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Author:

Kashish Ali

Jamia Millia Islamia University, Delhi

B.A. LL.B. (Hons.), 2nd Year.

IS LIVE-IN RELATIONSHIP LEGAL IN INDIA?

Indian society is ever-changing. Live-in Relationship is a millennial concept brought into our society in recent times. With the whole world shifting towards modernization, India has witnessed a drastic change in the way the present generation perceive their relationships. People are gradually broadening their mindset about premarital sex and live-in relationships. This broadened mindset is an outcome of improved education, profession, freedom, privacy, and also globalization. However, these changes have been consistently under the radar of criticism. They are highly debated on as these concepts lack legality and social acceptance.

Feeling of being loved and belongingness is what most people want, but the tie that marriage binds them into is excessively binding for them. And an alternative is a relationship that resembles marriage but without its obligations and responsibilities. This is when live-in relationships come into the picture. It involves continuous cohabitation between the couple without any responsibilities or obligations towards each other. There is no legislation tying them together, and consequently, either of the two can walk out of the relationship, whenever they wish for. Live-in-Relationship is neither a Crime nor a Sin; However, it is unacceptable to a certain extent in the Indian society. In a country like India, where marriages are considered as a social foundation to legalize the relationship between a man and a woman; the concept of Live-in-Relationship has set up a new dimension in the arena of men-women relationship.

The concept of a live-in relationship is influenced by Western culture. Some of the major reasons people are opting for live-in relationships rather than marriages is to avoid the responsibilities towards each other, chaos of family drama, duck the issues of commitment, and unlike other countries, the ground for divorce in India is very limited. Once a couple gets married, separation and divorce becomes a prolonged process and creates a great turmoil in their lives. But before making any opinions, we should always consider both sides of a concept, so analyzing the cons of a live-in relationship is also very significant. Bollywood has become the biggest idol for the youths of our Country. One of the reasons why live-in Relationship has become so common in this new generation is because our idols have set an example for us and influenced us to do so. But the actual problem arises when good times pass, and the relationship comes to an end. Then various questions are asked like what are the rights of the parties in a live-in relationship? Is there any responsibility for either of the parties in a live-in relationship? All these questions remain unanswered. The recent case of Actor Sushant Singh Rajput's mysterious death also raised some questions on legality and responsibility involved in Live-in relationship as the actor was in a live-in relationship with actress Rhea Chakraborty. India has no particular legislation to govern live-in relationships, to establish the legality of live-in relationships, reliance is placed upon different acts and precedents set by the Court.

What is a Live-in Relationship?

The Supreme Court judgement of *Indra Sarma vs V.K.V. Sarma* defined live-in relationships in five distinct ways:

- Firstly, a domestic cohabitation between an adult unmarried male and an unmarried adult female is the simplest kind of relationship.
- Secondly, a domestic cohabitation between a married man and an adult unmarried woman. A domestic cohabitation between an adult unmarried man and a married woman.
- Thirdly, it is important to mention in a live-in relationship, that cohabitation is taking place with mutual consent.
- Fourthly, the Apex Court has made it very clear that any domestic relationship with a married individual will tantamount to adultery. So, even if the cohabitation happens, unknowingly can act as a ground for divorce.

- Lastly, a domestic cohabitation between two homosexual partners, which cannot lead to a marital relationship in India as there is no law which has defined gay marriage yet.

Difference between Marriage and Live-in relationships

- The institution of marriage is a socially, ceremonially and ritually acknowledged union and an agreement between spouses that institutes rights and legal commitments towards one another. In contrast, in Live-in relationships, there is no legislation binding the partners together. Subsequently, either of the two can walk out of the relationship, as and when they are willing to do so.
- Considering the different culture in India, separate laws have been formulated which lay down the rules and procedure for the proper execution of marriages in different religions. Marriage laws have been made to provide solutions for disputes emerging out of marriage in various religions. In contrast, there is no legal definition of a live-in relationship. Hence, the legal status of such kind of relations is also unconfirmed.
- In Marriage, apart from the law of maintenance under personal laws, Section-125 of the Code of Criminal Procedure also provides for maintenance, if the wife can't maintain herself. Women can also seek extra-maintenance aside from the maintenance received by her under some other law according to Section- 20 (1) (d) of the Domestic Violence Act. In contrast, in a live-in relationship, the Domestic Violence Act provides maintenance and protection, thereby granting the right of alimony to an aggrieved live-in partner.
- When we talk about marriage, the belief is that a marriage takes place between two families. Family support in case of marriage is present to a great extent. However, when it comes to a live-in relationship, it is only between two people and family support is mostly lacking in it. Especially in India, families still, scorn upon living relationships.
- Marriage is known to have social and legal benefits for children. In contrast, Even though the child born out of a live-in relationship is legitimate; however, the father, in this scenario, does not hold an obligation to support the child. Here, the mother is mostly considered to be the legal guardian.
- There are several studies and articles on the live-in relationship that show that people staying in a live-in relationship have commitment issues later on as compared to married

couples. Psychologists believe that people who usually have commitment issues enter into a co-living relationship.

- There are several pieces of research which suggest that people who are married have better mental and physical health compared to unmarried couples which also includes live-in partners. There have been reports where married couples show lower rates of chronic diseases in comparison to live-in partners.

Presumption of Marriage and Live-in Relationships

The courts in India have consistently observed that a long-continued live-in relationship can raise a presumption of marriage. Such a presumption is raised by the courts to defend the interests of the parties (generally women) to such arrangement, and the children conceived out of such arrangement thereby treating long-term living relationships as a marriage rather than making it a new concept like a live-in relationship.

In *Madan Mohan Singh vs Rajni Kant*¹, the Supreme Court held that the live-in relationship whenever continued for a long time, can't be stated as a "walk-in and walk-out" relationship and also there is a presumption of marriage between both the parties.

In *Tulsa & Ors vs Durghatiya & Ors*², the Court gave legal validity to a 50-year long term live-in relationship of a couple. It was held that the Court might presume the presence of any fact which it thinks likely to have happened—reading the provisions of Sec. 50 and 114 of the Evidence Act together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as the facts of a specific case bear them out. Further, it was also held that a strong presumption arises in favour of marriage where the partners have lived together for a long term as husband and wife. Even though the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law inclines for legitimacy and frowns upon bastardy.

Laws favouring live-in-relationships.

¹ (2010) 9 SCC 209

² (2008) 4 SCC 520

As there is no particular enactment to be depended upon for ascertaining the status of a live-in-relationships, there are various enactments that are referred. They are:

Domestic Violence Act, 2005

Domestic Violence Act, 2005 was legislated as an attempt to protect women against abusive partners and family. Under Section 2(f) of the Domestic Violence Act, Domestic Relationship is stated as a relationship between two individuals who live or have lived at any point of time together in a shared household, when they are connected by marriage, or through a relationship like marriage³. A woman under the Domestic Violence Act is qualified to claim remedy in case of physical, mental, verbal or economic abuse. Moreover, remedies are given for alienation of woman's property, and limitation from the utilization of facilities to which the abused is entitled. The abused has been granted various rights and protections under this enactment. Hence, where it is established that there exists a relationship like marriage, the woman in a live-in relationship can claim all the remedies available to her.

However, in the case of *Velusamy vs D. Patchaiammal*⁴, Court determined certain prerequisites for a live-in relationship to be considered valid. It provides that the couple must hold themselves out to society as being akin to spouses and should be of lawful age to marry or qualified to enter into a lawful marriage, including being unmarried. It was expressed that the partners must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period. The Court held that not all relationships would amount to a relationship like marriage and get the benefit of the Act. It further explained that, if a man keeps women as a servant and maintains her financially and uses chiefly for sexual purposes, such a relationship would not be considered as marriage in the Court of law. Accordingly, to get such benefit, the conditions mentioned by the Court must be fulfilled and must be demonstrated by proof.

As the word, "live-in Relationship" has not been used in this act; it is left up to the interpretation of courts. The Court has multiple times covered live-in Relationship under the ambit of this law by providing the victims with relief under this act. The provisions of this Act are currently

³ Section 2(f) of the Domestic Violence Act 2005, <http://legislative.gov.in/sites/default/files/A2005-43.pdf>.

⁴ (2010) 10 SCC 469

applicable to people who are in live-in relationships. This gives women the right to protect themselves from the abuse of fraudulent marriages and bigamous relationships.

Criminal Procedure Code, 1973.

Married women can claim maintenance from their husbands under Section 125 of the Criminal Procedure Code (CrPC). The right to maintenance is a provision exclusively provided for married women in the existing personal laws. However, none of the religions recognizes and acknowledges live-in relationships. Since women in a live-in relationship were not entitled to maintenance from their male partners, the Supreme Court in *Chanmuniya vs Virendra Kumar Singh Kushwaha*⁵ widened the scope of maintenance, i.e. section 125 of CrPC. It held that when partners live together as husband and wife, a presumption of wedlock will arise in favour. The man ought not to be permitted to profit from the legal loopholes by enjoying the benefits of a de facto marriage without undertaking the obligations and duties. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is intended to prevent. Hence, Section- 125 of the Criminal Procedure Code has been provided to give a legal right of maintenance to female partners in or out of a marriage.

However, an issue may emerge if we consider/presume any long term live in Relationship to be in nature of marriage because there may be different bars to such marriage under the personal laws or other legislation. Where a Hindu male was already married starts living in a live-in relationship with someone for a long time, a presumption of marriage can't be made as it will legalize a subsequent marriage which is barred as per the Hindu Marriage Act.

Therefore the Supreme Court, to some extent clarified the legal position in the Landmark Judgment of *Indra Sarma vs V.K.V Sarma*⁶, examining the issue of live-in relationships in detail and laid down certain guidelines. The Court was of the opinion that if a woman is aware of the fact that the man she is entering into a live-in relationship with, is already wedded and also has children, she would not be entitled to reliefs that are available to a legally married wife. But the Supreme Court also felt that denial of any protection would result in great injustice to the victims of illegal relationships. Subsequently, the Apex Court emphasized the requirement for widening

⁵ (2011) 1 SCC 141

⁶ (2013) 15 SCC 755

the scope of Section 2(f) of Domestic Violence Act, 2005. Supreme Court also extended a request to parliament to enact specific legislation and give this issue a serious consideration or make a proper amendment to the Act in order to help the victims of illegitimate relationships, based on guidelines issued by the Court as it is the woman and children who suffer because of the breakdown of such a relationship.

Recently in the year 2015, the Supreme Court held that couples living together under the same roof would be considered to be legally married⁷. The Bench also opined that a woman in a live-in relationship would be eligible to acquire the property after the demise of her partner.

Legal recognition and the Court's view on live-in-relationships.

There still exists no uniform civil code in India, and marriages are often governed under personal laws of each individual. The legislature does not expressly recognize the concept of Live-In relationships; however, Indian Judiciary has taken essential steps towards filling the voids created by the absence of specific legislation regarding live-in relationships. Although this relationship lacks social acceptance and is considered to be immoral in the eyes of society, it is not “illegal” in the eye of the law. The Courts have consistently been of the opinion to render justice to the partners in a live-in relationship. The Court is neither promoting nor prohibiting it. The only thing that the Court is concerned with is that there should be no miscarriage of justice. The Courts in India have over and over while differentiating law and morality have upheld the validity of such relationships remembering the constitutional principles.

Our constitution has given certain fundamental rights and freedoms to the individuals. According to Article 19 of the Constitution, Indian citizens have a fundamental right to freedom of speech and expression, and to reside and settle in any part of the territory of India. Apart from this, as per Article 21 of the Indian Constitution, every Indian citizen is granted with the right to life. It's a law that no person shall be deprived of his life and personal liberty. One's desire to reside with a partner of their choice and establish a sexual relationship is governed by the rights and freedoms as mentioned above. However, it is to be remembered that such freedoms are not absolute.

⁷ Dhannulal v. Ganeshram, (2015) 12 SCC 301.

In *Payal Sharma vs Nari Niketan*⁸, the Allahabad High Court recognized the concept of a live-in relationship. The bench comprising of Justice M. Katju and Justice R.B. Misra was of the opinion that a man and a woman can live together without getting married if they wished to. A live-in relationship might be viewed as immoral by society, but it is not considered to be illegal. Law and morality are two distinct things.

In *S. Khushboo vs Kanniammal*⁹, the Supreme Court held that a live-in relationship comes under the ambit of Article 21 of the Constitution of India. The Court was of the opinion that live-in relationships are not illegal, and the act of two adults living together cannot be considered unlawful.

In *Lata Singh vs. State of U.P. & Anr.*¹⁰, the Supreme Court of India held that live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of 'adultery'). However, it might be seen as immoral.

[It is to be noted that the Supreme Court has recently decriminalized adultery by its judgment in Joseph Shrine's case.]

In *Indra Sarma vs V.K.V.Sarma*¹¹, the Supreme Court observed that choice to marry someone or not to marry or to have a heterosexual relationship is intensely personal.

The question that frequently comes up is whether a party in a live-in relationship can be held of infidelity or immorality? Such an incident was seen in the case of *Alok Kumar v. State*¹², the complainant was having a live-in relationship with the petitioner, but the petitioner was already married and also had a child out of that marriage. The complainant also had a child with the petitioner but was not married to him. The Delhi High Court had tagged such a relationship as a walk-in and walk-out relationship. The Court held that individuals who choose to have a live-in relationship could not complain of infidelity or immorality.

⁸ AIR 2001 ALL 254

⁹ (2010) 5 SCC 600

¹⁰ AIR 2006 SC 2522

¹¹ (2013) 15 SCC 755

¹² 2010 SCC Online Del 2645

In *Koppisubbarao vs State of A.P.*¹³, the apex court held that the man could not harass a woman for money in a live-in relationship. He can't use the fact that he is not legally married to protect himself from prosecution under Section 498A. Further in *Chanmuniya vs Chanmuniya Kumar Singh Kushwaha*¹⁴, the Supreme Court held that the provisions of Section 125 CrPC must be considered in the light of Section 26 of the Domestic Violence Act, 2005. The Supreme Court is of the opinion that women in live-in relationships are rightly entitled to every claims and relief which are available to a legally married wife.

The latest judgment that discussed live-in relationships was passed on 24th August 2020. The Orissa High Court, in *Chinmayee Jena vs State of Odisha & ors*¹⁵, held that people of the same-sex could also choose to be in a live-in relationship, as love knows no bound. The petitioner, in this case, was living with her female partner and her partner's mother and uncle forcefully separated them. The Bench of Justices S.K Mishra and Savitri Ratho went on to write separate but concurrent orders permitting the petitioner to stay with her same-sex partner.

Children out of Live-in Relationship.

The children of a live-in relationship are usually considered to be illegitimate by society. They are looked down upon by society, just because the legal contract of marriage did not bound their parents. In 2011, a Supreme Court bench consisting of G.S. Singhvi, Asok Kumar Ganguly in the case of *Revanasiddappa vs Mallikarjun*¹⁶ held that irrespective of the relationship between the parents, the birth of a child out of a live-in relationship would be viewed individually. It is fair to consider the child born out of such a relationship to be innocent. He would be entitled to all the rights and privileges, just like a child born out of a legal marriage.

Partners living together for quite a long time may have kids together. However, live-in couples are not permitted to adopt kids according to the Regulations governing the Adoption of Children as notified by the Central Adoption Resource Authority.

Custody and maintenance rights of children

¹³ (2009) 12 SCC 331

¹⁴ (2011) 1 SCC 331

¹⁵ Writ Petition (Criminal) No. 57 of 2020

¹⁶ (2011) 11 SCC 1

The position on the maintenance rights of children out of marriage differs in personal marriage laws. For example, under the Hindu Law, the father needs to maintain the child, whereas, under the Muslim Law, the father has been acquitted of such an obligation.

However, under Section- 125 of the Criminal Procedure Code, the remedy is available for children who cannot claim maintenance under personal laws—section- 125 grants a legal right of maintenance to children and wives.

Conclusion

*It is 2020 now, and Live-in relationship has still been a controversial topic as the general public believes it to be a threat to our Indian ethics. Illegality is not the same as immorality. It is considered to be immoral and unethical by our orthodox society. Yet, **it is not illegal**, as there is no specific law justifying the same.*

Indian Judiciary has often been seen taking significant steps which are pragmatic in approach and an initial welcome step towards social acknowledgement and evasion of the continuous taboo of Live-in relationships. The Courts have continuously attempted to provide the victims of live-in relationship with the justice they deserve. However, simultaneously, It is very certain that the Court does not entertain any relationship akin to marriage. The benefits of the Domestic Violence Act, 2005 is given only to solid and long term relationships. Though the Court has tried to set up a clear picture by its various judgments and case laws, the scenario of live-in-relationship remains unclear.

In my opinion, there is an urgent and dire necessity for proper legislative enactment not only to ensure the rights and interests of the partners in such relationships but also to determine the several other rights arising out of such relationship such as right over property, custodial rights of children etc. At last, anybody who is entering into such a relationship must be well-versed and aware of its legal consequences.



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