

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

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Live-In Relationship in India

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ABSTRACT

With the changing social norms of society, the law cannot afford to remain static, it changes with the changing social pattern of the society. The Indian society has noticed a significant change in its social structure in the last few years, it is now slowly opening its doors towards western ideas and lifestyles, one such concept is of live-in relationships.

Live-in relationship i.e living together as a couple without marrying each other is being considered taboo in India, as it goes against the sanctity and sacredness of marriage. But with the changing norms of society, such relationships are being accepted in many parts of the world.

The apex court of India has observed that live-in relationships are the results of changing times and they are not considered as a criminal offense and therefore they are not illegal in India. Since there is no definite legislation governing such relationships, the courts in many of the cases have issued certain guidelines for governing such relationships. This article aims to observe the current legal status of live-in relationships in India.

Keywords: - Live-in relationship, Marriage, protection, life and liberty.

I. INTRODUCTION

Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law, it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different time.”

– Justice G.S. Singhvi and A.K. Ganguly²

Love is a charming emotion that brings two people together irrespective of their sex, color, caste, or class. To explore that love, they may need to spend some time with each other or they may have to live together. This is a situation where marriage or live-in relationships comes into play.³ Traditionally in India marriage is considered as a sacrosanct institution whose foundation

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²Revanasiddappa v. Mallikarjun, (2011) 11 SCC 1.

³Times of India, *Marriage vs. live-in relationship: Two different approaches to exploring love and companionship* (oct 14,2019 ,20:00 IST), <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/>.

is laid upon commitment and tolerance⁴ but when it comes to living together without marrying each other it is still considered taboo, however with the changing times in the society such kinds of relationships are being accepted in many parts of the world. The courts have also laid down certain guidelines for such kind of relationship.

II. WHAT DOES THIS LIVE-IN RELATIONSHIP MEANS?

A live-in relationship is a voluntary arrangement whereby two adults mutually agree to live together to conduct a long-term relationship that resembles a marriage.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 is in simple words, cohabitation.⁶

III. LIVE-IN RELATIONSHIP AN INDIAN PERSPECTIVE

The concept of live-in relationships developed in India after getting influenced by the western countries, but similar kinds of relationships were practiced in some parts of Gujarat, Rajasthan, and Madhya Pradesh. *"Maitri karar"* a system of friendship contract existed in Gujarat, where people of two opposite sex would enter into a written agreement to be friends, live together and look after each other. Another custom i.e *"Nata paratha"*, which was prevalent in some parts of Rajasthan and Madhya Pradesh, allows a man to have a live-in relationship with a married woman. Although these kinds of relationships are not legally enforceable, a contract between the parties was meant to provide a kind of security to both parties.⁷

IV. LEGAL STATUS OF LIVE-IN RELATIONSHIP IN INDIA

Although the concept of a live-in relationship is considered immoral by society it is not illegal in the eyes of law. The legal status of live-in relationships in India has been determined by the Courts, in any number of cases, the supreme court has also stated that living together is part of the right to life and therefore it cannot be held illegal.

In *A. Dinohamy v. W.L. Blahamy*⁸ in 1927, the Privy Council held that *"where a man and a woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved that they were living together in consequence of a valid marriage,*

⁴ Mohit Chhibber & Aditya Singh, *live-in relationship : An ethical and a moral dilemma?* International journal of applied research 1 IJARPF ,74-77 (2015).

⁵ Kalpana V. Jawada *Live in relationships: recent development and challenges* (March 24,2015 ,13:00 hrs).

⁶ Alok Kumar v. State & Another, CrI.M.C.No. 299/2009

⁷ Nilesh Ranjan & Amarjeet Ranjan, *A Test Drive before use: Modernising the society or putting it in a wrong path?*, <http://ijlljs.in/a-test-drive-before-use-modernising-the-society-or-putting-it-in-a-wrong-path/>

⁸ AIR 1927 P.C. 185

and not in a state of concubinage.” Giving legal recognition to a couple who were living 50 years in a live-in relationship, the supreme court in the case of **Badri Prasad v. Director of Consolidation**,⁹ has observed that “*Law leans in favor of legitimacy and frowns upon bastardy*”. The Allahabad high court in the case of **Payal Sharma v. Superintendent, Nari Niketan**,¹⁰ opined that “*A man and a woman, even without getting married can live together if they wish. This may be regarded immoral by society but it is not illegal. There is a difference between law and morality*”.

In the case of **Lata Singh v. State of U.P. & Anr.**,¹¹ it was observed that a “*live-in relationship between two consenting adults of heterogenic sex does not amount to any offense, even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes*”.

In **S. Khushboo v. Kanniammal**,¹² it was held by the supreme court that live-in relationships are permissible and the act of two adults living together cannot be considered illegal or unlawful.

In **D.Velusamy v. D.Patchaiammal**,¹³ the court while examining section 2(f) and section 2(s) of The Protection of Women from Domestic Violence Act, 2005, opined that a “*relationship in the nature of marriage*” is akin to a common-law marriage. And the common-law marriages require the following conditions ;

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried.
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

The court, in this case, observed that “*in our opinion, a “relationship in the nature of marriage ’ under the 2005 Act must fulfill the above-mentioned requirements and in addition to this the parties must have lived together in the shared household, merely spending weekends together or a one night stand would not make it a domestic relationship*”¹⁴

⁹ 1978 AIR 1557.

¹⁰ AIR 2001 All 254.

¹¹ (2006) 5 SCC 475

¹² (2010) 5 SCC 600.

¹³ AIR 2011 SC 479.

¹⁴ *Ibid.*

The supreme court in, **Shakthi Vahini v. Union of India and others**,¹⁵ held that “Assertion of choice is an Insegregable facet of liberty and dignity”. The court ruled that the choice of the person was a fundamental aspect of dignity and liberty and was constitutionally protected by articles 19 and 21 of the constitution. Further once a right was recognized, it was the duty of the state as well as courts to enforce and protect that right.¹⁶

In **Nandakumar and another v. The state of Kerala**,¹⁷ the court emphasized that “live-in relationship is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005”.

Justice V. Chitambaresh and Justice KP. Jyothindranath, in one of the case, wherein the writ petition was filed by the father of a 19-year-old girl to prevent her from living with an 18-year-old boy, observed that “The Constitutional Court is bound to respect the unfettered right of a major to have a live-in relationship even though the same may not be palatable to the orthodox section of the society”. The court dismissing the writ petition declared that the girl is free to live with the boy, or she can marry him once he attains the marriageable age.¹⁸

V. RECENT JUDICIAL PRONOUNCEMENTS ON LIVE-IN RELATIONSHIP

While hearing the protection plea the Allahabad high court in **Kaminidevi v. State of UP and others**,¹⁹ observed that “where a boy and a girl are major and they are living with their free will, then, nobody including their parents, has authority to interfere with their living together. As the right to life is a fundamental right ensured under Article 21 of the Constitution of India in which it is provided that no person shall be deprived of his right to life and personal liberty”.

Whereas the Punjab and Haryana High court refused to give protection to a minor girl who was residing with an adult male in **Kajal and Another v. State Of Haryana and Others**,²⁰ the court observed that “A minor girl residing with an adult male in a live-in relationship is not morally and socially acceptable”. And again in **Ujjwal and another v. State of Haryana and others**,²¹ the Punjab and Haryana high court refused to give protection to a couple who were living together, the court observed that “If such protection as claimed is granted, the entire social fabric of the society would get disturbed. Hence, no ground to grant the protection is

¹⁵ (2018) 7 SCC 192.

¹⁶ Saurabh Kirpal *sex and the supreme court ,How the law upholding the dignity of the Indian citizen ,128 (Hachette book publishing India Pvt. Ltd, 2020)*

¹⁷ (2018) SCC OnLine SC 492.

¹⁸ WP(CrI) No.178 of 2018

¹⁹ WP-C No. - 11108 of 2020.

²⁰ CRWP No. 2160 of 2021 (O&M).

²¹ CRWP-4268 of 2021 (O&M).

made out".

And the days after these judgments, the Punjab and Haryana high court by granting protection to a couple who were living together in **Soniya and another v. State of Haryana and others**,²² observed that "The concept of live-in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offense". Further the court opined that, "It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage".

In **Rashika Khandal v. the State of Rajasthan**,²³ the Rajasthan high court observed that a "live-in relationship between cannot be permitted between a married and an unmarried person. One of the essentials of such relationships is that the couple must be unmarried".

The Punjab and Haryana high court while granting protection to a couple living in a live-in relationship in **Sanjay and another v. State of Haryana and others**,²⁴ observed that "*The live-in-relationship nowadays is not a new phenomenon but the society has not evolved to the extent of accepting such relationship without raising the eyebrows to such relationship*". A similar stance was taken by the court in the case of **Pushpa Devi and another v. State of Punjab**²⁵ and others, while granting protection to a 21 and 19-year-old couple the court observed that "*the two are entitled to live together in a live-in relationship being major*".

In the case of **Ridhima and another v. UT of J&K**,²⁵ while hearing the protection plea by a couple living together, the court observed that the "*Right to exercise assertion of choice is an inseparable part of liberty and one's dignity*".

VI. CONCLUSION

It can be seen through various judicial decisions that a live-in relationship has been recognized by the judiciary but the society is still not evolved to such an extent as to accept such kinds of relationships and hence they are still considered to be taboo in some parts of our country. People may view such relationships as unethical but moral policing is not an option when the arrangement is sanctioned by the touchstone of fundamental rights.²⁶

²² CRWP No.4533 of 2021 (O&M).

²³ S.B. Criminal Miscellaneous (petition) No.3023/2021

²⁴ CRWP-5531-2021

²⁵ CRWP -6314-2021

²⁶ WP(C) No.1403/2021