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## Live - In Relationship in India

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### ABSTRACT

An unmarried couple living together in a long-term relationship that resembles marriage is known as a live-in relationship. It's referred to as cohabitation in everyday speech. The law grants married people a number of rights and privileges in an effort to uphold and promote marriage. These rights and privileges are not conferred through cohabitation. In a live-in relationship, two people voluntarily decide to live together in order to maintain a long-term connection that mimics marriage. In this essay, the legal and sociological perspectives on cohabitation in India are analysed, with a focus on the status of women in such relationships.

### INTRODUCTION

The term "live-in relationship" can be understood in the same way as other words like "marital like relationship," "cohabitation," "living together," and "de facto relationship." The normal obligations of a marriage are not present in this partnership. It is a partnership in which two heterosexual people live together informally rather than through a formal institution such as marriage. The main idea behind choosing a live-in partner is to gauge compatibility with them before making any kind of legal commitment. In our society, live-in relationships are nothing new. The main distinction is that individuals are now more forthcoming about it. They were officially known as "Maitray karars," written agreements between persons of two opposing sexes to be friends and live together, and take care of one another.

There is no explicit law in India that recognises a live-in relationship, and no legislation defining a live-in partnership has been passed. The rights, obligations, procedural rules, and obligations of live-in partners, as well as the status of the children born into such a partnership, are not currently regulated or governed by any law in India. The emergence of premarital and non-marital cohabitations has had a significant impact on the prototype for union formation in many developed nations. Living with someone who isn't legally married has been a common habit for a very long time. Men living together outside of marriage is not in the least bit unethical. As society has matured more than in the past, bigamy is now illegal, and women are becoming conscious of their freedoms and freedoms, live-in relationships, albeit illegal, continue to be practised despite their illegality. Since a few decades ago, new types of live-in partnerships have developed in which men and women cohabit without getting married even if there is no legal barrier to their union. However, this arrangement was unpopular in traditional Indian society for a number of reasons. But in metropolitan social settings, practise is growing both publicly and covertly on a daily basis. On this subject, the High Courts of several states and the Supreme Court of India both rule in a significant number of instances. The court has never taken a stand on its own behalf in favour of a live-in relationship. Due to a lack of appropriate regulation, it is always associated with marriage even if it is not. As a result, a complicated conflict has developed in this case. The Supreme Court of India and several High Courts have attempted to define the live-in relationship as a "relationship in the type of marriage" in a number of cases through judicial pronouncements. According to Alok Kumar v. State & Another<sup>1362</sup>, a "live-in relationship" is defined as a walk-in/walk-out arrangement in which neither party is subject to any obligations and there is no establishment of a formal legal relationship. The agreement to cohabit is a mutual one that is maintained each day by the

<sup>1362</sup> Alok Kumar v. State & Another, Cr. M.C. No. DL 299/2009 (India).

actions of the parties. Neither party needs the approval of the other to cease the arrangement, and either party is free to leave at any moment. There are no personal laws or regulations in India that have either envisaged or accepted the status of a live-in relationship. The courts in India have actively adopted the position that when two people mutually agreed to live with each other as husband and wife for a prolonged period of time without actually being married, the law will simply assume that they were legally married unless the opposite intention is proved. This is because there is no legal definition of live-in relationships.

### RESEARCH OBJECTIVE

1. To examine the Indian judiciary's approach to "live-in relationships."
2. Analyse the legislation pertaining to children not in a live-in relationship.
3. To examine the problems women in "live-in relationships" in India face and make suggestions for solutions.

### DISCUSSION

A "connection in the nature of marriage" can exist under certain conditions, which are outlined by the Supreme Court of India. It contains a critical analysis of the *Indira Sharma v. V.K.V. Sharma* case<sup>1363</sup>. It is among the most notable instances of a live-in relationship. For the protection of women who have been the victims of domestic violence, the Supreme Court has established some important guiding principles, such as the length of the relationship, the sharing of a home, and the pooling of resources, to convey a live-in relationship within the context of a "relationship in the nature of marriage" under section 2(f) of the Protection of Women from Domestic Violence Act 2005. The court noted that other elements to be taken into account include combining financial and household operations, assigning responsibility, sexual affiliation, having children, socialising in public, and the spouses' intentions and

demeanour. According to the court, the phrase "at any point of time" used in section 2(f) of the Domestic Violence Act refers to a reasonable amount of time to maintain a relationship and can vary from case to case depending on the facts and circumstances. The court further noted that the parameter of sharing resources and financial agreements intended to support each other or any one of them, sharing bank accounts, owning real estate in joint names, long-term investments in business establishments, receiving shares in separate and joint names, and so on, may be a guiding factor. The Court further said that domestic arrangements where responsibility is placed, particularly on the female counterpart, to manage the home and carry out household tasks like cleaning, cooking, maintenance, or upkeep the house are a sign of a partnership with the characteristics of marriage.

The Allahabad High Court supported live-in relationships in *Payel Kattara v. Superintendent of Naari Niketan*<sup>1364</sup>, Agra, by making the daring comment that anyone, man or woman, might live together even without even getting married if they so desired.

The Apex Court, which was comprised of Justices Arijit Pasayat and P. Sathasivam<sup>1365</sup>, decided the case in favour of "legitimising a live-in couple as they had lived together for 30 years" in *Tulsa and Others vs. Durghatiyya and Others* after taking the similar step into consideration.

Muslims adhere to a very rigorous type of regulation when it comes to the acknowledgment of children. It therefore states that a child born to a man and his legally married wife is a legitimate child. Because of this, according to current Muslim personal law, any kid born as a result of non-marital cohabitation is considered to be "illegitimate." In *S. A. Husain v. Rajamma*<sup>1366</sup>, the Andhra High Court ruled that "Islamic law recognises

<sup>1363</sup> *Indira Sharma v. V.K.V. Sharma*, 2013 (14) SCALE 448 (India).

<sup>1364</sup> *Payel Kattara v. Superintendent of Naari Niketan, Agra*, AIR 2001 All 254 (India).

<sup>1365</sup> *Tulsa and Others vs. Durghatiyya and Others*, (2008) 4 SCC 520 (India).

<sup>1366</sup> *S. A. Husain v. Rajamma*, AIR 1977 AP 152 (India).



'acknowledgement' as a method by which such marriage and legitimate descent can be set in place as a topic of substantive law for the objective of inheritance" when the parentage of a child cannot be proven by establishing a marriage between both the parents.

The Hindu Marriage Act of 2005 has codified measures that protect the rights of children born from invalid or voidable marriages. It is clear from the interpretation of section 16(3) of the Act of 1955 that Hindu law solely protects the claims of illegitimate offspring born out of null or voidable marriages. The Hon'ble Supreme Court stated in *Tulasa & others vs. Durghatiyaa & Others*<sup>1367</sup> that a kid born out of a marriage-like connection will no longer be recognised as illegitimate child. The most important prerequisite for a child born out of a live-in relationship is that the parents must have resided together under same roof and cohabited for a considerable amount of time in order for society to recognise them as husband and wife and the connection should not be a simple "walk in and walk out." It is a problem to conceal the "maintenance right of the child born out of live-in relationships" when children are maintained without a formalised legal duty. Children from live-in relationships frequently fall victim to the "right to maintenance during the life span of his or her father or mother," so section 125 of the Code of Criminal Procedure provides maintenance to children irrespective of their identity as legitimate or illegitimate even when they are minors or even if they become majors, but unable to maintain himself due to any physical or mental anomaly or injury from their parent(s). The Supreme Court maintained the right to raise and maintain children born out of a live-in relationship in *Dimple Gupta v. Rajiv Gupta*<sup>1368</sup>. According to the Supreme Court's decision in this case, even an illegitimate kid born from an unlawful connection is completely entitled to maintenance under section 125 of the Code of Criminal Procedure, 1973, which

provides maintenance to children regardless of their legitimacy or illegitimacy until they reach age of majority and in case scenarios where they are unable to sustain themselves due to any disability then even after they reach the age of majority they are also entitled to be maintained."

In contrast to Sunni Muslim law, which states that an illegitimate kid may only inherit from his mother and not from his supposed father, Shia law is stronger because it forbids such a child from even inheriting from his mother. Children born through non-marital cohabitation will not be permitted to acquire from the ancestor's property if they are still regarded as "illegitimate". The courts should not, however, consider a child born out of a live-in relationship as legal and deny him inheritance if the connection has not persisted for a sufficiently extended period of time. However, as stated in section 125 of the CrPC, that child shall be supported by either of the parents. "Children born from the female counterpart in a live-in relationship are eligible to inherit the properties of their biological father as "his lawful heirs," the Hon'ble Supreme Court opined and held in *Ravaanasiddappa v. Mallikaarjun*."<sup>1369</sup> Since no kid should be denied their inheriting right just because they were born outside of a live-in relationship within a fair amount of time, the Court has upheld this in numerous of its legal rulings.

According to the Hindu Minority and Guardianship Act of 1956, the mother takes on the role of natural guardian when the father is unable to do so. The biological father is the organic custodian of his minor legitimate children, and in cases where there is no living or deceased father, the mother steps in. However, the mother is the child's natural guardian in the instance of an illegitimate boy or an illegitimate, unmarried girl, followed by the father. In accordance with Muslim law, the father is always recognised as the child's natural

<sup>1367</sup> supra 4

<sup>1368</sup> *Dimple Gupta v. Rajiv Gupta*, (2007) 10 SCC 30; (2008) 1 SCC (Cr) 567 (India).

<sup>1369</sup> *Ravaanasiddappa v. Mallikaarjun*, (2011) 11 SCC 1; (2011) 3 SCC (Civil) 581 (India).

guardian. However, even after the father's passing, the mother is not recognised as the child's natural guardian. Since Muslim law does not grant custody of illegitimate children, the mother is granted that responsibility through judicial rulings.

The former law prohibiting live-in spouses from adopting a child had been overturned by the Child Adoption Resource Authority in September 2018. (CARA). Therefore, it is now possible for live-in couples to adopt a child both within and outside of India, and the prerequisites are as follows:

To nurture a child with greater motivation, the spouse must be solid in their finances, health, and mental well-being.

Similar to a married pair, a live-in couple who wants to adopt a child must have the approval of both partners and have been together for at least two years.

The Adoption and Maintenance Act of 1956 only grants married couples the ability to adopt a child, therefore CARA's permission to adopt a kid is a big relief for cohabiting couples.

The Supreme Court had ruled that the woman is eligible to maintenance if the parties are living together for an extended period of time without a legal marriage. The court stated that "if a man and woman choose to live alongside without being legally married, no wife status automatically developed out of such connection." When opening a bank account, filing an income tax return, seeking for financial help in the form of a loan, etc., women in live-in relationships are not legally required to use their partner's last name, unlike married women. In such a partnership, the female partners keep their own independence and are not referred to as "wives". The 2005 PWDV Act protects women who are not married from domestic violence as well as those who are in live-in relationships, which are akin to marriage. Domestic relationships are those between two individuals who are connected by consanguinity, relationship, or a marriage that is similar to marriage, adoption, or who are members of the

family living together in a joint family structure. This definition of a domestic relationship is found in Section 2(f) of the PWDV Act. As a result, the definition of a domestic relationship includes both an affiliation with marriage and an association that resembles an actual marriage. The PWDV Act safeguards women from domestic abuse and grants the right to alimony-style support to both the affected wife and live-in female partner.

#### CONCLUSION

Even if Indian society forbids such relationships, the judiciary is in some ways acknowledging them by applying the law as it is now. Live-in relationships are not permitted by personal laws on the basis of marriage, but they are permitted under section 2(f) of the Protection of Women from Domestic Violation Act of 2005 as "marriage like relations." The law governing the situation of children born to such partners is also not particularly clear because there is no explicit law that recognises the status of couples in live-in relationships. The necessity to determine these children's status becomes more crucial when considering how to defend children's rights, therefore this should be the main focus of any legislation. Legal precedents have shown to be of great use in addressing the difficulties experienced by children of live-in relationships in determining their place in the socio-legal system. In a different fashion, Section 13 of the Hindu Minority and Guardianship Act of 1956 expressly refers to "the wellbeing of the concerned minor and deems as the paramount responsibility of the society." In order to ensure the highly dignified upbringing of such kids born out of the live-in relationship, the jurisprudential philosophy needs to be explicitly liberally understood.

Under the PWDV Act of 2005, women who live with someone else can be protected and receive a remedy. This Act aims to safeguard both live-in partners and women who have experienced domestic violence of any form. A "domestic relationship" is one between two heterosexual people who are currently living

together or have previously lived together in a common household, according to Section 2(f). The term "live-in relationship" is defined in several contexts based on various court rulings on various conflicts. In the event that the relationship is "in the nature of marriage," as defined by the Domestic Violence Act of 2005, the woman is protected. According to the PWDV Act of 2005, a live-in relationship is defined as a female residing with her male partners in a mutually agreed-upon arrangement without legally solemnising marriage, but one that appears to be "in the nature of marriage" and is seen by society as a marriage.

### SUGGESTION

1. The parties must indicate on a declaration form that they are willing to be controlled by the 217 unique legislation for live-in couples before the live-in relationship may be registered. The registration process should come after the declaration, and the registration date should begin to run from the declaration date. In order to be eligible for rights that may be similar to those of married couples, live-in couples must have at least two years of cohabitation as of the date of registration.
2. The Civil Code of Quebec (Canada approach)'s for non-marital cohabitation registration can be used in India as well. If the pair later decides to get married, their marriage will be recognized from the date of the registering of their cohabitation, according to the Civil Code of Quebec, which specifies the length of the cohabitating period between them.
3. India may adopt the Scottish Family Law's intestate succession rules for couples living together outside of marriage. So, if a partner passes away without making a Will, their inheritance will be divided in accordance with intestacy laws. Unless the couple owned property jointly, the surviving partner will not automatically inherit. The surviving partner may petition the court for a portion of the estate of the deceased partner. When

a partner passes away intestate, the surviving spouse has six months to petition the court for financial support from the estate. This clause may be added to India's exclusive laws governing live-in couples.

4. By using the Supreme Court's rulings in the cases of Veluswamy v. D. Patchaiamm (AIR 2011 SC 479) and Indira Sharmah v. V.K.V. Sharmah (2013 (14) SCALE 448; AIR 2014 SC 304), specific recommendations were made to the Parliament, including broadening the definition of domestic relation under Section 2(f) of the PWDV Act 2005 to include the aggrieved women who are or were co

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