



A Socio- Legal Aspect of Live in relationship Rules in India

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Abstract

The concept of live in relationship has long been avoided by Indian society. Live in relationship before marriage is an offense or crime in Indian culture. Hindu dharma favors 'one man, one woman' as the most sacred form of marriage. But as people evolve spiritually, the succeeding generations are ready to accept a few deprecatory practices. For example, live in relationship is a situation in which two people decide to live together for an extended period of time or permanently, maintaining an emotional and/or sexual relationship. The term is usually used for unmarried couples. Take, for example, the case of the decriminalization of homosexual live in relationship. The recent judgments like the decriminalization of Sections 377 and 497 of the IPC show how Indian laws have also evolved with the society. One does not have to follow strict rules when living in a live in relationship. Statistics show that 80% of Indians now support the concept of live-in relationships and less than half percent prefer this form of living.

Keywords: Relationship, cohabitation, legitimacy etc

What is the importance of a live-in relationship?

The idea of a living relationship has evolved from the expanded mindset of people who long for a relationship without conditions. A live-in relationship is a couple living together without expectations. However, there is no legal definition for this concept in Indian law. It is more of a western theory that has little to do with Indian tradition. Therefore, the Supreme Court has taken the liberty to elaborate on the concept at various places in its judgments. It is different from marriage. (Marriage or live in relationship is a socially/ritually recognised union of a couple). The partners in a live in relationship do not impose any obligations on you. There is no definite answer to the question of whether live in relationship is good or

bad. It just depends on the person and their personality, if you look at it from a different angle. People should believe that they can understand each other better when they live together and also for many other reasons which are undeniable. You can register the marriage online.

What does the law say about living together in a relationship?

In a typical marriage, the partners have certain rights and responsibilities that must be fulfilled by each of them. There are various personal laws like Hindu laws, Muslim laws, Christian laws etc. that govern and protect the bond of marriage of a recognised couple. Since the concept of live in relationship is alien to the Indian legislature, there is no law on live in relationship for couples living together without marriage being involved in the relationship.

Since live in relationship also supports premarital sex, there is a high probability that a child will be born. These children, unlike extramarital offspring, have no rights to inheritance. Moreover, they are treated by society as illegitimate children, which is unacceptable. However, the Supreme Court has relieved them of this grievance. It granted them the status of legitimate children and the right to property.¹

Living relationships were legally considered void ab-initio. However, in a 1978 judgement, the Supreme Court declared such relationships valid for the first time. If the requirements for marriage, such as mental health, attaining the legal age for marriage, consent, etc., are met, the couple is considered to be in a legal live in relationship. The couple is also considered married if they live together for an extended period of time until proven otherwise.

The Supreme Court in the excellent judgement *Indra Sarma Vs V.K.V.Sarma in 2013*² has mentioned five different types of live in relationship. It also held that such relationships fall within the ambit of Section 2(f) of the Protection of Women Against Domestic Violence Act, 2005, which provides an insight into the said concept. In a living relationship, the facets of the relationship can come to an end regardless of the decision the couple has made.

Legal provisions to protect women in a cohabiting relationship:

Couples today want to explore different ways of living together. Live in relationship in a relationships has become common as they know that the perception of understanding can be different. Although Indian couples are largely accepting of the concept, the patriarchal

¹<https://blog.iplayers.in/are-live-in-relationships-legal-in-india/>

²(2013) 15 SSC 775

mindset has not yet disappeared from society to some extent. Women were taken for granted and mistreated by the male partner on various occasions. But they had no hope of redressal in the Indian live-in relationship laws. However, as the cases of harassment and violence increased, the Supreme Court provided relief to the victims through the Domestic Violence Act. This Act does not refer to a marriage, but to a 'marriage-like relationship'. The right to maintenance is also a provision exclusively for married women in the existing personal laws. However, as these laws do not regulate anything other than marriage, women living in a cohabiting relationship can never claim maintenance from their male partner. The courts later remedied this by expanding the scope of maintenance under Section 125. Under the Code of Criminal Procedure, it is questionable to criminalise any man who does not provide adequate maintenance to the woman.

Statutory provisions to protect children born in live in relationship:

Children resulting from such a relationship are psychologically traumatised. Custody or maintenance problems could arise when the child grows up. The courts have declared such children legitimate. They also have the right to property, not only ancestral property but also property they have acquired themselves. Since there is no specific provision in the relationship law for maintenance of children born out of such relationships, the law decides to provide protection to the children. This is how Section 125 of the CrPC came into being. The section contains provisions for all children who cannot claim remedies under their laws. The Indian Live in relationship Act also does not allow cohabiting couples to adopt a child as provided under CARA.

Worldwide Status of live-in relationships

Live-in relationships, also known as live in relationship or de facto relationships, refer to unmarried couples living together in a committed, long-term relationship, similar to marriage, but without the legal formalities. The acceptance and legal recognition of live in relationship varies greatly from country to country and even within different regions of a country.

Western countries: In many Western countries, live in relationship is increasingly common and widely accepted. Legal rights and protection for cohabiting couples have also improved over time. Some countries, such as the Netherlands and Sweden, have even recognized live in relationship as a legal status with rights and obligations similar to marriage.

North America: In the United States and Canada, live in relationship is widespread, especially among younger couples. Live in relationship has become a social norm, and

many states and provinces have laws regulating certain aspects of live in relationship, such as property rights and child custody.

Asia: Acceptance of live in relationship varies widely across Asian countries. In more liberal and urban areas, live in relationship may be common and tolerated, while in more conservative or rural areas it may be frowned upon or even illegal. In India, for example, live in relationship has increased among the younger generation, but the legal status is still somewhat unclear.

Middle East: In many Middle Eastern countries, live in relationship is not widely accepted for cultural and religious reasons. In most cases, it is not legally recognized and unmarried couples may face social pressure or legal consequences.

Africa: The acceptance of live in relationship in Africa varies from country to country and depends largely on cultural and religious influences. In some regions they are more common and tolerated, while in others they may be frowned upon.

Oceania: Countries such as Australia and New Zealand have a relatively progressive attitude to live in relationship and provide some legal protection for de facto couples in areas such as property, inheritance and welfare.

Status of live in relationship in India

Live in relationship has been considered taboo in India since British rule. However, attitudes have changed, especially in the big cities where live in relationship is now more accepted. However, in rural areas with conservative values, live in relationship is still often frowned upon.³

Under the Protection of Women and Domestic Violence Act 2005, female partners have certain economic rights. The Maharashtra government adopted a proposal in October 2008 that a woman living in live in relationship for a 'reasonable period' should be given the status of a wife. The determination of what constitutes a 'reasonable period' is based on the specific facts and circumstances of each case.

The National Commission for Women recommended to the Ministry of Women and Child Development on June 30, 2008 to amend the definition of 'wife' in Section 125 of the Code of Criminal Procedure (Cr.P.C.) to include cohabiting women. The purpose of this recommendation was to bring the protection of women from domestic violence in line with that of legally married couples. The Judges Malimath Committee appointed by the Supreme

³<https://tripakshalitigation.com/legality-of-live-in-relationship-in-india/>

Court supported this view and stated that if a man and a woman live together as husband and wife for a reasonably long period of time, the man should be deemed to have married the woman.

The Malimath Committee also suggested that the word 'wife' in the Penal Code should be amended to include 'a woman living with the man as his wife' so that a woman living with him is entitled to maintenance. On September 16, 2009, the Supreme Court held in a case that a woman need not necessarily prove a formal marriage to claim maintenance under Section 125 of the Cr.P.C. This means that a woman living in a live in relationship can also claim maintenance under this section.

In another case, the Allahabad High Court ruled that a woman of about 21 years of age, who is of legal age, has the right to cohabit with a man even without getting married, if both parties so desire. The Supreme Court also held that a man and a woman who cohabit for an extended period of time are treated as a married couple and any child born to them is considered legitimate.

Pros and cons of live in relationship

The Supreme Court's controversial statement on live in relationship and premarital sex has sparked fierce debate across the country. This historic finding has angered many conservative groups who fear it could undermine the sanctity of marriage. A section of society, including notable social activists and prominent figures, has spoken out on the issue.

Trustee of Maa Ghara Foundation, Rutuparna Mohanty, expressed concern over the possible negative impact of the judgment. She hopes that the government will take appropriate measures to protect the rights and dignity of Indian women and save society from possible chaos. Mohanty believes that such a ruling could lead to an increase in child pregnancies and spread HIV/AIDS, although it is aimed at restricting multiple partners. She also fears that children born to cohabiting couples will not be properly educated.

Some social scientists have identified serious social problems such as early pregnancies among adolescent girls, drug abuse, violence and juvenile delinquency. They argue that the controversial ruling could legalize reprehensible social behavior and lead to a spoiled new generation that favors live in relationship over arranged marriages.

BJP spokesperson Shaina is concerned about the impact of the amendment on the Hindu Marriage Act, which does not provide for a second wife among Hindus. She believes that

granting the status of a legally married woman to a mistress, including property, inheritance and maintenance rights, is against both the law and Hindu customs.

Advocates of the free choice of live in relationship see the recent observations as a positive step that emphasizes individual freedom. They believe that such relationships allow partners to understand each other better without legal complications and that it is easier to end the relationship if necessary. They argue that people should be free to live as they wish as long as their actions do not harm others.⁴

Women from different walks of life welcome the progressive moves on live in relationship and see it as an expression of social change and pragmatism. Some believe that the younger generation is becoming more realistic and should have the freedom to make informed decisions about their relationships.

It is important to point out that live in relationship has long been debated, with discussions revolving around whether such relationships can be legally recognized. While it is legal in many places for unmarried people to live together, the law traditionally favors marriage and reserves certain rights and privileges for married people.

Despite legal recognition, the law does not actively promote live in relationship, as it traditionally supports the institution of marriage. In some cases, however, the law attempts to protect women from the patriarchal power dynamics that can also exist in cohabiting relationships.

Legitimacy of the child of a Live in relationship couple

In an earlier case involving the legitimacy of a child born out of wedlock, the Supreme Court made an important ruling: if a man and a woman have a long-term live in relationship, they are treated as a married couple, and any child resulting from that relationship is considered legitimate. In addition, recent amendments to the Domestic Violence Act 2005 offer protection to women who live in such relationships for a 'reasonable length of time', giving them the status of wives. A Supreme Court bench headed by Justice Arijit Pasayat emphasized that children born out of such relationships are no longer classified as illegitimate. The law now favors legitimacy and rejects the terms 'whore' or 'fruit of adultery'

Right to inheritance

The Supreme Court has ruled that a child born out of live in relationship is not entitled to inheritance of Hindu ancestral property (in case of an undivided joint Hindu family), but can

⁴Brown, S. L. & Booth, maya angelo 2014 (1996). Journal of Marriage and Family.

only claim a share in the parents' self-acquired property. This decision overturned a judgment of the Madras High Court, which assumed a marriage on the basis of the long relationship and granted a share of ancestral property to children from a cohabiting relationship.

The court, comprising Justices B.S. Chauhan and Swatanter Kumar, reiterated an earlier judgement that illegitimate children are treated as legitimate for practical purposes, including succession to the property of their parents, in terms of the statutory fiction in Section 16 of the Hindu Marriage Act, 1955 (which governs the legitimacy of children of void and voidable marriages). However, the scope of this provision is limited to the property of the parents and they cannot inherit property from other relatives on the basis of this provision.

A child who is the offspring of a cohabiting couple can only lay claim to the person's self-acquired property. Some argue that this interpretation could also allow the child to claim a share in the ancestral property of the parents, as Section 16 allows for a share in the parents' property. Thus, it can be debated that the person is not only entitled to self-acquired assets but also to a share in the ancestral property.⁵

The Apex Court clarified that as long as a legal marriage exists, a spouse cannot claim to live with another person and claim an inheritance for the children from the property of that other person. Such a relationship with another person while the spouse is still alive is considered 'adultery' and not 'live in relationship'. It is important to note that 'live in relationship' is permissible for unmarried heterosexual couples. However, if any of the said persons are married, the husband may be guilty of adultery, which is considered an offense under Section 497 of the Indian Penal Code.

Important case law:

Badri Prasad vs. Dy. Director of Consolidation, 1978

This was the first case in which the Supreme Court of India recognized a live-in relationship and interpreted it as a valid marriage. In this case, the court recognized a couple's live-in relationship of 50 years as valid. Justice Krishna Lyer held that there is a strong presumption in favor of marriage if the partners have lived together as husband and wife for a long period of time. Although the presumption is rebuttable, a heavy burden rests on the party seeking to deprive the relationship of its legal origin. The law favors legitimacy and disfavors bastardy.

⁵Miller AJ, Sessler S, Kusi-Appouh D (2011). The Specter of Divorce Views From Working- and Middle Class.

Tulsa & Ors v. Durghatiya & Ors, 2008

The Supreme Court confers legal status on children born of a domestic partnership. One of the key requirements for a child born of live in relationship not to be treated as illegitimate is that the parents must have lived under the same roof for an extended period of time for society to recognize them as husband and wife, and that it is not a relationship that just happened to go in. Therefore, the court also recognized the right to property for a child born out of a common-law relationship.

D. Velusamy Vs. D. Patchaiammal, 2010⁶

The judgment sets out certain conditions that must be met for a live in relationship to be considered valid. It stipulates that the couple must present themselves to society as being similar to marriage and that they must be of legal age or qualified to enter into a legal marriage, even if they are unmarried. It was held that the couple must have voluntarily lived together for an extended period of time and presented themselves to the outside world as being marriage-like. The court noted that not all relationships constitute a marriage-like relationship and benefit from the Domestic Violence Act. It further clarified that a relationship in which a man keeps a woman as a servant, maintains her financially and uses her primarily for sexual purposes is not considered a marriage in court. To get this benefit, the conditions mentioned by the court must be fulfilled and supported by evidence.

S. Khushboo v. Kanniammal & Anr, 2010

In this case, the Supreme Court dropped all charges against the petitioner, a South Indian actress. The petitioner was charged under Section 499 of the IPC and it was also alleged that the petitioner advocated premarital sex and live in relationship in a relationships. The court ruled that live in relationship is not illegal in the eyes of the law, even though it is considered immoral in the eyes of conservative Indian society. The court declared that live in relationship is a right to life and therefore not illegal.

Nowadays, the live-in relationship is no longer a substitute for marriage. It has its own place in society and in the law of the land. The court in the case of Indira Sarma vs. V.K.V. Sarma has identified five types of live-in relationships

1. Domestic relationship between an adult male and an adult female, both of whom are unmarried. It is the most uncomplicated type of relationship.
2. Domestic relationship between a married man and an adult unmarried woman entered into knowingly.

⁶(2010) 10 SCC 469

3. Domestic relationship knowingly entered into between an adult unmarried man and a married woman. Such a relationship can lead to a conviction for the crime of adultery under the Indian Penal Code.

4. Domestic relationship between an unmarried adult woman and a married man entered into unknowingly.

5. Domestic relationship between same sex partners (gay or lesbian)

The Court stated that a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the Protection of women Against Domestic Violence act, 2005 and provided certain guidelines to get an insight of such relationships. Also, there should be a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account, including the individual factors. The Court in this case affirmed that the relationship in the present case is not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" under Section 2(f) of the DV Act. In this case the appellant admittedly entered into a relationship with the respondent despite of knowing that the respondent was a married man with two children born out of the wedlock who opposed the live in relationship since the inception. The court further added, "If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act, as there is also no evidence of a live-in relationship between the appellant and the respondent as per the given guidelines". The Court held that the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. Furthermore, the Domestic violence Act does not take care of such relationship which may perhaps call for a amendment of the definition of section 2(f) of the DV Act, which is restrictive and exhaustive.

Conclusion

Despite live-in relationships becoming legal, they remain non-binding for the partners. Depending on the expectations of the couple, it could be an advantage or disadvantage. It is

a big step forward for society to accept a practice such as live-in. These relationships are not governed by personal laws. However, the Indian Law/Supreme Court is trying to bring in change on live in relationship law. Moreover, the legal position of this foreign concept is being expanded. India has a wide definition of live-in relationships.