

The situation of Marriage and Live-In Relationship in India in the 21st Century - Analysing the Legitimacy of a Child Born out of a Live-In Relationship

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Abstract

A live-in relationship is one in which two people choose to live together as a pair but are not legally married to one another. The concept of a live-in relationship is quite popular in the western world but now it is also gaining popularity in India and other Asian countries. It was previously considered a taboo in Indian society but now society is evolving and the acceptance rate of live-in relationships is quite high. Other countries in the western world have specific laws about live-in relationships but in India, there are no specific laws about live-in relationships. The apex court of the country in absence of any specific legislation has issued certain guidelines in its judgment for the regulation of such relationships. This paper attempts to analyze the current position of live-in relationships in Indian society and landmark supreme court cases about the same. The court in its various judgments mentioned that two adults with the consent of each other living together cannot be termed as illegal and if the couple living together showcase themselves as husband and wife, and have spent a significant period the relationship is considered to be a relationship like marriage under the prevention of domestic

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violence act, 2005 Initially this paper studies the concept of live-in relationship in detail and then discuss evolution. The middle part of this paper studies the benefits of the live-in relationship and then talks about the stand of various countries around the world on the live-in relationship. In the end, the paper talks about the legitimacy of the child born out of a live-in relationship and discusses certain landmark cases about the same”.

Keywords - Live-in relationship, Couple, Society, Court, Marriages, Legal

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Introduction

When two people decide to live together for a long time or good, this is called a "live-in relationship." It can be close on both an emotional and a sexual level. Most of the time, "living in a relationship" means that two people live together but are not married.

People in the western world live together a lot these days. People can want to live together for a lot of different reasons. Some of these things are getting to know each other and making sure they are financially stable before getting married. Another reason could be that living with someone before getting married can help them avoid getting a divorce if they find out they don't get along. It can also happen when people can't legally marry each other, like if they are the same gender or if they are from different religions and can't get married. Recently, the Supreme Court said that a man and a woman living together without being married couldn't be called illegal or a crime, because what's wrong with two people wanting to live together? Is that a crime? asked K.G. Balakrishnan, who had been Chief Justice of India, Justice Deepak Verma, and Justice B.S. Chauhan. The court also said that no law in India says people can't live together or have sex before they get married. People have the right to live together. Article 21 of the Indian constitution says that everyone has a fundamental right to life and personal freedom. The South Indian actress Khushboo asked the supreme court to throw out 22 criminal cases against her because she was accused of supporting premarital sex in interviews she gave to magazines in 2005.

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Objective of research

- A. To study in detail the merits of the Live-in relationship.
- B. To study the position of different countries when it comes to Live-in relationships.
- C. To study the legitimacy of the child born out of a Live-in relationship.

Question of research

- A. What are the merits of a live-in relationship?
- B. What is the position of different countries when it comes to live-in relationships?
- C. What is the legitimacy of a child born out of a live-in relationship?

Literature review

Gopal Swathy (2019)² - The concept of a live-in relationship in India in the twenty-first century has been covered in this article, along with how it has changed over time. Along with discussing marriage laws, the nature of marriage, and its interpretations, the author also talked on how live-in partnerships affect people's lives. Additionally, the author has explored a number of live-in relationship-related cases and the legality of live-in relationships in India.

Laxminarayan Choudhary, Mridula Narayan, and Mridul Deepanshu (2021)³ - The author has talked about how live-in relationships are becoming more popular and how Cohabiting,

² Available at <http://www.legalservicesindia.com/article/211/Live-in-Relationships.html>

³ Laxminarayan Choudhary, Mridula Narayan, and Mridul Deepanshu, *Live-In Relationships in India—Legal and Psychological Implications* (Journal of Psychosexual Health 2021)

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which means living together as a couple without being legally married to each other, is frowned upon in India. But for many reasons, these kinds of relationships are becoming more common. Since there were no specific laws, rules, or customs on the subject, the Supreme Court used its ruling to set some guidelines for how these relationships should be handled. After systematically looking at these penalties, this article tries to figure out what the current laws are in India about people living together. Cohabitation between two adults who agree to it is not illegal, and under the Domestic Violence Prevention Act of 2005, if the couple acts like husband and wife in public and lives together for a long time, the relationship is considered to be "of a marital nature." Because of this, the law gives the woman the right to ask for alimony. However, they do not have the right to a share in the Hindu undivided family property. Couples can get to know each other better in a relationship that lasts a lifetime, but there are some bad things about it as well. Every day, the couple has to deal with several social and practical problems. From the point of view of mental health, being in a good relationship is better than living alone and not having any relationships.

Shivam Kumar (2021)⁴ - In this paper, the author has studied the live-in relationship terminology and discussed the legality of live-in relationships in India and the rest of the world. The author has also studied the legitimacy and inheritance of children born out of live-in relationships.

⁴ Shivam Kumar, *Rise in live-in relationships in the 21st century* (Journal for law students and researchers 2022)

The Benefits of Live-In Relationship

One of the main merits of a live-in relationship is that a live-in relationship is totally like a marriage, but the person involved in a live-in relationship doesn't have any legal obligation or responsibility towards each other.

Both people get the opportunity to know each other at a much deeper level. There are many stances where couples opt for a live-in relationship before marriage so that they can understand whether they are compatible with each other or not. So a live-in relationship helps them to decide better and saves them from future divorce. People sometimes choose live-in relationships because they are unable to handle the level of commitment required by marriage.

Some of the merits of a live-in relationship are mentioned below.

A. Less accountability and responsibility

As discussed above, there is less or no accountability and duties towards each other when it comes to live-in relationships. There is no pressure to please family or relatives. You get the opportunity to be yourself as there is no pressure to please the parents. You can divide your expenses and just enjoy each other's company. There is a lot of personal space in the relationship, so you get time for yourself as well.

B. Freedom to take decisions

Couples in live-in relationships have the freedom to decide whatever they want without being dependent on their partners. For example, switching jobs or investing money, etc.

C. Compatibility test

People in live-in relationships usually have a lot of time to get to know each other's nature and temperament. This makes it easier for them to decide whether they are a perfect match or not.

D. Legal obligations

There are no legal obligations when it comes to live-in relationships. If you feel you are unhappy with your partner or your partner is not your type and you feel there is no room for improvement, then you are free to walk out of the relationship and there will not be any legal complications like divorce filing, court hearing, etc. It is much easier to handle heartbreak than the social stigma of divorce.

E. Equality and mutual understanding

People who are in live-in relationships are usually very practical and they feel that they are both equally responsible for the relationship. The best thing is that they are not dependent on each other, financially, legally, or emotionally. Because there is always the possibility of leaving, both parties put in extra effort, dedication, and loyalty to make the relationship meaningful.

Position of different countries in a live-in relationship

Scotland

Because the country has over 1,50,000 couples in live-in relationships, the Finnish government passed the Family Law (Scotland) Act⁵ in 2006 to legalize the live-in relationship. Section 25(2) of that, states that a court of law can consider a person as a co-habitant of another by checking three factors.

1. How long have they lived together?
2. What was their relationship like during that time?
3. The kind and amount of any financial plans

France

In France, live-in relationships are governed by the "pacte de solidarité," or "civil solidarity pact," which was passed in October 1999 by the French national assembly. Cohabitation is when two people of the same or different sexes live together as a couple and have a "de facto stable and continuous relationship." The act says that the relationships are contractual, and the people who are in them are called contractions. The contract binds two adults of the same or different sexes to plan how they will live together. For a contract to be valid, the people signing it can't be tied to another agreement "by marriage, siblings, or lineage."

⁵ Family Law (Scotland) Act 2006

United Kingdom

The Civil Partnership Act 2004 governs the live-in relationship in the United Kingdom. Although a man and a woman who live together in a stable sexual relationship are frequently referred to as "common-law partners," the term is not entirely accurate in English and Welsh law. The government believes that the residents owe each other more than that. Unmarried couples do not have guaranteed rights to mutual ownership of assets, according to a 2010 memorandum from the House of Commons Home Affairs Section. When a cohabiting couple divorces, the courts do not have the authority to override the strict legal ownership of the property and divide it as they would in a divorce. In the event of death, unmarried partners do not automatically inherit the other partner's property. For tax purposes, cohabiting couples are treated as unrelated individuals.

Canada

Living together is legally recognized as a common-law marriage in Canada. Under federal law, common law couples have the same rights as married couples in most situations. A common-law relationship gains legal sanctity if the couple has been in a conjugal relationship for at least 12 months, if the couple is the biological or adoptive parents of a child, or if one of the people has custody and control of the child and the child is completely reliant on that person for support.

Australia

According to the Family Law Act of Australia, a de facto relationship can exist between two people of the same or different sex, and a person can be in a de facto relationship even if legally married to another person or in a de facto relationship with someone else.

United States

Before 1970, cohabitation was illegal in the United States, but it later became common law, subject to certain conditions. There have also been several consensual sex laws in American legal history, which paved the way for cohabitation contracts and their cousins, "prenuptial agreements." The country then institutionalized cohabitation by granting cohabitants essentially the same rights and responsibilities as married couples, a situation similar to that of Sweden and Denmark. Those who cohabit are not recognized as legal parents.

The legality of a Child born from a Live-In Relationship

The Supreme Court's decision in **Tulsa & Ors vs. Durghatiya & Ors**⁶ established the legal status of a child born from a live-in relationship. The court ruled that a couple who has been living under the same roof for a long time cannot walk out of the relationship after the child is born. The court also stated that a child born from a live-in relationship has full ownership of the parent's property. In addition, a Supreme Court bench led by Arijit Pasayat ruled that a child born from a live-in relationship will no longer be considered illegitimate. The law is biased in favor of legitimacy and condemns "whoreson" or the fruit of adultery.

⁶ AIR 2008 SC 1193

Children born from live-in relationships have inheritance rights

The Supreme Court ruled in its decision that a child born from a live-in relationship does not have the right to inherit Hindu ancestral coparcenary property (in the case of an undivided joint Hindu family) and can only claim a share of the parents' self-acquired property. This order contradicted the Madras High Court's decision, which held that children born from live-in relationships were entitled to share in ancestral property because there was a presumption of marriage due to the long relationship.

Suggestions and Conclusions

There is a trend of live-in relationships in India and the acceptance of the same in society is also increasing day by day. There are no laws which describes how we should live; it is the societal norms or ethics which explain the essence of living in a welfare model. The apex court itself said that the court doesn't see any harm if two people decide to live together with each other's consent, and there is no crime, but it may be immoral. It is crucial to keep in mind that as society develops, laws must also change. Even if certain decisions made by Indian courts and committee reports recognised live-in partnerships, an equal number of decisions went the other way. As a result, it is imperative that the law take a position on this new type of connection, whose development is being accelerated by India's rising economy and cultural modernization. After this is resolved, the critical topic of how living together affects children must be examined. In the year 2006, the court noted that two consenting adults engaging in sex isn't an offense in law even though it may be perceived as immoral.

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The Supreme Court of India has played an important role in establishing a legal basis for children born out of live-in relationships through its various judgments and in protecting their rights as well.