



Review Article

Changing dimension of marriage: A socio-legal analysis in the context of live-in relationships in India

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Abstract

Live-in relationships are defined as living together as a couple for a significant time without being married in a legally recognized manner. A live-in partner is someone who has a sexual relationship with another person but is not married to that person. This kind of relationship is still considered a taboo in India, although such relationships have become more prevalent for various reasons. In the absence of particular laws, regulations, or norms, the Supreme Court has provided guidelines for regulating such partnerships through several judgments. This article highlights the changing dimension of the institution of marriage in India. Further, an endeavor has been made to determine the current legal stances regarding live-in relationships in India by systematically analyzing the various court decisions. Live-in relationships may allow the pair to get to know each other better, but such a commitment-free relationship also has drawbacks. The couple encounters numerous social and logistical challenges on a day-to-day basis. At the same time, the promotion of live-in relationships is warranted since they allow the persons involved to better understand one another. The partners have no societal obligations and can, therefore, live without remorse.

Keywords:

Live-in relationships, India, Legal issues in live in relationships

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Introduction

Over the past several decades, technological and industrial advancements have dramatically transformed the world and every aspect of an individual's life. Globalization has accelerated the changes that have affected nearly all elements of our social life, including family

structure, marriage, and conjugal relationships, among others. Marriage is a legally recognized and socially acceptable form of relationship between couples. As social structure and cohesion are stronger in our nation, marriage is even more significant here.^[1] Cohabitation outside of marriage is considered taboo, although these days, it is more common for young people to get into a live-in relationship with the person to whom they may eventually seriously thinking of getting married. In other words, it can be said that even a devout relationship such as marriage is becoming materialistic and has entered the era of test and trial, rendering the sanctity of marriage meaningless and without purpose.^[2] It is a reality that cannot be refuted that the institution of marriage and the family firmly anchors a society.^[3] Marriage is a key social institution in India, and it also occupies a prominent role in the country's culture and traditions as a whole. The institution of marriage is seen as a holy link between two people in India and is frequently thought of as a commitment that lasts for one's entire life. Human beings live in social systems that meet human needs like life, liberty, and happiness. From the beginning of civilization, the development of social relationships played a substantial role in the manifestation of human culture. The philosophy of marriage dates back to ancient times when it was considered a means of forming bonds between families and tribes. On the other hand, as cultures progressed, marriage began to place a greater emphasis on the psychological and spiritual bond that exists between two individuals. Love, trust, commitment, and responsibility are frequently used to describe marriage. When two people decide to build a life together, they promise to share life's ups and downs and do so as equal partners. The concept of marriage also incorporates the notion that marriage is a commitment to life. In many cultures, divorce is considered a last resort, and couples are urged to work through their issues and find ways to improve their

bond. A strong marriage is said to require effort, compromise, and communication. In general, cultural, societal, and religious variables, as well as individual ideas and values, impact the concept and philosophy of marriage. Yet, it is fundamentally about love, commitment, and the shared adventure of two people who choose to build a life together.

In India, marriage is considered a sacred institution; it is the foundation of a stable family and a civilized society. In comparison to the countries of the West, India's family structure is the strongest in the world because of the country's deep-rooted traditions and rich culture. The idiom "marriages are made in heaven" gives a very deep meaning to marriage.^[4] It is also known as matrimony or wedlock, a recognized social union between two individuals termed spouses. Marriage is intended to establish rights and responsibilities between spouses and extended to their family members.^[5] The union of two people is made official in many different cultures through the performance of a wedding ceremony. When it comes to the issue of legal recognition, the majority of sovereign states and other jurisdictions restrict marriage to only those couples who are of opposing sexes or to only those people who are of opposite genders in the gender binary. As far as same-sex marriage is concerned, it is the legal recognition of marriage between two individuals of the same sex or gender. It is a social, political, and legal issue that has been the subject of much debate and activism worldwide. It is legally recognized in over 30 countries, including the United States, Canada, the United Kingdom, Spain, and South Africa.^[6] However, it is important to note that the legal status of same-sex marriage can vary widely between different countries and regions, with some legalizing it through legislation while others have done so through court rulings or referendums. In India, in the year 2018, the Hon'ble Supreme Court of India delivered a landmark judgement in the case of Navtej Singh Johar v. Union of India.^[7] In this case, the court

overturned a rule from the colonial era that made sexual relations between people of the same gender illegal. The court decided that the law infringed upon the constitutionally protected rights to equality and privacy, as well as the freedom to express one's opinions. In an ongoing case, over the past few weeks, the five-judge Constitution bench of the Supreme Court of India takes the legality of same-sex marriages into consideration. In this case, the rights of heterosexual and homosexual partners in marriage are vying for equality.^[8]

Various cultures have had their genesis of marriage followed by their respective marriage practices. Hinduism perceives marriage as a sacred duty that entails both religious and social obligations and as such, it brings with it several religious and societal responsibilities. Marriage is considered to be a *sanskara* (sacrament) among Hindus. It is one of the ten sacraments that adherents to the Hindu religion partake in to facilitate the spiritual rebirth of men, and it is required of any Hindu who does not choose to lead the ascetic lifestyle of a *sanyasi*.^[9] According to Hindu texts, a wife is considered as '*ardhangini*'. In *Tikait Munmohiniti v. Basant Kumar*^[10], it was observed by the court that "in Hindu Law, marriage was a sacrament, a union, an indissoluble union of flesh with flesh, bone with bone- to be continued even in the next world".

In *Gopal Kishan v. Mithilesh Kumari*^[11], an observation was given by the Allahabad High Court that, "the institution of matrimony under the Hindu Law is a sacrament and not a mere betrothal". In Hindu texts, a man cannot be said to have a material existence until he takes a wife in marriage. A man is only half of himself. Therefore, he is not fully born until he takes a wife, and only after marriage alone, he becomes complete.^[12] Although marriage under the Hindu Marriage Act of 1955, to an extent, the sacramental character of Hindu marriage has been done away with.

In Islam, marriage is regarded as the cornerstone of society. In addition to being a legal agreement, it is also a solemn promise. Marriage is both an institution that can elevate man and a way through which the human race can be maintained and passed on to future generations. It has also been said that marriage is such a holy sacrament and that in this world, it is an act of '*ibadat*' or worship because it maintains the purity of humans and protects them from pollution. According to Tyabji, "Marriage brings about a relationship based on and arising from a permanent contract for intercourse and procreation of children, between a man and a woman who are referred to as '*parties to one marriage*' and who, after being married, become husband and wife".^[13] In Islam, the practice of polygamy is permitted, whereas the practice of polyandry is prohibited, with the specific restriction that men are only permitted to have a maximum of four wives at any given time, and they must be able and willing to divide their time, wealth, and other resources equally among all of their wives.^[14]

Christian marriage is the union of two individuals, a man, and a woman, in a religious and spiritual context based on Christian beliefs and values. In Christianity, marriage is viewed as a sacred and lifelong commitment between two people, and it is considered one of the most significant events in a person's life. Christian marriage also involves the concept of submission, which means that both partners should submit to each other out of love and respect. Christian marriage is viewed as a holy and sacred institution that requires commitment, sacrifice, and faith. It is a union that is blessed by God and is meant to reflect the love and devotion between two people as well as their commitment to God.^[15]

Parsi marriage refers to the traditional marriage customs and rituals of the Parsi community, which is an ethnic and religious group. Parsis follow the Zoroastrian religion,

emphasizing purity, honesty, and morality. The Parsi wedding ceremony is known as 'Lagan' and involves several pre-wedding and post-wedding rituals. The religious ceremony of "ashirvad" is regarded as a necessary basis for establishing and sustaining the validity of a Parsi marriage. Under Parsi law, the religious ceremony of 'ashirvad' must be performed by a Parsi priest in the presence of two Parsi witnesses in order to establish the sacrament of marriage, and its registration is also essential and necessary. The Parsi community is an exclusively monogamous and endogamous society. Overall, Parsi wedding is steeped in tradition and rituals and emphasizes the importance of family, community, and spirituality in the union of two individuals.^[16]

The parents or families of the bride and groom traditionally arranged marriages in India. Arranged marriages are frequently viewed as a means of preserving traditional values and family ties. When choosing a life partner for their child, the families would consider various variables, including religion, caste, social standing, and financial stability, among other things. Due to the progression of society, members of the younger generation in India have begun to favour the institution of love marriages, in which individuals select their spouses. A love marriage is one in which both partners choose each other voluntarily and based on mutual attraction and compatibility. It is viewed as a more modern and individualistic form of marriage and has gained popularity in the recent past. Before getting married, the partners have the opportunity to get to know each other and form a strong emotional connection, which is one of the benefits of a love marriage. This can make the relationship stronger and more fulfilling. However, arranged marriages may not allow the partners to get to know each other well before the wedding, and they may result in forced or unpleasant unions.

In India, marriage is viewed as a way to prolong the family lineage and preserve family

traditions. The couple is expected to have children and raise them according to the traditions and values of their respective families. Marriage is seen as an integral component of Indian culture. The concept of marriage is strongly founded in history and represents society's values, beliefs, and practices. It is a legal and social union between two people recognized by law, religion, or custom. The definition of marriage has changed over time and varies between countries, religions, and customs. Yet, at its foundation, marriage is a promise between two individuals to share their lives and support one another through thick and thin.

In the course of the development of human civilization, India has undergone a great deal of change. An examination of its philosophical, historical, political, and social features reveals that there has been a significant shift in the value system from the distant past to the current day. But, the wave that swept the nation to break free from all the rules led people to search for an alternative concept of commitment, as many viewed marriage as a burden. The generation that is afraid of commitment has given rise to the practice of live-in relationships, which was adopted from our Western neighbours. Live-in relationship is the outcome of our modern society to accord the individuality of each status. India is a nation that is in the process of gradually opening its doors to Western concepts and ways of life. The idea of live-in relationships is one of the most significant episodes among those contributing to India's gradual but steady acceptance of Western ideas and philosophies in their life. It was considered quite scandalous only a generation or two ago for a man and a woman who were not married to live together, whereas it is now considered a common practice for most couples to live together before getting married. But, the pace of that shift is swift. There has been a discernible shift in the norms of our culture, from arranged marriages to love marriages and now to 'live-in relationships'.

Live-in relationships, or cohabitation or domestic partnership, are when an unmarried couple lives together in a long-term relationship without being legally married. Nonetheless, live-in relationships are becoming increasingly widespread in India, particularly among the younger generation, who consider it a method to assess compatibility before getting married. Couples choose to cohabit instead of getting married because they believe it is more practical and comfortable. The primary motivation behind the development of this kind of partnership is convenience. If one were to research the factors that contribute to the necessity of such relationships, evading responsibility would emerge as the most important factor. Alternatives to marriage have become increasingly popular due to a declining commitment rate, a disregard for social bonds, and a lack of tolerance in relationships.

The perception of live-in relationships in India differs greatly from one part of the country to another and from one social stratum to another. Some consider it a matter of personal choice and support the couple's right to live together without marriage, whereas others believe it inappropriate and immoral. It is essential to remember that live-in relationships in India are not yet universally accepted and that families and society may stigmatize and discriminate against couples who choose to live together.

Legally speaking, a person in a live-in relationship does not have the same rights or protections as married people who have their marriage recognized by the state. For example, the couple may lack inheritance rights, shared property rights, and legal protection in the event of the separation or death of one partner. Hence, couples in live-in relationships must be aware of their legal rights and take the appropriate precautions to safeguard themselves. In India, the matter of live-in relationships is not governed by any particular laws, social conventions, or customs because

there are none. The Supreme Court, through its judgments at various points in time, has provided elaboration on the notion and guidelines to address issues related to partnerships of this nature.^[17] In India, a live-in relationship between two consenting adults is not seen as a violation of law. It was observed by the apex court of the land that a live-in relationship between two consenting individuals of different sexes, even though it could be considered immoral, does not constitute any illegal activity under the law.^[18] Since cohabitation is a fundamental human right, it can under no circumstances be construed as a criminal offence.^[19] The presumption under the law is that a man and a woman are legally married to each other if they have been living together as husband and wife for an extended time, unless it can be proved that they are not married to each other, and children born out of such relationships would be entitled to inheritance in the property of the parents. This was observed in the case *SPS Balasubramanian v. Suruttayan*,^[20] and in the case of *Indra Sarma v. VKV Sarma*^[21], where the Supreme Court determined that not all live-in relationships are of the type of marriage. In this specific case, it was determined that the appellant, who was fully aware that the respondent was married, could not have entered into a live-in relationship like marriage because it lacked any inherent or essential characteristics of a marriage but was instead a relationship not like marriage.^[22] The Protection of Women from Domestic Violence Act, 2005 (PWFDA) protects injured parties against any atrocities committed against females living in non-marital adult heterosexual relationships. This Act has been widely lauded as the first legislative statute to acknowledge that "any woman who is or has been in a domestic relationship with the respondent and who alleges to have been victim to any act of domestic abuse by the respondent" will be covered by this Act. In addition, the Act defines "domestic

relationship” under 2(f) of the Act as “a relationship between two persons who live or have lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together in a joint family”. By employing the concept of “relationships in the nature of marriage”, the Act appears to have broadened the scope of legally recognized domestic partnerships between men and women. In *Aruna Parmod Shah v. Union of India*^[23], the constitutionality of the Act was challenged because “first, it discriminates against men and second, the definition of “domestic relationship” contained in Section 2 (f) of the Act is objectionable. The petitioner argued that placing “relationships in the nature of marriage” at par with “married” status leads to the derogation of the rights of the legally wedded wife. The Delhi High Court rejected both these contentions regarding the constitutional status of the Act and the court said that “there is no reason why equal treatment should not be accorded to a wife as well as a woman who has been living with a man as his “common law” wife or even as a mistress”. In this case, the judges interpreted “a relation in the nature of marriage” as covering both a “common law marriage” and a relationship with a “mistress” without clarifying the legal and social connotations of these terms.^[24] In *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others*,^[25] the high court of Allahabad ruled out that “a lady of about 21 years of age being a major, has right to go anywhere and that anyone, man, and woman even without getting married can live together if they wish, and also in a case the apex court observed that live-in relationship between two adults without formal marriage cannot be construed as an offence”.

In *Lata Singh v. State of U.P*^[26], the apex court of the land found that “live-in-relationship is admissible only in major unmarried persons

of diverse sex”. In *Radhika v. State of M.P*^[27], the apex court stated, “if a man and a woman are involved in a live-in relationship for an extended term, they will be viewed as a married couple and their child will be considered legitimate”. In the case of *Abhijit Bhikaseth Auti v. State of Maharashtra and Others*^[28] on September 16, 2009, the Supreme Court noted that “it is not required for a woman to strictly establish the marriage in order to claim maintenance under section 125 of the Criminal Procedure Code, 1973”. In *Madan Mohan Singh & Ors.v. Rajni Kant & Anr*^[29], the court ruled that “the live-in relationship cannot be described as a “walk in and walk out” connection if it continues for an extended period of time, and there is a presumption of marriage between the parties. While there is no doubt that marriage is an important social institution in India, people must also keep an open mind regarding the fact that certain individuals or groups hold different opinions. Certainly, there are some tribal communities in our nation where sexual interactions outside the context of marriage are viewed as natural. In this decision, the supreme court opined that getting into a live-in relationship cannot constitute a crime.

Since ancient times, the social union known as “marriage” has been viewed as “more of a sacrament and a divine concept”. Thus, the Indian populace is ignorant of the concept of live-in. In the landmark case of *S. Khushboo v. Kanniammal*^[30], the Supreme Court ruled that there was no statute prohibiting cohabitation or sexual activity before marriage. The Hon’ble Supreme Court in *SPS Bala Subramanyam v. Sruttayan*^[31] held that “if a man and woman are living under the same roof and cohabiting for several 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 this landmark judgment, the apex court of India recognized the legal standing of children born out of live-in

relationships and interpreted relevant laws so that they are consistent with Article 39 (f) of the Indian Constitution, which mandates that the state ensure the proper growth and protection of all children. The Hindu Marriage Act, 1955, also recognizes the legality of children born into marriages that are considered “void” or “voidable”, it also establishes the legal rights of such children to succession and property ownership.

Thus, the High Courts and the Hon’ble Supreme Court have indicated a willingness to recognize the legitimacy of live-in relationships and to pass legislation to preserve the rights of couples in a live-in relationship. The judiciary is neither explicitly encouraging nor segregating such kinds of live-in relationships in India. It only renders justice per the law in a particular case. The Protection of Women from Domestic Violence Act, which includes “partnerships comparable to marriage” and live-in situations in its purview, provides just a few traces of help for women’s rights in such relationships. A domestic relationship is the relationship between two people who live or have lived together in a common household, and who are linked by consanguinity, marriage, a relationship in the nature of marriage, adoption, or family members living in a joint family. So, the words in the definition of marriage are self-explanatory and incorporate the social concept of cohabitation.

Furthermore, in recent years the recommendations by various committees and NGOs have awakened the spirits of justice in the interest of women, especially those aggrieved by such relationships. The concepts of ‘live-in-relationship in the nature of marriage’ and ‘live-in-relationship not in the nature of marriage’ have been differentiated in several cases. The Supreme Court of India observed that the definition of domestic relationship as defined under the Protection of Women from Domestic Violence Act, 2005 covers only ‘relationships in nature of marriage’ and as such, the women in relationships not in nature

of marriage are not entitled to reliefs provided under the said Act. To make a ‘live-in’ legal, i.e., a ‘relationship in nature of marriage’ the Supreme Court noted that the couple must hold themselves out to society as being akin to spouses; they must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried; and they must have voluntarily cohabited for a significant period.

The various components of Indian society are bound together by a profoundly ingrained sense of culture and tradition. Indian society represents the actual colour of India amongst the patchwork of traditional rituals and the mosaic of Indian celebrations. It is the crest of varied traditions and the symbol of rich ethnicity. The country’s rich social legacy and heritage make it stand out from the crowd. A rich culture and profound tradition characterizes the various facets of society. The country’s rich social legacy and heritage make it stand out from the crowd. As the institution of marriage is the foundation of society, society’s interests are well preserved by maintaining the institution’s foundation. Marriage offers a transient longevity bond, requiring two dissimilar personalities to adjust to and care for one another. It requires dedication and sacrifice. With a high percentage of educated girls and boys living away from their families, it has become easier for the younger generation to experiment with noncommittal relationships. The option to separate for numerous reasons makes it both alluring and threatening. Attractive because they may offer them a wonderful time until they leave on their own accord; frightening because the emotional connection can lead to bitterness or exploitation, particularly if one partner is more committed than the other, uncertainty coupled with it may induce anxiety. Moreover, in our societal structure, there is also a lack of approval for such couples, which places them under considerable stress. Society’s censure

and parental disapproval can make life tough if one lacks the strength and confidence to maintain the relationship. Marriage signifies both a sacrament and a civil contract in personal law; consequently, a man's complete personality combines with a woman's total personality, and the in-laws are naturally connected for the duration of their married lives. Live-in relationships provide a remedy for a carefree life free from the burdens of responsibility and commitment, which are the very prerequisites of the institution of marriage, for the modern group of youths who want to experiment with new things in life rather than just clinging to the old customary traditions imposed on them by their ancestors, they prefer to live in more than the institution of marriage. Marriage encourages adjustment, whereas individual liberty is emphasized in a live-in relationship. One could say that such a relationship is an escape. No relationship can become more resilient and expressive if an escape option is accessible. The Indian judiciary has taken the initiative to lead the way in demonstrating the appropriate way forward in light of the shifting lifestyle patterns that have emerged in society, and now it's the turn of society to accept the change and honour the choice. Encouragement of live-in relationships is warranted because they provide the parties involved the opportunity to have a better understanding of one another. The partners have no social commitments and can therefore live guilt-free lives, which may reduce the number of divorces and the mental anguish endured by families. The partner's ability to leave at any time could minimize domestic violence. It is a collective responsibility of society to sensitize and make the new generation aware of the pros and cons of both marriages as well as live-in relationships and allow them to make an informed decision without being judgemental.

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