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EXPLORING THE LEGALITY OF LIVE IN RELATIONSHIP IN INDIA WITH NEED AND CHALLENGES (AN OVERVIEW)

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INTRODUCTION

In today's rapidly evolving world, technological and industrial progress has been occurring at an unprecedented rate over the past few decades, profoundly transforming every aspect of our lives. Globalization has further accelerated these changes, impacting nearly every facet of our social existence, including family structures, marriage, and intimate relationships. Marriage, traditionally recognized both legally and socially as the formal union between couples, holds significant cultural importance in our society, where social bonds are particularly strong.

Historically, living together outside of marriage has been stigmatized and uncommon in our culture. However, recent times have witnessed a rapid shift in societal norms, with couples increasingly choosing to cohabit without formalizing their relationship through marriage. These cohabiting arrangements, whether temporary or long-term, are referred to as live-in relationships. Such relationships are characterized by continuous cohabitation over a significant period between partners who are not legally married but share a common household.

In India, there is no specific legislation, social norms, or customs governing live-in relationships. As a result, the Supreme Court has played a vital role in clarifying and defining the legal framework surrounding these relationships through various judgments, issuing guidelines to address the legal aspects involved. This article aims to review the Supreme Court's decisions over time and delineate the current legal stance on live-in relationships. Additionally, it explores the psychosocial dimensions of these relationships, shedding light on their implications beyond the legal realm.

Living together in a relationship between consenting adults is not illegal under Indian law. In the 2006 case of "*Lata Singh v. State of U.P.*"²⁰¹⁵ it was determined that while a live-in relationship between two consenting adults of opposite sexes might be seen as immoral, it doesn't constitute an offense under the law. Similarly, in the case of "*Khushboo vs Kanaimmal and another*"²⁰¹⁶ the Supreme Court emphasized that although society might view live-in relationships as immoral, they are not illegal in the eyes of the law. The right to live together is considered a fundamental right and cannot be deemed illegal.

If a live-in relationship endures for an extended period and the couple presents themselves to society as spouses, they may be recognized as legally married. This principle was established as far back as 1978 in the case of "*Badri Prasad Vs Deputy Director Consolidation*"²⁰¹⁷ where it was noted that a strong presumption of marriage arises when a couple lives together for a considerable time as husband and wife. However, this presumption can be rebutted, but

²⁰¹⁵ AIR 2006 SC 2522

²⁰¹⁶ Criminal Appeal No 913 of

2010 S

²⁰¹⁷ 1978 AIR 1557,

the burden of proof lies heavily on the party seeking to deny the relationship's legal status.

Furthermore, in cases such as "**SPS Balasubramanian Vs Suruttayan**"²⁰¹⁸ it was determined that if a man and woman cohabit as spouses for an extended period, the law presumes them to be legally married unless proven otherwise. Children born from such relationships are entitled to inherit from their parents' property.

However, if the relationship is solely based on sexual reasons, neither partner can claim the benefits of a legal marriage, as seen in the case of "**Indra Sarma vs VKV Sarma**"²⁰¹⁹. Prior to 2018, domestic cohabitation with a married woman constituted the criminal offense of adultery for the man under Section 497 of the Indian Penal Code. This section was struck down by the Supreme Court in the case of "**Joseph Shine vs Union of India**"²⁰²⁰ in 2018, as it was deemed discriminatory and unconstitutional.

Although adultery is no longer a criminal offense, cohabitation with a married person may still be grounds for divorce, irrespective of gender. Similarly, prior to 2018, cohabitation with sexual relations between same-sex partners was considered a crime under Section 377 of the IPC. However, the Supreme Court overturned this in the case of "**Navtej Singh Johar vs Union of India**"²⁰²¹ declaring it unconstitutional to criminalize consensual homosexual acts between adults. While consensual homosexual acts are now legal, same-sex marriages are not recognized in India, although performing a symbolic ceremony is not prohibited.

To be recognized as "in the nature of marriage," the Supreme Court, in the case of "**D.**

Velusamy and D. Patchaimal,"²⁰²² established certain conditions:

1. The couple must present themselves to society as akin to spouses.

2. They must be of legal age to marry.

3. They must meet the qualifications for legal marriage, including being unmarried.

4. They must have willingly lived together and presented themselves as spouses for a significant period.

However, in "**Indra Sarma vs VKV Sarma**" the Supreme Court clarified that not all live-in relationships qualify as relationships in the nature of marriage. In this specific case, it was determined that the appellant, being aware that the respondent was married, couldn't have entered into a live-in relationship akin to marriage. The court emphasized that such relationships lack the inherent characteristics of marriage and are different in nature.

The court made several observations regarding such relationships:

- They may endure for an extended period, leading to dependency and vulnerability, especially for women and children born from these relationships.

- While acknowledging the personal nature of such relationships, the legislature must address the need for adequate protection, without promoting premarital sex.

- Parliament needs to consider these issues and enact appropriate legislation or amend existing laws to protect women and children born from such relationships, even if they don't qualify as marriages.

It's important to note that Sections 494 and 495 of the Indian Penal Code prohibit marriage during the lifetime of a spouse and deem it punishable unless permitted by personal law. Therefore, a live-in relationship involving a married individual cannot be recognized as "in the nature of marriage" as it's explicitly prohibited by law. However, children born from such relationships, though not considered legitimate, are entitled to certain rights as outlined below.

²⁰¹⁸ AIR1992SC756

²⁰¹⁹ (2013) 15 SCC 755

²⁰²⁰ AIR 2018 SUPREME COURT 4898

²⁰²¹ AIR 2018 SUPREME COURT 4321

²⁰²² AIR 2011 SUPREME COURT 479

LITERATURE REVIEW

Cohabitation is described as a close, sexual relationship between two individuals who are not married but reside together in the same household for an extended period (Bacharach et al., 2000). The surge in cohabitation marks a significant shift in partnership patterns across various developed and developing nations. This increase in cohabitation coincides with other notable demographic changes, such as higher divorce rates and delays in marriage and childbirth (Coast, 2009). While research on cohabitation was scarce until the late 1980s, its prevalence has substantially grown in recent years (Smock, 2000).

In addition to tracking cohabitation trends, much research explores its implications, including whether it serves as a precursor or alternative to marriage, its impact on forming and ending relationships, and its effects on children and childbearing (Hatch, 1995; Smock, 2000). Only recently have scholars started investigating aspects like relationship dynamics and quality within cohabiting partnerships (**Brown & Booth, 1996; Brown, 2003**).

Despite some similarities, significant differences between cohabiting and marital relationships have been observed. Previous studies generally indicate lower levels of commitment and relationship satisfaction among cohabiting couples compared to married ones (e.g., **Brown, 2003, 2004; Stanley, Whitton & Markman, 2004; Hansen, Moum & Shapiro, 2007**).

Numerous studies have examined relationship quality, with the majority indicating that married individuals tend to report higher satisfaction with their relationships compared to cohabiting partners (e.g., **Brown & Booth, 1996; Brown, 2003, 2004; Stanley et al., 2004**). **Nock (1995)** observed lower levels of commitment among cohabiting couples compared to married ones. Additionally, Stanley et al. (2004) found that currently married individuals, in comparison to cohabiting partners without definite plans for marriage, displayed significantly higher levels of

dedication to their relationships, indicating a greater desire to prioritize the relationship.

On average, cohabiting individuals tend to report lower levels of commitment to their relationships, reduced happiness, diminished satisfaction with their sex lives, and more frequent disagreements when compared to married couples (**Nock, 1995; Waite, 1995; Brown & Booth, 1996**).

Research on cohabitation in India has been scarce, mainly limited to non-representative surveys and opinion-based articles. The reluctance of cohabiting individuals to openly discuss their relationships may contribute to this lack of research. Despite the introduction of laws regarding domestic violence and property rights, there hasn't been a significant shift in societal attitudes toward cohabitation. According to Kojima (as cited in **Times of India**, November 2010), when comparing cohabitation in East Asia and the West, it's suggested that cohabitation might become more prevalent in major Indian cities with further economic growth and evolving social norms. Kojima noted that the rapid economic development in mega cities like those in coastal China, coupled with India's democratic political system, could lead to even faster changes in social norms and values in Indian cities.

The Scandinavian countries, such as Norway and Sweden, are often highlighted as examples of nations where cohabitation is widely accepted and regarded as nearly equivalent to marriage (**Wiik, Keizer, & Lappegard, 2012**). In these countries, cohabitation is prevalent and socially acceptable, with public policies treating it similarly to marriage. In contrast, Southern and Eastern European countries tend to have lower rates of cohabitation compared to Scandinavia and may view this living arrangement differently (**Wiik, Bernhardt, & Noack, 2009**).

Considering the diverse perspectives on cohabitation across the globe, research in this area should extend beyond simply measuring its prevalence and comparing it to marital

relationships. Cohabitation warrants recognition as a distinct and separate phenomenon. To gain a deeper understanding, there is a pressing need for more extensive research on cohabitation in countries like India, where despite its increasing prevalence, it remains culturally unacceptable. Cohabitation has become integrated into existing family systems, but researchers should approach this topic with caution.

Moreover, as typologies of cohabitation continue to evolve, reflecting broader changes in living arrangements, ongoing research efforts are essential (*Haskey, 2001; Martin and They, 2001*). This evolving understanding of cohabitation will contribute to a more comprehensive grasp of contemporary family dynamics and social norms (Coast, 2009).

NEED AND CHALLENGES

The concept of a live-in relationship may be considered objectionable and novel in India, but it is gaining traction worldwide. In today's contemporary lifestyle, influenced in part by the rapid spread of globalization, many people are reluctant to commit to traditional, long-term relationships. Instead, they are opting for voluntary partnerships based on a broader understanding of domestic cohabitation, recognition of pre-nuptial agreements, and greater tolerance towards diverse sexual preferences. The Protection of Women against Domestic Violence Act, 2005 was a welcome initiative in India to extend protection against violence to women in non-marital relationships. However, the Act's criteria for determining the legal validity of a relationship as a "relationship in the nature of marriage" based on the fulfillment of legal formalities has raised concerns. This criterion may exclude many relationships from being recognized as marriages and deny women involved in these relationships their rights and entitlements associated with marriage. Furthermore, the Act's criteria may lead to judges imposing specific forms of marriage solemnization as legally valid forms, curtailing individuals'

freedom to choose custom-based or other forms of marriage. This is problematic, given that the Indian legal system recognizes diverse forms of marriage, and individuals have the right to choose the form that best suits their cultural and social practices.²⁰²³

CHALLENGES

Below are some highlighted challenges that comes in between live-in relationships:

1) BREAKING DOWN OF MARRIAGE INSTITUTION

The institution of marriage is a recognized social union or legal contract between individuals, establishing kinship ties. It encompasses various interpersonal relationships, often intimate and sexual in nature, and is observed in diverse ways across different cultures and subcultures. Typically formalized through a wedding ceremony, marriage is also referred to as matrimony. In contrast, a live-in relationship lacks the formal recognition and legal standing of marriage, involving the cohabitation of two individuals without the formalities of matrimony.

Marriage fosters a bond between a man and a woman, providing a sense of security, particularly for any children resulting from the union. It is seen as a foundational institution for family structure and societal stability. Critics argue that promoting live-in relationships may undermine the sanctity and value traditionally associated with marriage. They caution that the dissolution of such arrangements, for any reason, can leave emotional scars and feelings of rejection for the individuals involved. Moreover, children born out of live-in relationships may face challenges integrating into society and may be perceived as misfits. In essence, proponents of marriage often view live-in relationships as a deviation from established social norms and values, raising concerns about their impact on individuals and society as a whole.

2) IN AND OUT RELATIONSHIP

²⁰²³ Kumar, V. (2017). BIGAMY AND HINDU MARRIAGE: A SOCIO-LEGAL STUDY. Journal of the Indian LAW

An in-and-out relationship, such as a live-in arrangement, is characterized by a contract of cohabitation that is essentially renewed daily by the involved parties and can be terminated unilaterally by either party without the need for mutual consent. Consequently, individuals who opt for a live-in relationship cannot reasonably lament issues of infidelity or moral misconduct within the context of such an arrangement. Thus, it can be perceived merely as a means of personal enjoyment devoid of deeper commitments or expectations.

3) NON RECOGNITION IN HINDU LAW

The Hindu Marriage Act of 1955 does not recognize the concept of a second wife among Hindus. Therefore, granting legal status to a mistress involved in a live-in relationship, entitling her to rights such as property share, inheritance, and maintenance, goes against both the provisions of the Act and traditional Hindu customs. In light of this, the proposal by the Maharashtra Government suggesting that a woman engaged in a live-in relationship for a 'reasonable period' should be treated as a wife is seen as contradictory. On one hand, the government has taken measures such as banning dance bars due to their perceived negative impact on the social fabric, while on the other hand, it appears to be endorsing illicit relationships through such amendments.

4) NEGATIVE IMPRESSION

Every individual bears a moral responsibility to uphold life-enriching norms, ensuring that future generations can take pride in their heritage, cultural traditions, and national identity. It is unjust for children to suffer the consequences of their parents' misguided actions. Responsible parents strive to leave behind a positive legacy for their offspring, rather than burdening them with the consequences of their own shortcomings. Even when parents fulfil their normative duties in raising their children, it is imperative to take precautionary measures to shield them from

the negative influences of societal deviations and the harmful effects of modernity. India, with its rich cultural heritage and time-honoured customs, cannot afford to disregard its inherent merits. It is essential to preserve and uphold these values in the face of changing societal trends.

5) INTERFERENCE IN SOCIAL RELATIONSHIPS

The decision to engage in such relationships is often made independently by the individuals involved, without the involvement or consent of their parents. This can create expectations of strained relations between the families of the spouses. Consequently, conflicts of ideas and opinions may arise within the family, leading to a weakening of relationships among family members. Overall, this can have a detrimental effect on societal cohesion and harmony.

6) LGBTQ COMMUNITY

The LGBTQ community faces several issues and challenges when engaging in live-in relationships in India due to social, legal, and cultural factors. Legal Recognition: India does not legally recognize same-sex relationships, including live-in arrangements. This lack of legal recognition deprives LGBTQ couples of various rights and protections, such as inheritance, property rights, and spousal benefits.²⁰²⁴

CONCLUSION AND SUGGESTIONS

Cohabitation or live-in relationships often reflect a human rights-oriented and individualistic approach, prevalent particularly in Western societies. However, in India, the social landscape presents a starkly different reality, where marriage remains the preferred institution over any other form of union. Nonetheless, adult unmarried couples who choose to cohabit should not face prohibition or societal stigma for their decision. The judiciary's efforts to safeguard the interests of individuals in such relationships are indeed commendable and contribute to societal welfare.

²⁰²⁴ Priya Sepaha, Live-in Relationship in India: Laws and Challenges April 202191

Live-in relationships are popular among educated urban classes seeking to escape the constraints and inequalities of traditional marriages. However, it's important to recognize that a live-in relationship can never fully replace the institution of marriage, which offers a unique sense of security and emotional fulfilment. While some view live-in arrangements as a precursor to marriage, others see them as immoral or indecent. Nevertheless, the Supreme Court of India has rightly declared that while live-in relationships may be perceived as immoral, they are not illegal.

Despite the absence of specific laws regulating live-in relationships in India, the judiciary has taken steps to provide legal recognition and protection to such couples and their children. However, there remains a need for clear legislation to address the rights and responsibilities of individuals in such relationships, particularly concerning the welfare of children.

Live-in relationships, especially among the educated middle class in urban areas, can be viewed as a declaration of independence or a deliberate rejection of the institution of marriage. It's crucial to acknowledge the rights of such couples while ensuring that their choices do not undermine the institution of marriage.

International studies suggest that cohabitation can complement rather than compete with marriage. However, relying solely on statistics may be misleading in a culturally diverse country like India.

The pragmatic approach taken by the judiciary toward live-in relationships is a positive step toward their social acceptance. While live-in relationships offer individual freedom, laws are necessary to address their associated insecurities. Ultimately, regardless of the type of relationship chosen, it should prioritize the interests of both partners and be based on understanding and commitment.

Live-in relationships have sparked debates as they challenge traditional societal norms. While the government has reserved many rights for married individuals to encourage marriage, there is currently no law defining live-in relationships in India. However, courts have been cautious in enforcing obligatory agreements between unmarried couples, considering public policy. In conclusion, as Swami Vivekananda emphasized, it's essential to recognize the inherent equality of all individuals, regardless of gender, and work toward their upliftment.