



## Live In Relationship: An Indian Perspective

Ms. Ritika Khandelwal

*ritika.khandelwal.1516@gmail.com*  
BA.LLB(HONS.) 2<sup>ND</sup> YEAR  
GLA UNIVERSITY, MATHURA

Ms. Saumya Balyan

*saumyabalyan@gmail.com*  
BA.LLB(HONS.) 3<sup>RD</sup> YEAR  
GLA UNIVERSITY, MATHURA

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### I. INTRODUCTION

For a very long time, Indian society resisted the idea of a live-in relationship. Living together before getting married was once considered an offence or crime in Indian culture. Most notably, "One man, one wife" is regarded by the Hindu Dharma as the most revered type of matrimony. But, as individuals begin to develop cognitively, succeeding generations are prepared to accept a few objectionable customs.

sharing a home As an illustration, cohabitation is when two individuals decide to live together for an extended period of time or permanently while continuing to have a close emotional and/or sexual relationship. Unmarried couples are the most common group to which the phrase is applied.

Take the decriminalization of homosexual cohabitation as an example. One need not follow strict rules while in a live-in relationship. Statistics reveal that 80% of Indians now support the concept of live in relationship and less than half percent prefer living in this form of life.<sup>1</sup>

The desire for a relationship with no obligations led some people to develop a more open mindset, which gave rise to the concept of a live-in relationship.

Cohabiting couples are those in a living relationship, with no expectations as the bottom line. In Indian law, there isn't a definition for the idea, though. It is primarily a westernised idea and has little to do with Indian tradition.

Hence, the Supreme Court occasionally felt free to further develop the idea in its rulings. That

differs from getting married. (Marriage, marriage, or matrimony is a couple's knowledgeable social and religious relationship.) Partners who live together do not impose obligations.

There is no adequate justification for whether a live-in relationship is good or bad when the question is posed. Looking at things from a different angle simply depends on the individual and their personality.

Individuals ought to believe that when living together, they can understand each other better and also for many other reasons, which cannot be refuted.

### What Does Indian Law Mean to Say?

Living together without getting married is not subject to any legal consequences in India because the concept of live-in relationships is foreign to the country's legislative system.

A kid is likely to be born because premarital sex is encouraged in living couples. Contrary to the heirs born outside of marriage, these children have no claim to the inheritance. In addition, they are treated as illegitimate children by society, which is unacceptable. The Honorable Supreme Court exonerated them of this regrettable situation, nonetheless. This gave them the right to property as well as the status of a legal kid.

Such partnerships are legitimate for the first time thanks to a ruling by the Supreme Court in 1978. The couple is regarded as being in a legal live-in relationship if all the conditions for a marriage are met, including mental soundness, reaching the legal marriage age, consent, etc. Until proven otherwise, a couple is also assumed to be married if they have lived together for a significant amount of time.

In its great decision in Indra Sarma v. V.K.V. Sarma in 2013, the Supreme Court provided

<sup>1</sup> Live In Relationship – What Does The Indian Law Say? Feb 23, 2023 <https://vakilsearch.com/>



five different sorts of cohabitation. It further remarked that such relationships fall under the ambit of Section 2(f) of the Protection of Women Against Domestic Violence Act, 2005 that provides an insight into the said idea. In living partnerships, the elements of the connection could come to a finish, irrespective of any decision made by the couple.

### Background information on the live-in relationship over time<sup>2</sup>

In Indian civilization, live-in relationships are nothing new, yet there is some historical evidence for them. One form of tradition in various parts of ancient India was the live-in relationship. Although the phrase "live-in relationship" may seem novel, the idea is not. There are eight different kinds of marriages mentioned in the Vedas, one of which is the Gandharva form, in which a man and a woman agree to get married.

This doesn't involve the couple's relatives or a specific rite to celebrate the marriage. That is merely a spoken pledge. It nevertheless falls under the umbrella of marriage. Although a Gandharva vivaaha was used to bring a couple together, the commitment and responsibility were the same as any other marriages prescribed in the traditional literature.

Even among the numerous sorts of marriages authorised by the Vedas, some are claimed to be far better than the others. (Maybe it is good to emphasise here that the concept of child marriage is nonexistent in the Vedas; boys and girls were married only after they reached puberty.) The Prajapatya type and the Brahma type are two very revered types. In the Brahma kind, a boy's parents find an appropriate girl for him to marry. This also applies to situations where a boy chooses a specific girl to marry. The Prajapatya kind involves the parents of a suitable lad and girl for him to marry. This also applies to the svayamvara custom, in which the girl selects the boy she will marry. The Daiva type and the Arsha type are two more types that speak of the girl's parents handing her off in marriage to priests.

### SITUATIONS IN OTHER COUNTRIES....

It is vital to examine the lawful constitutional rights and responsibilities for live-in couples around the world in light of the Utmost Court's ruling that the right to cohabit is a component of the right to life. While same sex

couples are referred to in law as "civil partners," heterosexual couples who live together are referred to as "co-habitants." Yet, the regulation governing cohabitation rights is still developing, and many applicants are still oblivious to their obligations and rights to one another.

#### • United Kingdom<sup>3</sup>

The Civil Partnership Act of 2004 in the United Kingdom mostly regulates live-in partnerships. Nevertheless, a couple who lives together in a committed bond are frequently referred to as "common law spouses," the term is not entirely accurate under English and Wales law. According to the government, live-in partners should owe one other more in order to merit the name. Unmarried couples do not have any guarantees about title of each other's property in the event of a relationship breakup, according to a 2010 letter from the Home Affairs Section to the House of Commons. When a living together couple separates, the courts cannot divide the property and disregard severe lawful title as they may in an annulment. Unmarried couples are not automatically entitled to inherit their deceased partner's assets. For taxation purposes, cohabiting couples are classified as separate persons. The couple who cohabitates does not have the same rights as a married pair. They are not entitled to the same legal protections as married couples. They are free to care for one another independently. Partners do not inherit rights to each other's property, and there are no obligations or liabilities that they must uphold until one partner specifically names the other partner by name in their will. Yet, the rules aim to safeguard the rights of children conceived in such unions. Regardless of whether they are married or living together, both parents are responsible for raising their children.

#### • Canada

Living together is regarded as "common law marriage" under Canadian law. Under the central laws of the nation, common law duos frequently have the equal privileges as married couples.

If a couple has been together for at least one year and a half, or if one of them has custody and control of the child and the child is entirely dependent on that person for support, or if they are parents of a child through birth or adoption, or if any of these

<sup>2</sup> Dave, R. "LEGAL STATUS OF LIVE IN RELATIONSHIP IN INDIA" Volume-9 | Issue-12 | December - 2019 | <https://www.worldwidejournals.com/>

<sup>3</sup> Civil Partnership, Marriages and Deaths (Registration etc) Act, 2019, <http://www.legislation.gov.uk/ukpga/2019/12/enacted>



circumstances apply, their common law relationship acquires legal sanctity.

- **United States<sup>4</sup>**

Cohabitation was illegal in the United States before 1970., but it later became common law, provided certain conditions were met. The American legal system then witnessed a number of laws governing consenting sex, which made possible 'cohabitation agreements' and their relatives, the "prenuptial agreements." Later, the nation formalized cohabitation by granting cohabiting individuals nearly identical rights and obligations to married couples, emulating Sweden and Denmark. People who cohabit are not considered to be parents under the law.<sup>5</sup> The United States grants the same freedom to cohabit as a married pair. They can still sign a document called a "Cohabitation Agreement" that outlines their rights and obligations in a firm and unambiguous manner.

- **Australia<sup>6</sup>**

According to the Australian Family Law Act, a "de facto relationship" can exist between two individuals of either the same sex or a different sex, and an individual can be in a de facto relationship even if they are wedded to someone else in a civil union or in a de facto relationship with someone else.

- **Philippines**

Co-ownership laws govern property rights in the Philippines, which include both movable and immovable property. Article 147 of the Philippine Family Codes<sup>7</sup> "provides that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership."<sup>8</sup>

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<https://web.archive.org/web/20080719001643/http://www.ss.ca.gov/dpregistry>

<sup>5</sup> Goyal Swathy, "Live-in relationships", available at <http://www.legalservicesindia.com/article/article/live-inrelationships-211-1.html>

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[http://www.familycourt.wa.gov.au/\\_files/defacto.pdf](http://www.familycourt.wa.gov.au/_files/defacto.pdf)

<sup>7</sup> Family Code of Philippines, 1987, Articles 147 and 148 [Chapter 7-Property Regime of Unions Without Marriage].

<sup>8</sup> Solanki Sharma Parul, "LIVE-IN RELATIONSHIP : A COMPARATIVE APPROACH", available at

## II. A JUDICIAL PERSPECTIVE ON LIVE-IN RELATIONS IN INDIA

Indian law has changed as much as it has through legislation thanks to judicial decisions. As a result, the judiciary has played a crucial role in Indian law, frequently even influencing popular opinion. Not only has it done this by defending the law as it stands, but it has also done so by striking down or interpreting statutes in particular ways when the necessity arises or when a scenario is presented before it that calls for such action.

The Indian courts currently take a nuanced approach to live-in partnerships. This position is mostly the result of the absence of any definitive legislation on the subject, as was demonstrated in the earlier section of this study. As a result, what little jurisprudence there is on the subject is the result of a great deal of subjectivity, personal judgement, and judicial interpretation of the connection in light of constitutionality and acceptability.

Regarding live-in partnerships, the judiciary has made numerous attempts to provide answers. It has addressed the prevailing social perspectives on whether or not the law even permits such interactions. It has attempted to categorize various topics, including what kind of relationship living together can be considered, what kind of relationship living together can be considered, what rights or obligations it confers on its participants and their heirs, and what happens to the property owned by the relationship's participants.

- **Position of women out of live-in relationships<sup>9</sup>**

The Allahabad High Court provided its opinion on the first and possibly most significant issue of absolute legality in, **Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others<sup>10</sup>** ruled that it is not illegal for a man and a woman to live together. The HC also drew a distinction between law and morality.

"Hence, she is a major [adult] and she has the right to go anywhere and live with anyone. In our opinion, a man and a woman, even without getting married can live together if they wish. This may be considered

[file:///C:/Users/SamsungRV409/Desktop/Livein/6\\_Parul\\_Solanki\\_Sharma\\_2544\\_Research\\_Communication\\_VSRDIJ\\_TNTR\\_August\\_2013.pdf](file:///C:/Users/SamsungRV409/Desktop/Livein/6_Parul_Solanki_Sharma_2544_Research_Communication_VSRDIJ_TNTR_August_2013.pdf)

<sup>9</sup> Caesar Roy Emerging trend of live in relationship in India a critical analysis, vol-118, CLJ p-37-144, (2012)

<sup>10</sup> AIR 2001 All 254.



immoral by society but it is not illegal," said the HC.<sup>11</sup>

In **Lata Singh Vs. State of U.P. & Anr**<sup>12</sup> The Supreme Court ruled that only major, unmarried persons of different sex are allowed to live together. **Madan Mohan Singh and Anr. v. Rajni Kant**<sup>13</sup> The Supreme Court ruled that living together cannot constitute a crime.

**Chellamma v. Tillamma**<sup>14</sup> The partner of a live-in relationship was granted the status of wife by the Apex Court. According to Justices Katju and Mishra, a man and a woman can live together even if they do not get married if they so choose.

In **Abhijit Bhikaseeth v. State of Maharashtra and Anr.**<sup>15</sup> The Supreme court further pointed out that, in order to make a claim for maintenance under section 125 of the Criminal Procedure Code, 1973, a woman does not always need to prove her marriage in every detail.

When two individuals desire to live together, what is the offence in that, asked the Chief Justice of India, K.G. Balakrishnan, Justice Deepak Verma, and B.S. Chauhan on a special three-judge bench. Should that be considered a crime?

In the very Landmark case **S. Khushboo v. Kanniammal**<sup>16</sup> According to the Supreme Court, a living connection is covered by the Indian Constitution's Article 21 right to life. The Court further ruled that live-in relationships are acceptable and that it is not illegal or unconstitutional for two adults to live together.

#### ➤ **Position of children born out of Live-in Relationships**

Every child, whether born from a void, voidable, or valid marriage, has the status of a legitimate child under the Hindu Marriage Act of 1955. Hence, a legal provision is not necessary to award the child legitimacy, only the rights to the child's property and support.

In a case addressing the legitimacy of a child born out of wedlock, the Supreme Court previously decided that if a man and a woman live together for an extended period of time, they would be considered as a married couple and their child will be legitimate.

In **Radhika v. State of M.P.**<sup>17</sup> The SC noted that if a man and woman have been living together for a significant amount of time, they will be treated as a married couple and their child will be considered genuine. But, the Supreme Court's ruling in another case has led to a situation of uncertainty over the child's validity. Children born out of such a relationship shall no longer be referred to as illegitimate children, according to a Supreme Court bench led by Judge Arijit Pasayat. "Law inclines in the interest of legitimacy and thumbs down 'whoreson' or 'fruit of adultery'."

The Hindu Marriage Act can be favored over the ruling since this issue can be resolved after examining the effects of the two laws. If we wait for additional cases of this nature to come before the court, it would be like denying justice to those who came first.

#### ➤ **Child's Rights to Inherit**

According to the federal court, a child born into a live-in relationship is only eligible to inherit a portion of their parents' self-acquired property, not Hindu ancestral coparcenary property (in the event of an undivided joint Hindu family). A Madras High Court decision that stated children born out of live-in partnerships were entitled to a stake in ancestral property since there was a presumption of marriage given the long-term nature of the connection was overturned by the Bench.

The Hindu Marriage Act of 1955's Section 16 (legitimacy of children of void and voidable marriages) contains legal fiction that, according to a Vacation Bench of Justices B.S. Chauhan and Swatanter Kumar, requires treating illegitimate children as legitimate for all practical purposes, including succession to their parents' property. On the basis of this rule, which in its application is restricted to the properties of the parents, they cannot, however, succeed to the properties of any other relation.

If a child is not legitimate, they can only lodge a claim against the parent's self-owned property. It can also be read to mean that a child could make a claim on their parent's share of their ancestors' property because Section 16 allows a child to ask for their parent's share of such property.

The Apex Court further ruled that a spouse cannot claim a live-in relationship with another person while the marriage is still in effect and then ask for an inheritance from that person's assets on behalf of the children. Adultery is the relationship with someone else while the husband is still alive. It is not a "live-in relationship." More clarification is

<sup>11</sup> Basu, J. Live-In Relationships In India: Legal But Do They Have Enough Safeguards? 21 NOV 2022 <https://www.outlookindia.com/>

<sup>12</sup> AIR 2006 SC 2522

<sup>13</sup> (2010) 9 SCC 209.

<sup>14</sup> AIR 2009 SC 112.

<sup>15</sup> 2009 CRL.L.J. 889.

<sup>16</sup> (2010) 5 SCC 600.

<sup>17</sup> AIR 2008 SC



provided, stating that heterosexuals who are not married are permitted to be in a "live in relationship" (if one of the aforementioned individuals is married, the male may be charged with adultery and would be in violation of Section 497 of the Indian Criminal Code).

### III. SAME-SEX LIVE IN RELATIONSHIPS, UNADDRESSED QUESTIONS

About same-sex couples, the court decisions are incongruous. They [live-in partners] must otherwise be qualified to engage into a formal marriage, including being single, according to the Supreme Court's list of requirements in the Velusamy v. D Patchaimal ruling from 2010<sup>18</sup>. Although same-sex weddings are not permitted in India, same-sex live-in relationships should not be legal as well, but Odisha High Court in 2020 determined that same-sex partnerships are equally legitimate.

"Therefore, we allow the writ application (criminal) and direct that the petitioner and the daughter of the Opposite Party No.5 have the right to decide their sexual preferences including the right to stay as live-in partners," said the HC in a case involving two females wanting to stay together.

The HC while favouring the self-identification of gender said, "There is hardly any scope to take a view other than holding that the petitioner has the right of self-determination of sex/gender and also he has the right to have a live-in relationship with a person of his choice even though such person may belong to the same gender as the petitioner."

But, in light of a Court decision that takes a contrary stance, the legality of same-sex live-in relationships is likely to be murky beyond this case.

There are still unanswered issues, such as how to protect men in heterosexual live-in relationships or same-sex partners from intimate partner violence, particularly sexual violence. A guy in a heterosexual relationship or a woman in a same-sex live-in relationship do not have legal redress if they are violated because the Indian Criminal Code (IPC) Section 375 defines "rape" as an offence a male commits against a woman.<sup>19</sup>

Men are not allowed to get alimony, and the SC made the dubious decision that only men can start live-in partnerships.

"Men who live with women are not eligible for relief under the PWDV Act, 2005. In this connection, it is pertinent to mention that in the case of Khushboo Vs Kanniamal, the Court observed that 'a live-in relationship is invariably initiated and perpetuated by men'," note authors in the paper Live-In Relationships in India- Legal and Psychological Implication in Journal of Psychosexual Health.<sup>20</sup> Moreover, as India has personal laws based on faiths, the succession and validity of the children discussed thus far only pertain to Hindu family laws or the Special Marriage Act. With two professors telling Outlook that alimony or the validity of children born out of live-in partnerships is not acceptable, it is unclear whether similar privileges extend to other religions, such as Muslims or Christians.

Live-in relationships, which have pre-marital sex as an essential element, involve zina which is not permissible in Islamic law, says Iqbal Ali Khan, Professor, Faculty of Law, Aligarh Muslim University (AMU). Zina means pre-marital sex in Islamic law.

"Live-in relationships are nowhere mentioned in Muslim laws and they are not mentioned even in Hindu laws, but the courts through their judgements have legalised it for Hindus, even giving property rights to children born in such relationships," says Waheed Alam, Assistant Professor, Faculty of Law, Shia PG College, Lucknow.<sup>21</sup>

The children of Muslim live-in partners would be regarded as illegitimate under present law, according to Alam, who also argues that court judgements on interracial relationships thus far do not apply to Muslim personal law.

### IV. PROS AND CONS OF LIVE-IN RELATIONSHIPS

#### Pros-

A live-in relationship enables a person to experience what it could be like to live with their partner. Before entering into an institutionalized arrangement like marriage, one can take this step.

❖ Couples can spend more time together because they are no longer limited by time restrictions in a live-in relationship. Live-in relationships show how much love and intimacy there is between two people.

<sup>18</sup> Sharma, M. Live-In Relationships In India: Legal But Do They Have Enough Safeguards? 21 NOV 2022 <https://www.outlookindia.com/>

<sup>19</sup> Section 375 Indian Penal Code

<sup>20</sup> Sharma, M. Live-In Relationships In India: Legal But Do They Have Enough Safeguards? 21 NOV 2022 <https://www.outlookindia.com/>

<sup>21</sup> *ibid*



- ❖ A couple who lives together will learn how much they value and love one another and what obstacles they face in their relationship. Also, it highlights interpersonal issues prior to the consummation of marriage.
- ❖ A lot of couples think they should start a live-in relationship before making the commitment. Because if certain problems occur that can't be resolved, it is usually possible to dissolve the partnership without engaging in a legal dispute.
- ❖ Live-in relationships are also said to have the benefit of avoiding the negative effects of society because they are now exempt from its rules and regulations. This implies that live-in relationships do not adhere to the social rules that would otherwise be required. In a live-in relationship, the responsibilities of social relationships are lessened, and it actually promotes the growth of the partnership.

#### Cons-

Simply put, a live-in relationship leaves nothing for the pair to learn after marriage. There is already a routine between live-in relationships, and there is still worry or expectation that will be fulfilled after marriage.

- ❖ In most nations, there are no special regulations to address the complexities of live-in relationships, hence the frequency of serious issues is rising. In live-in relationships, many people are defrauded of their valuables. Despite the fact that live-in relationships are seen as more "contemporary," verbal and physical abuse cases are nonetheless extremely common.
- ❖ Social stigma is a serious drawback of a live-in relationship. These relationships are derided because they have not yet received the societal approval seal. Many couples who live together choose to refer to themselves as married out of fear of being rejected. Relationship issues are the main result of this.
- ❖ After a live-in relationship, entering another one is really challenging. Live-in relationships demand a lot of dedication, commitment, and time. The most significant reality is that two people choose to share their lives in a live-in relationship. And when such a relationship ends, it has an adverse effect on people's mental health.<sup>22</sup>

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<sup>22</sup> <http://www.onlymyhealth.com/pros-cons-live-in-relationship-1306837008> (assessed on 24/10/2012)