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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **LIVE IN RELATIONSHIPS - CONTEMPORARY JUDICIAL STANCE**

AUTHORED BY - YASHVARDHAN VATS

& TANISHA MAHESHWARI

## **ABSTRACT:**

Marriage is a pious institution that is governed by the provisions of the Hindu Marriage Act. India has always been one of those culturally distinct countries, a land with manifold traditions and customs. We have always adhered to living life in the simplest way. In such a scenario living relationships emerges as a catalyst of deliberations and the origin point of several issues which arise owing to the beliefs deeply ingrained and entrenched in our minds. Since time immemorial everyone has abided by a certain prescribed way of marriage, therefore, livin' relationships lack adaptivity, go against preconceived notions, and expose people to newness's. The aim of this research paper is to analyze and juxtapose the past and the contemporary scenario pertaining to the new concept of live-in relationships along with its impact on the legal regime. Under the ambit of which the paper would further provide a clearer picture in terms of the status and rights conferred upon these people by covering judgments by eclectic courts. Although we have witnessed tremendous reforms and developments in various fields, India has a long way to go when it comes to adapting and inculcating such changes. Society tends to look down upon these relations, depriving and devoiding people of a sense of dignity to respectfully sustain in society. To conclude the paper will bring about some real-life scenarios depicting the ordeal that one faces in a live-in relationship despite the changes and progress and propose some solutions to tackle and adapt this societal issue.

## **Introduction-**

There are 16 traditional samskaras or sacraments form part of the Hindu religion marking every stage in life from birth to death. Marriage is one of the holy sacraments which holds paramount importance. Indian culture is fraught with customs, practices, beliefs, and norms and we have diligently adhered to these since the beginning of civilization. In such a milieu "living relations" brings along reluctance and unassertiveness. People eye it as an abrupt change heading to taint the

pristine institution of marriage. The institution of marriage is strictly governed as per laws enacted; which incorporates manifold ceremonies giving legality to the relation. “Living relationships” however, as people opine, are devoid of any piousness and laws and disrupt the core of marital relations. In all societies, people have been set in their ways thus comes the difficulty in adapting and changing preconceived notions. Not only the common people but also the lawmakers have struggled with recognizing and upholding the transitions and variations. Like every other societal relation, positives, and negatives are part n parcel of it and they cannot be disregarded on the grounds of infringing on our traditions and overstepping and defying culture which is deeply entrenched in the very core of society.

### **Opinion of different courts-**

When it comes to the legality of living-relationship there is no specific codified law for the same. However, judgments of eclectic courts provide an implicit understanding of legal enforceability. Owing to the lack of any law specifically dealing with living-relationships there is reliance on judgements and precedents.

In 1978 the apex court ruled in favour of living-relationships subjected to certain conditions such as age, soundness of mind, etc. There is a presumption that a man and woman had lived together as husband and wife for a considerable period. In multiple judgments, the supreme court had upheld the validity of living relationships with certain restraints, and conditions and considered it as legal albeit immoral and socially unacceptable since these two are very different things.

In *Lata Singh v. State of U.P.*<sup>1</sup>, the court stated it is legal for two individuals who are adults and of heterogenous sex to be a part of a loving relationship.

In *Velusamy vs. D Patchaimal*,<sup>2</sup> the court enlisted the criteria for a living relationship to be recognized as legal such as man and woman being of the legal age of marriage, living together for a considerable and significant period, etc.

In *Indra Sarma v. V.K.V Sara*, a famous case of 2013 apex court recognized the right of women against domestic violence which was previously confined to only married women.

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<sup>1</sup> (Lata Singh v. State of U.P., (2006) 5 SCC 475)

<sup>2</sup>



Different courts have given different decisions which makes it even more confusing to ascertain the legality and validity of such relationships. On one hand some courts have given legitimate recognition to such relations whereas some have refuted the concept from a societal perspective. All these judgements of the courts showcase a progressive and positive approach. Every adult has the right to choose a life partner of their choice and reside with them.

### **Contemporary scenario-**

Living-relationships are becoming immensely popular amongst the youth. It allows an individual to know their partner better and instil confidence in them. Society, however, views it as socially and morally wrong, corrupting the sanctity of marriage. Living relationships is not a new concept to society but despite the recognition and judicial decisions, we still have a long way to go. Witnessing some spine-chilling incidents pave the way for ambiguity and topples the confidence reinforced by people in accepting and coming to terms with such new changes. The hot topic of the “Aftab and Shraddha” murder case was a *cause célèbre*. The harrowing experience of chopping down an individual’s body shocked everyone to the core. Another instance of a living-in partner who not only strangled his partner, chopped her body, and dumped it in a roadside food stall but also married another woman on the same day. Such instance is blood curdling and weakens the confidence reinforced by people. “Living relationships” have always been disregarded owing to social and moral factors. They are solely based on conviction. Such instances scale up and consolidate these beliefs making it even more daunting to change the conventional mindset of the populace.

### **Suggestions-**

“Living relationship” is a relatively new concept law pertaining to it have not been codified or articulated in any act specifically designed for governing such relations. The legality and regulation of such relations are governed by judicial pronouncements of various courts. Owing to the lack of any legislation and codification there are manifold problems in governing issues pertaining to it. Unlike “The Hindu Marriage Act” which is a codified act regulating the institution of marriage, according to their rights, conferring duties, imposing penalties, etc. In the paucity of any legislation, the rights, and interests of people and others arising as a virtue of such relations would be prone to misuse and not being acknowledged. Judicial decisions vary depending from court to court making the murkier situation even more unsettled and open to debate. Situation can be made better only with the enactment of acts made specifically for living relations which would

not only protect their rights but also provide a societal respect and recognition which they lack.

### **Rights of Live-in Partners:**

Despite the lack of codification and proper legislation live-in-partner have been imparted with various rights. Female partners are endowed with several rights to protect and uphold fundamental rights and interests

Not only married women but also female partners in a loving relationship are protected from any kind of verbal or physical abuse under the “Protection of Women from Domestic Violence Act” 2005. The apex court upheld the rights of female living partners in “Indra Sarma Vs. VKV Sarma case.”<sup>3</sup> “Domestic relationship” as defined under the act covers both married and unmarried women.

Law recognizes the right of maintenance of married women. Several provisions have been incorporated into different acts be it the Hindu marriage act, the special marriage act, or the code of criminal procedure. Unmarried women however have no specific right or act pertaining to the right to receive maintenance. However, the court upheld the rights of women in living relations to maintenance under section 125 of CRPC. Concept of “palimony” was introduced by the court which includes the compensation given by an unmarried person to another.

Another critical aspect of living relationships is determining whether the children born from such relationships are legitimate or not. In numerous decisions, the Supreme Court has upheld the legitimacy of children born from such relationships, extending it to the extent of inheriting parental property. When two people cohabit for an extended period, there is a presumption of marriage, which confers legitimacy on the children born from such relationships.

The court has even acknowledged living relations as constitutionally protected under Article 21. Article 21 of the constitution is crucial in granting and enabling a person to live a dignified life. As a result, when two adults live together, it cannot be considered an illegal act.

### **Situation of live-in relationship in India:**

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<sup>3</sup> (Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755 )

Live-in relationship is a debatable topic when we discuss about its situation in India, the courts heavily rely on precedents and interpretations of existing laws to settle matters before them when there aren't explicitly stated rules or provisions.

Few courts may have accepted the concept of live-in relationship in India but it is a very controversial topic as according to customs the concept of live in relationship goes against the rule of nature because people having the idea of only valid concept of marriage is the kind of marriage which is done according to the customs of the respective religion and caste.

The concept of Live-in relationship has in recent times evolved to an advanced level as people nowadays especially the youth of the country are adapting the concept of live-in relationship wherein the couple live together without marrying to test out their compatibility, there are few couples who do not marry according to their customs and follow the concept of live-in relationship just to avoid the procedure of marriage given in their customs. Because fundamental rights are generally pliable and courts have a broad interpretation of them, it was very easy for the courts to decide whether live-in relationships were legitimate. Nonetheless, a number of rules relating to live-in partnerships continue to be too stiff for the courts to expand upon or interpret in live-in couples' favour. Because fundamental rights are generally pliable and courts have a broad interpretation of them, it was very easy for the courts to decide whether live-in relationships were legitimate. Nonetheless, a number of rules relating to live-in partnerships continue to be too stiff for the courts to expand upon or interpret in live-in couples' favour. Marriage is seen as a sacred union that is both legally recognised and highly revered in society. Nonetheless, a particular population seems to be absorbing Western culture, such as the live-in relationship pattern, as a result of the influence of the West. The judiciary has served as a watchdog to end the taboo in society, allow them to cohabit, and accord them equal respect. In India, marriage is a sacred social institution.

But, there are undoubtedly those people who disagree with this viewpoint and wouldn't hesitate to try a different approach, like live-in. Today Live-in relationships are no longer frowned upon to the same extent as they once were in our society, and they are increasingly accepted and practised. One of the most important aspects of Indian society is marriage, which serves as a societal cornerstone. Our nation, which has strong social origins, places a premium on morality and social values. In any event, as times have changed, we have started to adopt Western culture, which is very different from Indian culture. A particular group in India also seems to have adopted

aspects of Western culture, like live-in relationships. The Supreme Court of India's decision, its effects on society, and future challenges are the main topics of this article. A small-scale change in the law will undoubtedly affect the entire country's population. It's likely that future generations won't understand the importance of marriage and will instead pursue improper relationships. live with someone else, to cure such ideologies

In the state of India, upholding moral principles is crucial. The legislation cannot encourage the pre-marital sex that comes with a live-in relationship in light of this. The reason for this is that a live-in relationship is a very personal subject, and people may express their opinions in favour of or against it. As a result, the parliament must take this issue seriously and implement appropriate legislation. This will make it easier for the partners to feel safe and to live their lives as is their birth right. In 2013, the Supreme Court held that because live-in partnerships fell within Section 2(f) of the statute, which specifies a domestic connection, women are protected by the PWDV Act, 2005.

It states that a domestic relationship is "relationship between two persons who 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, and who now live or have at any time lived together in a shared household."

Living together as husband and wife but not legally married is referred to as a live-in relationship. When a pair has no obligations or responsibilities as a married couple, it is said that they are living together. Marriage is seen as a very significant step and a life-altering choice for an individual because it brings together two families in addition to a man and a woman. It used to be believed that males ran society and that women had no right to speak or have any influence, but today's empowered women are autonomous and powerful, making it important to determine whether a marriage is compatible or not. While husband and wife must be on equal footing in a marriage, each person has a unique personality, so choosing a partner who complements that personality is essential. Many today are a little apprehensive and unsure about whether living with the person they are now would be pleasant and joyful after marriage. They like a live-in relationship because it enables them to assess whether the other person is a good fit for them. If they feel that things are not working out, they can call it off or end the relationship. Nevertheless, with marriage, if things don't work out, people either drag things out for whatever reason or file for divorce, which is official, takes time, and also involves costs.

When we talk about the current situation of live-in relationship in India, the condition of such

relationship have evolved a long time because in past people were totally against the idea of live-in relationship but when we see , currently people are accepting the culture of Live-in relationship because in most of the cities in the country especially the metro cities the concept of live-in relationship is trending.

## **SITUATION OF LIVE-IN RELATIONSHIP IN OTHER COUNTRIES:**

Live-in Relationship not only in India but in other countries is also a very crucial topic to discuss, in the **United States of America** the concept of Couples living together, in an intimate relationship without getting married is termed as Cohabitation. The percentage of American adults who have ever cohabited with an unmarried partner is increasing as more of them put off getting married or choose not to get married at all. Notwithstanding these developments, the majority of Americans still consider cohabitation acceptable, especially for couples who do not intend to wed. Yet, a slim majority believes that society will be better off if long-term partners finally get married.

The poll also investigates the interactions between married adults and those who cohabit with unmarried partners. Those who are married report higher levels of relationship satisfaction and trust in their relationships than those who are cohabiting. From 58% in 1995 to 53% in 2017, the proportion of American adults who are currently married has somewhat decreased during the past two decades. Adults who live with an unmarried partner have increased from 3% to 7% over the same time frame. According to a Pew Research Centre analysis of the National Survey of Family Growth, the percentage of adults aged 18 to 44 who have ever lived with an unmarried partner (59%) has surpassed the percentage who have ever been married (50%), even though the percentage who are currently cohabiting remains significantly lower than the percentage who are married (NSFG). Although most people of all ages agree that it is okay for an unmarried couple to live together, young adults are most accepting of cohabitation; 78% of those between the ages of 18 and 29 think this. But even among those under 30, a sizeable portion (45%) believe that society is better off if long-term relationships end in marriage. About half of people in the 30 to 49 age range and most people who are 50 and older say the same thing.

Affiliation with a particular religion is also related to opinions on marriage and cohabitation. Seventy-four percent of Catholics and seventy-six percent of white Protestants who do not identify as born-again or evangelical feel it is appropriate for unmarried couples to cohabit. The



majority of persons who are married or living with a partner claim love and companionship as their top motivations. Yet, approximately four out of ten cohabiters also claim that money and convenience played a significant role in their choice: 38% claim that living with their partner made financial sense and 37% claim that it was convenient. Comparatively, only 13% of married adults cite money, and 10% cite convenience, as their top reasons for getting married. Making a public commitment was a significant motivator for about 63% of married persons to get married. This is especially true for people who didn't live together before getting married. Almost a quarter (23%) of cohabitants indicate wanting to test their compatibility. Palimony is a legal term that refers to providing support to a woman who has lived with a guy for a significant amount of time without getting married before he deserts her. It was first used in the USA. Unlike married couples, partners in a live-in relationship do not have the right to inherit each other's assets. Property can, however, be bequeathed to one another.

Cohabitation is legally regarded as common law marriage in Canada. Common law couples frequently receive the same privileges as married couples under federal legislation of the nation. If a common law live-in couple has been living together for at least 12 months straight, or if they give birth to or adopt a kid, they are considered legally sanctified.

In France, a *pacte common de solidarité* or a common settlement of fortitude usually known as a PACS, is a type of common relationship between two grown-ups (same-sex or other gender) for coordinating their joint life. It brings freedoms as well as certain limitations, however less so than marriage. From a lawful viewpoint, a PACS is an agreement drawn up between the two people, which is stepped and enrolled by the representative of the court. Beginning around 2006, people who have enlisted a PACS are not generally viewed as single with regards to their conjugal status. Their introduction to the world records will be changed to show their status as pacs (in a PACS) too.

In the United Kingdom, regardless of whether the parents are cohabiting, divorced, or separated, they are both financially accountable for the children. Unless specifically stated in a will, parents normally do not inherit each other's property. Nonetheless, this can be disputed. Even if they share a home or are raising a family together, live-in spouses are not required by law to provide financial assistance for one another. They are not eligible to collect maintenance from their partners, unlike married couples, even if they have lived together for a while or have given up their careers to care

for the home and kids.<sup>4</sup>

By creating a cohabitation contract or living together agreement that describes the partners' rights and obligations towards one another, an unmarried couple can formalise certain parts of their status. A civil partnership can be formed by members of the Lesbian, Gay, Bisexual, and Transgender (LGBT) community who are not granted marriage privileges. In contrast to a live-in relationship, where the unmarried mother or father of a child has obligation but might opt to share that responsibility with the partner, every child born to a married woman is presumed to be her husband's child, and both have parental responsibility. Couples can apply together to adopt a child whether they are married or living together.

The kid of unmarried or married parents has a legal right to inherit from both parents and both parents' families, even if there is no will. In the case of cohabiting couples, if one partner passes away without writing a will, the remaining partner will not automatically receive anything unless the couple possessed property jointly. If either married partner dies without creating a will, the other will inherit all or part of the inheritance. One is not free from paying inheritance tax, as married couples are, if they receive money or property from an unmarried partner. Consequently, it is clear that the idea of a live-in relationship has been addressed in the UK.

Despite the fact that cohabitation is permitted in Ireland, popular opinion is strongly opposed to any legislation that would provide separated spouses who live together the legal right to request maintenance and/or property sharing. Couples from opposite sexes and same-sex unmarried couples are both covered by the law as long as they have lived together for at least three years (or 2 years if they have children). The government hopes that this new regulation would provide financially dependent and legally vulnerable cohabitants with protection in the case of a divorce or death.

## **DOES LIVE-IN AFFECTS OUR SOCITEY**

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<sup>4</sup> Islam, J. u. (n.d.). Live-In Relationships Indian And Internationaln Perspective.

## **IN ANY SENSE?**

The question that whether the idea of live-in affects our society in any sense or not is not an accurate question because in the idea of few people of the society the concept of live-in relationship is invalid whereas some section of the society totally accepts the idea of live-in relationship because they think that adapting the idea of live-in relationship only justifies modernization of the particular individual.

Live-in does not violates any law of the society or it's not stated anywhere that live-in is against the society and violates the laws of the society. For Few sections of the society, it's only against the custom because according to the only marriage done according to the customs of their particular religion is in favour of the society and anything done against this is against the nature and the customs.

The Indian Constitution's Articles 19(a), which protects the right to freedom of speech and expression, and Article 21, which protects the right to life and personal liberty, are what make live-in relationships permissible in India. "The freedom of an individual to enjoy life in whatever way, unless it is restricted by current laws, is emphasised by the right to life. One may live wherever they choose to in this free society. According to Advocate Debrup Bhattacharyya, a lawyer at the Calcutta High Court, "Right to Life under Article 21 is applicable in the context of live-in relationships in the sense that an individual has the right to live with a person of their interest with or without marriage." A young live-in couple had petitioned the Punjab and Haryana High Court for protection after receiving threats from the girl's family. The judge dismissed their appeal, observing that "if such protection as demanded is granted, the entire social fabric of the country would get upset. The legal status of a live-in relationship in India is rumoured to be related. No unique regulation or enactment has been created specifically for the welfare of couples who choose to live together. While decisions and changes have been made to protect married couples and newly born children. The concept of living together has been clarified by judicial interpretation, and a few rights have been conferred by legislative modifications.<sup>5</sup>

## **Conclusion-**

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<sup>5</sup> Antony, C. M. (n.d.).

Despite all the laws, decisions, and judgements, there is still room for and a need for large-scale reforms. We have been working tirelessly to achieve the goal of societal acceptance, recognition, validity, and so on. The need of the hour is to spread education about it, particularly to parents, in order to break the conventional and orthodox mindset. Backward areas have lagged in terms of acceptance, failing to adapt to the newness that comes with living relationships. Despite education and awareness, such people struggle to adopt these changes. They are rigid in terms of abiding their customs and the belief that living-relationships are against nature is deeply ingrained in their mindset. From societal perspective a marriage performed in accordance with laws and customs is the only acceptable way of cohabiting, but we need to bring about a change in the society since the youth is preferring and prioritising such concepts which enables them to have a more secure and safe relationships. Even though there is recognition but the family issues and resistance pertaining to such relations persist. Since time immemorial marriage as an institution has been governed as per the personal laws and customs the recentness and unsolicited changes brought by living-relationships get in the way of standard preconceptions hence viewed as atypical. One major critical aspect of living-relationships is the victim blaming and gaslighting that comes along. Despite the consent, lot of hate is directed towards an individual who becomes the target of any incident. Young generation is more open and broader minded and exercises their freedom. Indian societies are more conventional when juxtaposed with western societies. Although living-relationships are not accepted with open arms in Indian society but there is scope of betterment.

Living together does not pose a threat to society. The rights of cohabiting partners, children born out of such relationships, and all others who are likely to be impacted by such partnerships should be safeguarded, hence there has to be a special law or statute addressing the current difficulties. Only live-in partnerships that meet the necessary conditions should be granted legal status, not all of them. Also, live-in couples need to be aware of the legal repercussions that could result from their living arrangement.