

EMERGING TRENDS OF LIVE-IN RELATIONSHIPS UNDER FAMILY LAW

Pridhi Chopra*

Family Law is a branch of law that regulates family matters and other domestic relations, including marriage, divorce, wills, succession, adoption, and many such personal issues. In India, the most important subject under Family law is considered to be the subject of marriages. India being a secular country, grants each individual right to religion and religious practices. The matters of these religions have a different set of laws, especially in the case of the institution of marriage. The concept of Marriage is acknowledged by all civilized societies. Due to the diversity of religious practices, the Indian legal system has different codified laws for each religion. Hindu marriages are regulated under the Hindu Marriage Act, 1955 while the Muslim Marriage Act, 1957 deals with Muslim marriages. Similarly, there is the Christian Marriage Act, 1872, and the Parsi Marriage and Divorce Act, 1936 for the Christian and Parsi marriages in India. With the changing times, the Special Marriage Act, 1954 was also enacted for inter-faith marriages. Different provisions for marriages were made under the law for different religions. However, **the most recent development under family law in India is the laws related to the matters of live-in relationships.**

In times of change, the young generations of Indians are participating by happily embracing the idea of live-in relationships. It is important to note that new social change brings the need for new laws. At present, there is no law made specifically regarding the emerging issue of live-in relationships. The socio-legal issue of 'live-in relationships' is new to the Indian cultural context but is quite prevalent in western countries. Indians are gradually opening their minds to the idea of cohabitation of man and woman before marriage. However, the topic of "live-in relationships" is always criticized as it is seen as a degrading source of India's cultural and traditional values.

Marriage is considered to be a sacred and eternal union between a man and the wife. The concept of live-in relationships doesn't recognize the traditional institution of marriage in its true sense. The first question regarding a live-in relationship is- what is a live-in relationship and how it is different from the sacramental union of marriage? A live-in relationship is a concept of 'Mitru Sambhandh', wherein couples live under the same roof in a relationship

*LLB, FIRST YEAR, AMITY LAW SCHOOL, NOIDA.

that is similar to the nature of marriage. In other words, it can be categorized as cohabitation. Marriage is defined by Britannica as “*a legally and socially sanctioned union, usually between a man and a woman that is regulated by the laws, rules, customs, beliefs, and religion that prescribe the rights and duties of the partners.*” The key difference between live-in relationships and marriage lies in the legal and social aspects. In India, live-in relationships lack proper legislation and acceptance by society. The rigid customs, culture, and faith practiced in the Indian subcontinent don’t favour the idea of a couple living together as ‘man and wife without getting married. There are numerous ongoing debates on the legality of live-in relationships. Most people claim that it is against the country’s traditions, culture, and beliefs, however, with changing times, the new generation of Indians are inclined towards the idea of cohabitation without marriage. Due to that, a substantial amount of the population also argues whether **India's youth has given up on marriages altogether**. From the last decade, the phenomenon of living together as husband and wife without marriage is emerging, especially in metropolitan cities or urban areas.

As the number of couples living together increases, the cases of unjust to either party also increases. Various issues emerged in recent times, raising sensitive questions like what happens to the child born out of such a relationship? Is the child eligible for the father’s property? What happens to women who have been in a long-term live-in relationship and are a victim of false promises? Are women entitled to maintenance by the man? What are the provisions available to women if they become prey to domestic violence? There are infinite questions, repeatedly asked in regard to live-in relationships which are yet to be answered by the law-making bodies. At present, there are no laws for couples living in a live-in relationship. No redressal mechanism can protect the interest of one or both parties involved in such a relationship, making each party vulnerable and helpless many times.

Indian Judiciary has witnessed many cases where it has been reported that partners in live-in relationships or a child born out of such a relationship have remained vulnerable merely because there are simply no provisions made for such relationships. Interestingly, live-in relationships are not only not recognized and accepted by Indian society but also by Indian Legislation. A marriage legally provides the status of husband and wife to the parties involved and creates mutual rights, duties, and obligations towards each other. If there would be issues in a valid marriage, it will be enforceable by law. Indian personal laws provide provisions of alimony, maintenance to wife and children, the inheritance of property by wife

and children, child custody in case of divorce as matrimonial remedies. However, there are no such provisions in case a couple living in a live-in relationship chooses to separate their ways. No doubt there is a need for a more organized and clear set of laws for people choosing to live in live-in relationships.

However, the argument against more clear laws on live-in relationships is if provisions were made for such relationships it might create a **disorder in the “Indian family system”**. The concept of a live-in relationship is seen as a major threat to the values, traditions, and culture of India, where pre-marital sex is a sin and marriage is a sacred union. A live-in relationship is exactly the opposite of the institution of marriage, a matter significantly embraced and celebrated in India. As a result, it becomes a controversial topic to draft laws on as it might not be socially accepted even if an act would be passed by the Parliament of India.

Further, it is crucial to note that live-in relationships are not illegal; no law declares live-in relationships as a criminal offence. It is merely the social convention and taboo that prohibits a man and woman to live together in nature that of a marriage. It can be said that the traditional norms of Indian society are the biggest hurdle in the way of live-in relationships. Most recently, **the Allahabad High Court held that two adults who are willing to live together have the right to cohabit even if families are interfering**. As per the judgment, two adults don't need the permission of a third person to live together. It is the fundamental right of every citizen under Article 21 of the Indian Constitution to live freely.

A live-in relationship is also known as *de facto* marriage (in practice but not necessarily practiced by law). As mentioned, there is no specific law for the matter of live-in relationships in India. There is no clause in any law regarding such couple's rights, duties, and commitments towards each other like in the case of marriages. Interestingly, the term “live-in relation” has never been described under any law. Many such issues have been addressed by the judiciary in an attempt to make the concept of the live-in relationship clear. Various lawsuits have been filed in the court of law, therefore, few rights have been granted by the court to curb the misuse of such relationships.

The Protection of Women from Domestic Violence Act, 2005 seeks to protect women from domestic violence. The term ‘domestic relationship’ is described under section 2(f) of the aforementioned act, “*Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related*

by consanguinity, marriage, or **through a relationship in the nature of marriage**, adoption or are family members living together as a joint family.” The phrase “a relationship in the nature of marriage” in the Domestic Violence Act often provides justice to women who lived with their partner before marriage. In *D. Velusamy v. D. Patchaiammal*¹, the Supreme Court held that the relationship in the nature of marriage is **akin to common law marriages** and laid down certain essentials of such relationships. As per the judgement, women who were in a live-in relationship can claim the remedies available under the Domestic Violence act.

Indian society as a whole has condemned the emerging trend of couples living together before marriage. With time, many cases were put forward to the judiciary in regard to live-in relationships, one such case was *Revanasiddappa v. Mallikarjun*², in which Justice A.K. Ganguly said, “*With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.*” This statement highlights the need for change in societal norms and values. A judicial response should be refined from the society's prejudices and the Indian Judicial system has proved the same especially concerning the issue of live-in relationship. However, many times judgements have been delayed to form provisions even though there is no legislation for the same.

In 1978, the Supreme Court gave validity to a 50-year old live-in relationship in the case of *Badri Prasad v. Director of Consolidation*³. In this case, a special leave petition was dismissed by Justice Krishana Iyer stating “*a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable...Law leans in favour of legitimacy and frowns upon Bastardy*”

Further, The Allahabad High Court in 2001 recognized and highlighted the difference between law and morality. In the case of *Payal Sharma v. Nari Niketan*⁴, Justice M. Katju and Justice R.B. Misra remarked that “*In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but it is not illegal. There is a difference between law and morality.*” This judgement marks out the future of live-in relationships in India. Even though the matter is extremely criticized by

¹ *D. Velusamy v. D. Patchaiammal* (2010) SC

² *Revanasiddappa v. Mallikarjun*, (2011) SCC 1

³ *Badri Prasad v. Director of Consolidation* (1978) AIR 1557, 1979 SCR (1) 1

⁴ *Payal Sharma v. Nari Niketan*, (2001)

Indian society as a whole, yet the judiciary didn't fail to stand out the idea of justice in regard to matters that lack societal acceptance.

Often, live-in relationships are also termed as "walk-in, walk-out relationships". Keeping the use of the term in mind, the Supreme Court held in the case of *Madan Mohan Singh v. Rajni Kant*⁵ that the live-in relationship if continued for a long time, cannot be termed as a "walk-in and walk-out" relationship and that there is a presumption of marriage between the parties.

Lately, attempts have been made by the Supreme Court to have new legislation for live-in relationships so that **the victims can be given protection from any wrong caused to either party from such relationships**. The Supreme Court also felt that denial of any protection to such parties in the present would amount to a great injustice to victims of such relationships in the future. As a result, the apex court suggested Parliament make provisions based on certain guidelines given by it. The Supreme Court suggested guidelines on categories including duration of periods of relationship, shared household, pooling of resources and financial arrangements, domestic arrangements, sexual relationship, socializing in public, children and intention and conduct of parties.

Justice P.N Bhagwati remarked in the leading case of the oleum gas leak case that "*law cannot afford to remain static*", similarly, the country cannot afford to only run on the years-old notion of what is culturally right or wrong. The issue of live-in relationships is that it is not socially accepted as it is seen as the corrupting force. The emergence of live-in relationships can be compared to that of the custom of Sati. When Sati custom was abolished, many people criticized the abolition on the grounds that it is an attack on Indian traditions and culture. However, years after the abolition of Sati, the same society has accepted that the abolition of Sati was a needed reinforcement that protects innocent women from premature death. Similarly, the society might feel that the emerging trend of live-in relationships is corrupting the customs, beliefs, and faith of Indian society at present but will eventually realize that it is a mere effect of modernization.

⁵ Madan Mohan Singh v. Rajni Kant, (2010) 9 SCC 209

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