika Sarkar, (2015) “Law, Religion and Conjugal Ties: A Study of ‘Live-in-Relationships’ in Contemporary Indian Society”, IJHRLR Vol. 1- Issue, ISSN 2455-5924.
2. Anuja Agrawal (2012), Law and ‘Live-in’ Relationships in India, Economic & Political Weekly, vol xlvii no 39.
3. Auroshree, “Live-In Relationship And Indian Judiciary”, The SCC blog online, <https://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/>, Retrived on 22/07/20.
4. Rajagopal, Krishanadas (2010). “Living together a part of Right to Life, not an offence: SC.” The Indian Express, < <http://indianexpress.com/> > retrieved on 20/07/20.