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Contractual Live-In Relationships in India: Potential and Challenges

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Live-in relationship is a term and practice that is on the rise everywhere in the world and India is not an exception either. The cases of live-in relationships are increasing day by day which is inevitable with changing values. However, the situation becomes problematic when the relationship ends without any recourse for the more vulnerable party. While India has protected the traditionally vulnerable party, that is, the women, the men have been neglected entirely. Furthermore, the already provided protection also seems to be inadequate to an extent. Exploring the potential of contracts to rectify the situation seems to be a way forward, which is what this paper is about. The paper dives into the present legal position of live-in relationships in India and the problems that might arise even with the reliefs already accorded. The paper then moves into exploring the potential of contracts to regulate live-in relationships by looking into similar approaches adopted in other countries. The paper is ultimately a deep dive into exploring the potential of contracts in regulating live-in relationships in India and predicting the challenges that may come forth.

Keywords: *live-in relationship, cohabitation, contracts, cohabitation agreements.*

INTRODUCTION

On 10.03.2021 an interesting case came to light, that of *Moyna Khatun and Anr v State of Punjab and others*¹ wherein a deed of live-in relationship was dismissed on the ground that it was not morally accepted in society. Other contentions raised in the case were that of the age of the parties involved, Moyna Khatun (18 years) and Labh Singh (19 years), according to Hindu Marriage Act Section 5 marriageable age of a Hindu male is 21 years, and above, since it is not so, in this case, the deed was already void.

The case naturally sparks the question of whether contracts can be the solution that could solve the legal dilemmas that India is facing in regulating Live-in relationships or if there is a way to somehow incorporate contracts in such relations to better manage the problems that arise when such relationships don't end in marriage.

Existing literature² also suggests and demands the involvement of contracts in live-in relationships in India for regulating them and formally recognizing them but only as a passing thought and does not delve into the potential problems that such contracts may resolve nor do they address the challenges involved in recognizing such contracts. Additionally, the existing literature only brings up the existence of such contracts in other countries to make arguments in favor of such contracts but does not analyze them in the face of the Indian scenario and the related problems.

Involving contracts in the realm of live-in relationships is not a novel idea as such. France, notably has made great strides in this regard through their mechanism of PACS in respect of cohabitants (as these relationships are known) in France. France however, is not an exception, other countries too have extended legal recognition to 'Cohabitation Agreements', some of which include the US, UK, Italy, etc. While these countries lack a specific provision governing

¹ *Moyna Khatun and Anr v State of Punjab and Ors* WP (Crm) 2421/2021

² Anand Prakash Singh, 'Legal Conundrum of Live-in Relationship in India: A Judicial Approach' (2023) 9(2) International Journal of Law: Law and World <<https://lawandworld.ge/index.php/law/article/view/365>> accessed 21 October 2023

these relationships, they notoriously extend validation to contracts to protect the rights of the parties involved if these relationships do not end in marriage.

This paper deals with the possibility of contracts for governing and protecting the rights of parties involved in live-in relationships in India, in addition to addressing challenges that may arise in this pursuit. The first part of the paper deals with live-in relationships in India and the present legal position along with the shortcomings of such legal position. Then the paper looks into the contractual live-in relationships practised in other countries specifically the US and France, along with their drawbacks. The paper then moves into the analysis of both approaches to the Indian scenario and problems unique to India to decide which of the approaches is better suited to India. The paper then gives some suggestions for the way forward and finally ends with the conclusion.

PRESENT LEGAL CONDITION OF LIVE-IN RELATIONSHIPS IN INDIA

Live-in relationships in India refer to the living together or cohabitation of two individuals without the status of marriage which, however, mimics marriage-like aspects of an intimate relationship between the adults, living together, raising children together, and so on.

In *Payal Sharma v Nari Niketan*³, the Supreme Court affirmed that a man and woman can live together upon their willingness even without getting married. The court also held that even if the practice is immoral according to the norms of society, it is not illegal.

In *Badri Prasad v Director of Consolidation*⁴, also, the Supreme Court had accorded legal recognition to a 50-year-long live-in relationship.

In *Indra Sarma v VKV Sarma*⁵, the live-in relationship has been decreed to fall under the ambit of relationships envisaged in the Protection of Women from Domestic Violence Act, 2005. This means that women in a live-in relationship are also protected by the provisions of this Act.

³ *Payal Sharma v Nari Niketan* AIR 2001 All 254

⁴ *Badri Prasad v Director of Consolidation* (1978) 3 SCC 527

⁵ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755

*Velusamy v Patchaiammal*⁶ is another case where the Supreme Court has laid down certain requirements on fulfillment of which the women in such a relationship would be entitled to claim maintenance from their estranged live-in partners under Section 125 of CrPC, 1973. These requirements are-

1. Holding out to society as being akin to spouses;
2. Being of legal age;
3. Otherwise, they qualified to enter into a legal marriage;
4. Voluntarily cohabited for a significant period.

Further in *Dhannulal v Ganeshram*⁷, the Court affirmed a woman's right to inherit property after the death of her live-in partner to settle a property dispute.

In *Balasubramanyam v Suruttayan*⁸, the Supreme Court accorded the legal status of legitimacy to children born out of live-in relationships.

From all the judicial pronouncements listed till now, it is clear that India at least recognizes live-in relationships as not a crime. Further, steps have been taken to protect the more vulnerable live-in partners, that is, women from being taken advantage of. The Court also protects the truly innocent in these scenarios, that is, the children born in these relationships.

SHORTCOMINGS OF THE PRESENT LEGAL POSITION OF THE LIVE-IN RELATIONSHIPS IN INDIA

On doing an in-depth study of the requirements laid down in *Velusammy v Patchaiammal* however, it would be fairly clear that the requirements mimic the requirements of Common Law Marriage in the US. Furthermore, while these requirements might seem fairly easy to fulfill at face value, it is not so in reality. As already established, society finds this kind of relationship immoral, it is hence, entirely possible that a couple living together without marriage would not advertise the fact to the world. This would automatically hence fail the victim seeking refuge

⁶ *Velusamy v Patchaiammal* (2010) 10 SCC 469

⁷ *Dhannulal v Ganeshram* (2015) 12 SCC 301

⁸ *Balasubramanyam v Suruttayan* AIR 1992 SC 756

from law. Further still, a scenario is entirely possible that a woman is deceived by their live-in partner into believing that the man was eligible to enter into a legal marriage at the time of their living together, but the reality could have been different, and he could have been married for all intents and purposes which would ultimately disqualify the woman from seeking relief from a court of law.

Another point of contention could be that an instance might occur where while the couple did not live together for long but still, the couple still invested in property and such where the woman's name is not mentioned in the property deed, but, since the relationship could not satisfy the required period, it is uncertain if she would have any recourse or not.

Another flaw in the legal status of live-in relationships in India is that there is no recourse available for men in the event of an adversary befalling them.

By keeping in mind, the difficulties already discussed and based on other unexplored difficulties the argument may be made in favor of seeking a separate legal provision for regulating such relationships. However, it would not be amiss to make it clear here that the concept of live-in relationships to a certain extent evolved out of the need of individuals to avoid the obligations imposed by the state on a married couple after the end of the marriage. The psychology of a 'come-and-go' relationship also plays a role in making this option so desirable to couples today, hence, state-imposed obligation on such relationship might be unjust⁹.

The option of contract hence seems to be a fairly viable one that would retain the private decision-making power of the individuals in such a relationship but still accord a modicum of regulation that they chose for themselves. The existence of such contracts would also be able to provide for property distribution after the breakdown of the relationship. Moreover, the most important point in favor of making such contracts is that the eligibility requirements needed to

⁹ Shreya Srivastava and Fakkires Sakkarnaikar, 'Cohabitation Contracts and Constructive Trusts, Tools to Secure Property Rights in Unmarried Cohabitation in India: An Analysis' (2023) 15(3) Lex Humana <<https://seer.ucp.br/seer/index.php/LexHumana/article/view/2635>> accessed 21 October 2023

enter into such contracts would to an extent stop the widespread cases of infidelity as well as age-related issues.

The next part of the paper explores the potential of contracts to regulate live-in relationships in other countries and their status of validation in such jurisdictions.

CONTRACTUAL LIVE-IN RELATIONSHIPS IN OTHER COUNTRIES

This part of the paper deals with the legal stand of other countries primarily the US and France in regards to the involvement of contracts to regulate live-in relationships. The interesting thing to note here is that, while both countries involve contracts in live-in relationships or cohabitation as known there, the approach is a little different. While the US bases its stand on the precedent set up by the court case of Marvin case, France has specifically provided for the making and registry of a cohabitation contract to allow the couples autonomy to handle their affairs on their terms but still provide a legal recourse on any event of any adversary. Secondly, cohabitation contracts in the US are made primarily to govern the maintenance or support of the vulnerable party (often known as 'palimony') after the end of the relationship in addition to the distribution of property amongst the parties involved in the relationship, France on the other hand, provides a framework for the cohabitation contract which dictates the clauses that could be included in the contract which primarily deals with the distribution of property.

COHABITATION AGREEMENTS IN THE US

Cohabitation agreements are the primary way to protect cohabitants in the US¹⁰. There exist two approaches in this regard within the different states of the US itself as well. The majority approach is that cohabitation contracts are enforceable while the minority approach is that such contracts are not enforceable. The minority approach developed through the case of *Hewitt v Hewitt* in Illinois. In this case, Victoria and Robert Hewitt cohabitated as students in college. Later on, Robert worked in the medical field while Victoria took care of their children full time and assisted Robert in building his practice both by the manner of her skills as well as financially.

¹⁰ Margaret Ryznar and Anna Stepień-Sporek, 'Cohabitation Worldwide Today' (2019) 35(2) Georgia State University Law Review <<https://readingroom.law.gsu.edu/gsulr/vol35/iss2/2>> accessed 21 October 2023

After 15 years, the relationship ended and Victoria filed for divorce believing herself to be married through common law marriage. The Court however dismissed the petition and held that she was not entitled to any remedies as they were not married. She could not recover any relief from them on grounds of contracts either as Court refused to recognise any such contracts.¹¹

The Illinois approach of not enforcing any such contracts is also followed in Georgia and Louisiana as well. The majority approach, that of enforcing cohabitation contracts developed through the case of *Marvin v Marvin*. The California Court in this case has observed that cohabitants could enter into a contract with one another and courts would enforce both written as well as oral express contracts.¹²

Michelle Triola alleged that Lee Marvis had entered into a contract to support her for the rest of her life, in return for her services as his homemaker, entertainer, and companion, and that she had given up her career to do so. Ultimately, however, the court did not grant her any relief because it was held that the contract was based on the consideration of meretricious sexual services. However, the case established that cohabitant's rights in California could be based upon express or implied contracts and that the consideration for them could include homemaking services.¹³ Many states in the US decided to follow this approach. New York, however, restricted Marvin's rights to those based on express contracts. Minnesota and Texas passed Statutes of Frauds that require cohabitants' contracts to be in writing¹⁴.

DRAWBACKS OF THE APPROACH ADOPTED IN THE US

On the face of it, the majority approach of the US might look attractive but, the reality is a little different. While the majority approach allows for the enforceability of both written as well as expressed oral contracts and also advocates for looking into the conduct of the parties to infer whether or not there existed an implied contract for the maintenance of one party by the other

¹¹ *Ibid*

¹² *Ibid*

¹³ Cynthia Grant Bowman, 'Legal treatment of cohabitation in the United States' (2004) 26(1) Law & policy <<http://scholarship.law.cornell.edu/facpub/148>> accessed 21 October 2023

¹⁴ *Ibid*

party many cases have come to life where the promised relief was not granted citing one or the other cause.

In *Breininger v Huntley*, for example, the contentions of an oral contract between the thirteen year- long couple by Breininger was rejected on the ground that whatever labor she performed for the house and the household, she had already been compensated for it during the subsistence of the relationship itself where she was supported by her live-in partner.¹⁵

Similarly in the *Friedman v Friedman* case, the relationship was longer than Marvin's case and mimicked marriage more in conduct but Terri still could not recover any relief as Elliott argued that he had never committed to support Terri for the rest of her life on the end of the relationship. The court interestingly enough did not find the couple's conduct to be indicative of an implied contract to that effect, even though they had cohabitated for 25 years, had raised children together and the deed of their house mentioned them as husband and wife.¹⁶

In *Jones v Daly*, a case involving a gay couple the court refused to grant relief on the ground that the oral agreement explicitly included a sexual component as the promise referred to the party's services as a lover among other things.¹⁷

The problem is that in any cohabitation agreement, the implied sense is there exists a component of sexual nature among other considerations. The consideration is also going to involve the component of home-making services in the oral contracts which the Courts, however, more often than not, take to be gratuitous.¹⁸ It is clear that the approach followed in the US is confusing and is as likely to refute claims based on oral contracts as it is to grant them. Moreover, the focus on not allowing for cohabitation contracts to be based on meretricious considerations and home-making services entirely defeats the purpose of such in the first place as one of the parties more

¹⁵ Albertina Antognini, 'Nonmarital contracts' (2021) 73(67) Stanford Law Review
<<https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/01/Antognini-73-Stan.-L.-Rev.-67.pdf>>
accessed 21 October 2023

¹⁶ Bowman (n 13)

¹⁷ *Ibid*

¹⁸ Antognini (n 15)

often than not stays back at home to support the relationship from the household than through financial means.

PACS ARRANGEMENT IN FRANCE

The cohabitation or live-in relationships in France are primarily governed by PACS. According to Article 515-1 of the Civil Code, PACS is a binding contract, providing legal security to an agreement between cohabitants regarding personal matters, including property matters. 'A civil pact of solidarity (pacs) is a contract entered into by two natural persons of age, of different sexes or the same sex, to organize their lives in common'.^{19,20} The contract would be void between friends or between any other relationship but is reserved only for couples who commit their lives to one another. PACS is a kind of 'in-between' a marriage and cohabitation.²¹

PACS permits couples to negotiate and enter into agreements on how to manage and distribute their jointly owned property in the event of the relationship not ending in marriage. The contract can be formed with two original copies of a signed contract, proof of birthplace, and documentary evidence that neither cohabitant is married or in other PACS, and it needs to be registered with the town clerk to be effective. Modification of the Contract is possible by filing a joint written declaration with the court.²²

PACS agreements have a few eligibility restrictions, the parties entering into PACS must be 18 years of age or above and have the legal capacity to enter into contracts, it cannot be signed between ascendants and descendants in the direct line, between relatives by marriage in direct line and such, and neither party agreeing could be similarly involved with other person either through PACS or marriage.

¹⁹ French Civil Code, art 515-1

²⁰ Ji Hyun Kim et al., 'The Rise of PACS: A New Type of Commitment from the City of Love' (2017) 56(1) Washburn Law Journal 39-92 <<https://contentdm.washburnlaw.edu/digital/collection/wlj/id/6725/>> accessed 22 October 2023

²¹ *Ibid*

²² *Ibid*

The agreement could be dissolved in the following four ways:

1. If either party gets married;
2. Upon the death of one party;
3. By mutual consent;
4. If one party unilaterally decides to terminate the relationship, in which case the relationship will subsist for three months after the notice is given to the other party.

Drawbacks of the approach adopted in France: PACS is unique to France and is an intermediate between marriage and cohabitation, providing a way for the protection of cohabitants but still restricting the application short of marriage. The biggest drawback of PACS is that it does not provide for spousal support or alimony. Inheritance rights are also restricted because of the French legal system.

CONTRACTUAL APPROACH APPROPRIATE FOR INDIA

In the previous part of the paper, two distinct approaches to cohabitation agreements have been discussed. The approach adopted by the US is set forth by way of precedents while France has legislated a separate guideline of cohabitation contract. This section of the paper analyses which of the approaches would be more suitable for India in light of the advantages and drawbacks of each of the approaches tested against the Indian scenario.

ANALYSING THE APPROACH ADOPTED BY THE US

The approach adopted in the US is riddled with confusion as well as reluctance to enforce oral contracts with home-making services or sexual components as considerations. It could be argued that the approach in the US is infected with the lens of public policy and anything against it, is not enforced, which is ironic as a cohabitation agreement is said to be enforceable which is against the societal norms itself. The more an agreement is business-like, the more likely it is to be enforced which again defeats the purpose of such agreements in the first place as the vulnerable party often gets trapped in the language of the agreement which restricts their entire contribution to the relationship from being recognized.

If India opts for this approach going forward, that could prove to be problematic as India too has contradictory legal norms and societal norms regarding live-in relationships which would make the determination of public policy difficult. India is a country where marriage is regarded as sacred for building a family unit and public policy would demand that any such contract that is based on an intimate relationship outside wedlock be shunned and declared unenforceable. The status quo would thus remain.

Public policy would also include the issue of contracts with intercourse as a part of consideration which would come under the 'sexual immoral services' as per Section 23 and thus would be held to be void.²³ In the case of *Gherulal Parakh v Mahadeodas Maiya & Ors.*²⁴, it was observed that contracts against sexual norms would be void.

On the matter of considering home-making services as consideration for the contract, the probability is that the Courts here would take a similar approach to the US as these services here are also taken for granted and not accorded any recognition, thus, claiming them to be gratuitous the whole contract especially, oral one would be dismissed. Another thing to consider is that India is a country where home-making services are considered to be the duty of the female partner and it's expected from them. The trend doesn't seem to be changing as according to a survey around 92 percent of women do household chores in comparison to 27 percent of the men doing the same which is unpaid. In such a country, the contract is bound to rest on the home-making services as consideration, which would reduce it to redundancy similar to the approach adopted in the US.

However, arguments can be made that, maintenance is given to women in the event of the end of such a relationship under the Code of Criminal Procedure, 1973. But as already discussed there remain some barriers because of the eligibility criteria, which might prove to be arbitrary in certain circumstances. However, such provisions are not available for men in any case, which

²³ Indian Contract Act 1872, s 23

²⁴ *Gherulal Parakh v Mahadeodas Maiya and Ors* (1959) AIR 781

means dependent men would go unaccounted for if they chose to remain at home instead of the other way around.

The conclusion is hence that adopting the US approach of enforcing cohabitation agreements without any legal framework might not be helpful in the long run as it leaves room for ambiguity.

ANALYZING THE APPROACH ADOPTED BY FRANCE

Moving on to the French arrangement of PACS, there are clear advantages of such a system. The eligibility requirements of the PACS system would help to prevent any situation similar to Moyna Khatun from arising in the first place as a couple would only be able to enter into the contract upon reaching a certain age.

The requirement to furnish proof that both parties are unattached at the time of entering into the contract would prevent cases of infidelity. This would mean safeguarding the interest of all the parties involved, the existing partners, and any other person unaware of the cheating of the other partner. This is important as live-in relationships have emerged as a way for individuals to practice bigamy on their existing spouses without any legal ramifications²⁵ as the law only prevents bigamy which requires contracting another marriage even when one marriage is already subsisting.

The system also allows for the parties to end the relationship whenever they want, thus preserving the basic essence of live-in relationships despite providing a way to regulate the affairs of the parties involved. However, not everything is good with the system either, the fact that it does not provide for alimony or support after the end of a relationship would again lead us to the same point from where we started in regards to men at least.

Furthermore, the unique Indian circumstances have to be taken into account for the consideration of any of the approaches. The existence of personal laws of different religions in

²⁵ Manisha, 'The Nexus between Live-in Relationship and Bigamy' (*Law Bhoomi*, 16 July 2022) <<https://lawbhoomi.com/the-nexus-between-live-in-relationship-and-bigamy/>> accessed 22 October 2023

India which govern the aspects of family law has to be taken into account as well. For example, Muslims are allowed to practice polygamy by their laws, how that would affect a system like PACS is worth pondering.

Further still, India is not clear on LGBTQ rights regarding relationships. Allowing any legal status for live-in relationships would affect them as well which the Courts and Legislators have to take into consideration.

SUGGESTED WAY FORWARD

The analysis of both approaches concludes that the French approach of PACS is more suitable for India than that of the US system of diverse and often contradicting court decisions. However, India also has to modify the PACS system a little bit to make it more suitable for problems unique to India.

Some of the suggestions are as follows:

- Laying down a legal framework that allows for the existence of such contracts in the first place and explicitly distinguishing them from the scope of any contracts that might be immoral due to meretricious considerations, by way of making it clear that the involvement of affection and a promise of exclusivity plays an important role in such contracts just as they play the part in marriage which are acknowledged as a kind of a contract all over the world.
- Laying down eligibility requirements to be fulfilled for the Live-in Agreements which would be secular, that is, the eligibility requirement would be general for all people belonging to any of the religions in India. This would be like taking one more step towards the Uniform Civil Code (UCC).
- Laying down a restrictive age criterion to be fulfilled.
- Requirement of proof of bachelorhood or similar station (unattached at the time) to reduce cases of infidelity.
- Disclosure of any debt or loan pending, to the partner in the contract itself to prevent economic exploitation of either of the parties.

- The guidelines should allow for entering clauses governing both the distribution of property as well as support (among other things) in the event of a breakdown of the relationship.
- Registration of such contracts should be made necessary but options should remain open in extenuating circumstances.
- Spreading awareness about the existence of such contracts far and wide by way of newspapers (hardcopy or digital) so that those who might need them can make use of them.
- However, the guidelines should also allow for implied contracts in cases where the conduct of the parties calls for that as some might still be unaware of the requirements of such contracts in the first place.
- The guidelines might specify the eligibility of the members of the LGBTQ community to enter into such contracts to better safeguard the vulnerable party in such relationships as well.

CONCLUSION

Live-in relationships are a reality in India just as in the rest of the world. Indian judiciary has taken the commendable initiative in protecting the more vulnerable party of a live-in relationship by way of several judgments. However, as discussed and also as acknowledged by the Courts themselves in the Velusammy case the observations made in various judgments may not be able to properly cover all the future prospective seekers of justice. The paper marks out some of the shortcomings of the existing judicial pronouncements such as ambiguous period requirements, the men being left behind in the judgments as most of the cases involve women as the vulnerable party hence all the safeguards are also put in place for them only, etc. are some examples.

While specific legislation should be provided for the regulation of such relationships, it would prove to be contradictory as well, since live-in relationships rose to the forefront because of the desire to avoid obligations involved with marriage and messy divorces. Contracts in such a situation seem to be a desirable solution as that would be akin to handing the power to decide

the extent of obligations one chooses to have while still providing rights to both parties amongst themselves.

Two different approaches to cohabitation agreements have been discussed in the paper, that of the US and that of France. The courts in the US have varying views regarding the subject of enforceability of such agreements and more often than not don't validate them leaving the vulnerable party with no legal recourse. France in contrast has chosen to provide a legal guideline for the making of such contracts, that is, the Civil de pact which provides the parties with a way to legally regulate their relationship while also maintaining minimum interference of the state in the relationship.

However, neither of the discussed approaches is perfect and is riddled with one or the other drawback. It could still be argued that the French system of PACS would be more suitable given it is adopted with some careful modification which would account for problems unique to India.

The paper also attempts to suggest a few ways forward for the implementation of the contracts in regulating live-in relationships in India. The most important point to remember, however, is that of the spread of the knowledge of the existence and the importance of such provisions in the first place. India instead of opting for either of the approaches could easily go for a third path, developing its own with the qualities of both but with drawbacks of none.

This paper attempts to explore the potential of contracts in solving and regulating the problems that might arise at the end of a live-in relationship from the viewpoint of the Indian context. It also accounts for some of the challenges that may come up in adopting any of the existing approaches of contractually regulating live-in relationships in other countries. The question of whether India ever allows for such a step to be taken is of course up for debate but there still exists a requirement to regulate such relationships in India and contracts can be a way forward remains a thought-worthy point.