



“THE BHARATIYA NYAYA SANHITA”
&
LIVE-IN RELATIONSHIP CRIME

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Abstract

“The Act known as “The Bharatiya Nyaya Sanhita” replaced the IPC with a few new and updated clauses. This article describes the ways in which the BNS can help resolve marital problems, particularly those pertaining to live-in relationships. “The Hindu marriage act” is used to settle marital matters and offenses pertaining to them. With the addition of additional provisions, some offenses pertaining to marriage and marital matters, as well as the associated penalties, are codified in the BNS.”

1.1 INTRODUCTION:

Live-in relationships, in which an unmarried couple cohabitates without formally tying the knot, are a relatively new idea in India. Live-in relationships are still problematic, especially in more conservative segments of society, although opinions are slowly changing, especially in cities. An outline of the idea in India is as follows.

Living-in-relationship under Religious and Cultural Context

Marriage is highly valued as a sacrament in Indian culture, especially in Hinduism. Live-in partnerships are frequently seen by traditional norms as compromising the sacredness of marriage. Though some couples consider cohabitation as a trial period before marriage or as an alternative to marriage entirely, changing attitudes in urban areas have increased acceptability.

Public Perception of live-in-relationship



Although live-in relationships are permitted by law, societal opinion differs. Although the practice is becoming more accepted because to media representations and shifting teenage views, conservative voices still oppose it because they believe it to be a danger to social values. While some states or regions maintain strong traditional values, others have a more liberal attitude.

Impact of globalization and modernization

In metropolitan areas, live-in relationships are probably going to grow more common as India continues to modernize and globalize, particularly in terms of education, employment, and exposure to Western lifestyles. Women's economic independence, their desire for personal freedom, and changes in gender norms are some of the elements driving this trend.

Social acceptance of live-in-relationship

Although India's social acceptance of cohabitation has been changing, the country's deeply ingrained cultural, religious, and traditional traditions make it a delicate and complicated topic. The perception of live-in relationships is influenced by a number of factors, such as generational shifts, urbanization, and legislative changes. Many elderly people still have traditional ideas about relationships; they consider cohabitation without marriage to be sinful or socially improper, and they perceive marriage as a holy institution. On the other hand, some progressive metropolitan families are becoming more accepting of their kids' preferences

All of these factors contribute to India's rising live-in relationship rate, which in turn raises crime rates. There are no provisions in the Indian Penal Code, 1856, to address crimes relating to such cohabitation. The Protection of Women from Domestic Violence Act (PWDVA) of 2005 is one of the smaller acts that attempts to codify some of provision to remove some sorts of difficulties. According to this law, women in these kinds of relationships are entitled to maintenance and protection in the event that they are abused. Consensual relationships



between adults are protected since the Supreme Court ruled that live-in partnerships fit under the "right to life" under Article 21 of the Indian Constitution, even though they are not the same as marriage. Seeing the rising number of crimes involving cohabitation, the legislator ultimately made the decision to include some new and accordingly some new Sections are inserted in *"The Bharatiya Nyaya Sanhita"*.

2.1 LEGAL POSITION OF LIVE-IN-RELATIONSHIP

S. Khushboo vs. Kanniammal (2010)

Judgment: In this case, the Supreme Court of India ruled that **live-in relationships come under the right to life under Article 21 of the Indian Constitution**. The court observed that living together without marriage is not an offense and that a live-in relationship is permissible as long as both parties are adults and are consenting.

Significance: This judgment laid the foundation for legal recognition of live-in relationships, emphasizing personal liberty and individual choices. It highlighted that living together in a live-in relationship falls within the purview of the **right to live with dignity**.

Indra Sarma vs. V.K.V. Sarma (2013)

Judgment: The Supreme Court, in this case, ruled that a live-in relationship falls under the ambit of the **Protection of Women from Domestic Violence Act, 2005 (PWDVA)**. The court specified that while not every live-in relationship can be equated with marriage, the woman in a "relationship in the nature of marriage" can claim protection under the Domestic Violence Act.

Significance: This case defined "relationships in the nature of marriage" and extended legal protection to women in such relationships against abuse and exploitation. The court provided



clarity on circumstances where live-in relationships could be treated similarly to marriage under the law for legal rights and protections.

(C) D. Velusamy vs. D. Patchaiammal (2010)

Judgment: In this case, the Supreme Court clarified the distinction between casual relationships and "relationships in the nature of marriage." The court listed criteria for recognizing such relationships, including:

A long-term cohabitation.

Both parties presenting themselves as akin to spouses.

Sharing responsibilities and household duties similar to a married couple.

Significance: This judgment emphasized that **not all live-in relationships can be treated like marriage** for legal rights, but it protected partners who live together in long-term, stable relationships.

(D) Lata Singh vs. State of Uttar Pradesh (2006)

Judgment: In this case, the Supreme Court ruled that **two consenting adults are free to live together** without marriage and that the Constitution of India guarantees them this right. The court also criticized honor killings and the harassment of couples who choose to live together outside of wedlock.

Significance: This judgment reinforced the importance of **individual freedom and choice** in live-in relationships and condemned societal violence or honor-based crimes against those who exercise such rights.

(E) Nandakumar vs. State of Kerala (2018)

Judgment: The Supreme Court ruled that even though a couple may not be legally married, **living together as adults in a consensual relationship is not illegal**. The court stated that "live-in relationships have been recognized by this court" and that adults in such relationships have the right to live peacefully without interference.

Significance: The ruling reiterated that the **legality of live-in relationships** is protected under the fundamental rights of individuals and that they should not face legal or social harassment for their personal choices.

6. Tulsa vs. Durghatiya (2008)

Judgment: The Supreme Court ruled that if a man and woman live together for a long time, the law presumes that they are legally married, and **the woman is entitled to inherit property or claim maintenance** under Section 125 of the Criminal Procedure Code (CrPC).

Significance: This case created a **presumption of marriage** if a live-in relationship is long-term and stable, which helps secure the legal rights of women and children in such relationships, especially in cases of abandonment.

(F) Ajay Bhardwaj vs. Jyotsana (2022)

Judgment: The Punjab and Haryana High Court upheld the right of live-in couples to protection under the law. The court emphasized that **constitutional rights should not be denied to live-in couples simply because society may not agree with their relationship**.

Significance: This case reflects the changing judicial attitudes, where courts now uphold the right to protection for live-in couples, even when the relationship might be frowned upon socially.

3.1 LIVE-IN-RELATIONSHIP AND CATEGORIES OF CRIME



In live-in relationships, the women get exploited by **false promises of marriage, sexual assault, or domestic abuse**. This type of crime is tried to minimize through insertion of new section in BNS.

3.1.1 Domestic Violence in Live-in Relationships

Under the **Protection of Women from Domestic Violence Act (PWDVA), 2005**, women in live-in relationships are entitled to protection from domestic violence. This law has led to several cases being filed by women who face abuse from their partners.

The **Indra Sarma vs. V.K.V. Sarma (2013)** ruling specifically extended the protection of this law to women in live-in relationships that resemble a marriage, which means that crimes in such relationships often get reported under **domestic violence cases**.

3.1.2 Sexual Abuse and Cheating Allegations

One of the more common crimes reported in live-in relationships is when a woman accuses her partner of **cheating or false promises of marriage**. Under Section 376 of the Indian Penal Code, this can sometimes be treated as **rape on the pretext of marriage** if one partner (usually the man) misleads the other about marriage intentions.

Many such cases have been filed where relationships end without marriage, and one partner alleges that they were exploited or deceived.

3.1.3 Murders and Honor Crimes

In rare but severe cases, **honor-based crimes or murders** related to live-in relationships have been reported. These incidents often stem from societal and family disapproval of such relationships, particularly in more conservative or rural settings. While these are not common,



the societal pressure and stigma around live-in relationships can sometimes lead to violent outcomes.

4.1. “THE BHARATIYA NYAYA SANHITA” AND LIVE-IN RELATIONSHIP CRIME

“**Marriage**” is a ritual for uniting a male and a female in a socially acceptable way. If we consider the ancient history, we can find that, from the ancient period of time, the society consider some approve form marriage. The unapproved form of marriage, not considered as divine one. But, the relationship outside the marriage is considered as “**sin**” and liable to get punishment. The reason behind formulation of “marriage”, is to create discipline among the society. The concept of living-relationship is not found in the ancient history. Such “**Live-in-relationship**” become a reason for various crime. The “Hindu Marriage Act” and IPC codify many offenses to prevent the “*marital-crime*”. But, such old codification failed to prevent many crimes committed under the roof of “Living-relationship”. Therefore. At the time of amendment of Indian Penal code, new provision is inserted to prevent the “Relationship-Crime”.

4.1.1 Marital Crime

The crime committed within the marital relationship is considered as “*Marital-Crime*”. Some of the marital crime identified by the “*Bharatiya Nyaya Sanhita (BNS)*”. Those are mentioned in Section 69, 67, 80 to 85, 88 to 90. This section includes different crime committed in connection to the “**Marriage**”. This section includes Dowry death, miscarriage, cruelty caused by husband and husband family, deceit a women in the name of marriage, crime committed during dissolution of marriage. Before the BNS, there was IPC, who also identified the crime and prescribed punishment for the same, but in different sections. But a new section is inserted in the “*Bharatiya Nyaya Sanhita (BNS)*”, that is section 69 which identify a new Marital - Crime, which is codified as “*Punishment for making promise to marry a women without any intention of fulfilling the same*”. The quantum of punishment imposed for the crime committed under “*Section 69 is imprisonment for a period of term, which may extend to 10 years and also be liable to fine*”.¹

¹ ‘Bharatiya Nyaya Sanhita’, Chapter V, ‘Section 69’, page 1.277



4.1.2 Section 69-

This is the new section inserted in the new penal law i.e. “*Bharatiya Nyaya Sanhita (BNS)*”.

Definition - “*Sexual intercourse by employing deceitful means, etc*” Basic ingredients -

Sexual intercourse with a female

Intercourse done by deceiving the women to in the name of marrying her by way of -

False promise

Employment or promotion

By suppressing identity

Intercourse not amounting to the “*rape*”.

Punishment-

Imprisonment upto 10 years

and Fine

Nature of Offense-

Cognizable and

Non- bailable

Triable by Session Court.

4.1.3 Post-marital Crime

Marital-Crime is not binding to the marital tie but also include the crimes, which becomes the reason for dissolution of marriage. The “*Hindu Marriage Act*” mentioned the provisions for dissolution of a marriage under the heading “*Divorce*” in Section 13 & 13B.² One. of the such reason under Section 13 is “*Cruelty*” committed by the spouse. But the definition of “*Cruelty*” is not mentioned in the “*Hindu Marriage Act*”. The BNS define the word “*Cruelty*” under Section 86. In IPC though the word “*Cruelty*” is not defined, but it was explained under the Section 498 of IPC. In the beginning the Cruelty ground is open for man only. But through the Judgement of,the court of justice defined that the husband can also take divorce under the ground of mental Cruelty.

4.1.4 Offense not defined under BNS

² ‘The Hindu Marriage Act’, 1955, section 13 & 13B



Though the “*Bharatiya Nyaya Sanhita (BNS)*” define almost every kind of offense but the BNS not define the crime committed under living-relationship. Now-a-days, man are began to live in a relationship with man. Though, such relation is not get approval by the law as well as by the society, but such relationship is exist in the current society. The BNS not define any such crime, committed under such unapproved relationship. The Supreme Court of India on 28th April, 2010, in a matter of “*Khushboo vs. Kanniammal & Anr*” mentioned that the “*live-in relationships is not illegal as well as there's no such law that prohibits live-in relationships or pre-marital sex. It also highlighted that living together is a right to life as per Article 21 of the Constitution of India*”.³ Though such a relationship is not considered illegal by the court, but it not get accepted in the society. The crime committed under such relationship is not get considered under specific heading in the new code of penal law, i.e. “*Bharatiya Nyaya Sanhita (BNS)*”.

5.1 FINDING AND SUGGESTION

The “*Bharatiya Nyaya Sanhita (BNS)*” includes new **Section 69** to punish the wrongdoer, who come under physical relationship (not amount to rape) with a fake promise of marriage. This is the major changes bring by the BNS in the area of Human-relationship.

The clear definition was introduced by the BNS by defining the word “Cruelty”, which help the judiciary in awarding justice. But the definition is similar, as it mentioned in Explanation part of Section 498A. The BNS can used a wide meaning of the word “Cruelty”, to identify many crime, specially the crime committed under a relationship.

Like the IPC the BNS has define many marital and pre-marital crime under different sections from section 69 to 90. Hope it will help in minimizing the Crime rate in India. Moreover, insertion of “community service”⁴ as an alternative mode of punishment will definitely help in reducing crime rate. “The community service” is considered as reformatory form of punishment and encoded under section 4(f) of BNS as a sixth form of punishment.

The law is created to discipline in the society and to maintain peace in the society by punishing the wrongdoer. The “*Hindu Marriage Act*”, is there to identify and resolve the marriage related issues. But as we all know, that such law got codified long before in the year

³ ‘Khushboo vs Kanniammal & Ans’, SCC, 2010.

⁴ ‘Bharatiya Nyaya Sanhita’, Section 4(f)



of 1955 and now after almost 72 years of age, new amendment is need to resolve all new Relationship-Crime. The changing social and cultural structure of relationship make a demand for new form of law to minimize the crime rate and the BNS tried to help in fulfilling the same demand.

Form the above discussion, it can be said that the current penal law i.e. *Bharatiya Nyaya Sanhita* covers different aspects of crime. But some of the area remain untouched which has mentioned in para 1.5.4 of this article. Therefore, from above discussion, we come to an conclusion that the outcome of the *hypothesis are positive* and it can said that the BNS has almost succeeded in touching the various issues of current India, which was not get considered in IPC.

5.2 SUGGESTION

The “family” is considered as the smallest unit of a society. The society is the based of the culture of a country. The “Marriage” is the essential element of a family. Any crime committed within a marital or pre-marital relationship not only effect the family but also effect the country. Therefore, proper measure should be taken to minimize such crime, which can hamper the future of a country. The new modified version of the penal code i.e. “*Bharatiya Nyaya Sanhita (BNS)*” introduce some new provisions to minimize the rate of relationship-crime. But some parts of it remain untouched, which are very essential to consider in amended version of the penal law. Some suggestions are given in this regards. Those are-

To create awareness among the people regarding the law and it's consequences can help in minimizing the crime rate.

Apex court or other court of justice can play an important role in minimizing the crime, which are not encoded in the new penal law.

The filmmaker should create such a film, which can show the importance of a healthy marital relationship.

The marriage law should get amended to provide quick- effective relief. Sometimes delay in getting justice becomes a cause of crime.

Police authorities should take proper measures in minimizing crime like Dowry death. The negligence created by the police in the name of procedure, increases the rate of crime.



The parents or family members should take initiative to give moral education to their children and reach them to respect their relationship.

Long term “Living-relationship” must get legal validation to reduce relationship crime.

Awareness regarding “Sex-education” can help in minimizing crime.

The law-maker should take a wide aspect in formulation of law for its better implementation.

6.1 CONCLUSION

These historic rulings demonstrate the Indian judiciary's progressive views on cohabitation. These decisions have improved the legal framework, guaranteeing the protection of individual rights and women's safety in cohabitation, even though there is still a disconnect between legal recognition and societal acceptance. The article tried to focus on the today's crime scene under the heading relationship and try to define the importance of such law in connection to marital or pre-marital crime. Though the BNS tried to cover many of them, but some remain untouched. It is hoped that the next amendment will help in inclusion of all crime. The BNS has introduced new form of punishment as “Community service”. The “Community service means any work a court may order a convict to perform as a form of punishment that benefits the community, for which a convict will not be entitled to any remuneration.”⁵

Reference

The Bharatiya Nyaya Sanhita

The Bharatiya suraksha Shastra

The Hindu Marriage Act

The Indian Penal Code

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⁵<https://timesofindia.indiatimes.com/city/noida/community-service-for-minor-crimes-under-bharatiya-nyaya-sanhita-bns/articleshow/111470298.cms>