
LEGALISATION OF COHABITING RELATIONSHIPS

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ABSTRACT

The arrangement is when two people become involved in a romantic and sexual relationship as partners for a long term or permanently. Deciding to live together without marriage is called living in a relationship also called a cohabiting relationship. India has been witnessing a major change in the way the present generation is observing their relationships. Its stress-free companionship without any legal obligations contemporary it has many complications, responsibilities, and legal liability. Recent attempts have been made to bring it to some laws' jurisdiction. It is no longer an offence in India and many guidelines pertaining to maintenance, property, and the legal status of children have been issued in various decisions in the apex court. Continuing with the concept of 'relationship in the nature of life in a relationship'; majorly three issues are faced. The first possibility is domestic cohabitation between two unmarried heterosexual people. Second, adulterous people live in relationships and lastly, there are domestic relationships between same-sex couples. The primary focus of this research paper is to comprehend the concept of live-in relationships with the help of secondary sources. Thereafter an attempt has been made to study the challenges and problems faced during relationships. Lastly, for a better understanding of the topic, a brief relevant case study is done.

INTRODUCTION

The legal definition of live in a relationship is still unconfirmed, as there is no legal definition of the same. The concept of live-in a relationship is already accepted and legalised in many countries around the world. The arrangement is when two people become involved in a romantic and sexual relationship as partners for a long term or permanently. The term 'cohabitation' is frequently applied to couples who are not married. The right to life emphasises the freedom of an individual to enjoy life by all means unless it is prohibited by existing laws.

It's a free society and one can live anywhere one wishes to live. The right to life under Article 21 is applicable in the sense that an individual has the right to live with a person of their interest with or without marriage. In *Badri Prasad vs. DY. Director of Consolidation and Ors*¹, live-in relationships in India are legal but subject to caveats like age of marriage, consent, and soundness of mind. The question of legality and legitimacy of live-in relationships was relatively simple for the courts to settle as fundamental freedoms are mostly elastic and courts have interpreted them broadly. In the west, the concept of live in is very common, and having kids outside marriage is normal. Whereas in Indian society, you will be looked at upside down

RESEARCH METHODOLOGY

The primary focus of this article is to comprehend the concept, books, current news laws and cases pertaining to a live-in relationship in India and understand the scenario of the new social order. After that, an attempt is made to understand the issue and challenges faced by couples living in a cohabiting relationship. Lastly, a descriptive study was initiated on problems faced who volunteer to embrace the trending concept of a cohabiting relationship. This article argues and talks about problems, issues, acceptance, and legalisation of a cohabiting relationship.

LEGALISATION OF LIVE-IN RELATIONSHIPS

Legally, the live-in relationship has its roots in Article 21 of the Indian Constitution. This fundamental inalienable right gives rise to the right and freedom to choose to marry or to live together of one's own will.

The term "cohabitation" does not have a precise definition but describes the cohabitation of two unmarried persons within a household. The concept of cohabitation is becoming more and

¹ 1978 AIR 1557, 1979 SCR (1) 1

more popular among couples. However, prevalence is high in metropolitan and Tier 1 cities, especially among emerging youth. Individuals prefer cohabitation to marriage for a variety of reasons.

Couples tend to resort to cohabitation to test compatibility before getting married. In Indian society, premarital sex is highly criticized. As such, couples who live together before marriage are often viewed as culturally inappropriate, immoral, and contrary to social norms. As a result, some people openly embrace the concept of cohabiting relationships but continue to face social stigma based on conservative thinking

In *Indra Sharma vs. V.K.V Sarma*², Unmarried Indra Sarma quit her job and formed a 'live-in' relationship with V.K.V. Sarma. Even though Sarma knew he was married for up to 18 years, Mr. Sarma left Ms. Sarma in a state where she could no longer hold herself. Under the Protection of Women from Domestic Violence Act 2005, a woman's inability to maintain a "domestic relationship" is considered "domestic violence". Two lower courts ruled that V.K.V. Sarma, who committed domestic violence against her for failing to keep Ms. Sarma, ordered Mr. Sarma to pay alimony of Rs 18,000 per month. The judgments passed here serve as the basic structure or rules for a live-in relationship.

The Supreme Court in *Tulsa Ors vs. Durghatiya*³ held that a child born from such a relationship is No longer considered illegitimate. A notable prerequisite for this is the parents they must have lived together under the same roof for quite some time towards the relationship

AFTAB POONAWALA SHRADDHA WALKAR MURDER: CASE STUDY

An autopsy revealed that Shraddha Walkar had been murdered by her boyfriend who was live-in partner Aftab Poonawala. Shraddha Walker's heartbreaking murder in May 2022 was exposed six months after her death. The horrific incident dates back to 2019 when Shraddha and Aftab started living together in a live-in relationship. Infighting between the two exacerbated the situation as Shraddha forced them to marry. It was discovered that Aftab had cut her into over 30 pieces. Her body was further thrown in various cities of Delhi. During the first few days of the investigation, Aftab tried to fool the police in Bombay and Delhi, but after

² AIR 2014 SC 309

³ 2008 (4) SCC 520

a chain of evidence, the truth gradually came out. It is said that it was disposed of for 18 days. Without corroborating circumstantial evidence, the case might not have come to light.

The facts have yet to be fully discovered, but the evidence uncovered has played an important role in connecting the dots. Although Aftab's confession has already been received, the case is far from closed. The admission that Shraddha's body was disposed of at her 18th day is at the forefront of irregularities, as fewer than 15 parts of her body have been found so far of hers, and it, therefore, puts resed gestate at the forefront. The same applies to drug testing. This is considering the cops investigating the psyche of the accused. However, an evaluation of previous criminal cases shows that the defendant's physical ability to withstand such tests does not stand up in court. Conviction in this case, therefore, relies on other evidence that has not been fully restored. Electronic evidence, bank transactions, DNA testing, criminal motives, and circumstantial evidence act as margins. A post-mortem report conducted by Delhi police stated that Shraddha Walkar was cut into 23 bone pieces using a saw which is a thin serrated-bladed hand tool used for cutting wooden material or any hard objects. A few weeks ago in January 2023, police officials informed that bone fragments found in the Mehrauli Forest and DNA extracted from blood found in Aftab Poonawala's home matched samples from her father. While searching for Walker's body parts, police recovered 13 of her bones from the woods and surrounding forest area.

During interrogation, Aftab Poonawala confessed to killing 27-year-old Shraddha Walkar and chopping her body into 35 pieces, and throwing them into various parts of Delhi. The case is still on trial, the facts are yet to be discovered and it lacks evidence.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The first legal act to recognize the existence of non-marital heterosexual relationships between adults, The Act defines an "aggrieved person" as "any woman who is or has been in a domestic relationship with the defendant and who claims to have been subjected to domestic violence by the partner" Section 2(a). Further, the law defines domestic relations as "kinship, marriage, marriage-like relations, adoption, or members of a family considered to be a common family living together" Section 2(f).

Section 2[f]⁴: "domestic relationship" means a relationship between two persons who live or

⁴ Indian kanoon, <https://indiankanoon.org/doc/1316495/>, (last visited Jan,18, 2023)

have, at any point in time, 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 as a joint family. The act comprehensively deals with all forms of domestic relations. Domestic relationships between male employers and domestic workers are therefore excluded. The law also clearly has no room for adult same-sex relationships. By using the concept of "marriage", the law appears to have broadened the scope of legal recognition of domestic relations between men and women. In the case of *Aruna Pramod Shah vs. UOI*⁵, the petitioner challenged, the constitutionality of the act on the grounds that,

1. It discriminates against men.
2. The definition of 'domestic relationship' is objectionably contained in section 2(f) of the act.

The petition was originally submitted to one judge of that court. The petition contains two prayers

- (a) It declared the Protection of Women Act from the Domestic Violence Act, 2005 (the "Act") as an Ultra-vires of the Constitution of India;
- (b) Suspend proceedings before the Metropolitan Magistrate of New Delhi; Briefly, Petitioner admits that a ring ceremony took place between him and Defendant 2, but no marriage took place. Respondent 2, however, appears to be of the view that the marriage was properly completed.

LIVE-IN RELATIONSHIP: THREAT TO SOCIETY?

India is a developing country and in this modern age, people are open-minded and have positive opinions about premarital sex and live-in a relationship. But find it difficult to accept the concept of life in relationships. Indian society has always strongly supported the institution of marriage. Marriage is a sacramental institution in our society. From ancient times to modern times, every society has had an institution of marriage. Marriage is also called a universal institution.

Life in partnership, as opposed to marriage, is heavily criticised and repeatedly targeted. This is because the two live under a roof that resembles a marriage but is not married. It is a form

⁵ WP(CRL) Appeal No. 425 of 2008

of cohabitation. India's social framework is such that life in relationships is controversial. There is a need, or an urgent need, to codify rules and regulations governing species relationships. India has not yet legalised it. Legalisation means that there is a special law. Currently, there are no laws or laws specifically regulating inheritance, alimony, and guardianship issues related to cohabitation.

Section 125 of CrPC, gives the legal right to maintain the female partner in or out of marriage. Section 125 CrPC was made in order to avoid homelessness and poverty for a wife, minor, children, and old age parents and the same has now been extended by judicial interpretation to partners of a live-in relationship.

Living in a relationship is not a threat to society, Specific laws or statutes addressing current issues are needed so that the rights of civil partners, children born from such relationships, and all persons who may be affected by such relationships are protected not all live-in relationships need to be legally recognized, but only those that meet basic requirements. Couples living together should also be aware of the legal consequences of such housing arrangements.

ISSUES AND CHALLENGES

There are many legal and practical rules that affect unmarried couples. Once you understand the laws of a particular matter or relationship, you will be able to act in accordance with those rules and laws. The Supreme Court has recognized the legal status of cohabitation, but what happens if one of the partners leaves, and should the other partner become homeless? What status do children receive if they come out of this relationship? Does it give women rights to inheritance, alimony, and alimony?

Issues like:

- a) Societal and Moral acceptance.
- b) Cultural issues.
- c) Official documents.
- d) Challenges faced by LGBT couples.
- e) Gender – biasness issues.

CONCLUSION

The law takes time to articulate such social changes through the process of change. Therefore, in a changing society, laws cannot be static. Looking at the history of the development of Hindu law, it is clear that it was never static and changed from time to time to meet the challenges of changing social patterns in different eras.

In my opinion, living in relationships is not a matter of moral struggle. The legal theory also states that law must be distinguished from morality. It is your choice to live with your partner without performing the required rituals. Article 21 of the Indian Constitution states the right to life. At times, the judiciary has interpreted the right to privacy as a right subordinate to the right to life.

All citizens, including women, have freedom of speech and expression and, above all, the right to live with dignity. This does not mean that the authors are encouraging bigamy or adultery or living in relationships. However, the author states that living together without ceremony was her own choice and that she was denied basic rights just because she chose to be with a man without getting married.