



# LEGAL CONUNDRUM OF LIVE-IN RELATIONSHIP IN INDIA: A JUDICIAL APPROACH

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## ABSTRACT

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The ideas of how men and women interact with one another and the attitude toward cohabitation, in general, have changed significantly with the advent of the post-modern or industrial society. "Live-in relationships" are an expression of a couple's decision to cohabit as a couple without getting married. The modernisation of the community has brought an array of new ideas and values. With the affection growing towards each other and the decision to tie the knot after taking into consideration all the prospects of a healthy marriage, youngsters these days believe in living together before marriage to test compatibility, known as "live-in relationships." However, with modernisation comes the traditional thinking of our culture and the mindset of people towards these practices. Acknowledging the legal implications of the "live-in relationship" along with the challenges youngsters are facing nowadays, this paper highlights the analysis of laws that govern this practice in India.

## INTRODUCTION

“Live-in relationship” refers to an arrangement of staying together as a partner in a home for a long period without getting married. In this arrangement, an unmarried partner cohabitates in such a manner that it resembles marriage without formally getting married. The traditional obligations of married life are not forced upon the people living together in this type of partnership. Individual freedom is the cornerstone of a live-in relationship. Many countries all over the world have adopted the concept of relationships. An arrangement where two persons live together without being married with their agreement is no longer illegal. “Live-in relationships” are not a novel idea; they have developed with human civilisation. “Live-in relationships” were more common before the concept of marriage. There were no weddings in the time before civilisation. Traditionally, people, especially men and women, lived in close quarters. The people did not have any regard in relation to “sapinda marriages”, and they were not concerned about the taboos associated with it. The institution of marriage was established in order to prevent disorder, confusion, and conflict in human relationships, to legalise cohabitation, and to gain social approval. The institution of marriage also has legal power because nearly every country in the world has passed laws regulating it. Indian culture regards marriage as sacred. Along with bringing two people together, it also brings two families together with diverse norms. Therefore, marriage is the greatest status institution in our society. The Supreme Court repeatedly reaffirmed that it is part of an individual’s right to life to live with each other if they are in love.<sup>1</sup>

The Commission<sup>2</sup> suggested to the “Ministry of Women and Child Development” that the definition of “wife”, as established in section 125 of the Cr.P.C, should be expanded to include women living together. The recommendation sought to equalise the status of a “live-in relationship” couple as a legally recognised marriage and harmonise the legal rules for protecting women from domestic abuse. Because of this, the SC established the “Justice

Malimath Committee”, which stated that “if a man and a woman are living together as husband and wife for a reasonable period of time, the male shall be judged to have married the woman.”

The Committee<sup>3</sup> recommended that the definition of “wife”, which is given in Cr.P.C, should also be amended and include women living in a “live-in relationship” so that the women can receive alimony in the case of domestic abuse. The SC held that in order to qualify for maintenance, there is no need to get married under section 125 of the Cr.P.C formally. The women living in “live-in relationships” are eligible for the demand of maintenance.

## CONCEPT OF MARRIAGE AND LIVE-IN RELATIONSHIP

The concept of marriage in India has been seen as a sacred institution from the very beginning. Traditionally it is built around dedication and tolerance and includes “the coupling of two people possessing different desires, interests and needs, is a special association given shape by social rules, and laws and significantly affects individuals’ development and self-realisation.”<sup>4</sup> Marriage as a concept has evolved over time. After the formal ceremony, marriage is typically regarded as one of the fundamental civil rights. It has legal implications and implies several duties and obligations with regard to succession, property inheritance, and other concerns. Marriage thus encompasses all of the legal criteria related to tradition, selection and exposure, as well as all of the legal outcomes that follow from such a union.

As we know that change is the rule of nature, and commitment has changed with the times. Now people are looking into alternatives to marriage. A “live-in relationship” is a voluntary arrangement where two adults agree to live together for a long-term relationship, which resembles a marriage.<sup>5</sup> If

1 Article 21 of the Constitution of India.

2 The National Commission for Women recommended on June 30, 2008.

3 Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs.

4 Melek Kalkan & Ercumend Ercanli, The Effects of the Marriage Enrichment Program Based on the Cognitive-Behavioral Approach on the Marital Adjustment of Couples, 8 Educational Sciences Theory and Practice 977 (2008).

5 Kalpana Vithalrao Jawale, Live-In Relationship: Recent Development and Challenges in India, SSRN Journal (2012).

we compare it with other countries, a “live-in relationship” is still not socially acceptable in India.

In this growing society, people want to believe in order to long-term conjugal relationships but are not interested in the marital knot and choosing an alternate institution like a “live-in relationship.” Basically, it is the result of the continual improvement of society and the intricate nature of marriage. “Live-in relationships” are “walk-in, walk-out relationships.” In such kinds of relationships, people do not have any legal obligation, and there are no strings attached between them. It is, in simple words, cohabitation.<sup>6</sup> We can also refer to this relationship as a way of living a life wherein unmarried couples reside with each other in a home in order to maintain a long-term relationship that will eventually lead to marriage.

## THE LEGALITY OF LIVE-IN RELATIONSHIP

No particular law in India acknowledges “live-in relationships.” Therefore, it is very clear that there is no legal definition of it, and it does not determine the rights and responsibilities of the parties as well as the status of any children born to such marriages. No Indian law, including the Hindu Marriage Act of 1955,<sup>7</sup> recognises a “live-in relationship.” The “Supreme Court of India” has held in many decisions that if two major persons (a man and woman) live together for a long period and procreate, the courts will assume they are married. They and their relationship would be subject to the same laws as are applicable to Indian marriages. Under Article 21 of the Constitution of India, living together with two major persons is a part of the right to life. The courts have explained the legal status of the “live-in relationship” in several cases and further held that it cannot be a criminal act.

In the case of **A. Dinohamy v. W.L. Blahamy**,<sup>8</sup> the “Privy Council” observed that if it is proved that two major persons are living together for a long period of time, it is a presumption of the law unless the contrary is proved beyond doubt that they were residing together in consequence of a valid

legal marriage, and not in a state of concubinage. In **Lata Singh v. State of U.P.**,<sup>9</sup> the court observed that even though the concept of a “live-in relationship” is considered immoral in society’s eyes, consenting adults of the opposite sex is not illegal in the eye of the law. In the case of **Badri Prasad v. Deputy Director of Consolidation**<sup>10</sup> Supreme Court held that few would be successful if a man and woman who are legally married and live as husband and wife had to demonstrate through eyewitness testimony that they were legally married fifty years back. Where the couples have cohabited for a considerable period as husband and wife, then there is a strong presumption in favour of marriage. Although the presumption can be rebutted, the burden of proof is on that person who wants to deprive the legal foundation of such a relationship. In the case of **SPS Balasubramanian v. Suruttayan**<sup>11</sup> Court reiterated the observation made in the Badri Prasad case along with the observation that observed that their children would be entitled to inherit the property of a parent, born to such a “live-in relationship.” In a landmark case of **Indra Sarma v. VKV, Sarma**<sup>12</sup> Supreme Court held that if both parties are unmarried and enter into a “live-in relationship” and several types of implications were examined, it does not fall under any offences.

In **Joseph Shine v. Union of India**,<sup>13</sup> case SC held that sec. 497 of the IPC is unconstitutional because this section was based on gender discrimination and violates Articles 14 (treating men and women unfairly) and 15 (discrimination on the ground of sex) of the Indian Constitution. However, adultery is no longer a crime but still could be grounds for divorce under civil law. In the same way, the apex court pronounced that Section 377 of the IPC is partially unconstitutional in **Navtej Singh Johar v. Union of India**<sup>14</sup> case and further said that it is not only unconstitutional but also irrational, indefensible and arbitrary and violating Articles 14, 15, 19, and 21 of the Constitution of India. Section 377 continues to apply to sexual acts committed against minors, bestial acts, and non-consensual actions between two adults. Despite the legalisa-

6 Alok Kumar vs State & Anr. August 9, 2010.

7 Act No. 25 of 1955.

8 AIR 1927 P.C. 185.

9 Lata Singh vs State Of U.P. & Another on July 7, 2006.

10 AIR 1978 SC 1557.

11 AIR 1992 SC 756.

12 15 SCC 755. 2013.

13 SCC Online 1676. 2018.

14 5 SCC 1. 2018.

tion of consensual gay behaviour, executing a symbolic same-sex marriage is not against the law, but same-sex marriages have still not been acknowledged in India.

In the case of **D. Velusamy and D. Patchaimal**,<sup>15</sup> the apex Court established specific guidelines for recognising the nature of marriage in relation to “live-in relationships.”

1. To the public, the couple must present themselves as spouses;
2. The couple must be of legal marriageable age;
3. In order to be able to marry legally, they must not already be married;
4. They had to have lived together freely and presented themselves to others for a considerable time as being close to spouses.

In **S. Vahini v. Union of India and Others**,<sup>16</sup> the SC held that choice-making is fundamental to liberty and dignity. The court determined that articles 19 and 21 of the Constitution guarantee an individual’s choice as a vital part of their dignity and freedom. Further, once a right was recognised, it was the duty of the state as well as the courts to enforce and protect that right. Further, in **Nandakumar and others v. State of Kerala**,<sup>17</sup> the court ruled that “live-in relationships” are now established by the Legislature and given such provisions to protect such relationships through the “Protection of Women from Domestic Violence Act, 2005.”

The Constitutional Court, in a writ, held that even if it may or may not be acceptable to conventional sections of society but it is the fundamental duty of the Court is duty bound to protect and respect the basic right of a major to have a “live-in relationship.”<sup>18</sup> In this petition, a father of a 19-year-old girl filed a petition to prevent her from living with an 18-year-old boy. The writ petition was dismissed by the Court, which held that the girl has the right to live with the boy and even can marry him after getting the age of marriage.<sup>19</sup>

The “Supreme Court of India” in the case **Indra Sarma v. VKV Sarma**,<sup>20</sup> determined that if the

appellant knew the fact that the respondent was already married, he could not have entered into a “live-in relationship” as in the nature of marriage because the essential characteristics of a marriage like inherent, maintenance etc. could not be fulfilled. Sections 494 and 495 of the Indian Penal Code strictly prohibit and even punish every marriage that takes place while a person is still legally married to their spouse unless expressly permitted by that person’s personal law. Because it is specifically against the law, a “live-in relationship” between a married man and a married woman cannot be regarded as being in the nature of marriage. Children born from such a relationship, though not considered legitimate.

## LEGAL STATUS OF CHILDREN

Under Hindu law, as a coparcener, it is very clear that children born into a “live-in relationship” are only eligible to claim the property in the parent’s independently acquired property, not from joint family properties. The SC, in the case of **Tulsa v. Durghatiya**,<sup>21</sup> observed that children born out of such a relationship would be considered legitimate. The essential precondition for such legitimacy is that the parents must be sincere towards their relationship, sharing of home, and it cohabit for a long period.

The question of the legitimacy of children born out of a “live-in relationship” was first highlighted in the case of **S.P.S. Balasubramanyam v. Surutayan**.<sup>22</sup> In this case, the SC ruled that Section 114 of the Evidence Act talks about the legal presumption under which persons live as husband and wife under a roof for a long period, and their children born out of this relationship are not illegitimate. The court further interpreted that Article 39(f)<sup>23</sup> directs policies toward “ensuring 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.”

15 (2010) 10 SCC 469.

16 (2018) 7 SCC 192.

17 (2018 ) SCC On Line SC 492.

18 Sharma, A., & Umpo, S. (2022). Judicial Approach amidst Growing Live-in Relationship. *Law & World*, 21, 27.

19 WP(CrI) No.178 of 2018.

20 Supra 12.

21 (2008) 4 SCC 520.

22 1994 AIR 133, 1994 SCC (1) 460.

23 Constitution (Forty-second Amendment) Act, 1976.

## PROPERTY RIGHT OF PARTNERS

Section 114 of the Evidence Act discusses the presumption of certain facts under which the Court may presume live-in relationship partners as legally married couples. The onus is on the opposing party to disprove such presumption. In the **Vidyadhari v. Sukhrana Bai**<sup>24</sup> case, the court observed that partners who have been cohabitating for a reasonable amount of time are eligible to inherit one other's property which offered hope to many live-in partners. The court determined that because the live-in male partner, in this case, was already married, the lady could not inherit the property but that the children were the rightful heirs and could therefore make an inheritance claim.

Further, in another case of **Dhannulal v. Ganeshram**,<sup>25</sup> the live-in partner and other family members spent a long period living in the same house. After the death of the male partner, a dispute of property came into existence, and the court held that if live-in partners were living together as husband and wife under the same roof with a long-term commitment towards each other were presumed to be legally married couples. Although the deceased's property type was not mentioned in the aforementioned instance, it was simply decided that a live-in partner could only inherit another person's property in the event of his death.

## PROPERTY RIGHT OF CHILD

The legitimacy of a child has long been a contentious issue, and Hindu law has always regarded legitimacy as a key consideration for determining inheritance rights. A child born out of a "live-in relationship" has inheritance rights from their parents, and they must have spent a long period, as the courts have ruled this consistently. In a landmark judgement of **Vidyadhari vs Sukhrana Bai**,<sup>26</sup> the Court provided the right of inheritance and legal position to children born out of a "live-in relationship." In **Revanasiddappa Mallikarjun**,<sup>27</sup> the "Supreme Court of India" recognised that children

born out of the "live-in relationship" have legal rights in inheritance, hence approving the bequest to them. Further Court has declared that one of the essential criteria of inheritance of children born out of the "live-in relationship" is a reasonable period that the partners must spend. The Supreme Court established the legality of a child born out of a "live-in relationship" in the eyes of the law in the **Bharatha Matha v. R. Vijaya Renganathan** case and declared that he might be permitted to inherit the parent's property. According to section 21 of the Hindu Adoption and Maintenance Act, children, either legitimate or illegitimate, are dependent and entitled to get maintenance from their father or from the estate of their deceased father while still a minor and while the daughter is single. If children born out of a "live-in relationship" are denied maintenance rights, this can be challenged in court because it is against the fundamental right, which is given in Chapter III of the Constitution of India.<sup>28</sup> This specific denial of rights is against the right to live with the dignity of the individual.

## RECENT JUDICIAL PRONOUNCEMENTS ON LIVE-IN RELATIONSHIPS

Recently in the case of **Kaminidevi v. State of UP and others**,<sup>29</sup> "The High Court of Allahabad" held that when two major persons, one male and one female, are living together with their free will and consent, it is the fundamental right of those persons and nobody has the right to interfere with them including their parents. It is a fundamental human right and is also guaranteed under the right to life and personal liberty, further in the case where a minor girl who was living with her adult male partner Court has said that a "live-in relationship" is not acceptable by society and it is against the morality.<sup>30</sup> Once again, the "Punjab and Haryana High Court" refused to grant protection to a couple who were living together and said that if the protection as claimed were provided, the entire social structure of society would be up-

24 AIR 2008 SC 1420 (India).

25 (2015, SC) 19.

26 Vidyadhari & Ors vs Sukhrana Bai & Ors on January 22, 2008.

27 (2011) 11 SCC 1 (India).

28 Constitution of India, 1949.

29 WP-C No. – 11108 of 2020.

30 Kajal and another v. State of Haryana and others CRWP No. 2160 of 2021 (O&M).



ended. Therefore, there is no basis for granting the protection in the case of **Ujjwal and another v. State of Haryana and others**.<sup>31</sup>

After these judgments, in **Soniya and another v. State of Haryana and others**,<sup>32</sup> the “Punjab and Haryana High Court” granted protection to the person who was living together and observed that although the idea of living together without regard for the sanctity of marriage may not be acceptable to everyone, it cannot be said that such a relationship is unlawful or that it is a crime to do so. The court further stated that it would be “a travesty of justice” to deny protection to those who have chosen to live together outside of marriage’s sanctity.

A “live-in relationship” between a married and an unmarried person is not allowed; the “Rajasthan High Court” stated in **Rashika Khandal v. the State of Rajasthan**<sup>33</sup> case, it was stated that one requirement for such relationships was that the couple must be unmarried. In **Sanjay and another v. State of Haryana and others**,<sup>34</sup> the “Punjab and Haryana High Court” granted protections to those who were living in a “live-in relationship” and said that although the “live-in relationship” is not a new phenomenon today, society has not yet developed to the point where it can accept such a relationship without objecting. Further, in the case of **Pushpa Devi and another v. State of Punjab and others**,<sup>35</sup> while granting protection to a 21 and 19-year-old couple, the court said that two major persons are entitled to live together in a “live-in relationship”; it may be socially and morally not acceptable, but it is not against the law. In the case of **Ridhima and another v. UT of Jammu & Kashmir**,<sup>36</sup> while hearing the protection plea by a couple living together, the court observed that the “*Right to exercise assertion of choice is an inseparable part of liberty and dignity of the individual.*”

## CONCLUSION

In this modern lifestyle, most youths are not prepared to accept obligations as well as engage

in a whole-life committed bond, which is partially arising as a result of the rapid influence of globalisation. The acceptance of pre-nuptial agreements, broad-mindedness for sexual preferences, etc., as well as a broader knowledge of domestic living among spouses, is a new appeal for young people. They see a “live-in relationship” as one of the better options for living together, and it reduces enough complexities and problems associated with marriage. In reality, though, it requires far more responsibility and awareness of socio-legal viewpoints. In India, the view of the judiciary has a complex and non-linear view of “live-in relationships.” The judicial viewpoint is not an easy case of black or white due to the variety of legal opinions that exist at different levels of the judiciary as well as the distinct demographics. There are numerous Supreme Court decisions that support “live-in relationships”, yet there are just as many high court decisions that are critical of and even outright condemn “live-in relationships.” Since there are still no specific laws addressing “live-in relationships” that have been established by the legislature, it would seem that the generally accepted rule in such cases is that courts of law have a great deal of discretion in determining how fundamental and natural rights should be interpreted to apply in specific circumstances. However, due to the binding character of the Supreme Court of India’s decisions, consensual “live-in relationships” (subject to the age of the majority of both the party) are in themselves not prohibited by law and therefore are not illegal. In the absence of appropriate law on “live-in relationships”, the Indian Judiciary has passed several morally driven judgments. Firstly, we must establish a dividing line between morality, which is full of debates and ambiguous areas, and legality, which is essentially unambiguous. The Judge’s prime responsibility is to uphold the law of the land, not to pass new ones based on personal morality. According to Article 21 of the Indian Constitution, morality is no longer justified once a person enters a space where they have the freedom to make their own decisions and exercise their own agency, which the state has a responsibility to uphold. In order to provide live-in couples with legal protection, the Indian judicial system should consistently apply the right to privacy throughout the entirety of India. Additionally, it is advised that

31 CRWP-4268 of 2021 (O&M).

32 CRWP No.4533 of 2021 (O&M).

33 S.B. Criminal Miscellaneous (petition) No.3023/2021.

34 CRWP-5531-2021.

35 CRWP – 6314-2021.

36 WP (C) No. 1403/2021.

a “live-in relationship” be treated as a domestic matter if they meet the criteria outlined in the Supreme Court of India’s decision **S. Khushboo v. Kanniammal & Anr**<sup>37</sup> or if the cohabiting couple is in a relationship that has the same characteristics

as marriage. In addition, the legal system might make it possible to sign cohabitation agreements as a way to control patrimonial relationships and to recognise domestic relationships formally.

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37 SLP (Crl.) No. 4010 of 2008.

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