Live-In Relationships in India—Legal and Psychological Implications

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Abstract
Live-in relationship, that is, living together as couple without being married to each other in a legally accepted way, is considered a taboo in India. But recently, such relationships are being increasingly common due to a variety of reasons. In absence of any specific legislation, rules, or customs on the subject, the Supreme Court has issued certain guidelines in its judgment for regulating such relationships. This article tries to figure out the current legal positions governing the live-in relationships in India after making a systemic assessment of these judgments. Live-in relationship between two consenting adults is not considered illegal and if the couple present themselves to the society as husband and wife and live together for a significant period of time, the relationship is considered to be a relationship “in the nature of marriage” under the Prevention of Domestic Violence Act, 2005. Consequently, the female partner is entitled to claim alimony under its provisions. Children born out of such relationships are considered legitimate and entitled to get share in the self-acquired property of their parents, though they are not entitled for a coparcenary share in the Hindu undivided family property. Live-in relationships may enable the couple to know each other better, but such no-strings-attached relationship has its disadvantages as well. The couple faces multiple social and logistics problems in day-to-day living. From mental health point of view, it is considered better to be engaged in a good-quality relationship than living alone and having no relation at all.

Keywords
Legal aspects, legal issues, marriages, families, relationships, human sexuality

Introduction
In the modern fast-changing world, technological and industrial advancements are occurring at a very rapid pace for last few decades, which has revolutionized all aspects of our life. Globalization during last few decades has hastened the changes, affecting almost all aspects of our social life, like family structure, marriage, conjugal relationship, and so on. Marriage is a legally and socially accepted form of relationship between couples. Social structure and bonding being stronger in our country, the institution of marriage holds even greater importance here. Living together without marriage is considered a taboo and is very rare. But recently, things are changing fast and couples have started living together in a single household even without being married. Such relationship may be brief or may continue for a considerable period of time. If the cohabitation continues for a prolonged period, it is termed live-in relationship. Live-in relationship may be defined as “Continuous cohabitation for a significant period of time, between partners who are not married to each other in a legally acceptable way and are sharing a common household.”

There is no specific legislation, social rules, or customs in India regulating the matter of live-in relationship. Therefore, the Supreme Court has taken liberty to elaborate on the concept through its judgment at different times and has issued guidelines for the purpose of dealing with such relationships. This article tries to make a review of the decisions of the apex court delivered at different times and figure out the current legal positions regarding the live-in relationships. A brief review of psychosocial aspects of such relationship is also done.
Legality of Live-In Relationships

Live-in relationship between consenting adults is not considered illegal under the Indian law. In 2006, in the case of “Lata Singh v. State of U.P,” it was held that a live-in relationship between two consenting adults of opposite sex, though perceived as immoral, does not amount to any offence under the law. In another important case “Khushboo vs Kanaimmal and another,” the Supreme Court observed “Though the concept of live-in relationship is considered immoral by the society, but is definitely not illegal in the eyes of the law. Living together is a right to life and therefore it cannot be held illegal.”

If live-in relationships continue for a long period of time and the couple present themselves to the society as husband-wife, they get recognized as being legally married. As early as 1978, in “Badri Prasad V’s Deputy Director Consolidation,” observation was made that “If man and woman who live as husband and wife in society are compelled to prove, after half-a-century of wedlock by eye-witness evidence that they were validly married fifty years earlier, few will succeed. A strong presumption arises in favor of wed-lock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy.”

Same observation was made in “SPS Balasubramanian Vs Suruttayan”, in which it was observed that where a man and a woman live together as husband and wife for long time, presumption under the law would be in favor of their being legally married to each other unless proved to the contrary and children born out of such live-in relationship would be entitled for inheritance in the property of the parents.

If such relationship is only for sexual reasons, neither of the partners can claim benefits of a legal marriage. “Indra Sarma vs VKV Sarma” was another landmark case on the matter of live-in relationship in which implications of different types of relationships were examined. If both the partners are unmarried and enter into a relationship mutually, it does not constitute any offence. Prior to 2018, domestic cohabitation of a married or unmarried man with a married woman constituted a criminal offence of “adultery,” but for the man only, under Section 497 of Indian Penal Code (IPC). But this section was annulled by the Supreme Court of India in the case of “Joseph Shine vs Union of India” in September 2018, as the Court came to the conclusion that it was violative of the Article 14 of the Constitution of India. The section treated men and women unequally as only the man and not the woman is subject to prosecution for adultery. Moreover, it was only the husband of the concerned woman who could prosecute the man who was involved in the act and the woman cannot prosecute her husband for adultery. Though adultery is no longer a criminal offence, but the matter of cohabitation with any married man or woman may be a matter of civil issues constituting a ground of divorce, in which case it would be gender neutral. Similarly, cohabitation with sexual relations between two adult partners of same sex also constituted crime of unnatural offence under Section 377 of IPC prior to 2018. But the position was reversed in “Navtej Singh Johar vs Union of India”. The Supreme Court annulled the Section 377, insofar as it criminalized the homosexual sexual acts of two or more adults in private who possess competency to consent. It was termed to be unconstitutional, irrational, indefensible and arbitrary, and being violative of Articles 14, 15, 19, and 21 of the Constitution. However, the Section 377 continues to be in the statute book as legally valid and applicable insofar as the Section 377 applies to the nonconsensual sexual acts between the two adults, to the sexual acts against minors and all acts of bestiality. Though consensual homosexual sexual acts were legalized, but the same sex marriages are not recognized in India, though performing a symbolic same sex marriage is not prohibited either.

To get recognized as “in the nature of marriage,” certain conditions were set by the Supreme Court in the case of “D. Velusamy and D. Patchaimal (5 SCC 600).”

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried.
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In “Indra Sarma vs VKV Sarma,” the Supreme Court was of the view that all live-in relationships are not relationships in the nature of marriage. In this particular case, it was found that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage, because it has no inherent or essential characteristic of a marriage, but a relationship other than in the nature of marriage. The Court further made following observations in this case:

- Such relationship may endure for a long time and can result in a pattern of dependency and vulnerability, and increasing number of such relationships calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship.
- Legislature, of course, cannot promote premarital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against.
- Thus, the Parliament has to ponder over these issues, bring in proper legislation, or make a proper amendment of the Act, so that women and the children born out of such kinds of relationships are protected, though such relationship might not be a relationship in the nature of a marriage.
It is pertinent to note here that the Sections 494 and 495 of the IPC prohibits any marriage of person within the lifetime of her/his husband or wife and even makes it a punishable offence, unless it is permitted by the personal law of the concerned person. Therefore, a live-in relationship of a married man with a woman or of a married woman with a man cannot be recognized as in the “nature of marriage” as it is expressly prohibited by law. However, children born out of such relationship, though not regarded as legitimate, would have all the rights within the parameters as described below.

Grant of Alimony and Application of the Prevention of Domestic Violence Act, 2005

In US, the term “palimony” is used for granting relief in the live-in relationships. The term “palimony” was conceived during a famous celebrity divorce case of “Marvin vs Marvin” in California, US. In this case, the complainant was living with the man in a live-in relationship for a long period of time and thereafter she approached the Court to get financial compensation from her partner on break up.9 The word “palimony” is a combined form of worlds “pal” and “alimony.” Though the particular suit was unsuccessful, the courts found that “in the absence of an express agreement, courts may look to a variety of other remedies to divide property equitably.” It was observed that if there is cohabitation agreement for the couple before moving in together, the Court may consider grant of palimony. In India, the need for such relief was felt by Malimath Committee on Criminal Justice which recommended amendment in the definition of the word “wife” in Section 125 of the Criminal Procedure Code (Cr. P.C.) so as to include women who was living with the man as his wife for a reasonably long period of time.90 Section 125 of the Cr. P.C. provides for claiming maintenance by wives, children, and parents from a person on which they are dependent and are unable to maintain themselves. Though the amendment was not incorporated in the Cr. P.C., such relationships were brought into ambit of domestic relationship. Section 2(f) of Prevention of Domestic Violence Act, 2005 (PDV Act, 2005) defines domestic relationship as “a relationship between two persons who live or have lived together, at any point of time, 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 as a joint family.” According to this definition, live-in relationships which are in a nature of marriage, that is, the couples are living for a long period of time and presenting themselves as husband and wife come under the ambit of the PDV Act, 2005. Therefore, the woman in live-in relationship can take protection under Protection of Women from Domestic Violence Act, 2005 and can claim for maintenance also (D. Velusamy vs D. Patchaiammal).9 The question of application of the PDV Act, 2005 to the live-in relationships came into the consideration of the Supreme Court in the case of “Lalita Toppo vs State of Jharkhand.” It was held that the victim, that is, the estranged wife or the live-in partner would be entitled relief under the Act in a shared household.91 While referring to this report in “Ajay Bhardwaj vs Jyotsna”, the court awarded alimony under the PDV Act, 2005 to a woman in a live-in relationship.92 But it is only the woman who can claim maintenance under the PDV Act, 2005. Relief under the PDV Act, 2005 is not available to men in live-in relationships. In this connection, it is pertinent to mention that in the case of “Khushboo vs Kanniamal” the Court observed that “a live-in relationship is invariably initiated and perpetuated by men.”

Rights of Children Born Out of Live-In Relationship

In “Tulsa vs Durghatiya,”13 the Supreme Court, while granting right of property to a child, observed that children born from live-in relationship would not be treated as illegitimate if their parents would have lived under one roof and cohabited for a considerably long period of time so as to be recognized as husband and wife and it must not be a “walk in and walk out” relationship. Section 16 of the Hindu Marriage Act, 1955 and Section 26 of the Special Marriage Act, bestow legitimacy to children born out of void and voidable marriages by providing that children born out of marriage, which is null and void or where a decree of nullity is granted in respect of voidable marriage, shall be legitimate or deemed to be legitimate, respectively. But according to Subsection (3) of the same sections of the Act, right of inheritance of such children is limited to the property of the parents only. Therefore, such children do not have the coparcenary rights in the property of the Hindu undivided family (HUF) if their parents were not legally wed to each other. Thus, the provisions of these sections of the Act have been applied to provide right of inheritance to the children born out of live-in relationship in the self-acquired property of the parents. But if their parents are not legally married to each other, they cannot claim the coparcenary rights in the property of the HUF of their father. Claiming maintenance under the Section 125 of the Cr. P.C is well within the rights of a dependent children born out of the live-in relationships, as the section itself expressly mentions “both legitimate and illegitimate child.” In the matter of deciding for the guardianship, mother is regarded as the natural guardian for such children.

Psychosocial Implications of Live-In Relationship

In recent years, our country has witnessed drastic changes in the matter of relationships between opposite sex. The present generation perceives such relationships in a way different from what was perceived earlier. In the context of our sociocultural values, it was considered to be taboo for men
and women to live together under the same roof without being legally married to each other. Similarly, the idea of having premarital sex was considered to be highly immoral. But these beliefs and taboos are gradually fading away and the society is opening up about the idea of premarital sex and live-in relationships. Freedom, privacy, profession, education, globalization, and other factors are responsible for this change in mindset. Points put in favor of such relationships are that such relationships are a way to understand the partners in a better way and to check if the partners are compatible to each other. Present generation, unlike their predecessors, considers it necessary for them to understand each other in a fairly reasonable way before entering into a formal wedlock. Once someone enters into a formal wedlock, the break up becomes very cumbersome, lengthy, complicated, and troublesome to all concerned if the partner finds that they are not at all compatible to each other. But living together for some time without entering into a legal marriage provides for an easy break up without the need of taking recourse to cumbersome legal procedures. But such relationship without any duties and obligations attached has its disadvantage as well. Such relationships are not binding upon the partners, whereas in a typical marriage, the partners are provided certain rights and bestowed with obligations and duties to be performed by both of them. The woman is often in a disadvantageous position in live-in relationships. A bench of Rajasthan State Human Rights Commission, in September 2019, even termed such relationship against the dignity of woman and made a recommendation to enact a Law against it. But the decision received widespread protest and criticism from human rights activists.

Such relationships lead to multiple social as well as logistic problems in day-to-day living. They face legal hurdles of multiple types like opening a joint bank account, visas, insurance, visitation to hospitals, and so on. Children born out of the wedlock are exposed to mental trauma and have problems of smooth inheritance in property of the parents. As stated above, they have the rights of inheritance in their parents’ properties, but they do not have coparcenary share in the HUF property. Two instances are described here to illustrate the difficulties faced by couples in live-in relationship without being legally wed. International chess player Anuradha Beniwal was peacefully living in with her partner in a live-in relationship without any objection from the family members, though the response of the society was like some sort of silent disapproval. Sometime later, her partner received a job offer at London and she decided to move along with him. Visa problem was anticipated as they were not married to each other in a legally acceptable way. To avoid these troubles, they had to get married in a rush.14 A couple in Kerala remained in live-in relationship for 40 years. They were against the social institution of marriage, holding the views that love did not need approval by the society and the sanctity of marriage. They had made the decision to live together forever and did it precisely for 4 decades of their life. But after such a long stint of live-in relationship, they decided to legalize their relationship, not out of personal compulsion but only to avoid legal and administrative problems faced by their grandchildren.14

**Importance of Good Quality Relationship**

Association between good-quality relationship and mental health cannot be overemphasized. Having good-quality, close, and positive relationships gives us a sense of purpose, meaning, and belongingness. Conversation with a good and empathetic listener in a face-to-face interaction helps in relieving stresses and also helps to process our emotions, including the uncomfortable ones. Interactions with a loved one leads to a range of pleasurable and positive experiences. People in good-quality relationship and social connectivity to family, friends, and the community are happier and have few mental health problems. Isolation and loneliness lead to multiple psychological problems and also poor physical health. Holt-Lunstad et al15 in their meta-analytic study made important observation about the influence of lack of good-quality social relationship on the risk of death. It was found to be a significant risk factor comparable to some other well-established risk factors such as smoking and alcohol and it was even greater than some other risk factors like physical inactivity and obesity.15 Stable and good-quality relationship has demonstrable benefit on both physical as well as mental health. Lower morbidity and mortality were found among those who were in stable and good-quality marital relationship.16 A long-running study on human behavior was conducted at Harvard University to find out what makes people healthy. The study started in 1938 and continued for several decades with findings published in 2012. The result of the study showed that happiness and health are not the result of wealth, fame, or working hard, but come instead from our relationships.17 For persons with disabilities too, social relationships play important role and have been demonstrated to have beneficial effect on their mental health and well-being.18 In another meta-analytic review, it was found that poor-quality or unhappy relationships have a higher negative influence on physical and mental health than not being in a relationship.19 These days, social media has come to play important role in our life. People have started to devote their substantial time in online interactions via social media. But these online interactions, friendships, and relationships cannot have the same effect as those happening in the real life. Social media interactions cannot have the same healthy psychological and emotional response that happens in the real-life relationships. Face-to-face and real-life interactions between people always remain a satisfying and healthy means of communication and relationship, which contributes to a sense of belongingness and well-being. Moreover, online interaction via social media can also be damaging as it blurs the line between real friends and virtual friends and exposes people to unhealthy communications as well leading to
developing prejudices and biased opinions, which may get rectified on witnessing things in real life. Therefore, it may be concluded that live-in relationship in a compatible couple is better than no relation at all. Living alone or remaining trapped in an unhappy marriage may lead various types of psychological problems.

**Significance of Marriage as an Institution**

The social importance of marriage cannot be overemphasized and it is one of the most important institutions in human civilization. Even greater significance is attached to it in the context of Indian culture. It not only serves to satisfy the fundamental biological need of sexual gratification through a socially acceptable way but also helps the individual to achieve a higher level of personality maturation. For most women in India, marriage is a onetime event in life, which is glorified and sanctified and is associated with much social approval. It is also the ultimate fulfilment for most women.

The celebration of a marriage gives rise to moral and legal obligations as well, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. One of the most important consequence of marriage is reciprocal support and responsibility of maintenance of a common household. Various types of obligations and duties flow out of marriage and it has its importance in the matter of inheritance of property, succession-ship, and so on. Marriage also provides strong familial and social support to the couple in different aspects of their life, be it physical, emotional, or economical support. Entering into a marriage, either through the Hindu Marriage Act, 1955 or Special Marriage Act, 1954 or any other personal laws applicable to the parties, is entering into a relationship of “public significance,” since marriage being a social institution, many rights and liabilities flow out of legal relationship. The concept of marriage as a “civil right” has been recognized by various courts all over the world. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or marriage-like relationship or de-facto relationship. In our country, nonsolemization of a relationship as marriage is regarded as social stigma. Social values, customs, traditions, and even legislation have attempted to ensure stability of marriage. It cannot be denied that problems occur in marriages and there may be unequal relationships in which one partner, most commonly women, is in a disadvantageous position. It is also true that on breaking down of relationships through marriage women suffer in far greater terms, especially in Indian context. But the importance of marriage as an institution cannot be denied.

**Conclusion**

Live-in relationships provide the couples a greater opportunity to know each other better together with a freedom to end the relationship as per their wish. But they have to face many social and legal hurdles. Such relationship puts women often in a disadvantageous position. The Supreme Court has issued guidelines for regulating such relationships and also for protecting the rights of women involved in the relationship and children born out of it, which has been described above. Social values and norms have changed for the new generation. Live-in relationship may be ok in some circumstances but the importance of the institution of marriage for maintaining the social order cannot be denied. From a psychiatrist point of view, what is more important is to get engaged into a positive, lovable, and meaningful relationship than to remain alone or remain trapped in an unhappy, negative, and troublesome relationship. To conclude, it is pertinent to say that there is always some madness in love. But there is also always some reason in madness.

—Friedrich Nietzsche

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