

THE LEGALITY OF LIVE-IN RELATIONSHIPS IN INDIA – A CRITICAL ANALYSIS

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ABSTRACT

The legality of live-in relationships in India is one such area that is always criticized and constantly debated. A man and a woman are said to be in a live-in relationship when they live together without marriage. Live-in relationships are becoming more common in Indian society, especially in metro cities. However, it is still considered taboo in many parts of society. It is also because of this reason separate legislation for live-in relationships does not exist, and the majority of the legal framework for live-in relationships comes from judicial precedents and other related acts.

The current research paper discusses the various definitions of live-in relationships according to Indian law and its relation to marriage. The paper will also briefly discuss how live-in relationships are viewed in India in comparison to other countries around the world. It also annotates the reasons for the increase in such relationships before moving forward to the legality of live-in relationships in India through various judicial precedents. Also, the validity and presumption of live-in relationships will be discussed with the support of case laws. Finally, the paper will discuss the applicability of various laws and acts on such relationships as well as the importance of the various rights given to women and children born out of live-in relationships.

Keywords: Live-in relationships, rights, legality, presumption, judicial decisions, validity, women (partner), children.

INTRODUCTION

A relationship between a man and a woman is said to be legal and valid when it is considered a credible marriage and is said to be illegal when it is not based on any marriage laws. A live-

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in relationship occurs when two people are in a sexual or romantic relationship or both as partners for a significant amount of time and decide to mutually live together permanently without getting married, in some countries, this arrangement is referred to as cohabitation. The simplest definition would be “a domestic cohabitation between a major unmarried female and a major unmarried male.” The Court ruled that a live-in relationship is covered by the right to life guaranteed by **Article 21** of the Indian Constitution. It was also ruled that live-in relationships are permitted and that it is not always illegal or unlawful for two adults to live together.

A marriage is the legal union between two people, which involves the families, whereas a live-in relationship is between two people. ‘Under English law, a marriage was an agreement dependent on a consensual private agreement between a man and a woman to become a couple.’ As no statute incorporates such relationships, the Court has taken the position that if a man and a woman live together as a pair for an extended period, the law will presume that they are lawful partners unless proven otherwise. ‘According to the Supreme Court of India, a live-in relationship is protected by the right to life and cannot be viewed as unlawful in the eyes of the law.’

Live-in relationships have become increasingly common and widely practiced in countries like India, the USA, France, and China. This is mainly because of the change in people's perspective of marriage and divorce. People have now developed a fear of failure in marriage and are also doubtful of whether they have the ability to maintain a successful marriage. It was mainly because of this that the practice of live-in relationships has increased widely in various countries. The socio-legal status of live-in relationships varies in different countries. In the **United States of America**, the practice of live-in relationships gained popularity only after the change in the divorce laws in the 1960s and 1970s, due to which divorces could be easily obtained, which in turn led to an increase in divorce rates. This changed the people's perspective on marriage, and they started living together without marriage. In **Canada**, live-in relationships are recognized as common-law relationships. This means that the relationship of couples living together over a time prescribed by law will be considered equivalent to marriage. In the **United Kingdom**, live relationships have been a part of the law since the beginning of the modern welfare state in 1948. In 1977, “living together as husband and wife” was used for the first time. It means the same as “cohabiting with a man as his wife,” which was used before that date. In the UK, live-in relationships are referred to as living

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together as a married couple. Thus, the practice of living in a relationship is also legal in the United Kingdom.

ANALYSIS

Live-in relationships are a concept that has been prevalent in society for a very long time. This concept can be traced all the way back to the Vedas and can be considered as one of the eight forms of marriage. One of the eight types of marriage, the Gandharva form, was a union formed by mutual consent between a man and a woman. Although this specific form of marriage does not explicitly fall within the definition of a live-in relationship, it can nonetheless be connected to the idea of a live-in relationship as it exists in modern times. The term live-in relationship, though, does not contain a specific definition; it refers to an arrangement where two people live together as partners for a long period of time or even permanently without any marriage. Live-in a relationship is, therefore, similar to marriage, but the difference is that they are not bound by the sacred thread of marriage. Thus, the couple can separate without any interference from the Courts.

The concept of live-in relationships is highly looked down upon in Indian society. It is considered as culturally immoral and inappropriate to the societal norms. Therefore, a separate legislation for live-in relationships is not present. However, the **Protection of Women from Domestic Violence Act, 2005** also refers to the concept of live-in relationships and also protects them.

Though separate legislation is not provided for live-in relationships, many people are opting for live-in relationships. The major reason for this is divorce, which has psychologically, economically, and emotionally affected people because it has created a fear in the minds of people that it could happen even though they have never experienced a divorce. Therefore, couples are opting for live-in relationships so as to determine their compatibility and ability to maintain a successful marriage. The other reason for live-in relationships to be widely accepted by people is the changes in social attitudes and the decline in the practice of traditional marriages. People practice live-in relationships mainly because they are not under any pressure to adhere to the conventional standards and ideals of traditional marriage. The live-in relationship has both advantages and disadvantages. The major advantage of a live-in relationship is it prevents a marriage from ending in divorce as partners by living together, getting to know each other, and helping them understand each other's responsibilities. Thus, it

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enables the partners to make a decision as to whether they can live together with the choices available to them. Live-in relationships can be based on mutual understanding and are not lawfully bound to each other. Therefore, they can end their relationship without undergoing any stress of divorce and without any interference from the courts. Live-in relationships also contain many issues, and the parties have to face several challenges like societal, documentation, cultural, and succession, and inheritance challenges.

VALIDITY OF LIVE-IN RELATIONSHIPS

A live-in relationship is currently recognized as a fundamental right to life and personal liberty under **Article 21** of the Indian Constitution. The right and freedom of choice to choose to marry or live with someone of one's own free will flow from this unalienable fundamental right. In the historic case of **S. Khushbhoo v. Kanniammal**², the Supreme Court decided that a live-in relationship is covered by the right to life under **Article 21**. The Court also found that it is not illegal or unlawful for two adults to cohabit voluntarily.

The Supreme Court declared in the case **Payal Sharma v. Nari Niketan**³ that although live-in relationships are socially taboo in some areas of India, they are neither morally incorrect nor immoral. A man and woman have the right to live together willingly without getting married, according to the ruling. Although live-in relationships are seen as immoral by society, the Court clarified the line between law and morality by holding that they are neither unlawful nor illegal. There is no crime associated with maintaining a live-in relationship between two persons or cohabiting. In the case of **Lata Singh v. State of Uttar Pradesh**⁴, the Court found that the freedom to choose one's spouse is guaranteed by **Article 21** of the Indian Constitution. Therefore, a woman is free to cohabit or be married to anybody she wants.

It is said that the ruling in the case of **Indra Sarma v. V.K.V. Sarma**⁵ acts as a fundamental foundation or guideline for issues involving live-in relationships. The Court cited **Section 2(f)** of the **Protection of Women from Domestic Violence Act, 2005**, which defines the phrase '**domestic relationship**' when examining the legal sanctity of live-in partnerships. The bench ruled that live-in relationships should be included under the definition of 'relationship in the character of marriage.' The Court also considered a few factors while

²S. Khushbhoo v. Kanniammal, 2010 5 SCC 600

³ Payal Sharma v. Nari Niketan, AIR 2001 ALL 254

⁴ Lata Singh v. State of Uttar Pradesh, AIR 2006 SCC2522

⁵ Indra Sarma v. V.K.V. Sarma, 2013 15 SCC 755

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determining if a live-in relationship can be considered to have the nature of a marriage under the Act. These elements include companionship, sexual relationships, the intention and behaviour of the parties, duration of the relationship, financial agreements and resource sharing, domestic arrangements, a shared home, socialization in public, and children. Thus, a live-in relationship can be regarded as lawful and valid in light of the aforementioned considerations.

The **Uttarakhand Uniform Civil Code** (UCC) has established a procedure for legalizing live-in relationships under **Section 381⁶** of the code. This process includes sending a formal notice to the registrar under whose jurisdiction they reside. After that, the contents of the notice will be examined, and a summary inquiry will take place. The major downfall of this code is the time period within which the statement must be submitted; it is our opinion that instead of submitting within one month, there should be at least a period of 5 years given. As such, a short period of time discourages the entire purpose of live-in relationships.

PRESUMPTIONS OF LIVE-IN RELATIONSHIPS

The courts have noted in a number of rulings that a long-term, ongoing live-in relationship can result in the assumption of marriage. In order to protect and safeguard the rights of parties, particularly women and children that came out of such relationships the courts have taken these actions. The Supreme Court ruled in the case of **Badri Prasad vs. Dy. Director of Consolidation and Others⁷** that it will be assumed that a pair is actually husband and wife if they have been living together as such. However, the Court also observed that this presumption is also rebuttable, and the party attempting to disprove the presumption that the legitimacy of the relationship is required to prove the same. Therefore, the Supreme Court can rebut the presumption in some unusual circumstances, even if it is appropriate to assume that the relationship of the parties is a marriage. In **S.P.S. Balasubramanyam v. Suruttayan⁸**, the Court declared that, unless the contrary is proven, a couple would be presumed to have a legitimate marriage if they have lived together as a couple for a significant amount of time. The rights of children resulting from such a connection were also defined in this case. A child born from such a relationship will still be regarded as a legitimate child and will be legally allowed to inherit such property, it was decided. An act of marriage

⁶The Uniform Civil Code of Uttarakhand, 2024 § 381.

⁷Badri Prasad vs. Dy. Director of Consolidation and Others, 1979 SCR (1) 1

⁸ S.P.S. Balasubramanyam v. Suruttayan, 1994 AIR 133

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may be inferred from the actions and behaviour of the parties as they are revealed by the circumstances of a particular case in regard to Sections 50 and 114 of the Indian Evidence Act. This was observed in the case **Tulsa &Ors vs Durghatiya**⁹ where the Court upheld the 50-year-long live-in relationship of a couple. The courts, therefore, can also presume the presence of any fact that could have occurred, though it did not actually occur. The Court stated that "Law leans in favor of legitimacy and frowns upon bastardy" and held that a strong presumption of a valid marriage arises when a heterogeneous couple lives together for a long period of time as husband and wife, and it is the duty of the person who disagrees the legal origin of the relationship. The judgment of the case **Madan Mohan Singh v. Rajni Kant**¹⁰ is also similar to the previous cases. In this case, the Court held that a live-in relationship between a man and a woman for a long period of time would be considered a marriage and not a "walk-in and walk-out" relationship.

Therefore, it is clear from the rulings in each of these cases that the courts prefer to treat long-term live-in partnerships as marriage rather than as a brand-new, unrelated concept.

WOMEN'S RIGHTS IN LIVE-IN RELATIONSHIP

1.MAINTENANCE RIGHTS

Following the recommendations of the **Malimath Committee**, **Section 125** of the Criminal Procedure Code, 1973, was changed in 2003 to expand the definition of "wife" to include women who are in a live-in relationship. This provided for the financial requirements of women who are unable to support themselves or whose relationships have become strained. The Domestic Violence Act, 2005 guarantees protection against all forms of violence. Women in live-in relationships can also be brought under this Act, just like married women. Thus, Domestic Violence Act, 2005 provides protection, maintenance and alimony to women in a live-in relationship. The courts have the liberty to decide the maintenance under this law and individual facts of the case, as the concept of claiming maintenance has also been opined in various such judgments. It should be noted, though, that not all live-in relationships are covered by the Act's requirements. In this regard, the Court reiterated the requirements of a valid live-in relationship. They are:

(i)Presenting oneself out to society as being comparable to spouses

⁹ Tulsa &Ors vs Durghatiya, 2008 4 SCC520

¹⁰Madan Mohan Singh v. Rajni Kant, 2010 9 SCC 209

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- (ii) Being of legal age
- (iii) Being otherwise eligible to enter into a legal marriage
- (iv) Willingly cohabiting for a substantial amount of time.

These standards were established in the **Velusamy v. Patchaiammal**¹¹ case.

In the case of **Chanmuniya v. Virendra Kushwaha**¹², the Court overruled the lower Court's judgment and upheld a woman in a live-in relationship's entitlement to file a maintenance claim under **Section 125** of the Criminal Procedure Code. The reason for such a decision is to ensure that the legal loopholes are not taken advantage of. This prevents a man from enjoying the benefits of a de facto marriage without fulfilling the responsibilities of that marriage. The Honourable Supreme Court stated in the case **Kamala v. Mohan Kumar**¹³ that the term “wife” should have a purposeful interpretation in order to advance social justice ideals and safeguard the constitutionally guaranteed right to human dignity. In this case, the lady was granted support for both herself and the children she had with the man during their lengthy cohabitation, which gave rise to the assumption of marriage. Thus, it can be claimed that a woman who is living with someone else has equivalent advantages to a woman who is married.

In the new UCC of Uttarakhand, **section 388**¹⁴ states that if a woman is deserted by her partner, then she can claim maintenance by approaching a competent court that has jurisdiction over their place of residence together.

2. RIGHT TO PROPERTY

The Hindu Succession Act of 1956 was amended to ensure that a woman is given the same rights as her son to her parental property and her own property, irrespective of her marital status. Unless a will exists that states that she cannot inherit her partner's property after his death, she will be allowed to inherit such property.

In the case of **Dhannulal v. Ganeshram**¹⁵, the Court upheld a woman's right to inherit property following the death of her live-in spouse to resolve a property dispute, illustrative of

¹¹Velusamy v. Patchaiammal, 2010 10 SCC 469

¹²Chanmuniya v. VirendraKushwaha, 2011 1 SCC 141

¹³ Kamala v. Mohan Kumar, (2005) 3 SCC 636

¹⁴The Uniform Civil Code of Uttarakhand, 2024 § 388

¹⁵Dhannulal v. Ganeshram, (2015) 12 SCC 301

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a woman's right to property in a live-in relationship. According to the Court, “when a man and a woman were living together as husband and wife, the law will presume that they were living together in a legitimate marriage.” Thus, under a valid succession act, the woman may claim the property.

CHILDREN’S INHERITANCE RIGHTS

In **Tulsa &Ors vs. Durghatiya**¹⁶, the Supreme Court allowed the right to property to children born out of live-in relationships. As a result, a man and a woman who cohabit for a considerable amount of time are regarded as married and are entitled to all the privileges of a married pair. Children of live-in couples will also be regarded as legitimate. Such children have the right to self-acquired properties of their parents under **Section 16** of the Hindu Marriage Act of 1955 and **Section 26** of the Special Marriages Act of 1954.

These children also have rights under **Section 125** of the CPC of 1973 that grant them maintenance even if it is allowed in their personal laws or even if the partners are not living together. It was also held in **Bharata Matha &Ors. vs. R. Vijaya Renganathan &Ors.**¹⁷ that a child of live-in couples has the right to inherit their parent's property but has no claim to Hindu Ancestral Coparcenary Property. According to the ruling in the case **Revanasiddappa&Anr vs. Mallikarjun &Ors.**¹⁸ a child born into this kind of relationship has a **constitutional right** to inherit property.

The recent Uttarakhand UCC states through its **section 379**¹⁹ that any child born out of such a live-in relationship will be considered a legitimate offspring of the couple.

CONCLUSION

Therefore, it can be concluded that though live-in relationships are preferred as they provide individual freedom, they must not be disadvantageous to any of the parties involved. The legal framework of live-in relationships primarily consists of a series of relatively progressive judicial precedents and a correlation of already existing acts. To do this, the Indian judiciary, on multiple instances, has considered and compared relationships to marriage in order to uphold rights and preserve the dignity of such relationships. Thus, the Supreme Court and various high courts have inculcated the legitimacy and legality of live-in relationships within

¹⁶ Tulsa & Ors vs. Durghatiya, AIR 2008 Sc 1193

¹⁷ Bharata Matha &Ors. vs. R. Vijaya Renganathan &Ors, AIR 2010 SC 2685

¹⁸Revanasiddappa&Anr vs. Mallikarjun &Ors, 2011 AIR SCW 2447

¹⁹The Uniform Civil Code of Uttarakhand, 2024 § 379

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the scope of statutes such as the Domestic Violence Act, the Criminal Procedure Code, and the Indian Evidence Act.

Therefore, as per the current legal position, women who are living together have a right to property and maintenance. Children born out of such relationships are also given various rights for inheritance and separation of parents. Though the judicial precedents provide a framework for governing and directing legal matters arising from live-in relationships, they are insufficient. Recent incidents have demonstrated that a lack of precise regulation and corresponding ambiguity has resulted in varied and diverging judgments within the judiciary. As a result, the Legislature must take into account the relevance of live-in relationships in the current society and adopt thorough legislation outlining the rights and duties of the parties.

SUGGESTIONS

From the above analysis of the different judicial decisions, we have come to the conclusion that separate legislation and legal provisions on live-in relationships are of utmost importance and are required immediately. Such legal provisions must be according to the current traditions, cultures, and values of Indian society, which is an ever-changing one. The Court's decision in granting legal status to live-in relationships is appreciable. Such legal status must be granted only after a considerable and reasonable period of time. This must be done so as to protect the rights of children born from such relationships and also the rights of the partners. Therefore, we are of the opinion that though the rights of the partners and children arising from a live-in relationship are important and must be legalized, it is also equally important that these rights do not impede the system of marriage.

Uttarakhand took a step forward by attempting to legalize live-in relationships, but there are still a lot of changes to be made to the code in terms of such relationships. That being said, the entirety of the nation should take a page from Uttarakhand's book and effectively legalize live-in relationships in order to secure the rights of women and children.

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