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LIVE-IN RELATIONSHIP VERSUS MARRIAGES IN INDIA- Vrinda Agarwal¹

ABSTRACT

India is a country with a diverse set of values, traditions, practices, and beliefs that serve as significant legal sources. Marriage is a sacred union with legal ramifications and strong social respect. It is an integral part of Indian culture and social institution. Our nation, with its deep cultural significance places a strong emphasis on morality and social ethics. The concept of live-in relationships is not well supported by most of the Indian families since according to people in India there exists only one kind of legitimate relationship between an unrelated male and a female, which is termed as “marriage”.

In a live-in relationship an unmarried couple lives under the same roof for a long term mostly to judge their compatibility. This concept is more prevalent in the western culture since India is yet to accept this social change.

This research paper aims to study socio-legal dimensions of live-in relationships in India and whether they are successful in comparison to marriages or not.

Keywords: Marriage, culture, socio-legal, live-in, comparison

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INTRODUCTION

"With Changing Social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today."²

Marriage is regarded as a sacramental and lifelong union in Indian culture. In a society like India where a lot of weightage is given to customs and traditions, the norm of two adults living under the same roof without marriage is considered as a shame and against the culture of India therefore most of the families do not look up-to Live-in Relationships. On one hand a marriage is a legal and socially acceptable type of relationship recognized in India whereas there is no legal recognition given to a relationship between two consenting adults living together without marriage. The concept of live-in relationship is also called 'MitruSambandh' in India. Living-in relationships, are a recent and growing trend among the youth that allows them to live with their spouses without the constraints of arranged marriages. Whereas marriages are those in which the bride and groom's families (parents, guardians, and even extended families) choose their spouse based on a variety of socio-economic factors rather than the couple staying together without the marrying.

Living with someone before marriage is considered as a taboo in the Indian context especially with a person of the opposite gender. This relates to the idea of virginity of a woman which cannot be violated before marriage since she would be considered impure and unholy by the society. In contrast to this the youth has a thinking that by coming into a Live-in relationship they can exercise their freedom of choice to be with anybody and do not conform to the conservative view.

As time passes, however, Indian culture is slowly making an appearance to western civilization and lifestyles, with the possibility of live-in relationships being among the most significant examples. In the forthcoming chapters the research paper will broadly look into the various

2. Justice A. K. Gonguly, *Revanasiddappa vs. Mallikarjun* (2011) 11 SCC 1.

advantages and disadvantages of these socially developed love and intimacy institutions including the legal dimensions and advancement when it comes to a Live-in couple.

STATEMENT OF PROBLEM

Cohabitation or live-in relationships are a recently established culture in India that is still not universally known. Our culture is evolving from arranged marriages to love marriages and now live-in relations, but there are some reasons that prohibits a live-in relationship from being accepted as valid and lawful.

- **Lack of Commitment:** Live-in Relationship is one that does not give rise to the same rights and obligations that a perfectly legitimate marriage does. The man is not obligated to support the woman, and the woman is not obligated to support the man. A walk-in/walk-out relationship can be described as such. Both individuals live together with each other's consent, not because they are married, but because they want to.
- **Social Challenges:** When two people of opposite sex live together in a live-in relationship, society not only questions their character, but also their family upbringing, and as a result, parents are often not supportive of live-in relationships. However, in metropolitan cities such as Bangalore, Delhi, Mumbai, and Chennai, people are embracing live-in relationships as a legal type of relationship, but the situation is not the same in rural India.
- **Legal Issues:** There are many personal laws that regulate and secure a recognised couple's marital relationship, such as Hindu laws, Muslim laws, Christian laws, and so on. Since live-in partnerships are a newer concept to the Indian legislature, they have no legal ramifications for couples who live together but are not married. But the courts in India through cases have given a legal backing to such a concept as in the *Badri Prasad v Dy. Director of Consolidation*.

RESEARCH OBJECTIVES

- The sociological impact which the family and the couple has to face if their children get into a Live-in Relationship.

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- The main objective of this research paper is to look into the legal provisions and recognition given to a couple in Live-in Relationship and the status of children born out of live-in relationships.
- Disadvantages of social institution i.e., Marriage and well as it's advantages over cohabitation.
- To propose remedial steps to relieve the sufferings of women in India who are in a 'live-in-relationship.'

RESEARCH QUESTIONS

- Is a Live-in Relationship illegitimate in India?
- How can a marriage be justified over a Live-in setup?
- Why is there no substantial Law regarding the status of a Live-in Relationship formulated till now?

RESEARCH HYPOTHESIS

H₀: Marriage as a legally recognized institution provides security to the women rather than staying in a Live-in Relationship.

H_a: Marriage as a legally recognized institution does not provides security to the women rather than staying in a Live-in Relationship which is by the couple's own will.

REVIEW OF LITERATURE

Books:

1) **Marriage and Cohabitation by Arland Thornton, William G. Axinn, Yu Xie**

Publisher: The University of Chicago Press, 2007

The authors through the given book have tried to answer the question of why do couples choose to cohabit rather than marrying. According to the authors marriage is a self-defined status which

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is crafted out of love, commitment and the consent of two people. Previously marriage was the only alternative to being single but in the contemporary world living in cohabitation has become an alternative to marriage. The main element defined for being in unmarried cohabitation is regular sexual relations and having a common roof. There exists a very thin demarcation between cohabitation and marriage and sometimes such relationships are referred to as De facto marriages, marriage-like relationships, or paperless marriages due to many similarities with the institution of marriage—co-existence, sexual relationship and companionship. The legal distinction between cohabitation and marriage is complicated even by the reality that most people in the United States and abroad who cohabit without marrying will acquire some of the privileges and obligations associated with marriage.

2) Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century by Anne Barlow, Simon Duncan and Grace James

Year: 2005

The authors through their intensive study have pointed out how unmarried cohabitation is increasing in Britain. Some people do it because of selfish reasons as there are not able to give commitment to building a family whereas some look at it's positive side that it's a less institutionalized way of expressing commitment and constructing a family. Looking at the present scenario, the laws in Britain treat marriages and cohabitation differently which can have detrimental effects on the children born out of a live-in couple. Even if a partner dies without a will, then it can have serious financial repercussions for the surviving partner both mentally and financially. The author has used findings from Nuuffield Foundation which includes national data and the public opinion towards cohabitation.

Articles:

1) Live-In Relationship and Indian Judiciary³ by Astha Saxena, The SCC Online Blog

3.Astha Saxena, *Live-In Relationship and Indian Judiciary*, THE SCC ONLINE BLOG (Mar 30, 2021, 3:44 PM), <https://www.sconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/>

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The article gives a deep study about the concept of Live-in relationships which is not very new in India but with changing times people are accepting it, moreover the judicial backing given to a couple in cohabitation, children and the rights given to the couple are analysed further. The laws in India does not recognize any rights of the people in a live-in. While several court rulings have clarified the concept of a live-in arrangement, the law remains unclear as to the position of such relationships. Nevertheless, a few safeguards have been provided by interpreting and amending existing laws to prevent partners from abusing such relationships. Some of the rules that have been discussed are as follows:

- The Domestic Violence Act, 2005
- Criminal Procedure Code, 1973
- Evidence Act 1872

2)Decoding the dynamics of live-in-relationships⁴ by VageshwariDeswal, The Times of India

The above article discusses the mindset of the younger generations and how they look upon their life partners and relationships. The young professionals first want to build their career and then go for marriage or rather go in for a live-in. The fact that there are no obligations and it is a walk-in walk out situation seems practical to the youth. The freedom to reside with a spouse of one's choosing is a mandatory corollary of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The decision to marry or not to marry or rather be in heterosexual relationship is a personal choice which cannot be influenced by anyone.

3)Law and 'Live-in' Relationships in India by Anuja Agarwal, Economic and Political Weekly

The article focuses on some of the legal actions taken by the judiciary which has brought out the term's cohabitation or live-in relationships to the focus of people in India. The first and foremost legal move of the Maharashtra Government in 2008 on the recommendations of the

4.VageshwariDeswal, *Decoding the dynamics of live-in-relationships*, THE TIMES OF INDIA (Mar 30, 4:30 PM), <https://timesofindia.indiatimes.com/blogs/legally-speaking/decoding-the-dynamics-of-live-in-relationships/>

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Malimath Committee to amend Section 125 of the Code of Criminal Procedure (Cr.P.C.) as it was suggested to give maintenance rights to the neglected wife, children and parents. Even the definition of wife was to include those women who have been living with a man for a long period of time should be recognized as his wife. Even the Protection for Women against Domestic Violence (PWDVA), 2005 has been widely recognized as the first Act to recognize non-married adults. But as some common and judicial interpretations tend to indicate, these legal moves do not explicitly imply legal approval and acceptance of modern types of non-marital heterosexual cohabitation practices in India.

4)“Cannot Be Morally Accepted in Society”: P&H HC Declines Protection to Couples In “Contractual Live-In-Relationship” Which is Not A “Marital Relationship” by Sparsh Upadhyay, Live Law

The article talks about a case where a girl aged 18 years and a boy of 19 years executed a deed of Live-in Relationship where the parties stated that their relationship is not a ‘Marital Relationship’. The judges of the High Court disapproved of the plea since it was against the process of law and also cannot be morally correct. The deed mentioned how the parties will live in co-operation with each other and the deed had their mutual consent. Further if any of them backs off from the deed the other can raise a claim in the court of law, marrying each other when a suitable age is reached.

The plea was dismissed on the very notion that it was impermissible in the court of law as the parties have not attained a legal age which is prohibited under the Prohibition of Child Marriage Act, 2006, also an agreement in restraint of marriage is a void agreement according to Section 26 of the Indian Contract Act 1872.

5)Advantages and Disadvantages of Live-in Relationship, E Zine Astrology

This article talks about the rising trend of live-in relationships among young people of our nation. This trend has seen upward strike mostly in metropolitan cities of India. The reason stated behind this growing scenario is that young people are seen more enthusiasts towards their career and job whereas marriage entail a great deal of commitment, therefore it becomes a major

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cause for refusal to marriage. The apprehension of this concept of live-in relationship refers to the alliances that many partners chose to meet their different needs. The article also focuses on the various advantages and disadvantages of live-in relationship. If we talk about advantages, then to mention a few I would begin with the advantage of financial independence followed by lesser responsibilities and then mutual respect etc. To count the disadvantages, one of the biggest disadvantages is criticism from society and the main victim of this criticism is usually the female partner in relationship.

ANALYSIS

MARRIAGES IN INDIA⁵(Marriage and Hinduism)

Hindus have a firm belief on the institution of marriage. In the patriarchal society of Rig Vedic Hindus, marriage was regarded as a sacramental union and remained so throughout history. In Shastric Hindu rule, marriage has long been recognized as one of the most significant sanakaras (sacrament for every Hindu). In Hindu law, the sacramental nature of marriage has three characteristics: (1) It is a sacrament union, which means that marriage is mainly intended to fulfill moral and theological obligations; (2) it is a divine union, which means that once joined, a marriage cannot be broken in any circumstances; and (3) it is a sacramental union, which means that a marriage thus formed cannot be disbanded for any purpose. It's a marriage that includes not just this life, but also all possible lives. It is for the good of all universes, not just this one, that they are together.

Marriage as a social Institution: Hindu marriage is viewed as a way for two families to develop a partnership. Even in the educated class, most marriages are arranged by parents or relatives. Extramarital marriages, divorces, and cohabitation are frowned upon, as children are supposed to accept their parents' marriage decision unconditionally. For the majority of Indians,

5.Indira Sharma, Balram Pandit, Abhishek Pathak and Reet Sharma, *Hinduism, marriage and mental illness*, INDIAN JOURNAL OF PHYCHIATRY, (2013)

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marriage is a once-in-a-lifetime experience that is sanctified and idolized by society. Family is a sacred necessity, and parents in India are primarily responsible for marrying their children.⁶

Marriage has been, and continues to be (to some extent), a very common institution because it offers companionship, comfort, and stability in one's life. Marriage, it is argued, instils a sense of obligation in one's life, even though one is not ready to accept this commitment. On the other hand, cohabiting couples are found to have lower levels of commitment to their marriages, lower levels of happiness, lower levels of satisfaction with their sexual lives, and more disputes on average.

JUSTIFICATIONS ON, WHY MARRIAGES ARE BETTER AND MORE SECURE THAN A LIVE-IN RELATIONSHIP

- In a live-in relationship there is no commitment, the couple stays together on their own will whereas a marriage is legally recognised and backed by personal laws in India such as the Hindu Marriage Act 1955 and The Muslim Personal Law (Shariat) Application Act, 1937 which recognises marriage as a contract between two parties, property of females, dissolution of marriage, divorce etc.
- In the 2010 case *Alok Kumar vs. State & Anr*, the Delhi High Court defined a live-in relationship as a "walk-in and walk-out relationship."⁷
- A lot of grey areas are recognised when it comes to parenting in a live-in relationship. Since there are no specific rules regulating the rights and obligations of parents who are not legally married, raising children in a live-in relationship can be fraught with ambiguity, especially if disagreements arise. Though through case laws like *S.P.S. Balasubramanyam vs. Suruttayan*⁸ the Supreme Court has ruled that if a child has been born by a couple in a cohabitation for some years, then the child will not be considered illegitimate.
- In a marriage even after separation, the financially stable partner is responsible for maintaining the divorced partner. This can be achieved by alimony, monthly maintenance, or

6. Paras Diwan, *Modern Hindu law, codified and uncodified*, ALLAHABAD LAW AGENCY, (1982)

7. BONOBOLOGY.COM, <https://www.bonobology.com/marriage-live-in-relationship/> (last visited Mar 29, 2021).

8. *S.P.S. Balasubramanyam vs. Suruttayan*, 1994 AIR 133, 1994 SCC (1) 460

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both, depending on the court's decision, whereas financial stability is lacking for a woman in a live-in as there is no maintenance law for a couple staying in live-in.

- Even members of the family do not possess as much right and power in the presence of a live-in relationship pair as they do in the presence of a married couple with a social sanction.

LIVE-IN RELATIONSHIPS IN INDIA

Simply put, Live-in Relationships are a form of mutual union by two adults aiming to cohabit with each other without any duties and legal responsibilities, exercising their individual freedom and staying together without the obligation of marriage. Consequently, there is no defined and procedural law that binds them together, which means an individual can walk out of the relationship. Metropolitan cities like Mumbai and Bangalore have seen quite a change in their culture as the live-in culture is quite accepted there. The main reason for people opting for a Live-in is to check their compatibility with their partners before officially choosing to get married. But in the other parts of India especially in rural India the change is highly criticized since the institution of marriage is sacramental to most of the Indians who think that a girl is impure if she loses her virginity before marriage and considering this practice a taboo. There is a long way to go for the development and acceptance of the Live-in culture since there is not even formal and legal recognition given to a couple existing in cohabitation and it's been observed that there occurs a lot of social and legal issues between a cohabitating couple.

Though the legal system is still ambiguous about the rights of a Live-In couple still there are a few legal concessions given interpreting and analyzing the existing laws so as to curb the exploitation in such a setting.

A few legislations have been discussed below:

1) The Domestic Violence Act 2005: Domestic relationship is described in Section 2(f) of the Domestic Violence Act of 2005 as "a relationship between two people who reside or have lived together in a common household at any period, when they are connected through consanguineous marriages, or a relationship in the form of marriage, adoption, or are family members residing

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together like a joint family." Through this provision the courts have interpreted that the act can be applied to a couple in live-in.

This offers women certain fundamental privileges to defend themselves from the violence of forged marriages and extramarital affairs.

2) **Malimath Committee's recommendation to Cr.P.C.⁹**: The said committee gave its suggestions in 2003 which were acted upon by the Maharashtra Government in 2008. The recommendations were to amend Section 125 of the Code of Criminal Procedure which would broaden the ambit of "wife" in the above section and suggests to protect the female partner in a live-in relationship. Section 125 of the Criminal Procedure Code was adopted to safeguard a partner, young children, or aging parents from homelessness and deprivation, and it has been applicable to live-in partners by judicial interpretation since then. As a result of this revision, the word "wife" also includes women who were formerly in a live-in partnership and whose companion left her at his discretion, allowing a woman in a live-in relationship to gain the status of a wife. In essence, it says that if an individual has lived in a live-in relationship for a fair period of time, she has the same civil benefits as a marriage partner and is entitled to benefits in the specific provision.

Perspective of the Indian Judiciary¹⁰: The Supreme Court in the case of *Khushboo vs. Kanniammal and Anreestablished* through a major ruling that a man and a woman living in cohabitation cannot be termed as illegal. Living together is established as a right to live which is defined under Article 21 of the Constitution. Since the time of the Privy Council, a custom of couples cohabiting without being legally married has existed. As shown in *AndrahenedigeDinohamy vs. WijetungeLiyanapatabendigeBlahamy*, the Privy Council said that "where a man and a woman are shown to have lived together as partners, the rule presumes, unless the contrary is clearly established, that they were living together as a consequence of a lawful marriage and not in a circumstance of concubinage."

9. Anuja Agarwal, *Law and 'Live-in' Relationships in India*, ECONOMIC AND POLITICAL WEEKLY, 50-56, (2012), <http://www.jstor.org/stable/41720191>

10. Saini & Savi, *Live in relationship in India problems and perspective*, SHODHGANGA, (2018), <http://hdl.handle.net/10603/278720>

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The Supreme Court held in *Tulsa & Ors. v. Durghatiya & Ors.* that a man and woman who have been living together for a long time will be regarded as married and their offspring will be considered legitimate.

ADVANTAGES AND DISADVANTAGES OF LIVE-IN RELATIONSHIP

Advantages:

- For people who eventually marry, Live-in is an opportunity for them to test their compatibility with their partner and actually get to know about each other and their habits to judge whether they will be able to stay with them and co-exist together. It is a step towards institutionalising one's marriage.
- The extent of passion and affection between partners is shown in live-in relationships. A couple in cohabitation will learn how deeply they feel about enjoy each other, as well as what obstacles they face in their relationship. It often brings marital concerns to light before taking the final phase in marriage.
- If there are situations such that the couple is not able to get along together then the families do not get dragged into it and the couple can get over the relationship without any legal formalities.

Disadvantages:

- The major con associated with a live-in relationship is that it does not has any particular and significant law related to it neither in India nor globally. There are graver chances of facing verbal and physical torture when the person is in a live-in setting as it does not put any legal obligations leaving the partner helpless.
- While live-in partnerships are becoming more common in urban India, our community has a hard time accepting such relationships openly. It is regarded as taboo by many in our culture, including the elderly. Couples in this sort of partnership are often criticized by society because of their personal preferences.

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- If a child is conceived into a live-in relationship, he or she is likely to be negatively impacted. To begin with, they may fail to follow the rules and norms. The risk of becoming unfaithful is bound to enter their minds. Second, if the pair breaks the engagement, there would be no valid custodial grounds. Since their parent's partnership is not legally bound, the infant would not be entitled to inherit anything from either their father or mother.

GLOBAL VIEW ON LIVE-IN RELATIONSHIPS¹¹

1) United Kingdom: The Civil Partnership Act of 2004 covers live-in marriages in the United Kingdom. While the term “common law spouses” applies to a male and a female living together in a secure sexual partnership but the expression is not usually followed in England and Wales. Unmarried spouses have no secured rights of possession of each other's houses, according to a 2010 document from the Home Affairs Section to the House of Commons. For taxation purposes, cohabiting spouses are regarded as unrelated persons. It can be seen that even in UK there are no well-defined laws for a couple in cohabitation.

2) Scotland: For the first time in Scotland, the family law (Scotland) Act 2006 established, and also by implication legalized, the live-in partnership of over 150,000 unmarried couples in the country. The Article 25(2) of the Act stated that, for the purpose of any Article 26 to 29, the court can regard a person (A) as co-inhabitant of another person as being (B), and that: - 1) The length of the time that he has co-existed, 2) The relationship's essence over that time frame and 3) any financial agreements, their existence and scope.

In the event of a dissolution of the arrangement according to section 28, a cohabitant has the ability to seek financial assistance in a court of law. From the above text it can be noted that the laws in Scotland regarding a live-in couple are quite progressive and have made a way forward than other nations and countries.

3) United States: Since the 2003 ruling in Lawrence vs. Texas¹², the status of live-ins is not found unlawful. In 2007, it is reported that 16.4 million homes in the United States were

¹¹.*Id*

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managed by two same sex individuals who claimed to be unmarried. 16 Prior to 1960, cohabitation was almost uncommon in the United States, but between 1960 and 1998, cohabitation appeared popular and easy. As of now cohabitation is still illegal in three states i.e., Mississippi, Florida and Michigan, with the changing time The United States has brought about changes with its perspective on live-in as it's reported that Since 1999, the percentage of people aged 30 to 44 who reside with a spouse has almost increased, from 4% to 7%.

FINDINGS

Family plays a crucial role when it comes to marriage. It is an age-old concept which provides a person with companionship, comfort, and continuity in life. In-fact in India it's considered than when a daughter grows up the only major aim for a father is to marry her away to a good family and with such thoughts it is difficult to accept a norm of the youngsters staying together without being legally married.

Therefore, it is eventually very difficult for India families especially in the rural areas to accept this change so drastically, for them it is a sin. As argued, marriage imparts a sense of obligation in life, even though the individual is not prepared to accept it this being the sole reason conventional arguments and ideologies have been unable to prevent today's fast-paced generation from devising a convenient alternative.

SUGGESTIONS

Section 125 of Criminal Procedure Code,1973 There are recommendations to amend this particular section and include in its ambit the women who was previously in a live-in relationship but was abandoned by her partner on his own will ought to give her maintenance as if they had been living together for a reasonably long period of time then the woman is considered a spouse.

12. Lawrence v. Texas, (2003), 539 U.S. 558

The Supreme Court in the judgement of *Revanasiddappa & Anr. vs. Mallikarjun & Ors.* Made it clear the irrespective of the relationship of the man and woman it is important that the child born out of a live-in couple should be given the same rights and privileges as are recognised by the one born out of a legitimate marriage.

Therefore, it is important that such progressive words do not remain in the papers but are even implemented.

CONCLUSION

The idea of live-in relationships has emerged from obscurity and has also gained partial legal recognition. Live-in Relationships are no longer a new concept in the India society, the Indian Judiciary had much before recognized certain rights of such couple through various case laws, legislations and the Malimath Committee Reports, it's on the people to accept the change and no longer consider an unmarried boy and a girl living together as a taboo. People in long-term live-in relationships have been found to be as successful as married spouses by the courts. In a number of instances, the Supreme Court has ruled that where a pair has cohabited for a fair period of time, they are considered to be married and are entitled to certain rights. But on the other hand, the courts have not specified how much time should be taken into account when conferring marital status on such relations. It requires urgent attention from legislators to make it clear by appropriate legislation, or else different couples can be judged differently when seeking their rights.

It is due to the reported dowry cases, physical and mental abuse and torture by the in-laws women prefer to stay in a live-in first to test their compatibility and later think about the future. Gone are the days when the male member was the only earning person of the family, women and girls have taken this responsibility equally due to reforms in educational policies and the will to be independent women equally contribute to manage the household financially. Concluding the whole topic, it can be said that it is important for the society to amend its ways with the changing colors and also for the judiciary to provide laws which are just, reasonable and enforceable by such live-in couples.

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