

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Legality of the Live-In Relationship in India

RATNA BINODINI AMIYA PRIYADARSINI DAS¹ AND ATMAJIT MANMITH DAS²

ABSTRACT

The live in relationship is an arrangement in which two people decided to live together under the same roof without getting married. It's a conduct of long-term relationship which is similar to marriage. The term live in relationship is the kind of relationship which is free from commitments and responsibilities unlikely traditional marriage. It is not recognized by the Hindu marriage Act, 1955 or by any other statutory law. The supreme court of India recognized live in relationship as legal relationship and is not considered as prohibited relationship.

Keywords: *live-in relationship, legality of live-in relationship.*

I. INTRODUCTION

India is a country, which is slowly opening its doors to western ideas and lifestyles, one of which is the concept of live in relationships. A relationship of a man with a woman in legal parlance is legitimate if it is based on proper marriage and illegitimate if not as per Marriage Laws. The live in relationship is a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. In every day parlance, it is cohabitation. The basic idea of conducting a live-in relationship is that the interested couple wants to test their compatibility for each other before going for some commitment. Today, cohabitation is a common pattern among people in the Western World. People may live together for a number of reasons. These may include wanting to test the compatibility or to establish financial security before marrying. It may also be because they are unable to legally marry, for instance, if they are of the same sex, some interracial or inter-religious marriages are not legal or permitted. Other reasons include living with someone before marriage in an effort to avoid divorce, a way for polygamists or polyammonist to avoid breaking the law, a way to avoid the higher income taxes paid by some two income married couples (in the united states), negative effects on pension payments (among older people), philosophical opposition to the institution of marriage and seeing little difference between the commitment to live together and the commitment to marriage. Some individuals may also choose cohabitation because they see their relationships as being private and personal matters, and not to be controlled by political,

¹ Author is an Advocate at Hon'ble Odisha High Court, India.

² Author is an Advocate at Hon'ble Odisha High Court, India.

religious or patriarchal institutions. In most places, it is legal for unmarried people to live together, although some zoning laws prohibit more than three unrelated people from inhabiting a house or apartment. A few states still prohibit fornication, or sexual relations between an unmarried man and woman, but such laws are no longer enforced. The law traditionally has been biased in favor of marriage. Public policy supports marriage as necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Cohabitation carries none of those rights and privileges. It has been said that cohabitation has all the headaches of marriage without any of the benefits. Live in relationship is a voluntary arrangement whereby two adults mutually agree to live together to conduct a long term relationship that resembles to a marriage. "Live in relationships are a walk in walk out relationship. There are no strings attached to these relationships as the relationship is free from any legal bond between the parties." This relationship does not impose the typical responsibilities of a marriage. The founding notion behind opting for live in relationships is to test one's compatibility with the other person before entering any sort of legal commitment. The Supreme Court of India has held by virtue of section 114 of the Indian Evidence Act, the courts can raise a presumption of marriage that the partners in the live in relationships are married to each other. In the case of *S.P.S. Balasubramanyum v. Suruttayan* the Apex Court held that if a man and women are living under the same roof and cohabiting for number of year, there will be a presumption under section 114 of the Indian Evidence Act that they live as husband and wife and the children born to them will not be illegitimate. This is in fact in accordance with section 50 of the Indian Evidence Act. In the absence of explicit laid-down laws and provisions, the courts lean heavily on precedents and interpretations of existing laws to decide cases in front of them. There is no law specifically addressing live-in relationships, but the Indian judiciary has developed jurisprudence over the years through a series of judgements. According to the SC judgment in *Badri Prasad Vs Dy. Director of Consolidation (1978)* live-in relationships in India are legal but subject to caveats like age of marriage, consent and soundness of mind. The question of the legality – or legitimacy – of live-in relationships was relatively simple for the courts to settle as fundamental freedoms are mostly elastic and courts have interpreted them broadly. However, several laws in different aspects pertaining to live-in relationships continue to be too rigid for the courts to extend or interpret them for the benefit of live-in partners. The legality of live-in relationship stems from the Articles 19(a)- right to freedom of speech and expression and Article 21- protection of right to life and personal liberty of the Constitution of India. "Right to life emphasizes on the freedom of an individual to enjoy life by all means unless it is prohibited by

existing laws. It's a free society and one can live anywhere they wish to live. In the context of live-in relationships, Right to Life under Article 21 is applicable in a sense that an individual has the right to live with a person of their interest with or without marriage," says Advocate Debrup Bhattacharyya, who practices at Calcutta High Court to Outlook.

(A) Objectives:

1. To study the position of live in relationship in India.
2. To study the merits and demerits of the live-in relationship in India.
3. To find out what are the legal provisions of the live-in relationship in India.

(B) Methodology:

The methodology of this whole work is based on secondary sources . Secondary sources like books, journals, newspapers, research papers, thesis, some case references, website .

II. WHAT IS THE MEANING OF A LIVE-IN RELATIONSHIP?

The idea of live in relationship evolves from the broadened mindset of the people who started to crave for a relationship with no-strings-attached. A living relationship couple are the ones who cohabit, with no expectations being the bottom line. However, there is no legal definition to describe the concept in Indian law. It is more of a westernised theory with very less relevance with the Indian tradition. So the Supreme Court, at various instances, took the liberty to elaborate on the concept through their judgements. It is different from a marriage. (Marriage or wedlock or matrimony, is a socially/ritually knowledgeable union of a couple). Live in relationship partners don't force on obligations. When asked if a live-in relationship is good or bad, there is no proper explanation on if it is good or bad. It merely depends on the person and one's personality on looking from a different perspective. People ought to believe that when living together, they can understand each other better and also for many other reasons, which cannot be denied.

III. POSITION OF LIVE-IN RELATIONSHIPS IN INDIA

In India, cohabitation was considered taboo since British rule. However, attitudes have changed, particularly in big cities, where live-in relationships are now more accepted. Nonetheless, in rural areas with conservative values, cohabitation is still often frowned upon. Under the Protections of Women and Domestic Violence Act, 2005, female live-in partners have certain economic rights. The Maharashtra Government approved a proposal in October 2008, suggesting that a woman involved in a live-in relationship for a 'reasonable period' should be granted the status of a wife. The determination of what constitutes a 'reasonable period' is based

on the specific facts and circumstances of each case.

The National Commission for Women recommended to the Ministry of Women and Child Development on 30th June 2008 that the definition of 'wife' as described in section 125 of Cr.P.C. (Criminal Procedure Code) should be amended to include women involved in a live-in relationship. The purpose of this recommendation was to bring the protection of women from domestic violence in line with that of legally married couples. The Justice Malimath Committee, set up by the Supreme Court, supported this view and stated that if a man and a woman live together as husband and wife for a reasonable long period, the man should be deemed to have married the woman.

The Malimath Committee also suggested amending the word 'wife' under Cr.P.C. to include a 'woman living with the man like his wife,' making a woman in a live-in relationship entitled to alimony. On 16th September 2009, the Supreme Court, in a case, observed that a woman doesn't need to strictly establish a formal marriage to claim maintenance under section 125 of Cr.P.C. This means a woman in a live-in relationship can also claim maintenance under this section.

In another case, the Allahabad High Court ruled that a woman of about 21 years of age, being a major, has the right to live with a man even without getting married if both parties so wish. The Supreme Court further observed that if a man and a woman are involved in a live-in relationship for a long period, they will be treated as a married couple, and any child born to them would be considered legitimate.

IV. PROS AND CONS OF LIVE-IN RELATIONSHIPS

The Supreme Court's controversial statement regarding live-in relationships and pre-marital sex has sparked intense debate across the country. This historic observation has upset many conservative groups who fear that it may undermine the sanctity of marriage. A fragment of society, including notable social activists and prominent figures, has expressed their views on this matter.

Maa Ghara Foundation Trustee, Rutuparna Mohanty, expressed concerns over the potential adverse effects of the ruling. She hopes that the government will take appropriate steps to safeguard the rights and dignity of Indian women and protect society from potential chaos. Mohanty believes that such a ruling could lead to increased instances of child pregnancies and spread HIV/AIDS despite its aim to restrict multiple partners. She also worries that children born out of live-in relationships may not receive proper upbringing.

Some social scientists have identified serious social issues such as adolescent girls' early

pregnancies, drug abuse, violence, and juvenile delinquency. They argue that the controversial ruling could legalize objectionable social behavior, leading to a more spoiled new generation that prefers live-in relationships over arranged marriages.

BJP spokesperson Shaina raises concerns about the amendment's implications on the Hindu Marriage Act, which does not provide for a second wife among Hindus. She believes that granting the status of a legally married wife to a mistress, including property, inheritance, and maintenance rights, goes against both the Act and Hindu customs.

Those in favor of the freedom to choose live-in relationships see the recent observations as a positive step emphasizing individual freedom. They believe that such relationships allow partners to understand each other better without legal complexities, making it easier to walk out of the relationship if needed. They argue that people should be free to live as they wish as long as their actions do not harm others.

Women from various walks of life welcome the progressive moves regarding live-in relationships, viewing them as a reflection of societal changes and pragmatism. Some feel that the younger generation is becoming more realistic and should have the freedom to make informed choices about their relationships.

It is important to note that live-in relationships have been a subject of debate for a long time, with discussions revolving around whether such relationships can be legally recognized. While it is legal for unmarried individuals to live together in many places, the law traditionally favors marriage and reserves certain rights and privileges for married individuals.

Despite legal recognition, the law does not actively promote live-in relationships, as it traditionally supports the institution of marriage. However, in some cases, the law seeks to protect women from patriarchal power dynamics that can exist even in live-in relationships.

V. LAWS RELATED TO LIVE-IN RELATIONSHIPS

Though the law is still ambiguous regarding the legality of such partnerships, a few rights have been provided by analysing and altering the laws so that the parties can avoid misusing such relationships. Several pieces of legislation are addressed below.

(A) Article 21 of the indian constitution

Article 21 of the Indian Constitution safeguards the basic right to life and personal liberty, and it has been decided by various Supreme Court judgements like *S. Khushboo v. Kanniammal and Anr (2010)* that the right to life and personal liberty includes the right to cohabit without interruption.

(B) The Protection Of Women From Domestic Violence Act, 2005

A domestic relationship is defined in Section 2(f) of the Domestic Violence Act, 2005 as a relationship ‘in the nature of marriage’ between two people residing in a shared home. A domestic relationship is defined as a relationship between two individuals who reside or have resided together in a shared household at any period of time and are connected by consanguinity, wedding, or a relationship in the nature of marriage, adoption, or are friends and family living together as a family group.

Live-in relationships have the characteristics of marriage because the partners live together for a long period of time and represent themselves as husband and wife. As a result, they fall under the purview of the Domestic Violence Act, 2005, and therefore, a woman in a live-in relationship can seek protection and maintenance under this Act. As a result, this Act legalises relationships other than marriage.

(C) The code of criminal procedure, 1973

Section 125 of the Criminal Procedure Code allows a wife to seek maintenance from her spouse if he refuses to support her. If a woman is able to form a marriage-like connection, she is eligible to receive maintenance from that man because the court can make the assumption that such a relationship is a marriage and the woman is considered to be a wife. The primary goals of including live-in relationships under the purview of Section 125 are to safeguard women from domestic violence and to increase the legal threshold for partners in live-in relationships to the level of marriage. The Supreme Court expanded on this precedent from the guidelines of the Malimath committee appointed by the Home Ministry. The committee was chaired by Justice Malimath to make recommendations on the aforementioned proposition.

The Committee submitted its findings in 2009, proposing that the definition of alimony/maintenance under Section 125 be modified to enable women to obtain it. As a result, the Supreme Court ruled in the case of *Abhijit Bhikaseth Auti v. State of Maharashtra and Anr* (2009), that a woman is not required to prove marriage to seek maintenance under Section 125 of the CrPC, meaning that a woman in a live-in relationship is also entitled to maintenance. This decision demonstrates our judiciary’s liberal and contemporary stance.

There is no explicit law or custom in India that governs live-in relationships. Thus, via decisions, the Supreme Court has expanded the notion of live-in partnerships and established rules for dealing with such relationships.

The Supreme Court first observed live-in relationships as legitimate in the case of *Badri Prasad v. Dy. Director of Consolidation* (1978). The Court said that under Indian law, a live-in

relationship between consenting adults is legal if the requirements of marriage, such as legal age of marriage, consent, and soundness of mind, are met. No rule permits or bans such connections. In the case of *Lata Singh v. State of U.P. (2006)*, the Supreme Court ruled that, although live-in relationships are considered unethical, they are not illegal under the legislation. In another well-known case, *S. Khushboo v. Kanniammal and Anr (2010)*, the Supreme Court ruled that living together is a right to life protected by Article 21 of the Indian Constitution, and thus, despite being considered immoral by society, it is not an offence under the law. In *Indra Sarma v. VKV Sarma (2013)*, the Supreme Court held that if both partners are unmarried and enter into a mutual relationship, it does not constitute an offence. The same kind of observation was made in the judgement of *Badri Prasad v. Deputy Director Consolidation (1978)* as well as in the case of *SPS Balasubramanian v. Suruttayan (1993)*, that if a man and a woman have resided together for a long duration of time, the legislation will assume them to be legally married unless the reverse is proven. A strong assumption favours marriage, but it is arbitrable, and the person contradicting it bears the burden of proof. Furthermore, children born from such a relationship would be eligible to inherit from the parent's properties.

VI. RECENT HIGH COURT JUDGEMENTS

1. **Gulza Kumari v. State of Punjab**

Justice H.S Madaan stated in *Gulza Kumari v. State of Punjab (2021)* that the non-marital relationship is not culturally or morally justifiable. As a result, the petition was rejected. The Supreme Court has affirmed the legitimacy of live-in relationships in several cases, but in *Gulza Kumari*, the Court failed to consider the precedent, which is the rule of the court as it was provided by the top court of the nation. For the proper reasons, the *Gulza Kumari v. State of Punjab (2021)* ruling has garnered a lot of criticism. Within weeks following this verdict, the High Court of Punjab and Haryana announced another decision, but with a totally opposite result.

2. **Pushpa Devi v. State of Punjab**

In *Pushpa Devi v. State of Punjab (2021)*, the petitioners, a female around the age of 21 and a boy around the age of 19, requested the court's protection to safeguard their live-in relationship from their families, who have been willing to kill them just for family reputation. They were unable to marry because one of the applicants, a boy, had not reached the legal marriage age of 21.

The Court, through Justice Arun Kumar, awarded the petitioners the right to life and personal liberty on the grounds that both applicants have reached the age of majority and have the

freedom to choose. This case appears to emphasise the significance of reaching the age of majority and how it alters the manner in which legal protection is conferred.

3. Rohit Kumar v. State of U.T. Chandigarh

In *Rohit Kumar v. State of U.T. Chandigarh* (2022) and others, the Punjab and Haryana High Court has urged the Union Government to outline its plan for dealing with live-in relationships. Noticing that no Act controls these relationships and that once an individual has achieved majority in terms of the Majority Act, 1875 (i.e., 18 years of age), it would be challenging for a court to refuse the validity of a live-in relationship, the Bench of Justice Amol Rattan Singh tried to seek a response from the centre by stating, “...*what is recommended is to make sure that too many youngsters with developing minds (not properly matured though they otherwise, theoretically, are of the majority age in terms of the aforementioned Act) would not start living together and end up regretting such choices in life, causing major trauma to their parents and loved ones.*”

4. Abhishek Chouhan v. State of Madhya Pradesh

In the case of *Abhishek Chouhan v. Madhya Pradesh State* (2022), the Madhya Pradesh High Court described live-in relationships as a by-product of the constitutional provision guaranteed under Article 21 of the Constitution, observing that such relationships foster sexual activity and lascivious behaviour, giving rise to sexual crimes.

The Court concluded that, with some exclusions, India has a conservative culture that has not yet achieved such a advanced level of civilization where unmarried girls, irrespective of their religion, participate in lascivious activities with boys only for the entertainment, unless supported by certain future promise of marriage, and that, to confirm her point, a victim should not be required to rely on committing suicide as in the current case.

VII. LEGALITY AND RIGHTS OF CHILDREN BORN FROM A LIVE-IN RELATIONSHIP

Children born from void and voidable marriages are given legality under Section 16 of the Hindu Marriage Act, 1955, and Section 26 of the Special Marriage Act, 1954. The right of inheritance of such children is confined to the parents' properties only. Such children do not have coparcenary rights in the property of the Hindu undivided family and thus cannot claim their parents' ancestral property.

Children born from live-in relationships were granted legal validity in *S.P.S. Balasubramanyam v. Suruttayan* (1993). According to the Supreme Court, if a man and a woman reside in the same house and cohabit for a significant period of time, there is a presumption of marriage

under Section 114 of the Indian Evidence Act, 1872. As a result, their children will be recognised as legitimate and eligible to inherit a portion of the family estate.

In *Bharatha Matha v. Vijaya Renganathan* (2010), the Supreme Court gave children born from live-in partnerships a portion of their parents' property. The Court ruled that children born in live-in relationships may not be considered illegal if the relationship lasts long enough.

VIII. LEGAL STATUS AND PROPERTY RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP

a. Legal Status:

The Supreme Court in **Tulsa v. Durghatiya** held that a child born out of such a relationship would no longer be considered as an illegitimate child. The noteworthy prerequisite for the same is that the parents must have lived under the same roof and cohabited for a significant period which proves their sincerity towards the relationship. **S.P.S. Balasubramanyam v. Suruttayan** was the first case which approves the legitimacy of children born out of a live-in relationship. The Supreme Court held that "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." Additionally, the Court also interpreted Article 39(f) of the Constitution of India which directs its policies towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

b. Property Rights:

The Supreme Court in **Revanasiddappa v. Mallikarjun** approved the inheritance to the four children born out of the live-in relationship by considering them as 'legal heirs'. Therefore, the Court has guaranteed that no child may be denied their inheritance who are born out of a live-in relationship of a significant period of time. In **Bharatha Matha v. R. Vijaya Renganathan**, case also the Supreme Court provided legitimacy to a child born out of a live-in relationship in the eyes of the law and held that he might be allowed to inherit the property of the parents. The Supreme Court held that a child born out of parents in a live-in might be allowed to inherit the property of the parents if any, but does not have any claim upon Hindu ancestral coparcenary property.

c. Maintenance:

The Malimath Committee, i.e. the Reforms of Criminal Justice System was set up in November

2000, it submitted the report in 2003 after making several recommendations for 'offences against women'. One of the significant recommendations proposed was, to amend Section 125 of the Criminal Procedure Code (hereinafter CrPC) which is related to the maintenance rights of the 'neglected and dependent wife, children and parents (Anuja Agrawal 2012).' The committee also pursued to extend the definition of 'wife' mentioned under Section 125 of CrPC to include a woman who was living with the man akin wife under the same roof for a reasonably long period. However, the aforesaid criteria are necessary for any women who want to take benefit of PWDVA, which consist; right age, mutual and independent consent, a significant period and social status. The objectionable conditions are if they are living for the period of a week, a month, a couple of months, one-night stand many relationships at a time, only for the sexual desire which does not show sincerity in the relationship. In **Chanmuniya v. Chanmuniya Kumar Singh Kushwaha**, the Supreme Court turned down the judgment of the High Court which declared that appellant wife is not entitled to maintenance on the ground that only legally married woman can claim maintenance under Section 125 CrPC and awarded maintenance to the wife (appellant) pronouncing that provisions of Section 125 CrPC must be considered in the light of Section 26 of the PWDVA, 2005. The Supreme Court held that women in live-in relationships are equally entitled to all the claims and reliefs which are available to a legally wedded wife. Similarly, in **Abhijit Bhikaseth Auti v. State of Maharashtra and Others**, the Supreme Court observed that a woman in a live-in relationship might also claim maintenance under Section 125 CrPC, it is not necessary to strictly establish the marriage to claim maintenance under section 125 of Cr.P.C. Although, in **Indra Sarma v. V.K.V. Sarma** a two-Judge Bench of the Supreme Court constituting of K.S.P. Radhakrishnan and Pinaki Chandra Ghose, JJ. held that "when the woman is aware of the fact that the man with whom she is in a live-in relationship and who already has a legally wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife and also to those who enter into a relationship in the nature of marriage" as per provisions of PWDVA, 2005. Nevertheless, then again in the same case only, the Supreme Court felt that denial of any protection mentioned under PWDVA, 2005 may be unjust for the victims. Therefore, the Supreme Court highlighted that the need of the hour is to extend the scope of Section 2(f) which deals with 'domestic relationships' in PWDVA, 2005 specially for a dependent, poor, illiterate along with their children.

IX. CONCLUSION AND SUGGESTIONS

Live-in relationships are now very popular in India. The law does not prescribe how we should live; it is ethics and social norms which explain the essence of living in welfare model. The

Court itself notices that what law sees as no crime may still be immoral. It has said in a judgement of 2006, notices by the Court now, that two consenting adults engaging in sex is not an offence in law “even though it may be perceived as immoral.” Of course, such protective sanctions may potentially lead to complications that could otherwise be avoided. But simply raising the hammer may not be the best route to taming the bold and the brave. Awareness has to be created in these young minds not just from the point of the emotional and societal pressures that such a relationship may create, but also the fact that it could give rise to various legal hassles on issues like division of property, violence, cases of desertion by death of a partner and handling of custody and other issues when it comes to children resulting from such relationships.

While the Supreme Court’s opinion might not have the undesirable effect on more and more couples preferring live-in relationships rather than opting to wed, it could certainly embolden more young men and women as they would now be convinced that there is no breach of law in the live-in relationship. One can only weigh the pros and cons and take into account the impact of their decision on their family and most importantly on themselves.

X. REFERENCES

- *Friedman, Jaclyn ; Jessica Valenti (2008).*
- Elena von der Lippe (Koytcheva).
- Research Gate. Retrieved 22 August 2015.
- See for each country: Variable Description – Family - Kramer, Elise (September–October 2004).
- Brown, S. L. & Booth, maya angelo 2014 (1996). *Journal of Marriage and Family*.
- Rhoades, G.K. Stanley, S.M. Markman, H.J. (2012). *Journal of Family Issues*.
- Pamela J. Smock, Wendy D. Manning, and Meredith Porter (2005).
- Miller AJ, Sassler S, Kusi-Appouh D (2011). *The Specter of Divorce Views From Working- and Middle Class*.
- Rhoades, G.K. Stanley, S.M. Markman, H.J. (2009). *Journal of Family Issues*.
- Wendy D. Manning; P.J. Smock. "Divorce-proofing marriage: Young adults' views on the connection between cohabitation and marital longevity.
- Brown, S.L.; Booth, A. (1996). A comparison of relationship quality. *Journal of Marriage and Family*. Rhoades, G.K., Stanley, S.M. & Markman, H.J. (2009a). Couples' reasons for *Journal of Family Issues*.
- Murrow, Carrie; Lin Shi (2010). Purposes on Relationship Quality. *The American Journal of Family Therapy*. Brown, S.L.; Booth, A. (1996). A comparison of relationships quality. *Journal of Marriage and Family* .
