



INTERNATIONAL JOURNAL OF TRENDS IN EMERGING RESEARCH AND DEVELOPMENT

INTERNATIONAL JOURNAL OF TRENDS IN EMERGING RESEARCH AND DEVELOPMENT

Volume 3; Issue 6; 2025; Page No. 65-68

Received: 02-10-2025
Accepted: 10-11-2025
Published: 17-12-2025

Domestic Violence against Women in Live-in Relationships

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DOI: <https://doi.org/10.5281/zenodo.17961982>

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Abstract

Live-in relationship is becoming the part of the society. Though, the Indian society has not given valid permission to such type of relationships. Though the Supreme Court has stated that the living relationship comes within the ambit of right of life under Article 21 of the constitution of India and also held that the partners are living in live-in relationship are not illegal.

Though the concept of live-in relationship is increasing in the society, but it is giving permission to the man for the sexual offences. Due to the concept of live-in relationship, the number of cases of domestic violence, sexual offences, rape or even murder is increasing in the society. We can take the example of the Nikki Yadav, Shraddha Walkar, Megha Thorvi, and many more are there, who were killed by their partners in brutal murder, living in the live-in relationship.

Though there are many acts and provisions, but the increasing of the crime against women can be consider in the NCRB report. In this article you will know about the acts and provisions related to the protection of woman from domestic violence and other sexual offences. This article will also explain the concept of live-in relationship and domestic violence under the live-in relationship.

Keywords: Domestic, Violence, Women, Relationships, Nikki Yadav, Shraddha Walkar, Megha Thorvi

Introduction

Live-in Relationship at a glance: The concept of live-in relationship can be defined as the couples living together without being married. The meaning of the live-in relationship is cohabitation. The law regarding to the live-in relationships are still evolving in India. Though, the Supreme Court has also stated that the couples are living together as partner without being married are not a criminal offence or illegal. The couples living in the live-in relationships do not have the same legal rights as the married couples have but they have some legal protection under the certain laws.

In live-in relationship, the women are not recognized by the surname of their partner in any legal and financial matters which include the opening of bank account, admission of income tax return, applying for loans, etc. The women living in such type of relationship have their individual identity because she is not recognized as a domestic partner. The couples living in such type of relationship can be

separate without any formal divorce or the court intervention.

In 2015, the Supreme Court has held that the women is living with her partner in live-in relationship for a long time, have a right to claim maintenance after the separation, even though marriage has not been recognized.

In the landmark judgment in the case of Khushboo v. Kanniammal^[1], "In this case, the court held that live-in relationships were not illegal or immoral, and that two consenting adults had the right to live together without getting married." The court further stated that, "A living relationship comes within the ambit of right to life under Article 21 of the constitution of India."

In another landmark judgment in the case of D. Velusamy v. D. Patchaiammal^[2], "In this case, the court recognized that a long-term live-in relationship could be considered a valid marriage under certain circumstances. The court also held

¹ 2010 5 SCC 600

² AIR 2011 SC 479

that women in live-in relationships are entitled to maintenance from their partners after separation.” In *Indra Sarma v. V.K.V. Sarma* [3], “In this case, the Supreme Court observed that live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

There are some rights provided to the women living in the live-in relationship as follows:

Maintenance of live-in partners

The women living in live-in relationship can also claim for the maintenance under section 125 of CrPc.

Inherited rights of live-in partners

The persons living as the husband and wife in such type of relationship can receive property inheritance from live-in partners [4].

Rights of children born out of live-in relationships

According to the Mitakshara school of Hindu law, the illegitimate son is entitled to claim maintenance out of his father’s estate [5]. According to the section 16 of the Hindu Marriage Act, 1955, the illegitimate son can stand at par with natural sons or can be coparceners but cannot claim partition if their father is alive [6].

In *Payal Sharma v. N. Talwar* [7], “In this case, the Delhi High Court held that a woman in a live-in relationship is entitled to the same rights as a legally wedded wife under the Hindu Marriage Act, 1955, and that a child born out of such a relationship is entitled to maintenance under the Hindu Adoption and Maintenance Act, 1956.

In *Lalita Toppo v. State of Jharkhand* [8], “In this case, the Delhi High Court held that a couple in a live-in relationship can be deemed to be married if they have lived together for a long time and have been accepted by society as a married couple.

Domestic Violence at a glance

An act caused or likely to be causes them physical, sexual, emotional injury or suffering, including threats of such actions, coercion, or arbitrary deprivation of liberty either in public or private, it consider as a domestic violence. The definition of the domestic violence is given under section 3 chapter II of the protection of women from domestic violence act, 2005. The physical violence includes the using of physical forces against the partner such as slapping, hitting, kicking and beating. The sexual violence includes forced sexual intercourse and other forms of emotional (Psychological) abuse, such as insults, intimidation, threats

of harm, threats to take away children. Controlling behavior includes such as monitoring their movements and restricting access to financial resources, employment, education and medical care. Economic violence includes such a monitoring a person’s access to money and making them financial dependent.

The Indian parliament has passed the Protection of Women from Domestic Violence Act, 2005 [9]. This act shall come into force on 26th October, 2006. This is an act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and formatters connected therewith or incidental thereto. Be it enacted by parliament in the 56th year of the republic of India.

In *Smt. Sabana@Chand Bai & Anr. V. Mohd. Talib Ali & Anr.* [10], “In this case, the women in a live-in relationship with the respondent have filed a case due to domestic violence. The court found out that the couple was living together, and there was a live-in relationship, and the norms were followed accordingly. The court found the respondent guilty under section 2(f) of the Domestic violence act, 2005.

Provisions related to live-in relationships in India

There are some provisions which are related to the live-in relationship in India are as follows:

- 1. The Hindu Marriage Act, 1955:** The Hindu Marriage act does not recognize the live-in relationship as a valid union. Though, this act provides the right of women to maintenance from her husband after the separation, but these rights provide after the registration of marriages. The Supreme Court held that if the woman is able to prove the relationship, then a woman in live-in relationship can claim the maintenance under this act.
- 2. Domestic violence act, 2005:** This act provides the protection to women living as domestic relationships or as a live-in relationship, against violence and abuse. This act recognizes the live-in relationship in the nature of marriage and provides the protection to the women.
- 3. Protection of women from Domestic Violence (Amendment) Act, 2013:** This amendment act added the “relationship in the nature of marriage” within the definition of “domestic relationship”. The definition of domestic relationship is given under section 2(f) of the protection of women from domestic violence act, 2005.

Criminal Liability provided by the Indian Penal Code, 1860: The Indian penal code provides criminal liability for the offence such as rape, adultery and bigamy, which can be applicable in the case of live-in relationship.

³ 2013 15 SCC 755

⁴ *Vidyadhari v. Sukhrana Bai*, (2008) 2 SCC 238

⁵ Prof. U.P.D. Kesari, *Modern Hindu Law*, Central Law Publications, Allahabad, 2011, p.194

⁶ *Rasala Surya Prakasarao and others v. Rasala Venkateswararao and others*, AIR 1992 A.P. 234: 1992 (2) ALT 346

⁷ AIR 2001 All 254

⁸ (2019) 13 SCC 796

⁹ Act no. 43 of 2005

¹⁰ Criminal Revision Petition No. 362 of 2011

Table 1: Here are some important sections of Indian Penal Code, 1860 related to the domestic violence:

Section 304-B	Dowry Death
Section 313	Causing miscarriage without woman's consent
Section 354	Assault or criminal force to women with intent to outrage her modesty
Section 354-A	Sexual harassment and punishment for sexual harassment
Section 354-B	Assault or use of criminal force to woman with intent to disrobe
Section 375	Rape
Section 376	Punishment for Rape
Section 376-B	Sexual intercourse by husband upon his wife during separation
Section 493	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage
Section 495	Same offence with concealment of former marriage from person with whom subsequent marriage is contracted
Section 496	Marriage ceremony fraudulently gone through without lawful marriage
Section 497	Adultery
Section 498-A	Husband or relatives of husband of a woman subjecting her to cruelty

Decriminalization of Adultery

The chief justice of India Dipak Misra, on 27th September, 2018 unanimously ruled to scrap to section 497 of the Indian Penal Code of Adultery. This law was firstly challenged in the court in 1951 in Yusuf Aziz v. State of Bombay [11], "In this case, the petitioner contended that the law of adultery is the violation of the Article 14 and Article 15 of the constitution of India. It was stated that the law discriminate against the men. This law does not make women equally culpable in an adulterous relationship. It was also stated that this law gives right to the women to commit the crime.

In 1954, the Supreme Court overruled the decision and upheld the validity of section 497 and said that the law did not give a license to women to commit adultery. It was also stated that under Article 15(3) of the constitution of India, it is constitutionally valid for the women to escape culpability. In Sowmithri Vishnu v. Union of India [12], "In this case, the Supreme Court held that the men and women both are not allowed to prosecute each other. The judgment retained the offence of adultery as a crime.

According to the 42nd Law Commission of India report of 1971 and the Malimath Committee on Criminal Law reforms of 2003, both recommended amendment to the adultery law. Both argued to make the law adultery a gender neutral.

The Bharatiya Nyaya Sanhita, 2023 [13].

The Bharatiya Nyaya Sanhita, 2023 has been introduced in the Lok Sabha by the Minister of Home Affairs of India, Mr. Amit Shah, has introduced this bill no. 121 of 2023 in Lok Sabha.

Table 2: Here are some important sections of the Bharatiya Nyaya Sanhita, 2023 related to the domestic violence.

Section 63	Rape
Section 64	Punishment for Rape
Section 65	Punishment for Rape in certain cases
Section 67	Sexual intercourse by husband upon his wife during separation or by a person in authority
Section 73	Assault or criminal force to woman with intent to outrage her modesty
Section 74	Sexual harassment and punishment for sexual harassment
Section 75	Assault or use of criminal force to woman with intent to disrobe
Section 78	Word, gesture or act intended to insult the modesty of a woman
Section 79	Dowry death
Section 80	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage
Section 82	Marriage ceremony fraudulently gone through without lawful marriage
Section 84	Husband or relative of husband of a woman subjecting her to cruelty
Section 87	Causing miscarriage without woman's consent

As we can see that the Law of adultery has been decriminalize from the section of the Bharatiya Nyaya Sanhita, 2023.

Conclusion

According to the report of NCRB 2021 [14], the cases of crime against women in 2021 were 4,28,278 cases, which is 15.3% more than in 2020. The cases of crime against women in 2020 were 3,71,503 cases. The crime rate registered per lakh women population is 64.5 in 2021, which is more than in 2020. In 2020, the crime rate registered per lakh women population is 56.5.

In 2021, the cases of cruelty by husband or his relatives registered with 31.8%, the cases of assault on women with intent to outrage her modesty registered with 20.8%, the cases of kidnapping & abduction of women registered with 17.6% and the cases of rape registered with 7.4%.

In the few years, we have listened about the brutal murders of the women living in the live-in relationship with their partners. The cases of Nikki Yadav, Shraddha Walker, Megha Thorvi, and many more like these women living in live-in relationship with their partners, faced the brutal murder by their partners. According to the news [15] of "The New Indian Express", on 19th April 2022, the Madhya Pradesh High Court made the observation while rejecting a pre-arrest (anticipatory) bail plea of a 25 year old man accused of raping a woman. The court said that the live-in relationships are leading to rise in sexual offences, promiscuity.

Thus according to the Supreme Court, the live-in relationship is not illegal, but the domestic violence is increasing in the live-in relationship. The rights provided under Article 21 of the constitution, is leading to rise in the

¹¹ AIR 1951 Bom 470

¹² Writ petition No. 845 of 1980

¹³ As Introduced in Lok Sabha, Bill No. 121 of 2023

¹⁴ NCRB report, Crime in India, 2021, Website: https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf

¹⁵ News, The New Indian Express, April 19, 2022, Website: <https://www.newindianexpress.com/nation/2022/apr/19/live-in-relationships-are-leading-to-rise-in-sexual-offences-promiscuity-madhya-pradesh-high-court-2443981.html>

sexual offences. The woman got raped by their partners, living with their partners, as live-in relationship.

The couples live with their partner in live-in relationship, are not allowed by the society. The Indian society does not prefer such type of relationships. Even the woman living in live-in relationship does not have as much rights, as the married woman have. While, in today's scenario, the couples are living as live-in partners and even the society is also accepting such type of relationship, but due to increasing the cases of sexual offences, there is a demand to ban live-in relationship, a byproduct of rights conferred under Article 21 of the constitution.

Though there are a lot of acts and provisions to protect the women from domestic violence and other sexual offences, but the court should take consider about the increasing of the domestic violence and other sexual offences due to this live-in relationships. The concept of live-in relationship is quit irrelevant, though it is providing the license to the man to do rape, sexual harassment, and other domestic violence.

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