

**INDIAN JUDICIARY AND THEIR TAKE ON NEW DIMENSIONS OF MARRIAGE  
AND DOMESTIC ARRANGEMENTS**

**\*DR. GIRJESH SHUKLA & AADIT VED**

**ABSTRACT-**

*The Indian scenario with respect to marriages has undergone a massive social transformation. The marriage as an institution has changed and seen various new aspects such as live in relationships or pre- and post-nuptial agreements. This paper seeks to determine if legal laws pertaining to these agreements exist and, if so, what role the judiciary plays in safeguarding the rights of both the woman and the man involved. Several historic Highest Court decisions around the country have attempted to safeguard these relationships by granting partners in such arrangement's marriage-like privileges. This paper aims to demarcate the extent and limitations of such rights that are granted to the partners in such domestic arrangements. The paper analyses various precedents set by the judiciary and this endeavour in protecting the citizens' rights and constitutional values needed for an egalitarian society. The socio-cultural ethos relating to these arrangements have been a widely debated issue but Indian courts have chosen to take a pragmatic view of these issues and reaffirmed that law changes with modern times and nature of law will always be dynamic. Consequently, various new and changed dynamics of relationships that resemble a marriage and facets of such relationships as recognized by the Indian Judiciary are examined in this paper.*

**KEY WORDS-** Judiciary, Live-in Relationships, Marriages, Rights, Nuptial Agreements

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**INTRODUCTION-**

On the global stage, India is known for its cultural values, traditions, and celebrations, as well as its conservative and progressive attitudes. There are certain edifying boundaries that members of our community must respect. As a developing nation, India's social order has shifted its perspective and accepted global developments in order to keep up with the demands of time. Acceptance of live-in relationships is one such step forward in the field of family ethics.

Although today's young age likes live-in relationships, and more and more Indian youngsters are doing so, Indian society as a whole still views such partnerships as taboo. The majority of people consider live-in relationships to be a violation of morals and, more significantly, tradition. In contrast, even if divorce cases are on the rise, marriages are still regarded in high respect. Living together in this context refers to two individuals who are in love and want to live together but are not legally married under the laws of India or any other country. Here, live-in partnerships do not include casual flings, pre-marital affairs, or post-marital affairs. Marriage is defined as a legal union formed by the mutual consent of two adults or an arranged union formed by the mutual permission of two families. As a result, the most fundamental and fundamental distinction between marriage and live-in relationships is that the former has societal legitimacy while the latter does not.

The term "live in relationship" is defined as "an arrangement of living under which the couples which are unmarried live together to conduct a long-going relationship similarly as in marriage. Live in relation i.e. Cohabitation is an arrangement whereby two people decide to live together on a long term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married". Therefore, a man and a woman have some form of connection before to marriage, and if they are pleased with each other as a partner, they either marry or remain single. Rather than worrying for and maintaining social position, the chances of knowing the other person and making the relationship amicable become the major goal.

Other countries around the world have varied views on cohabitation between male and female members of society; in Muslim countries, it is considered illegal and penalised by law. In industrialised countries such as the United States of America, Denmark, Norway, Sweden, and

Australia, on the other hand, live-in relationships are quite frequent, accepted, and not regarded unlawful, hence they are not penalised by law.

Pre-nuptial and post-nuptial agreements are gaining popularity among young couples who want to protect their assets and try to negotiate the best deal for each of them in the case of a divorce. While the rise in divorce rates is well-known to be a role in prenuptial agreements being signed by couples, the shift in public opinion on a Women's independence and the role of women in a marriage being shifted from a home maker to a home runner may also be held accountable for the Prenuptial agreements are becoming more popular and are being used more frequently.

As it can be ascertained pre and post nuptial agreements are new elements in a marriage that have come into existence due to the rapid modernization and globalization. These agreements are very popular in countries like USA and are entered into as a matter of course. USA has a legislation that enunciates the format for these agreements while the UK does not prohibit these agreements their enforceability is restricted on a case to case basis

Therefore, it becomes very important to analyse the various precedents given by the courts across India on the legality and working of both the live in relationships and these pre and post nuptial agreements.

## **INDIAN JUDICIARY on LIVE -in-RELATIONSHIPS**

### **S. Khushboo vs Kanniammal & Anr<sup>1</sup>**

On March 23, 2010, a three-judge panel of the Indian Apex Court, comprising of Chief Justice K G Balakrishnan, Justice Deepak Verma, and Justice B S Chauhan, for the first time judges ruled on live-in partnerships. The facts of the case can be summarised as follows: in an interview with an English magazine in 2008, Khushboo, a Tamil actress, stated that "there is nothing bad about pre-marital sex and it's a personal decision of individuals," which sparked a wave of protests from fundamentalist groups and political parties in Tamil Nadu. In total, 22 civil and criminal cases were filed against her in various Tamil Nadu's courts Her request for a stay of the proceedings before the High Court was denied, and she was forced to appeal to the Supreme Court. "What is the offence when two mature persons' desire to live together?" the court asked. "Living together is not a crime," it continued. Living together is a human right."

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<sup>1</sup>S. Khushboo vs Kanniammal & Anr (2010) 5 SCC 600

They also attacked all of the cases against Khushboo, questioning accusers' motives and demanding proof of how Khushboo's statements influenced young minds. There is no law barring live-in relationships or premarital sex, according to the Supreme Court. The judges grilled the attorneys for some of the case's complainants, emphasising that the alleged immoral behaviour could not be classed as a crime. It said, "Please tell us what the offence is and which section it happens under." The Supreme Court declared that "living together constitutes a right to life," citing Article 21 of the Constitution, which guarantees the right to life and liberty as a basic right. As a result, live-in relationships have grown increasingly common in Indian society." When John Grey wrote, 'Men are from Mars, Women are from Venus,' he seemed to be emphasising on the reality that there will always be disparities between God's two most valuable creations, and no live-in relationship or marriage can guarantee their eternal cohabitation."

Hence, if a marriage ends in divorce, the law protects the estranged wife's rights through numerous laws, but there was no such protection in the event of a live-in relationship because there was no explicit statute safeguarding it. In response to public demand, the Indian Parliament recognised the live-in relationship and adopted the phrase "relationship under the nature of marriage" as defined in section 2(f) of the Protection of Women from Domestic Violence Act, 2005.

Accordingly, if the marriages do not work out and both parties decide to part ways, the legally married woman has a claim to maintenance, however in a live-in relationship, this is not the case. In the case "Savitaben Somabhai Bhatiya v. Gujarat State and Others, court held that the expression 'wife' under section 125 Cr.P.C includes a woman who has been divorced by her husband and has not remarried and there is no scope to include a woman not lawfully married within the expression of wife and a divorced wife is treated as a wife but if a person has not even been married obviously that person could not be divorced and hence cannot claim to be the wife. The Malimath committee had also suggested that the word 'wife' under Cr.P.C. be amended to include a 'woman living with the man like his wife' which means the woman would also be entitled to alimony."

## **2) D. Velusamy v. D. Patchaiammal<sup>2</sup>**

D. Velusamy v. D. Patchaiammal AIR 2011 SC 479

This case and its outcome made national headlines almost immediately, highlighting the rising popularity of live-in relationships in India. Such interactions, according to the Court, do not confer any legal rights "The erudite opinion authored by Hon'ble Mr Justice Katju and Hon'ble Mr Justice T.S. Thakur mentioned several foreign judgements. The key issue is whether a woman in a live-in relationship may sue for maintenance and other benefits if her partner abandons her."

According to the circumstances of the case, in the year 2001, a lady named D. Patchainammal filed a complaint with the Family Court in Coimbatore under Section 125 Cr Pc., alleging that she was married to Veluswamy on September 14, 1986, and for the next 2-3 years, they resided in her father's house. She also claimed that Veluswamy left her father's house after 2-3 years and moved to his hometown, but that he would visit her on occasion. Her husband supposedly left her after barely 2-3 years after marrying her in 1986. In her appeal U/S 125 Cr Pc, she requested Rs 500 per month in maintenance, saying that she was unable to maintain herself because her husband Veluswamy, a teacher, earned Rs 10,000 per month. Veluswamy, on the other hand, claimed to be married to a woman named Laxmi. He married her on June 25, 1980, according to Hindu customs, and the couple has a son who is a student at Ooty's CSI Engineering College. To prove his marriage to her, he produced his Ration Card, his wife's Voters' Identity Card, his son's transfer papers, his wife Laxmi's hospital discharge certificate, and wedding photos. If Lakshmi is Velusamy's lawfully wedded wife, Patchaiammal may be Velusamy's live-in companion at best. "Consider the nature of the connection and evaluate whether it fits the standards for an eligible live-in relationship," the Supreme Court instructed the trial court.

"The court highlighted their opinion on a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married":-

- (a) "The couple must hold themselves out to society as being akin to spouses."
- (b) "They must be of legal age to marry."
- (c) "They must be otherwise qualified to enter into a legal marriage, including being unmarried."
- (d) "They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time."

"Under the 2005 Act, a "relationship in the nature of marriage" must also satisfy the aforementioned conditions, as well as the parties must have lived together in a "common home" as defined in Section 2(s) of the Act," the court noted in its judgement. 'Not all live-in

relationships, in our judgement, will amount to a connection in the kind of marriage to qualify for the benefits of the Act of 2005,' it went on to say. To be eligible for such a prize, the criteria described above must be satisfied, and this must be documented." "Undoubtedly, the position we propose would bar many women who have lived together from benefiting from the 2005 Act, but it is not for this Court to create or change the law." The phrase "relationship in the nature of marriage" was adopted by Parliament rather than "live in relationship." In a case of interpretation, the Court cannot amend the statute's text. The court stated, "Neither partner can claim benefits of a formal marriage if the man has a live-in arrangement with a woman only for sexual purposes."

Although the Indian Supreme court has granted legal status to live-in relationships, there are still unsolved issues concerning what would happen if one of the partners decides to quit the partnership. Is it possible that one of the partners may be evicted, and how will inheritance rights be handled? Will a kid born inside a live-in relationship be recognised by the law? Will a live-in relationship be given the same legal status as a marriage? The answers to these questions are frequently revealed to be shifting."

### **3) S.P.S. Balasubramanyam v Suruttayan Andalli Padayachi & Ors.<sup>3</sup>**

"If a man and a woman live under the same roof and for a long time, there would be a presumption that they live as husband and wife under Section 114 of the Evidence Act, and the children born to them will not be illegitimate," the Supreme Court bench of Justices P Sathasivam and B S Chauhan observed. It was also presumed that their children were legitimate because of the presumption of marriage based on live-in relationships under Section 114 of the Evidence Act. As a result, they have a legal claim to a piece of the ancestral estate. Because Muthu Reddiars died unmarried and intestate, Mariammal claimed his property throughout the present dispute. Rengammal lived with Muthu and their relation resulted in the birth of their children. After he died, she claimed his inheritance. Rengammal had previously married Alagarasami Reddiars, who was still alive, but due to their undissolved marriage, they did not live together. The trial judge dismissed her live-in claim. Her original request was denied. The Madras High Court decided in favour of the live-in partner after that.

## **INDIAN JUDICIARY PRE AND POST NUPUTUAL AGREEMENTS**

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<sup>3</sup> S.P.S. Balasubramanyam v Suruttayan Andalli Padayachi & Ors. AIR 1992 SC 756

**1) Pran Mohan Das v. Hari Mohan Das<sup>4</sup>**

A guy agreed to marry a lady because her father promised to provide a home for his daughter. Following the marriage, the plaintiff's father made an unreported gift to his son, who now owns the house. The couple owned the house for a long time before selling it to others. The house was eventually reclaimed after the wife's father launched a lawsuit. The prenuptial agreement was good and enforceable, and the plaintiff's claim to the property was disallowed on the principle of "part-performance of a contract," according to the Calcutta High Court. Furthermore, because the agreement in question was not a marriage brokerage contract, it was not judged to be against public policy.

**2) Bai Appibai v. Khimji Cooverji<sup>5</sup>**

The court endeavoured to strike a fair balance on prenuptial agreements, ruling that "the dicta in the Mon Mohini and Krishna Aiyar instances would not be admissible if the husband had abandoned the wife, and it would not raise the issue of public policy infringement." Despite the fact that Hindu law had made the husband equivalent to a 'deity' or 'god' to the lady, it was noted that this did not allow a husband to forsake, refuse, or neglect his wife. The court went on to state that the wife should be granted the prenuptial agreement's proposed remedy of separate support and housing as long as her chastity was not in issue. Due to a lack of clarity, the Court did not rule in favour of the wife getting decorations from the defendant husband, which were the subject of another prenuptial agreement.

**3) Krishna Aiyar v. Balammal<sup>6</sup>**

The husband sued for recovery of his wife's marital rights. The couple agreed to stay together shortly after filing the complaint, and the husband pledged to pay alimony to the lady if they ever divorced. After the agreement was struck, the wife, on the other hand, never returned to marital life. As a result, there was no prenuptial agreement. Nonetheless, the Madras High Court referenced the Mon Mohini case in pronouncing the agreement in issue unconstitutional,

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<sup>4</sup> Pran Mohan Das v. Hari Mohan Das AIR 1925 Cal 856.

<sup>5</sup> Bai Appibai v. Khimji Cooverji AIR 1936 Bom 138.

<sup>6</sup> Krishna Aiyar v. Balammal (1911) ILR 34 Mad 398

stating it breached Hindu law's marital obligation. The agreement was also found to be against public policy since it envisioned future separation.

### **CONCLUSION-**

To conclude, it is possible to argue that live-in relationships and these agreements provide significantly greater benefit than is commonly acknowledged. Keep in mind, however, that a marriage is a socially acceptable sort of partnership between two individuals that is controlled by a different set of laws in each nation that protects both parties' rights. Live-in relationships, on the other hand, have gained popularity in a few countries but are still frowned upon in traditional environments. In India, there is presently no law defining what constitutes a live-in relationship. In contrast, the Supreme Court endeavoured to establish a line between live-in partnerships and its various judgments.

As a result, the validity of the agreements discussed in the paper is decided on a case-by-case basis, rather than deciding the final legal position on their validity, as they are indeed intended for a good purpose, but the societal refusal to equate the sacrament of marriage with that of a contract. Marriage is a sacrament with a high level of sanctity. A number of statutes govern the legal status of numerous marriage-related concerns. Those who are married and those who have divorced are both aware of the various laws that can be used as rescue rangers. The courts, in their role of interpreting the law, are not confronted with the task of drafting a new law.

The individuals who form such relationship may overview the emotional and legal entanglements waiting for them if any one of them walks out of relationship, making it extremely difficult for the other to handle the scars of extinct relationship. The offspring of such relationship are the worst sufferers who are lamented by society and left to face the heat of law, at no fault on their part. The children out of such relationship are deprived of many rights as to what should be their rightful inheritance.



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