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## Live in relationship in India: A critical study

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### Abstract

Live-in relationships are gaining traction in contemporary India, with the judiciary playing a pivotal role in shaping their legal landscape. Through various rulings, the judiciary has favored the legality and non-punishability of such arrangements. This article explores the socio-legal dimensions of live-in relationships, shedding light on their contentious nature and the hurdles they present. Despite judicial support, India lacks specific laws delineating the rights and obligations of cohabiting couples and their offspring, unlike many other nations. The judiciary serves as a vanguard, challenging societal norms and advocating for progressive residential practices. It is imperative to destigmatize cohabitation and acknowledge its merits. This article extensively examines the concept of live-in relationships, elucidating the reasons for their popularity among Indian adults, historical contexts, and international perspectives. Ultimately, the author proposes valuable recommendations, including the formulation of comprehensive legislation addressing live-in relationships in India.

**Keywords:** Marriage, live in relationship, court, legislation, punishment

### Introduction

In our fast-evolving globalized world, cultural exchanges have become common, leading to the adoption of customs and systems from one region by people in other regions, even within their own countries. Particularly, Western culture has had a notable influence on social norms in our society. Young individuals are increasingly moving away from traditional family customs, with the prevalence of live-in relationships rising as they gradually, albeit not entirely, replace the institution of marriage. Marriage, traditionally a legal union that grants spouses and children rights to support and inheritance, is being circumvented by couples who choose to live together without formalizing their relationship, thus avoiding legal obligations and entitlements. Cohabitation, prevalent in numerous Western nations, entails unmarried couples sharing a committed partnership akin to marriage by living together. The underlying idea of live-in relationships is to assess compatibility before committing to a long-term partnership. While this practice is widespread in major cities, it remains taboo in many regions of India. Many individuals, motivated by the desire for autonomy and the avoidance of formal obligations, opt for live-in relationships, where two individuals live together without the legal sanction of marriage but with the emotional intimacy akin to marriage. Though not legally binding, such arrangements imply a sustained commitment. According to judicial interpretations, couples cohabiting for a certain duration are recognized as legally married, granting them certain rights and benefits, although specific laws governing this are still in the process of being established.

The Supreme Court has rendered several rulings in favor of cohabitation, emphasizing equal treatment for couples living together. However, the legal framework for such relationships is still evolving. The Domestic Violence Act of 2005 and Section 2(f) define domestic relationships broadly, including non-marital relationships, but legislative intervention is necessary to regulate these relationships effectively. In Indian history, live-in relationships are not new, with ancient agreements like "maîtrekarar" existing where individuals of different sexes lived together as friends. The term "live-in relationship" is not defined in dictionaries or law but generally refers to cohabitation without marriage for a significant period. Despite its acceptance in some segments of society, live-in relationships face criticism as socially ambiguous and sexually predatory. Although there are no specific laws governing such relationships, judicial interpretations have provided some assurance to those involved. However, legislative intervention is needed to regulate alimony, personal security, and child support in these relationships effectively.

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### Why do people choose live in relationships

There are several motivations behind couples choosing cohabitation over marriage. One prevalent reason is to assess compatibility and evaluate their ability to handle the responsibilities that come with marriage. This period allows them to determine if they can effectively live together and manage shared commitments. Another factor is when both consorts are in love and wish to go through together before committing prior to lifelong relationship. During this phase, some couples may realize they are incompatible and decide to part ways, while others may choose to marry upon discovering their suitability for a long-term commitment. For individuals in the LGBTQ community, a live-in relationship provides clarity and an opportunity to explore their partnership without fear of societal judgment or gossip. In cases where families do not support marriages across religious, caste, or age differences, cohabitation may serve as an alternative. Experiences of unsuccessful marriages may lead some individuals to avoid marriage altogether or delay it until they feel prepared. A live-in arrangement offers a middle ground for those who value the institution of marriage but are wary of the challenges associated with divorce or betrayal. Additional reasons for entering into a live-in relationship include maintaining single status until achieving financial stability, legal constraints preventing marriage, a belief that marriage is unnecessary, avoidance of complexities related to divorce, evasion of marital responsibilities, desire for marriage benefits without the commitment, focus on career advancement, escape from loneliness, and pursuit of independence and privacy.

### International Prospective

In numerous nations, live-in relationships are recognized either directly or indirectly through legal frameworks that safeguard property and housing rights. Many countries offer cohabitation agreements, enabling partners to establish their legal entitlements. Nevertheless, not all nations have specific laws addressing the rights of young one within these association, potentially dissuading interracial relationships due to legal complications.

In the United States, "cohabitation agreements" are legal instruments used to outline the rights and obligations of partners residing together. The term "palimony" originated in the US to describe financial support provided to a lady who lived with a man for an extended period without marrying, and subsequently, was abandoned. This term is a combination of "pal" and "alimony." A pivotal case in establishing the concept of palimony is *Marvin v. Marvin* <sup>[1]</sup>, which was heard in the California Superior Court. The case involved actor Lee Marvin and Michelle Triola, who lived together without formal marriage. When they separated, Triola sought financial assistance. Although the US Supreme Court has not directly addressed the constitutional aspect of palimony, lower courts in various states have issued rulings on the matter. These rulings have varied, with some courts recognizing, some rejecting, and some imposing limitations on palimony, leading to an ongoing evolution of palimony rights in the USA. In the case of *Taylor v. Fields* <sup>[2]</sup>, the Taylor defendant had a relationship with a married gent who subsequently passed away. Taylor then filed a lawsuit against Leo's widow, claiming a financial entitlement from Leo's estate. However, the Court of Appeals in California determined that their relationship was that of man who was married and his mistress, rather

than a valid contractual agreement. As their relationship lacked a substantial cohabitation arrangement, the claim was deemed unenforceable.

In the United Kingdom, cohabitation does not hold legal recognition, and there is no official status conferred upon unmarried couples akin to that of married partners. Unmarried partners do not bear maintenance obligations towards each other, nor do they automatically inherit each other's assets unless specified in a will. A memorandum presented to the House of Congress in 2010 by the Section of Domestic Affairs underscored that lovers/wife and husband who are unmarried do not possess an inherent entitlement to take over each other's property in the event of relationship dissolution. Even so, children born within alike relationships are safeguarded by law, and biological parents, irrespective of marital status, are accountable for their upbringing.

In France, cohabitation arrangements are firmly established and hold considerable significance, providing both same-sex and opposite-sex couples the opportunity to reside jointly and structure their existence while accessing marital rights and civilized privileges. Referred to as "pacte civil de solidarité" or PACS, these contracts enable either one or both partners to dissolve the pact with a three-month notice period. The legal validity of PACS was acknowledged by the French National Assembly in 1999, presenting couples with a means to achieve social cohesion through this agreement.

Thanks to the Family Law (Scotland) Act, more than 150,000 cohabiting husband and wife in Scotland at the present time enjoy licit recognition, a social position established in 2006. Section 25 sub clause 2 of the Act outlines that the court takes into consideration factors such as the duration of miscegenation, the nature of the relationship, and financial arrangements when determining if a person falls under the definition of cohabitation as per sections 26 to 29. Partners can pursue financial assistance from the court under section 28 in the event of the coalition's dissolution, though this provision applies solely to cases of judicial separation and not to the death of a partner. If a partner passes away without a will then the surviving partner has a six-month time period of window to file the petition in the court for petronization support from the deceased partner's tract.

In Canada, common-law relationships are recognized, allowing couples living together without formal marriage to define their rights and responsibilities under Section 54(1) of the Family Code, R.S.O. 1990. This applies to couples cohabiting or intending to do so. They can establish their rights and obligations during their time living together, its termination, or in case of one partner's death. These encompass matters such as property ownership, financial support, and decisions regarding their children's upbringing and moral education. However, they don't automatically gain guardianship or visitation rights to their children. Moreover, Section 53(2) specifies that if these partners marry later, any prior cohabitation agreement will be regarded as a marriage contract.

In Australian family law, a "de facto relationship" can occur between individuals irrespective of their marital status or whether they are in another de facto relationship. This applies to both same-sex and opposite-sex partners.

Article 147 of the Philippine Family Code allows physically and mentally capable individuals to live together as spouses

without a formal marriage. In cases of invalid marriages, both partners have equal entitlement to earnings, and any property obtained during their relationship is jointly owned. In Nepal, cohabitation without marriage is prohibited by law. Despite an enlarge in cohabiting partners, many opt to conceal their relationship themselves as married.

In rural regions of Bangladesh, cohabitation post-divorce often incurs consequences through a customary justice system called Salishi.

### Indian live in relationships

In India, the notion of cohabitation has undergone significant transformation due to legal revisions, particularly within Hindu law, which has evolved to accommodate changing societal norms. Although living together without marriage has been a longstanding practice, the term "live-in relationships" is a recent addition to the lexicon. Historically, sharing living spaces, even prior to independence, was viewed unfavorably, reflecting conservative attitudes. Cohabitation is widely perceived as morally objectionable and lacks specific legal regulations in India, posing challenges concerning the rights and obligations of cohabiting couples, particularly regarding inheritance and property rights.

In recent years, there has been a growing trend of couples choosing to remain in relationships rather than formalizing marriages, mirroring patterns observed in Western societies. However, due to limited public support, enacting legislation on this matter proves to be difficult. The Domestic Violence Act of 2005, which safeguards women from domestic abuse acknowledges "relationships akin to marriage" or live-in relationships as domestic relationships, defining an "Aggrieved Person" as any woman in such a relationship who claims to have experienced domestic violence.

The Justice Mallimath Committee, in November 2000, proposed that couples living together as spouses for a substantial period should be deemed married, suggesting an amendment to Section 125 of the Criminal Procedure Code (CrPC) to provide maintenance to women in such relationships as wives.

Similarly In October 2008, the Maharashtra Government suggested that a woman residing with someone for an "appropriate duration" ought to be recognized as a spouse, with the length of time evaluated according to specific circumstances.

Likewise, in June 2008, the National Commission for Women recommended that women in live-in relationships be embrace in the definition of "wife" under Section 125 of the CrPC to afford them recognition and protection. However, this suggestion faced opposition, citing concerns about legitimizing secondary relationships and complicating familial structures.

The Indian judiciary is adjusting its interpretation of marriage and cohabitation to align with evolving societal dynamics. Nevertheless, ambiguity persists regarding the legal status of children born from such relationships, often leading judges to assume marriage based on the duration of cohabitation in numerous cases.

In the case of *A. Dinohamy vs. W.L. Blahamy* <sup>[3]</sup>, the British cabinet established a precedent stating that if it can be unequivocally demonstrated that a couple cohabited as a result of a valid marriage and not as concubines, they would be considered married. This principle found reinforcement in subsequent cases such as *Mohabhat Ali v. Muhammad*

*Ibrahim Khan* <sup>[4]</sup>. Following India's independence, in the case of *Badri Prasad v. Dy. Director of Consolidation* <sup>[5]</sup>, the Apex Court ruled that intimation equated to marriage, thereby resolving uncertainties regarding the status of a couple's 50-year relationship.

The perspective of the Indian judiciary towards live-in relationships has evolved significantly. Recent judgments, like in *Payal Sharma v. Superintendent, Nari Niketan* <sup>[6]</sup>, by the Supreme Court of Allahabad, recognize that cohabitation is not inherently illegal, though it may be deemed morally objectionable by society. The Court emphasized the distinction between morality and legality, as reiterated in *Patel and others*, where the Supreme Court clarified that cohabitation between unmarried adults cannot be considered a criminal offense since there are no laws explicitly prohibiting it. This viewpoint was reaffirmed in *Tulsa v. Durghatiya* <sup>[7]</sup>, where long-term cohabiting relationships were equated with marriage.

Overall, the Indian judiciary now perceives live-in relationships differently, acknowledging them as legitimate arrangements and recognizing the absence of legal prohibition against them.

In *Kushboo v. Kanniammal* <sup>[8]</sup>, the Apex Court addressed concerns raised by the prosecution regarding advocate Kushboo's remarks on premarital sex, affirming that cohabitation between consenting adults is not a criminal act. Chief Justice K.G. Balakrishnan, along with Justices Deepak Verma and B.S. Chauhan, questioned the legal offense associated with cohabitation under Indian law and stressed that Article 21 of the Constitution guarantees the right to life, implying that cohabitation is a component of this right, albeit not legally binding.

In another example, the Delhi High Court described cohabitation as an informal arrangement devoid of legal ramifications. According to Judge S.N. Dingra, while this arrangement have not institute a legal bond between partners, it offers hope to individuals.

In *D. Velusamy vs. D. Patchaiammal* <sup>[9]</sup>, the Apex Court delineated the terms "live-in relationship" and "relationships akin to marriage," laying down criteria for women seeking maintenance in such relationships. Justices Markandey, Katju, and T.S. Thakur outlined four prerequisites: (1) presenting themselves as spouses for a substantial duration, (2) being of legal marriageable age, (3) being eligible for marriage, and (4) voluntarily cohabiting.

Moreover, for a relationship to be categorized as a "relationship in the nature of marriage" under the Domestic Violence Act of 2005, the parties must cohabit in "shared household" as defined by the Act. Justice Katju clarified that not all cohabitation implies a marriage-like relationship, stressing that occasional weekend visits or one-night encounters do not meet the criteria. These requirements must be substantiated with evidence. Justice Katju acknowledged that this stance might exclude many cohabiting women from availing themselves of the protections afforded by the 2005 statute but emphasized the court's role in interpreting rather than amending the law.

In the case of *Uday Kumar v. Aysha & Others* <sup>[10]</sup>, the Apex Court affirmed the legitimacy of children born from cohabitation, challenging previous notions regarding their status. This ruling reflects a favorable and relatively consistent position from the court regarding cohabitation. While these legal advancements have altered societal perceptions, they also present challenges for the future.

The court's rulings may encourage more individuals to enter such relationships, particularly as the educated segment of society gradually accepts this form of cohabitation. However, the broader public remains resistant, viewing cohabitation as undermining traditional social and moral values associated with marriage, such as language, caste, dowry, religion, region, nationality, and occupation.

While the intent behind such cohabitation is commendable, in reality, it often leads to tragedy rather than relief. Western experience has demonstrated that marriage is the only institution that holds value and binds individuals together. Nonetheless, society aspires to establish a civilized and rational framework where various forms of relationships are respected and comprehended.

The rule of law aims to uphold social justice and maintain order in society. However, laws operate within the context of diverse societal influences. Even though there are no clear instructions for maintaining relationships, "live-in relationships" have not explicitly acknowledged in the common law or the 1973 Code of Criminal Procedure.

To support, safeguard the women, the Act 2005 Domestic Violence mandates that victims be shielded from marital ties. However, both domestic and international legislation regarding this matter lack clarity. The legal rights of cohabiting partners concerning property, financial obligations, child custody, healthcare access, and survivor benefits remain inadequately defined.

According to Section 125 of the Criminal Procedure Code, individuals like spouses, children, and natural guardians who lack the means to brace themselves are entitled to maintenance. However, only lady who are presently divorced, married, or legally separated but not remarried can seek financial support.

In June 2008, the National Commission for Women advocated for the Ministry of Women and Child Development to suggest incorporating female live-in partners for custody under Section 125 of the CrPC. Legal cases like *Abhijit Bhikaseh Auti v. State of Maharashtra*<sup>[11]</sup> lend support to this recommendation.

In October 2008, the Maharashtra government backed the idea, based on recommendations from the Malimath Committee in India and the Law Commission, that women in lengthy partnerships should be legally regarded as spouses. This proposal suggested that women who cohabit with a man as his wife for an extended period should be considered "wives" under Section 125 of the CrPC.

In the legal case of *Koppisetty Subbharao Subramaniam v. A.P. State*<sup>[12]</sup>, the Highest Court affirmed the safeguarding of live-in partners from dowry harassment. Justices Arjit Pasyat and A.K. Ganguly dismissed the discussion that Section 498A was not applicable because the defendant was not wedded but received "dowry." They raised concerns about how the law recognizes the legitimacy of annulled marriages and their children.

In *Chanmuniya v. Virendra Kumar Singh Kushwaha*<sup>[13]</sup>, the term "wife" was broadly interpreted to include situations where two persons Male and Female lived together as husband and wife. This interpretation eliminates the strict proof of marriage requirement in Section 125 of the CrPC for maintenance obligations, preserving the essence of marriage.

There is a need for clear legal definitions regarding intimate relationships and their ramifications. The Supreme Court addressed ambiguities on this matter on October 21, 2010.

However, Indian courts' varied interpretations of cohabitation underscore significant inconsistencies in legal understanding. While some courts consider cohabitation as a mere relationship without legal implications, others regard long-term cohabitation as equivalent to marriage, entailing all associated rights and obligations.

The inclusion of cohabitation within Section 125 of the Criminal Procedure Code, primarily addressing alimony and property inheritance, contradicts the purpose of cohabitation, which typically aims to avoid the legal responsibilities of marriage. Equalizing the rights of better half and civil partners could inadvertently promote polygamy and create conflicts of interest.

In India, there exists a notable disparity between communal perceptions and societal attitudes toward cohabitation. Despite the absence of legal penalties, such relationships are socially stigmatized, particularly in urban areas. Many companies prohibit such relationships without legal consultation, adding to the complexity of the issue.

To address these issues, the Indian legal framework requires innovative approaches. One solution involves officially recognizing long-term cohabitation as equivalent to marriage after a specified period, thereby offering clarity. Children born from such unions should be granted inheritance and succession rights irrespective of their parents' marital status or religious affiliations. Moreover, the legal system ought to alleviate the burdens faced by individuals in these relationships.

Living with someone as a spouse while another marriage is still intact should be deemed bigamy, and provisions for assisting partners affected by such situations should be established through distinct legislation. Upholding moral principles such as justice, decency, and conscience in judicial rulings will further enhance the integrity of India's legal system. Simply attempting to fit cohabitation within existing legal frameworks will only serve to exacerbate complications.

### **Challenging prospective**

While our society has adopted the Western practice of cohabitation among couples, the rigid social norms pose challenges to this transition. The demonstrators and conservative organizations have consistently opposed premarital cohabitation.

Marriage continues to hold significant importance in our society, offering various rights and privileges within the legal framework. However, some couples may choose a committed relationship over marriage for reasons such as testing compatibility or personal preferences. Unlike marriage, cohabiting relationships can be dissolved more easily. These arrangements are increasingly common in modern lifestyles and urban settings, providing participants with a sense of freedom in their interpersonal dynamics. Nonetheless, cohabiting with a partner outside of marriage can sometimes lead to unmet expectations and potential risks.

The topic of relationships has long been controversial as it challenges our societal norms. While the government incentivizes marriage by granting privileges to married individuals, being in a relationship itself is not considered illegal. Yet, there are presently no specific laws governing such unions. Courts often refrain from legally binding the commitments of unmarried couples, citing potential conflicts with public policy.

Despite longstanding societal conventions dictating our norms, there is a gradual shift in social acceptance underway. Recent Supreme Court decisions, such as in *D. Patchaiammal v. D. Velusamy* <sup>[14]</sup>, emphasize that great partners should not automatically be assumed to be husband and wife. Additionally, recent legislative efforts aim to protect women in such relationships, although this does not imply endorsement of these unions by the courts. These rulings primarily advocate for women's rights rather than endorsing romantic partnerships.

The law does not dictate how one should live; instead, it's a matter of culture and ethics. However, as societal norms evolve, there is a growing need for regulatory agencies to oversee interpersonal interactions. It's crucial to work towards enacting laws with clear guidelines on recognizing and protecting the status, registration, and rights of parties and their children resulting from such partnerships.

In *Lata Singh v. State of U.P.* <sup>[15]</sup>, the court acknowledges that while substance may not be illegal, it could still be considered unethical. It emphasizes that while consensual intercourse between adults is not illegal, it may be deemed immoral. While preventive measures can mitigate potential issues, resorting to extreme measures may not be the most effective strategy.

Cohabitation has long been a contentious issue, with debates surrounding the legality of unmarried cohabitation, including among individuals of the same sex. Despite various cultural principles and customs in India, cohabitation is not legally sanctioned, although it is generally tolerated due to evolving social norms. However, this lack of legal endorsement does not diminish the societal preference for marriage, which historically has enjoyed legislative favoritism, especially evident in cases of cohabitation, where women are often presumed to be subordinate to men and in need of protection from patriarchal forces inherent in marriage and such relationships.

### Conclusion

1. Each person has the inherent right to single out their life partner freely, with whom they wish to form a genealogy through marriage. Although marriage comes with its challenges, it strives to nurture a connection and provides both security and formal recognition within society.
2. Cohabitation arrangements pose questions regarding privacy and individual rights that require attention. While not universally accepted, there are concerns that they may increasingly challenge traditional marriage. In the absence of regulations, Indian courts have made strides in understanding issues related to cohabitation and have adopted a fair stance.
3. Despite the allure of live-in relationships, they can present various challenges. Bigamy and polyamorous relationships may disrupt social cohesion, and women in such partnerships often endure societal marginalization and lack of respect, rendering them vulnerable.
4. Research shows that couples in these partnerships often opt out of parenthood, denying children the care and affection of parents, which can negatively impact their well-being. Additionally, conflicts over child support, legitimacy, and inheritance are becoming more prevalent.

5. While it's important for society to adapt, we shouldn't abandon moral and cultural norms in the quest for progress. Thus, there's a necessity to teach the younger age group about the authentic connotation of marriage and family, and to advocate for parents to respect their children's desires and ambitions by permitting them to choose their own partner in life.
6. This objective can only be achieved if parents acknowledge their children's intensity and preferences, granting them the liberty to choose their own life partners. Ultimately, there is an urgent requirement for comprehensive legislation regarding cohabitation in India.

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