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Underscoring the Legality of Live-in Relationships in India

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Law and society have long collaborated to improve the lives of individuals. Through its rules and regulations, the law has played an important role in changing society. With changing times, globalization, and modernisation around the world, the social dynamics in India have undergone a few changes in the positive direction, be it in matters of marriage, love, divorce, family planning, etc. One such change is the relationships in the 'nature of marriage', but not exactly marriage, which could be termed as a live-in relationship. Outside of the pastel, live-in relationships are still inventive in India. A live-in relationship is a long-term relationship in which an unmarried couple lives together under the same roof. It is a type of living situation, which is still new in India and people are still trying to accept this change and this kind of living arrangement between couples.

Keywords: *law, society, modernisation, divorce, marriage.*

INTRODUCTION

People have started to look around the world and explore the different practices around the globe and then pick the one which is best suited for them by adopting a new practice or by eliminating the one already in practice. Some developments in Indian law can be seen in the affirmation by the Supreme Court for the rights of transgender persons in *NALSA v Union of*

*India(2014)*¹, the decriminalization of Section 377 of the Indian Penal Code in the *Navtej Singh Johar v Union Of India(2018)*² Case, struck down of the practice of Triple Talaq in the *Shayara Bano v Union of India(2017)*³ case and the recent development of the acceptance and recognition of the Right to Privacy as a Fundamental Right in the *K S Puttaswamy v Union Of India(2017)*⁴ Case, popularly known as the Aadhar Case. The above instances show that India is progressing and is moving towards accepting the dynamics of the growing and modern world.

India is a country that is incrementally opening its doors to Western ideas and ways of life, and it is a standout in this regard. The idea of seeing someone live is one of the most crucial moments in it. Love is an endearing emotion that draws two people together irrespective of their gender, race, caste, or social class. To discover that love, they may need to spend some time together or even live together. This is a situation where marriage or live-in relationships come into play. Marriage is considered a sacrosanct institution in all religions. Certain social truths remain unaccepted and are viewed through the prism of patriarchal morality; live-in relationships are a prime example. Despite the many changes that have taken place in Indian society, still, some people are against the idea of two people living together before marriage, even if it's with their consent.

The expression itself creates the impression of a casual relationship, but when we dig deeper into the issue, we find that this is far from the case. Couples who enter into live-in relationships are mature, financially stable, and above all, self-sufficient individuals who are willing to contribute what is expected of them in a marriage relationship. The only thing they are not fully ready for is to enter into a formal relationship of marriage. The author of this article focuses on presenting a clear and concrete picture of the live-in-relationships in India, by dwelling deep into the concept and history of these relationships in India.

¹ *NALSA v Union of India* (2014) 5 SCC 438

² *Navtej Singh Johar v Union of India* (2018) 10 SCC 1

³ *Shayara Bano v Union of India* 2017 9 SCC 1 (SC)

⁴ *KS Puttaswamy v Union of India* (2017) 10 SCC 1

MEANING OF A LIVE-IN RELATIONSHIP

A living arrangement is the definition of a live-in relationship. It is "a living arrangement in which unmarried couples live together to conduct a long-term relationship similar to marriage." In this relationship, an unmarried couple lives together under the same roof as a marriage, but without legally marrying. This type of relationship does not impose the traditional responsibilities of marriage on the individuals living together. Individual freedom is the foundation of a live-in relationship. In the case of *Alok Kumar v State & Another*,⁵ "Live-in relationships are walk-in, walk-out relationships. There are no strings attached to these relationships as the relationship is free from any legal bond between the parties." It can be referred to as cohabitation. Marriage is considered a big step and requires a lot of commitment, young people fear that and which is why they feel it is better to know in the beginning whether the two individuals are compatible with each other or not, and then decide accordingly. It is hard to define the concept of this kind of relationship, it is simply living together without any legal obligation to one another.

LEGALITY OF LIFE IN RELATIONSHIPS IN INDIA

Although the term 'live-in relationship' is relatively new in India, still, in the past times in the states of Rajasthan, Gujarat, and Madhya Pradesh, two people of the opposite sex lived together, without actually binding them under the marital tag, the names of this sort of relationships in these states were "Maitri Karar" and "Nata Pratha". Still, people in India have a hard time accepting the concept and practice of live-in relationships, as pre-marital sex in India is looked frowned upon and is often thought of as something illegal in nature by the elder people, as it is felt that this is a concept which is against the societal norms.

Article 21 of the Indian Constitution establishes the legal basis for live-in relationships and has been made clear in the *S. Khushboo v Kanniammal case*⁶. This inalienable fundamental right gives rise to the right and freedom of choice to marry or establish a live-in relationship with a person

⁵ *Alok Kumar v State & Anr* CrI MC No 299/2009

⁶ *Khushboo v Kanniammal* (2010) 5 SCC 600; *Nandakumar v State of Kerala* (2018) 16 SCC 602

of one's choosing. Under Hindu law, the parties in a live-in partnership may have no rights or responsibilities. The judiciary in India has made it clear in *Payal Sharma v Nari Niketan*⁷, that a man and a woman can live together without actually getting married, even if it is considered immoral by society, still, it is neither illegal nor an offence as per the law and a similar decision was passed in the *Lata Singh v State of Uttar Pradesh And Another*⁸, that a "live-in relationship between two consenting adults of heterogenic sex does not amount to any offence, even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes".

The Hon'ble Court has also clarified the legitimacy of live-in relationships in the case of *Badri Prasad v Director of Consolidation*⁹ and has made it clear that if any third party seeks to disprove their presumption, the burden lies on them. The relationship between a married person and an unmarried person is not legal and is not included under the purview of live-in relationships, was held in the *Rashika Khandal v the State of Rajasthan*, by the Rajasthan High Court.¹⁰

JUDICIAL SHELTER IN LIVE-IN RELATIONSHIPS

The Indian Judiciary has time and again invoked the acceptance of this relationship in various decisions and judgments passed. In India, marital relationships are governed under various laws covered in various acts like the Hindu Marriage Act for Hindus; The Special Marriage Act in cases of inter-caste marriages, or laws made by the personal board of every religion like the Shariat law of the Muslims. The Court referred to Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act"), which further defines the term "domestic relationship" while outlining the legal sanctity conferred to live-in relationships.

As per the definition in the Act, domestic relation 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 like marriage,

⁷ *Payal Sharma v Nari Niketan* AIR 2001 All 254

⁸ *Lata Singh v State of Uttar Pradesh & Anr* (2006) 5 SCC 475

⁹ *Badri Prasad v Director of Consolidation* (1978) 3 SCC 527

¹⁰ *Rashika Khandal v State of Rajasthan* SB Criminal Miscellaneous (petition) No 3023/2021

adoption or are family members living together as a joint family."¹¹ In the preceding case, the bench ruled that the phrase "relationship like marriage" includes live-in relationships, but it does not include all the live-in relationships. To reaffirm, the Court laid down certain tests in the *Velusamy v Patchaiammal*¹², which are- presenting themselves to society as being similar to spouses, fulfilling the minimum legal age required, between the persons who are otherwise qualified to marry and voluntarily cohabiting for a significant and reasonable period.

The Supreme Court extensively clarified the subject of live-in relationships in the Landmark Case of *Indra Sarma v VK.V Sarma*¹³, the ruling serves as a basic framework or rulebook for live-in relationships in India. The Court in this judgment provided a list of factors that need to be considered while deciding whether a relationship falls under the purview of live-in relationships or not, these could be the sexual companionship between the partners, the duration of their cohabitation, and their conduct as a whole.

Also, the Hon'ble Court in the *Nandakumar and another v The state of Kerala*¹⁴, has reaffirmed that the Legislature recognises the existence of live-in relationships and India, and such relationships have found their place in provisions of the Protection of Women from Domestic Violence Act, 2005, as discussed above. As stated by the Supreme Court, there exists no law that forbids live-in relationships or pre-marital sex. The Supreme Court ruled that "living together is a right to live." The Hon'ble Court has also clarified that it is a right of every major person, be it a girl or a boy, to live or marry any person of their choice, and in such a decision the Court is bound to respect their decision, irrespective of the fact where a certain section of the society finds it immoral.

A signature showcase and way of life of couples, notably those in metropolitan areas, would be a live-in relationship structure. In any case, the definition and scope of a live-in relationship are

¹¹ Protection of Women from Domestic Violence Act 2005

¹² *Velusamy v Patchaiammal* (2010) 10 SCC 469

¹³ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755

¹⁴ *Nandakumar v State of Kerala* (2018) 16 SCC 602

extremely ambiguous; there is no specific enactment in India regarding this matter, and the laws are based on court decisions that vary from case to case.

RIGHT TO MAINTENANCE TO THE WIFE IN A LIVE-IN RELATIONSHIP UNDER CrPC

The Judiciary's contemporary, uplifting and dynamic stance towards the wife in live-in relationships can be explained in the *Abhijit Bhikaseth Auti v State of Maharashtra and Anr* (2009)¹⁵, wherein it was decided that as per Section 125 of the CrPC, a woman is not required to prove marriage to seek maintenance, implying that a woman in a live-in relationship is also entitled to maintenance. If her husband refuses to support her, Section 125 of the Criminal Procedure Code allows her to seek maintenance from him. If a woman can form a marriage-like relationship with a man, she is eligible to receive maintenance from that man because the court can presume that such a relationship is a marriage and the woman is considered a wife. The primary goals of introducing live-in relationships under Section 125's purview are to safeguard women from domestic violence and to elevate the legal threshold for partners in live-in relationships to the status of marriage. According to the existing legislative predicament, women who were in a live-in relationship and were eventually abandoned by their partner have the status of a wife. The Supreme Court in *Chanmuniya v Virendra Kushwaha* asserted that women who were in a live-in relationship can even claim maintenance from their live-in partner, this was decided so that a man does not exploit loopholes in the law by taking full advantage of a de facto marriage while failing to fulfill the responsibilities of that marriage.

LEGITIMACY OF A CHILD BORN DURING THE LIVE-IN RELATIONSHIP

Since the concept and the practices of live-in relationships are relatively new in India, there is still a never-ending conflict about the legitimacy of such relationships, and then another question arises when a child is born out of a live-in relationship, as there is no such clear provision under the law regarding it. Having children implies that the relationship between the

¹⁵ *Abhijit Bhikaseth Auti v State of Maharashtra* (2009) 1 AIR Bom R 212

two is close to that of a marriage and that the people involved seeing the relationship as long-term.

The Court in the *Balasubramanyam v Suruttayan*¹⁶, for the first time, legitimized the children born in such relationships and also mentioned that the children are also entitled to have a share in the parents' property also and said "If a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife, and the children born to them will not be illegitimate". In the *Bharatha Matha v Vijaya Renganathan*¹⁷, the Hon'ble Court provided a share in the parents' property to children born in the course of the live-in relationships, because the parents of the child cohabited for a long time, therefore it couldn't be said that the child is illegitimate. The Indian law recognizes this interpretation of the law, ensuring that no child will suffer harm through no fault of his or her own.

PRESENT SCENARIO OF THE LIVE-IN RELATIONSHIPS IN INDIA

The Judiciary has been continuously working towards normalizing the existence and the practice of live-in relationships in the country. In the words of Justice M Katju and Justice R.B. Mishra in the case of *Payal Sharma v Director, Nari Niketan, and others* stated "As we would see it, a man and a lady, even without getting hitched, can live respectively on the off chance that they wish to. This might be viewed as improper by society, however, isn't illicit. There is a distinction between law and ethical quality." The Indian Courts have time and again tried to strengthen the normalcy of such kinds of relationships. The recent ruling of the Punjab and Haryana High Court in the *Gulza Kumari v State of Punjab (2021)*¹⁸ was criticized as the Court had stated that a non-marital relationship is neither culturally nor morally acceptable, which was contradictory to the Supreme Court's stance on the legitimacy of live-in relationships.

¹⁶ *Balasubramanyam v Suruttayan* AIR 1992 SC 756

¹⁷ *Bharatha Matha v Vijaya Renganathan* (2010) 11 SCC 483

¹⁸ *Gulzar Kumari v State of Punjab* WP (Cri) No 4199 of 2021

So, The Punjab and Haryana High Court in *Pushpa Devi v State of Punjab (2021)*¹⁹, as per the judgment awarded by Justice Arun Kumar stated that both the applicants had their right to life and personal liberty under Article 21 of the Indian Constitution. The Court in *Kaminidevi v State of UP*²⁰ and others has again reiterated that it is every person's right to choose and live with the person they want to, under the freedom guaranteed to them by the Constitution under the purview of Article 21.

CONCLUSION

Times are changing and people are opening up to new ideas and ways of living, yet in the case of acceptance of live-in relationships, some Indian people are still unable to accept the idea and as a result, are hostile towards such practice. Individuals in live-in relationships are not protected under a prescribed set of rules or regulations due to legislative ignorance. The current legal framework in India governing live-in relationships is primarily the result of a series of relatively progressive judicial precedents. The author of this article strongly suggests that there is a need to have a well-defined set of rules and a code of conduct for such relationships. The Supreme Court and other high courts have interpreted the legality of live-in relationships in light of statutes such as the Domestic Violence Act and the Criminal Procedure Code, but yet there needs to be separate judicial legislation for the same to have a concrete understanding of this relationship as per the eyes of the law. Current revelations have demonstrated that an absence of conclusive legislation and resulting ambiguity has resulted in differing and diverging judgments among the judiciary. As a result, the Legislature must take into account the prevalence of live-in relationships and enact comprehensive legislation outlining the rights and duties of parties. Also in the *Rohit Kumar v State of U.T. Chandigarh (2022)*²¹, The Punjab and Haryana High Court has requested that the Union Government outline its strategy for dealing with live-in relationships.

¹⁹ *Pushpa Devi v State of Punjab* CRWP-8809 of 2021

²⁰ *Kamini Devi v State of UP* WP (C) No 11108 of 2020

²¹ *Rohit Kumar v State of UT Chandigarh* CRWP-8809 of 2021