

LIVE-IN-RELATIONSHIP IS AN EXAMPLE OF PREVALENCE OF MORALITY OVER LAW

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ABSTRACT

New version of marriage is known as live-in-relationship. The concept of marriage is updated to live-in-relationship for couples to live together without any legal bond. The concept of live-in-relationship has been recognized since Vedic period for Indians, known as Gandharva Vivah, where a couple lives together without societal acceptance and without any marriage rituals like in case of Shakuntala and King Dushyanta. The young generation nowadays are more attracted to live-in-relationships as there is no legal responsibility, and allows them to enjoy life similar to marriage. Live-in-relationship now is been leagalised in India. Cohabitation of two adults who live together for temporary period or permanently same as marriage, as there are no rituals cause of which no need of divorce. There is no legal bond between the couple and there is no compulsion to be responsible in the relationship. There are no official registering and documentation, whom to give custody of minor born from live-in-relationship; in case of LGBT couple; will the minor be legal heir after the death of individual . It will affect the personal life of individual if he or she ends the live-in-relationship and future of the child born in live-in-relationship as society has not yet accepted the concept of live-in-relationships. It might seem like there is easy and free companionship but there are legal obligations, responsibilities and loyalty is involved. As the laws for live-in-relationship will put some legal limitations on the couple and the couple will get recognition for their relationship by law. As live-in-relationship is legally recognized still there are no specific amendments in support of live-in-relationship. There should be laws for the individuals who are in live-in-relationship and for those who have ended their relation. Rights for minors born from these live-in-relationship should be enacted . The researcher has undertaken the topic to understand and study the meaning of live-in-relationship and also to find out the consequences for the couple, their child as well as for the society. Morality varies from individual to individual whereas law is equal for all but if someone is having wrong morals then it affect his social life which will definitely have impact on personal life. That's why morals of every person should be in limits of humanity which should not harm anyone including himself. Although it may be legalized, there are no laws in support of live-in-relationships in India. Perhaps morals, values and ethics are the main reasons behind lack of legal amendments in support of live-in-relationships.

KEY WORDS:– LIVE-IN-RELATIONSHIPS, COUPLES , MINOR CHILD, SOCIETY

1. Introduction

India's culture, rituals, and the importance of ceremonies are known to everyone. However, after independence, the new generations in India have become more attracted to western society due to the growing economy and

increasing awareness. Finally, India is a step ahead, just like other countries, legalizing live-in-relationships. India is not behind; yes, live-in-relationships in India are now leagalized for its citizens. The state has allowed couples to stay in live-in-relationships but has not defined the duration of the time period. In a country like

India, this is one of the most unusual step taken to date. The basic concept behind this is that partners wish to stay together to test their compatibility before making any long-term commitments or marriage.

The legality of live-in relationships in India is quite muzzled. While there's no legislation defining live-in relationships in India, the judiciary hasn't been averse to the idea. So even though it's pretty common now, no legal protections are extended to couples as the state does not legally recognise the relationship. The subject offers a conundrum for the couple and often act as an impediment to access social security.⁹⁸

2. Meaning of Live-in-Relationship:

As there is no specific definition for live-in-relationships. The concept means a temporary or permanent arrangement where two adults stay together without getting married or there no legal recognition to their relationship. As there no legal bond between the couple, it means they are free from all responsibilities and stress typically associated with marriage, but they can enjoy life just like a married couple..

3. Present status of Live-in-relationships in different countries:

As different countries have different moral values based on their religious beliefs and lifestyles, the concept of live-in-relationship varies for the people in each country, and accordingly, laws are amended.

Different countries in the world have different stances on live-in-relationships. For example, the law in France is "civil pact of solidarity" that legally binds partners who are living-in-relationship to support each other.

Canada legally recognizes liv-in-relationships, Canada's The Family Law Act R.S.O 1990 gives permission to adult couples to enter into

agreements for rights and obligations while cohabitating together or even after they stop living together. In the agreement which couple makes while planning to come into live-in-relationship includes as follows:

- Property: ownership or division
- Obligations
- Children: The right to education, moral training etc., but not the right of custody or access to their children.

These above mentioned rights and obligations are during cohabitation, as well as on ceasing to cohabit or on death. If further couple gets married this agreement will be deemed to be marriage contract.

In Islamic countries:

1. Bangladesh punishes cohabitation after divorce of a couple by salishi system of informal courts, particularly in rural areas.
2. In Indonesia cohabitation of couple is illegal according to sharia law and similarly in other countries where it is practiced.

In developed countries they are not considered illegal and most of their citizens follow live-in-relationships. United States of America's 23% in 2003, and above 50% in countries like Denmark, Norway, Sweden and about 23% in Australia.

In India as live-in-relationship allows the couple to engage in premarital sex. The couples who are in such relationships do not mind these relations and things. However, the overall relationship spoils their social personality and social influence due to live-in-relationship. As the prevalence of morality is still higher in Indian society over law.

Along the same lines, in recent rulings, various High Courts have granted police protection to a live-in couple, upholding their fundamental right to life and personal liberty as envisaged under Article 21 of the Constitution of India.⁹⁹

⁹⁸ Lactopus <https://www.lawctopus.com/academike/live-in-relationships-in-india/> October 7, 2024, 1.30 pm

⁹⁹ *Ibid*

4. Present status of Live-in-relationship in India

The concept of live-in relationships was not uncommon in ancient India as historical scriptures and texts highlight the practice of 'Gandharva Vivaha'. It was a form of marriage where couples chose to live together without societal approval or any formal ritual. It was prevalent during the Vedic period and continued through the medieval era. In the British colonial era, various laws and regulations discouraged relationships outside marriage or cohabitation. The colonial-era criminal law, Indian Penal Code, 1860 criminalized adultery affecting the acceptance of live-in relationships in India. After independence, India underwent significant social and cultural changes including their viewpoint regarding live-in relationships. Currently, this practice is common among the younger generation as it relieves them of responsibility.¹⁰⁰

This concept of live-in-relationship was first time coined in Indian Supreme Court was in Khushboo Case on 23.03.2010, where a man and a woman were living together without marriage. As it opined that living without marriage cannot be construed as an offence. Three judge bench of Chief Justice K.G Balakrishnan, Deepak Verma and B.S Chuhan observed that when two adult people want to live together what is the offence, living together is not an offence. As the court gave example from old hindu dharma mythology that even Lord Krishna and Radha lived together without marrying.

But the concept of live-in-relationship in India is still not accepted morally even though it is legalized. As morally live-in-relationship is wrong and people follow their culture and religion strictly and live-in-relationships are considered a cultural taboo. As it is against their religion and disgrace their religious beliefs. Even

¹⁰⁰ Legal Recognition of Live-in-relationships
<https://www.freelaw.in/legalarticles/Legal-Recognition-of-Live-in-Relationships-#:~:text=It%20was%20a%20form%20of,relationships%20outside%20marriage%20or%20cohabitation.> October 9, 2024, 8.30 pm

if young generations in India are now-a-days attracted towards live-in-relationships they are hesitating to cohabit together. Although it may be legalized, there are no laws in support of live-in-relationships in India. Perhaps morals, values and ethics are the main reasons behind lack of legal amendments in support of live-in-relationships.

5. Difference between Live-in-relationships and marriage?

According to Law: In India the main difference between marriage and live-in-relationship is that marriage is having legal contract and legal implications, while live-in-relationship is not having any legal bond. As marriage has rituals and legal registration, on the other hand live-in-relationships have nothing to do with these things.

According to ethics and moral values: In India, marriage not only involves husband and wife but even their families are involved. Marriage being a sacred relationship, as the bond between husband and wife is meant for lifetime; this is not changeable. Whereas, in India marrying against your family's wishes does not fit within framework of ethics and morals. Additionally, society tends to view live-in-relationships, which lack a strong emotional bond and do not guarantee of living together forever, and no responsibilities, as having negative impact and is setting wrong principles and against ethics.

At the time of separation in a marriage, which is divorce, couples have to face the process of the laws related to court, the money spent during the divorce. Financial stress can put a strain on the spouses, as well as legal issues regarding child custody. This can have a negative impact on child's mental health. As a result, many young people prefer to live in live-in-relationships instead. Live-in-relationship helps the couple to know each other without engaging legally. .

A live-in relationship lacks the commitment that one finds in marriage. There is more loyalty when one marries, rather than in a live-in relationship. Domestic violence can occur in a live-in relationship, as this concept involves only two adults without any third-party interference. Marriage, on the other hand, means family, while a live-in relationship does not have the concept of family, which can lead to depression and financial instability. If one partner dies, what happens then? There are no legal rights for the couple, and child custody becomes a significant issue if they have a child from the live-in relationship. Who will be responsible for that child? These are the drawbacks of the live-in-relationships in India.

6. Lack of laws and considerations in India

There are no laws in support of couples living in live-in relationships. The question arises: what will happen if one partner walks out of the live-in relationship and has a child from that relationship? If, after walking out, he marries someone else and has a child from that marriage, what will happen to the child born from the live-in relationship? Will the child be considered legitimate or illegitimate? All these problems do not have solution under the law in India.

Could the other partner be left alone homeless after one partner walks out? There are no rights in terms of maintenance, or alimony as there is no marriage? Will the laws give same status as that of marriage to live-in-relationship? If they do grant the same status, what will be the difference between marriage and live-in-relationships?

Answers to all these questions which are arising in live-in-relationships are changing gradually. In recent Supreme Court case of India said that, a child born out of live-in-relationship possess a right to inherit the properties left behind one of his/her parents. Bench of Justice P Sathasivam and B S Chauhan said that “if a man as well as a woman are living together in

live-in-relationship in one house for years then it will be considered as a marriage and legally the child born in this live-in-relationship will be considered as their legitimate child according to section 114 of the Evidence Act.

In United States of America, a child born out of live-in-relationships also has right to maintenance. Once the couple living in live-in-relationship decides to end their relation, both partners will be responsible for taking care, supporting children financially, regardless of which the child/children is living with. The custody of child is given by court. In Canada there are no difference in laws, the status of a child born to someone who is married, to a single mother, to a couple in a same-sex or opposite-sex relationship. The child born outside marriage is also treated in the same way as a child born inside marriage.

7. Prevalence of morality over Law

In recent cases involving Priya Naresh and her partner, as well as Apurva Bose, who was a program coordinator at the United Nations, they faced problems in finding a roof over their heads while living with their partners. This issue persists even in cosmopolitan cities like New Delhi, where landlords are reluctant to take the risk of allowing couples to live together without marriage, despite both being adults. Even with progressive laws, traditions and morality continue to have a strong grip on how Indian society functions and treats women. The mindset of people in Indian society will not change easily due to the traumatizing and dreadful cases in live-in relationships, as illustrated by the recent case mentioned below. In November 2022, police found that 28-year-old Aftab Poonawala had strangled his partner Shraddha Walker, cut her body into pieces and stored them in a refrigerator before scattering the body parts across the city. After Poonawala was arrested, the public conversation quickly pivoted from women's safety to a debate on whether women should engage in live-in relationships or not. A few days after the murder

came to light, India's Minister of State for Housing and Urban Affairs Kaushal Kishore put out a press statement questioning Walker's character. He suggested that it was the act of "living-in" before marriage that led to the crime and added that "educated girls should not get into such relationships."¹⁰¹

8. Case laws

1. Khushboo V. Kanniammal and Anr. (2010)

In this case Hon'ble Supreme Court of India, in three judge bench of Chief Justice K.G Balkrishna, Deepak Verma and B.S Chauhan said that when two adults lives together is not an offence, and is not illegal. Hon'ble Supreme Court even gave example of Hindu mythology's Lord Krishna and Radha who lived together without marriage rituals.

2. Dhannulal and others V. Ganeshram and others (April 08, 2015).

The court stated that after the death of a woman's live-in partner, she has the right to inherit property. In this case, the family members of the deceased contended that the woman should not be entitled to inherit property although she was living with the deceased for 20 years because she was not married to the deceased. The bench delivered the judgment considering its earlier decisions that if a man and a woman have been cohabiting for a long time, such a relationship is presumed to be a marriage by the court¹⁰².

3. Badri Prasad V. Dy. Director of Consolidation, 1978

In this case in 1978, the bench observed that if a woman and a man lived together for years i.e. long period then that couple should be presumed to be husband and wife and their relationship is presumed to be a marriage.

¹⁰¹ Hindustan Times
<https://www.hindustantimes.com/lifestyle/relationships/livein-relationships-in-india-are-legal-but-taboo-101699086768759.html#:~:text=Law%20versus%20lawmakers,continues%20to%20remain%20in%20office> September 25, 2024, 5:55 pm

¹⁰² Legal Recognition of Live-in-relationships
<https://www.freelaw.in/legalarticles/Legal-Recognition-of-Live-in-Relationships-#:~:text=Khushboo%20vs.,of%20the%20Constitution%20of%20India> September 26, 2024, 12:50pm

9. Live-in-relationship over marriage

After understanding the experience and learning the concept of marriage, it is clear that marriage is not just between two adults; the families of both adults are also involved. The responsibilities and opinions of elders come along with marriage, which makes a crucial impact on the couple's life. To avoid such situations and responsibilities in marriage, the new generation prefers live-in relationships instead of marriage. As a marriage not only involves the responsibilities of parents but also includes the permission, opinions, and burden of behaving and living in a certain way, it is important to respect elders, as Indian culture emphasizes listening to them and avoiding conflicts between in-laws. To be carefree from all these issues and to avoid such situations, nowadays, younger generations prefer to live in live-in relationships where they can live on their own terms and conditions without anyone's interference, pressure, or the burden of listening to the taunts of elders, and to stay away from family drama.

In a live-in relationship, couples are the only members living under one roof, and there is no one else to interfere in their matters. Therefore, the couple is the only member responsible for making decisions about their lives, which makes them feel most secure emotionally when it comes to live-in relationships. If the couple feels the need to end the relationship at any point in their lives, they can easily move out with mutual understanding without getting involved in any court process, which can take time and may sometimes be against their will. This approach also saves money.

10. Trail of Live-in-relationship before marriage

New generations have started preferring live-in relationships over marriage. The main reason behind this is the increasing rate of divorces in India and the drawbacks faced during such divorces by both sides, not only by couples but

also by their families and friends. In arranged marriages, the couple gets very little time to know each other, or sometimes no time at all, which impacts their lives after marriage. In love marriages, even if a couple knows each other for years, they haven't lived together, and this may lead to divorce. To avoid such difficult phases in everyone's life, people have started preferring live-in relationships, where the couple gets to know each other very well and understands their lifestyles closely. After living together, the partners will learn about themselves and what exactly they want from their partners in life. Clarity will come, leading to a preference for live-in relationships before marriage and a commitment for a lifetime.

Nowadays, even people are spreading awareness about living in live-in relationships through movies, theaters and street plays, where they try to convey the advantages of such relationships before getting into marriage. The main reason behind the increased attraction of new generations to live-in relationships is the desire to appear cool and to demonstrate that they embrace new thoughts, a modern lifestyle and open minded attitude. This, in turn, impacts their moral values and ethics.

This is because nowadays, women are also considering living relationships over marriages, it is because there are strict laws for the protection of women when they are in a living relationship. This encourages young women to prefer living relationships over marriage or before marriage.

The Domestic Violence Act, 2005, provides protection to women in live-in relationships who face domestic violence. The Act defines a domestic relationship as one in which the two persons live together in a shared household and are in a relationship in the nature of marriage. Therefore, a woman in a live-in

relationship can approach the court for protection under the Domestic Violence Act.¹⁰³

11. LGBT Couple

India has a higher prevalence of moral values and ethics rather than laws. In such a country, there are no laws for LGBT people who wish to live together, as there are no laws for the marriages of these LGBT couples. Therefore, these couples prefer to live in live-in relationships, which makes live-in relationships more important for those who do not have the right to marry. The only option left for LGBT couples is to live together without getting married. This is the reason why live-in relationships exist. Same-sex couples have legal protections related to domestic violence and protection when they live together, but they do not have legal approval for marriage, inheritance, or adoption. Same-sex marriage is not recognized under the constitution. The only option left for LGBT individuals or same-sex couples is to live together in a live-in relationship, where they can receive love, acceptance, and emotional support from their partner. As article 21 of Constitution of India states that every citizen has right to life and personal liberty. In this case same-sex couple and LGBT couple can stay together.

12. Benefits of Live-in-relationships

Nowadays, people's beliefs about marriage are negatively changing. The only way for people to stay together is through liberal relationships, where they can live together, get to know each other, and eventually decide to get married in the near future. This approach can help our next generations believe in relationships instead of living in isolation and being antisocial, which may reduce depression and anxiety in people's lives. As one gets deeper understanding to get to know their partner's habits and temperament which will help the couple to grow more and move ahead in their relationship. As in this relation a person gets freedom to do and follow

¹⁰³ The Domestic Violence Act, 2005

their passion and work without any one interference and gets chance to take decisions without any family or any other pressure which makes the individual more independent, indirectly it somewhere impacts in good way on their career and life. For new generations this is the test before marriage where the couple gets to know more about each other without giving extra time out of their schedule and they can manage both personal as well as professional life very well without any complaints.

No In-Laws to tell what to do and what not to do: when you get married without knowing each other as well as your in-laws it becomes more difficult to adjust with them in future which makes life more chaotic not only of the couple but even of in-laws. The couple does not have to obey or follow the relationship advice or how to manage financial advices from the elders or to give any societal pressure.

13. Rules in Live-in-Relationships

- The couple who wants to live in a live-in relationship under one roof has to follow certain rules. In India, the couple should live together for a reasonable period of time to be considered in a live-in relationship.
- The couple should have a similar type of relationship to marriage, which includes emotional support, financial support, and companionship.
- An important rule of a live-in relationship is that neither partner should be married to any other person, and they should not be blood-related.
- The couple should have mutual understanding regarding the nature of their relationship, including their responsibilities and rights. If the couple feels it is necessary, they can enter into an agreement to outline the terms and conditions of the relationship, such as property ownership, financial responsibilities, and child custody, if any.

14. Unmarried Couples Rights

It is important to note that live-in relationships in India do not have any legal recognition as

marriages; therefore, the couple may not have the same legal rights and protections as married couples. It is also advisable to seek legal advice before entering into a live-in relationship in India.

Unmarried couples who are living in live-in relationships and their rights:

- Unmarried couples living in live-in relationships can adopt children in India. Property-related rights of unmarried couples who are in live-in relationships allow them to jointly purchase or rent property.
 - When a couple owns a home as joint tenants with rights of survivorship, the surviving partner automatically takes full ownership of the property.
 - Children born to unmarried couples in long-term live-in relationships have the same legal rights as children born to married couples.
 - Privacy for unmarried couples is protected from harassment by hotels, as stated in Article 21 of the Indian Constitution. Couples can be together in public spaces as long as they are not involved in any illegal or obscene activity.
 - Unmarried couples can also grant each other powers of attorney and health care directives to help ensure their affairs are managed if they become incapacitated. Police cannot arrest someone in a hotel or any public place, but they should have valid ID proof.
 - As laws are different for people of different religion the couple should not be married to any other people. If it is so then their live-in-relationship will not be considered.
- The Lucknow bench of the Allahabad High Court stated earlier this month that a Muslim cannot claim rights in a live-in relationship when he or she has a living spouse. A two judge Bench of Justices A.R. Masoodi and A.K. Srivastava called such a relationship against the tenets of Islam while hearing a writ petition by Sneha Devi and Mohammed Shadab Khan. Ms. Devi and Mr. Khan had sought protection from police action

after the woman's parents filed a kidnapping case against Mr. Khan.¹⁰⁴

15. Rights of a child born through Live-in-relationships

Children born out of live-in-relationships are given same rights as that of children born in marriage.

At the same time the court has considered important to protect child rights in particular in live-in relationships. In January 2008, a Supreme Court bench that was headed by Justice Arijit Pasayat held that children who are born out of live-in relationships will not be considered illegitimate.

In August 2010, the Supreme Court held that a live-in relationship that has existed for a long time will be considered a marriage and that the children born to such a couple will not be illegitimate. Justice P Sathasivam and Justice BS Chauhan of the Supreme Court passed this judgment and it will have strong legal implications on disputes relating to the legitimacy of children who are born to live-in partners.¹⁰⁵

Children in live-in relationships have legal rights and legitimacy that protect their welfare and best interests. Courts frequently recognise these children as legitimate offspring with rights to financial support, inheritance, and other advantages comparable to those of children born into a traditional marriage. To safeguard their children's rights and interests, parents in live-in relationships need to be informed about the potential legal repercussions and seek legal advice. State laws governing inheritance may differ, however children born to cohabiting spouses may be entitled to inherit from their parents' possessions. After a parent separates or disagrees, courts may take the child's best interests into account when determining custody and visiting arrangements.¹⁰⁶

Maintenance is often understood as the duty to care for another individual. Sec 125 of the Code of Criminal Procedure 1973, has a provision for maintenance for the children irrespective of their legitimacy if they are minors or are unable to support themselves financially after attaining majority. This was held in the case of Dimple Gupta vs. Rajiv Gupta.¹⁰⁷

16. Conclusion

The issue of live-in relationships has always been a top debate point, and now India is witnessing drastic changes in the current generation's perceptions towards live-in relationships. It will always be a cultural taboo in India, and it will be a bit difficult to change people's mindsets. Laws regarding this issue will take time to be amended. The Supreme Court stated that there are no laws prohibiting live-in relationships or premarital sex only if the no one is married to other people. Living together is a right, as the Supreme Court said, apparently referring to Article 21 of the Constitution of India, which guarantees the right to life and personal liberty as fundamental rights. As live-in relationships are now very popular in India, awareness has to be created in the minds of these young individuals, not just from the point of emotional and societal pressure, but also because such relationships can create various legal hassles. These issues include division of property, violence cases, desertion due to the death of a partner, and handling custody and other matters concerning children resulting from live-in relationships. The judiciary tends to rely on its own morals when dealing with cases of live-in relationships cause there are no specified laws in support of Live-in-Relationships and for the adults who are in such relationships. Live-in relationships are not recognized or registered, and therefore, do not require a divorce.

¹⁰⁴ The Hindu Times <https://www.thehindu.com/news/national/what-is-the-legal-position-on-live-in-relationships-explained/article68172438.ece>
September 15, 2024, 3.30 pm

¹⁰⁵ Legal Service India <https://www.legalserviceindia.com/legal/article-5173-live-in-relationship-indian-and-international-perspective.html> October 11, 2024, 11.38 pm

¹⁰⁶ Juris center <https://juriscentre.com/2024/06/10/legitimacy-and-rights-of-children-born-out-of-live-in-relationships/#:~:text=Children%20in%20live%20in%20relationships,born%20into%20a%20traditional%20marriage.> October 12, 2024, 10.30 pm

¹⁰⁷ *Ibid*

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