



# THE CONDITION OF UNMARRIED COHABITING WOMEN IN INDIA

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**ABSTRACT:** When two people of different sexes live together and engage in married behaviours without following religious sanctity, it is referred to as a live-in relationship. "An arrangement of living under which the unmarried couples live together to conduct a long-term relationship similarly as in marriage" is the widely recognised definition of a live-in relationship. A live-in relationship, put simply, is a situation where a man and a woman cohabit without being married. Following independence, society grew to understand the importance of individual rights and moral principles. Bigamy was criminalised, and women's rights became increasingly apparent. Today, bigamy is prohibited due to ethical and legal reasons. However, the practice of cohabitation is constantly evolving daily. In recent years, India has seen a rise in popularity for the new, western-inspired form of non-marital cohabitation. Even though such a relationship is completely forbidden in Indian culture, the judiciary is in some ways acknowledging it by reading the law as it stands. Although live-in relationships are not recognised by personal laws as being on the same level as marriage, they are recognised as "marriage like relations" under section 2(f) of the Protection of Women from Domestic Violence Act of 2005. The Protection of Women from Domestic Violence Act of 2005 was passed with the intention of more effectively protecting women who are victims of domestic violence of any kind, as guaranteed by their constitutions, and for matters incidental or related thereto. Getting married, settling down, and becoming accepted as a married couple in society is the ultimate goal. Living together is a decision made by two mature heterosexual individuals. Prior to getting married, they planned to assess their compatibility. The idea of cohabitation has emerged from the shadows and is now somewhat acknowledged by the law. There have been no changes made to the current personal laws, despite the ongoing public debate and the recommendations and opinions that continue to come in from various authorities and commissions to reform the current laws. Thus, it is imperative to investigate whether or not live-in partnerships are appropriate for the nation's personal laws. The two primary arguments against the legalisation of live-in relationships in India are the harm done to a "legally wedded wife" and her children and the encouragement of bigamy.

**KEYWORDS:** Women, Live-in relationship, Cohabitation, Personal Laws, wife, socio-legal.

## INTRODUCTION

Marriage is one of the fundamental social institutions. Observance of criterions and agreements of marriage in religions, traditions and different societies is distinct from each other. It means that the people of society due to inbreeding or marriage call themselves relative of each other. It can be said that marriage is an interaction that causes a relation between two opposite sexes based on mutually beneficial sexual relation and requires making a social contract which leads the way to legitimating of physical relations and forms the basis of starting a family.

Marriage is an institution in which both the partners have equal role to play for a successful innings. Some golden rules are:

- a) creation of mutual trust which has to be made everlasting by watering it on daily basis,
- b) keep at bay undue interference by the nears and dears from both ends,
- c) share house hold work equally in case both are working,
- d) have joint accounts and joint property to create everlasting mutual trust for everlasting relationship (Dalai, 2018).

Anyone who believes that the idea of a live-in relationship is a relatively new trend in India may be mistaken. In India, it has long been customary for heterosexual couples to live together without first getting married via a legal ceremony. In the society of the time, having an extramarital affair with a woman was not considered immoral for a guy. Men might maintain *Avarudh Stris* or concubines for amusement and enjoyment; this was not considered prohibited in the community. Furthermore, keeping a mistress outside of marriage is a sign of pride and prosperity.

However, in a few regions of Gujarat and Maharashtra, the "*Maitri Karar*," also referred to as "friendship arrangement," predominated. It amounted to two heterosexual people willingly entering into a non-marital relationship. It is crucial to note that this type of living arrangement must occur between a married man and a single woman, with the latter consenting to waive any rights other than those related to an intimate sexual connection. These ladies who pick *Maitri Karar* found security in the arrangements. These contracts, which were thereafter referred to be live-in relationships, were recorded with the District Collector Office.<sup>1</sup>

Following independence, the societal principles linked to individual rights and personal liberty were established. It was at this time that bigamy was become a felony and women started to realise their own rights. Because of doubts about its morality and legality, the *Avarudh Stris* practice is currently prohibited.<sup>2</sup> However, live-in relationships are becoming more common in India's major cities. The majority of western nations have

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<sup>1</sup> Pragati Ghos, Essay on the Maitri Karar under the Hindu Marriage Act, (Mar. 15, 2024),

<http://www.shareyouressays.com/117237/essay-on-the-maitri-karar-under-the-hindu-marriage-act>.

<sup>2</sup> Prof. Vijender Kumar, Live-in Relationship: Impact on Marriage and Family institution, 4 SCC. J-20 (2012).

adopted a new kind of cohabitation that is rooted in the western culture, and this is also the model that modern India is inspired by and adopts.

In most of the European countries, living together relationship and behaviour has shifted from a marginal behaviour to one that has become acceptable and normal. In a way, it is a kind of behaviour or relationship which helps to expect way of starting a family in many countries (Hiekel and Castro-Martin, 2014). The rise in such living together relationship or behaviour has challenged the institution of marriage, leading to uncertainty about the reasons for marriage or whether marriage is even necessary.

There has been an increase in the influence of Westernization on Indian society due to globalization and thus, a shift can be observed in traditional values. Earlier, marriage was necessary as one's pious obligation and the fact that women were financially dependent on men. Over recent years, the worth of loyalty, duty, and self-sacrifice in marriage have been substituted by companionship, equality betwixt spouses, economic independence, and compatibility, at least among the upper classes.

Although living together relationships have increased in Europe and it is also rising in Asia including India. The nations have assorted socio-cultural and legal provision for live-in relationship distinct from others.

### **The New Dynamical Aspects of Live-In Relationship**

In addition to being a formal acknowledgment of status with connections to both civil and religious life, marriage is a religious sacrament. It cannot be disputed that marriage has its historical and traditional roots as a religious institution, even though it is desired nowadays to be solemnised more for legality than for religious holiness. The 1960s saw the emergence of a new type of non-marital cohabitation in western nations, which has since expanded to every corner of the globe. The issue therefore becomes, did this form of extramarital connection also exist in antiquity?

In contrast to personal laws, the principle of secularism is adhered to in live-in relationships, meaning that spouses' religious convictions are not prioritised. Even yet, the institution of marriage is linked to the nation's personal laws, the majority of which are formed and codified by religion, society, and the law. The sacramental vows and rites that a man and a woman must take in order for their marriage to be legally recognised are really protecting the sanctity of marriage.

Non-marital cohabitation may vary depending on the effect that various nations have on the welfare and quality of relationships. The primary distinctions may be attributed to the nation's institutionalisation of non-marital relationships and the widespread occurrence of single cohabitation. There are several unwavering and circumstantial elements in the support that make it simple to identify the primary reasons why someone would typically choose a live-in relationship. When a marriage is formally sanctified in accordance with the law and a religious ritual that is difficult to annul, it invariably establishes corresponding postulates of rights and obligations. However, there are no rights and no defined obligations in a live-in relationship, therefore the only accessible remedies in the event that a right is infringed are minimal and conditional.

Adopting a live-in arrangement might also be justified by young individuals without family who are living in major cities or overseas for employment or further education. Lack of both financial and emotional support encourages them to embrace the nation's open society. Similar to India, this tendency is often observed in multi-ethnic metropolises, particularly in the regions where individuals work for multinational corporations and other multifunctional, advanced industries like advertising, hotels, airlines, or the arts (music, theatre, etc.). Couples who choose to live together frequently do so primarily out of love and a desire to spend more time together. They believe, however, that their current connection is not a suitable fit for a committed partnership, such as marriage. In order to ensure that they are compatible before making a lifelong commitment, they would rather be in a live-in relationship before getting married. In essence, it is a compatibility test conducted before to marriage.

Concubinage is now commonly associated with live-in relationships. Concubinage may occur for a variety of reasons, such as the woman's lower social and economic status than the guy she is living with or the fact that he is already married. The common consensus is that men with great social and economic position typically had concubines. Living together can happen for a variety of reasons. However, those who have opted for live-in partnerships have a variety of characteristics, ranging from financial to physical. For example, they may choose to evaluate their compatibility or address their financial stability prior to marriage.<sup>3</sup>

There is no legal barrier that prevents a man and a woman from living together in a "live-in relationship" rather than being legally married. However, for a variety of reasons, Indian traditional culture disapproves of these living arrangements. First, marriage is still seen by society as a foundational institution.

Furthermore, the impulsive nature of such a connection formed an acquiescent position for the woman if she was monetarily reliant on her male counterpart. These days, social humiliation and condemnation are confronted in quite little towns and cities due to such relationships. That's why it stays very much a secret.

Live-in relationships, non-marital cohabitation, living together, de facto relationships, marriage-like relationships, etc., are all undefined by law. Children born out of such non-marital closeness are legally recognised, and live-in couples have no set rights or duties. In India, no legislation has been developed or passed to govern cohabitation relationships. Nonetheless, a "marriage like relationship" may be interpreted in accordance with Protection of Women from Domestic Violence Act Section 2(f). In some case laws, live-in relationships are classified as marriage by the courts. The court will almost always assume marriage based on a history of long-term cohabitation.

As of the now, India lacks a dominant legal framework to address the perception of cohabitation. Both the Indian Code of Criminal Procedure and the Hindu Marriage Act 1955, Muslim Personal Law, Christian Marriage and Divorce Act, and Parsi Marriage and Divorce Act do not accept cohabitation. The Protection of Women from Domestic Violence Act of 2005 is the only law that addressed live-in couples. Under the Act, a

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<sup>3</sup> Amit Anand Choudhary, Couple living together will be presumed married, Supreme Court rules, April 13, 2015, Times of India, (Jan. 19, 2024), <https://timesofindia.indiatimes.com/india/Couple-living-together-will-be-presumed-married-Supreme-Court-rules/articleshow/46901198.cms>.

live-in spouse who feels mistreated may be awarded maintenance for the specific purpose of providing safety and support to women.

A straightforward examination of this legislation indicates that a "domestic relationship" is defined as "an association between two persons who live, or have lived together in a common household at any point in time, once they are connected by consanguinity, marriage, or through an association in the nature of marriage, adoption, or are family members living together as a joint family."<sup>4</sup> While the term "in the nature of marriage" encompasses live-in relationships or non-marital cohabitation, no legislation has explicitly defined or provided a legal interpretation for this phrase. Consequently, the courts have the discretion to interpret and determine the meaning of this term on a case-by-case basis.

Cohabitees are nevertheless have to follow the difficult path that married individuals had to travel before reform, and they must use the tools of contract law and trust law to prove their property rights. As a result, there is a readiness to expand the scope of remedies from those available in marital settings to include cohabitation situations, although not the entire range. However, it is feasible to approach the entire issue from a completely other angle.

From a different angle, it appears that the notion of marriage itself is evolving, rather than the union of marriage and cohabitation. It's possible that marital status is really becoming less and less important, with a shift towards treating marriage more like cohabitation and emphasising the ability of the partners to enter into contracts rather than status. This is a result of women's evolving social roles and growing levels of freedom. If such is the pattern, legislative authorities ought to exercise caution when establishing a new dependent status as a result of cohabitation. Married couples and cohabitees alike frequently exhibit a lack of awareness regarding the legal ramifications of their unique partnerships.

In happy relationships, the potential legal issues that may emerge in the event of a breakup are rarely considered. Without realising it, bank accounts are opened and property is bought in the name of one individual only, opening up a veritable Pandora's Box of legal issues.

### **Forecasting of Marriage in Live-In Relationship**

In Indian tradition, marriage is considered the most significant samskara<sup>5</sup>; nevertheless, in reality, it may be a nightmare for a lot of women. Despite the religious emphasis on marriage's sanctity, marriage is frequently the setting in which women experience the greatest levels of abuse and hardship. In reality, a woman is subjected to violence as soon as she is married, including demands for dowries and possibly being slaughtered and burned alive if she brings too little money. Among the social ills that plague society are the overindulgent wedding customs prevalent in India and the expense of weddings that exceed one's resources.

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<sup>4</sup> Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

<sup>5</sup> P. V. Kane, *History of the Dharmasastras*, 427 (Vol. II, Carter IX, 1962).



## Right to Claim Maintenance and Live-In Relationship

The woman is entitled to maintenance if the parties are living together for an extended period of time without being legally married, according to the Supreme Court's ruling. Given the differing views of judges regarding the meaning of "wife" in Section 125, the case was referred to a larger bench in view of the Protection of Women from Domestic Violence Act, 2005. This Act granted broad interpretation to terms such as "domestic abuse" and "domestic relationship," which encompassed cohabitation, and entitled these women to relief under the Act.

According to opinion, the term "wife" should be interpreted broadly and expansively to cover situations in which a man and a woman have lived together as husband and wife for a significant amount of time. Precise proof of marriage is also not necessary to be a prerequisite for claiming maintenance under section 125 of the Code of Criminal Procedure, 1973, in order to fully realise the beneficial provision of maintenance.<sup>6</sup>

On March 23, 2010, in the Khushboo case, the Supreme Court granted legitimacy to live-in relationships. A three-judge bench comprising Chief Justice K.G. Balakrishnan, Justice Deepak Verma, and Justice B.S. Chauhan made a significant observation. They questioned, "When two consenting adults choose to cohabit, what constitutes the offense? Does living together amount to a criminal act? Living together is not illegal." The court further asserted, "Please inform us of the specific offense and the applicable legal provision. Cohabitation is a facet of the right to life," thereby invoking the fundamental right to life enshrined in Article 21 of the Indian Constitution.

### Right To a Live-In Relationship And Divorce

When it comes to any legal or financial problems, such as establishing a bank account, filing an income tax return, asking for a loan, etc., women in live-in relationships do not use their partner's surname as documentation, unlike married women. In a relationship like this, the women maintain their independence as individuals and are not acknowledged as "wife" or "domestic partner."

Thus, there is no need for a formal divorce decision or for the court to get involved in separating live-in couples. The matrimonial laws stipulate that the partners are not entitled to the legal procedures that must be followed for separation, including divorce, until this type of partnership is recognised by the law. It is simple to enter into a live-in relationship, whether "by choice" or "by circumstance," but it can be challenging to properly leave one. While the legal implications of this partnership remain unexplored, for example, no legislation currently exists to address the partition and preservation of their separate or joint property upon separation.<sup>7</sup>

<sup>6</sup> Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 (India).

<sup>7</sup> Prof. Kumar Virender, Supra 17 at J-19.

## Right To Inheritance and Living in Community

In a cohabitation arrangement, neither spouse has an inherited claim to the other's possessions. Even a mistress living with a male Hindu is not granted inheritance rights under the Hindu inheritance Act, 1956. But in *Vidhyadhari v. Sukhrana Bai*,<sup>8</sup> the Supreme Court gave hope to cohabiting couples by stating that those who have lived together for a respectable amount of time are eligible to inherit property from a live-in spouse.

In the case of *Revanasiddappa v. Mallikarjun*,<sup>9</sup> a Hindu man who had a lawfully married wife alive yet enjoyed a live-in relationship with a woman received his property following his death (intestate).

Family members argued that their grandfather, who lived with a woman for 20 years after his wife passed away, was not legally married to her and as a result, she was not entitled to bequeath the property after his death. The Supreme Court of India ruled in this regard in the case of *Dhannulaal and others Vs. Ganeashram and another*<sup>10</sup>. She was their grandfather's mistress, they said. When the family acknowledged that their grandfather had a relationship with the lady who was living with them in the joint family, the court assumed that the woman was the lawful wife even though she had not been able to establish it. The honorable Supreme Court ruled that if a woman cohabits with a man for an extended period, the law shall presume them to be legally married unless proven otherwise. Furthermore, this presumption entitles them to claim inheritance rights.

On inheritance of property by children born out of live-in relationships, the Supreme Court held that a child born out of a live-in relationship is not entitled to claim inheritance in Hindu lineal coparcenary property (in the case of Hindu undivided family) and only entitled for a shares in the parents' self-acquired property. The Court rejected Madras High Court's judgment, which state that offspring of live-in relationships were qualify to claim a share in ancestral property as there was a presumption of legal marriage in view of the long relationship. A child can only claim on the person's self-acquired assets, in case the child is illegitimate. It can also be understood in a way in which a child could lay a claim on the share of a parents' lineal property as they can claim for that parents' share in such property, as Section 16 sanction a share in the parents' property. Hence, it could be argued that the person born in a live-in relationship entitled to self-acquired property coupled with a share in the ancestral property.

The honourable Apex Court also stated that while marriage exists, a spouse cannot claim live-in relationship with another person and seek inheritance for the children from the estate of that other person. If done so it will be consider as 'adultery'.

<sup>8</sup> *Vidhyadhari v. Sukhrana Bai*, (2008) 2 SCC 238 : (2008) 1 SCC (L&S) 451 (India)

<sup>9</sup> *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1: (2011) 3 SCC (Civ) 581(India).

<sup>10</sup> *Dhannulaal and others Vs. Ganeashram and another*, (2015) 12 SCC 301(India)

## Women In Live-In Relationship Under Protection of Women from Domestic Violence Act 2005

It is a true reality that a woman's standing in any kind of relationship—whether it be a married one or one that is a living relationship—remains fragile. She is continuously the victim of emotional, physical, or sexual abuse, often all at once, in the relationship. Marriage laws do, however, protect the rights of a woman who is legally married; nevertheless, women who live in cohabitational relationships or marriage-like relationships are not entitled to the same protections. A live-in relationship is defined as a mutually agreed-upon living arrangement in which two single heterosexual people live together under one roof for an extended period of time. This type of relationship is similar to a marriage.

Therefore, living together as a man and woman is a non-marital arrangement. When it comes to individual liberty and freedom of choice, young people in metropolitan centres are turning to personal relationships as an alternative to marriage. The younger generation believes that all customary obligations and compulsions associated with marriage should be abandoned.

While live-in relationships are founded on individual liberty and freedom of choice, marriage institutes have their own set of societal and personal responsibilities and adjustments. Nevertheless, as a simpliciter, no personal law or other statutory legislation in India recognises live-in relationships or non-marital cohabitation.

In 2008, the Ministry of Women and Child Development received recommendations from the National Commission for Women on the inclusion of live-in women in the eligibility for maintenance under Section 125 of the Criminal Procedure Code, 1973. In its first report, the Malimath Committee, which was established to reform India's criminal justice system, recommended changing the definition of "wife" in Section 125 of the Criminal Procedure Code to include any woman who had lived with her husband as his spouse for a respectable amount of time. This recommendation of Malimath Committee was made in March 2003.<sup>11</sup>

The Law Commission of India once more advised in 2012 that live-in partnerships be included and that those in such relationships be given legal protection.<sup>12</sup>

Although a live-in female partner has not been married but has cohabited, the question of divorce will not arise and she cannot therefore claim maintenance under Section 125 of Cr.P.C., it is important to note that a divorced wife will be treated in the same manner as a wife under the definition of "wife" under that section.

The Protection of Women from Domestic Violence Act of 2005 safeguards women who are in live-in relationships or marriage-like relationships against domestic abuse as well as married women. A domestic relationship is defined as a relationship between two people who live together or have lived together in a mutual household at any point in the past and who are related by consanguinity, marriage, or another relationship similar to marriage, adoption, or are family members living together in a joint family arrangement under Section 2(f) of the Protection of Women from Domestic Violence Act. As a result, the definition of a domestic relationship includes both the affiliation with marriage and the associated with a true marriage.

<sup>11</sup> Justice Malimath Committee, Report on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, Volume I, March 2003, (Recommendation No 115).

<sup>12</sup> Law Commission of India, Supra Note 259.



A few key requirements must be met in order for a live-in relationship to be accepted as an institution comparable to a formally consummated marriage. Only the harmed woman may request maintenance if live-in couples meet these requirements when they are sharing a single roof and the female partner experiences abuse and harassment. These prerequisites are:

A live-in couple has to present themselves to the community as being similar to married couples.

To be able to get married in line with the laws to which they are subject, they have to be of legal age.

They must not be wedded to anybody else, and if they are, their spouse must either not exist or have been legally divorced.

They are not permitted to be prohibited from getting married legally in any other way.

They must have voluntarily chosen to live together outside of marriage and presented themselves to the outside world as similar to married people for a considerable amount of time.

Not only are women in live-in relationships protected by the Protection of Women from Domestic Violence Act, but they may also seek remedy against their male partner in cases of abuse or harassment if they are involved in deceiving marriages. The Protection of Women from Domestic Violence Act shields women against abuse in the home and gives resentful live-in partners as well as their wives the right to pursue support in the form of alimony.

Nearly all women who have suffered from domestic abuse are covered by this act. Any woman who has lived with the abuser/offender under the dwelling home and is or has been associated with him is covered by the Act. This Act also applies to women who are related by consanguinity, marriage or a relationship that mimics marriage, adoption, or cohabitation with other family members as a joint family. Furthermore, the Protection of Women from Domestic Violence Act grants legal protection to women who are sisters, widows, mothers, single women, or cohabiting with the abuser.

According to this Act, the court has the authority to issue any necessary orders at its discretion in order to stop the abuser from encouraging or carrying out acts of cruelty or domestic abuse, or to allow the victim to enter places of employment or other frequented locations. Other powers granted to the court include isolating any assets used by both parties and preventing violence against the victim, her family, and other people who help her escape the abuse.

## ***RESEARCH AND METHODOLOGY***

For the most part, the researcher has conducted the research using the descriptive, analytical, and doctrinaire methods.

The current study is based on a combination of empirical and doctrinal methods.

Both a socio-legal and a pure legal study have been attempted in this research.

The researcher has used primary sources such as Acts, Statutes, and Amendments of various laws in India and other countries, as well as decided case laws from the Indian Supreme Court and High Courts of various Indian states, as well as authoritative reports from committees and commissions and leading judgements from other countries.

Secondary research sources that the researcher has taken into consideration include text books, reference books, journals, legal news and perspectives, posted real internet articles, various online blogs, discussion platforms, public surveys conducted by various authorities, and social media, among others.

## ***CONCLUSION***

A man and a woman living together without getting married or entering into a formal marital relationship—as known as "live-in relationship"—is not prohibited by law. All in all, nevertheless, such living arrangements are not supported by Indian traditional culture. Since there is no particular statute that acknowledges a couple's status as cohabiting, it is also unclear what the law means when children born to these couples in non-marital cohabitation are raised. Determining the standing of such children in society and the legal system is crucial for the preservation of children's rights.

The current need is for ensuring the rights of children born inside situations akin to marriage—that is, cohabiting couples—should be the top priority for legislation. In addressing factual concerns that arise in determining the relevance of offspring produced out of cohabitation in the socio-legal sphere, the Supreme Court of India's verdicts bear substantial weight. It is safe to conclude at this point that modern society, in resolving the contentious issue, turns its attention to the welfare of the legal situation. Consequently, a child born into a marriage-like relationship will inevitably need clarification regarding their legal status in life, as well as their origin and any subsequent rights.

This may cause the youngster to have mental and emotional instability and uneasiness. Legalising cohabitation necessitates the creation of a whole new set of regulations that will control the partnership, including those pertaining to inheritance, maintenance, and protection against betrayal. Courts are also attempting to consider cohabitation to be equivalent to marriage. No judgement recognises it as a live-in relationship on its own. The encouragement of bigamy and the harm that would be done to a lawfully married woman and her children are the two primary reasons against the complete legalisation of live-in relationships in India.

The current state and rights for offspring born in non-marital cohabitation must be clarified by legislative modifications to the current unclear language in order to prevent similar situations. This will provide the consistency, upkeep, and safety necessary to monitor the child's and woman's emotional, psychological, and physical growth.

In addition to being a socially accepted arrangement, live-in relationships are now partially acknowledged under the law. Despite being condemned in public, it has had a good impact. A variety of commissions and agencies have expressed their thoughts and proposals to either take preventative action or further alter the current regulations. It is important to note that there have been no changes made to India's current personal

laws regarding the acceptance of live-in relationships. Therefore, it is essential to research and carefully consider whether or not live-in partnerships may be outlined in national personal laws that promote more stability and improve close relationships.

Support for bigamy and harm to a "lawfully wedded wife" and her offspring as well as children of a legitimate marriage are the two primary arguments against India's live-in laws. Therefore, it is argued that any endeavour to safeguard live-ins under personal laws ought to focus closely and rigorously on these two difficulties.

