



LIVE-IN RELATIONSHIP: SOCIAL AND LEGAL IMPLICATIONS

Edited By:

1) **Saumya Tripathi**

(Editor)

Saumya.judicateme@gmail.com

+91 9044382618

Publisher Details:

1) Saumya Tripathi

+91 9044382618

Address: Vikas Nagar, Lucknow

Email Address: Saumya.judicateme@gmail.com

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LIVE-IN RELATIONSHIP: SOCIAL AND LEGAL IMPLICATIONS

By, *Priyanjali Priyadarshini*
From, *Tamil Nadu National Law
University.*

Introduction:

The concept of marriage involves a relationship between two people (a male and a female) bound through the religious ceremonies and customs. The idea of cohabitation by a couple and sex before marriage are some concepts which are considered to be a crime by the society and have experienced a mixed review of acceptance and criticism. However, with the changing times couples prefer to test their compatibility by staying together in order to avoid any kind of mishaps in the marriage.

A live-in relationship is an arrangement where an unmarried couple stays together under one roof for a long-term such that it resembles a marriage. “*A live-in relationship is a kind of relationship of convenience where the parties decide to enjoy each other’s company at their own will and may leave each other at their own will, it is not a marriage.*”¹ It has been described as a “*relationship in the nature of marriage*” under the Protection of Women Against Domestic Violence Act, 2005 (also called the Domestic Violence Act, 2005)² and has been interpreted in the case of *D. Velusamy v. D. Patchiammal*³. The reason for couples choosing a live-in form of relationship is to test the compatibility between them before they get married and also prevents the family drama and lengthy court procedures once the couple decides to dissolve the marriage.

Although not given due respect, live-in relationships have been held to be legal by the Supreme Court in various cases.

¹ *Alok Kumar v. State* (2010) 2 DMC 286.

² Protection of Women Against Domestic Violence Act, No. 43, Acts of Parliament, 2005.

³ *D. Velusamy v. D. Patchiammal* (2010) 10 SCC 469.

Cohabitation without or before marriage and pre-marital sex are considered to be a sin by the society but have never been considered to be an offence legally, except in cases of adultery. However, in a democracy, the lack of acceptance and a legal stand on certain issues leads to ignorance. The lack of a legal framework for live-in relationships and the reported cases depict the vulnerability of the partners and children. The misuse by the partners in shirking their responsibilities have also raised grave concerns.

Indian Law For Live-In Relationships:

The personal laws of the Hindus, Muslims, Christians, etc. govern as well as protect the marital bond of couples. However, live-in relationships being an alien concept are not recognised by such laws in India. Even though the law is not clear about the status of live-in relationship yet some rights have been granted through the interpretation and amendment of the existing legislations so as to prevent the exploitation and misuse of partners.

The Protection of Women from Domestic Violence Act of 2005 has recognized the protection of rights of women in relationships in the idea of marriage, additionally akin to wife but not equivalent to wife. Section 2 (f) of the Protection of

Women from Domestic Violence Act, 2005 states that – *Domestic relationship means a relationship between two persons who live or have, at any point of 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.* Even though the following section does not define the term ‘live-in relationship’ categorically, it has left for the courts to interpret such forms of relationship. Thus, the Courts presume the term ‘relationship in the nature of marriage’ to stand in the same line with live-in relationships. Thus, the Act prevents any form of abuse, fraud or bigamous relationships which can be subjected to women in such relationships. However, there is still no such provision which protects the rights and interests of men in live-in relationships.

Section 125 of the Code of Criminal Procedure, 1973⁴ provides for the maintenance of wife, children and parents. The ambit of the following section has also been extended through judicial interpretation to the partners of a live-in relationship.⁵ The Committee on Reforms of Criminal Justice System, i.e. the Malimath Committee in its Report in 2003

⁴ Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973.

⁵ Ajay Bhardwaj v. Jyotsna, 2016 SCC Online P&H 9707.

recommended for the amendment of Section 125 of the Code of Criminal Procedure, 1973 so as to alter the meaning of 'wife' and incorporate even those women who have been in a live-in relationship and have been abandoned by their partner.⁶ A woman in a live-in relationship for a sensible period of time gets the legitimate privileges and rights as that of a wife and can claim maintenance under Section 125 of CrPC, 1972. Where partners were residing together as husband and wife, a presumption in favour of wedlock would arise.⁷

The Evidence Act, 1872⁸: The Court presumes existential facts occurred in the course of natural events, human conduct, etc. Thus, a man and a woman living together for a long duration of time would give an assumption of a married couple.⁹

Judicial Response To Live-In Relationships:

The Indian Judiciary has tried to fill the gap created due to the absence of any legislations regarding live-in relationships and has therefore stated that live-in relationships may be considered immoral in the eyes of society but are not illegal in the

eyes of law. Justice M. Katju and Justice R.B. Mishra quoted: *"In our opinion, a man and a woman can live together, even without getting married, if they wish to. Even though regarded as immoral by the society, it is not illegal. There is a difference between law and morality"*¹⁰.

Several judicial pronouncements seem to display that the Judiciary aims to prevent any kind of miscarriage of justice arising out of such relationships and does not - promote the idea expressly or prohibit such relationships. Thus, the Judiciary has aimed to stand on the principles of both the societal beliefs and the constitutional values.

The issue of couples living together without marriage arose a long time ago. This statement is supported by the case of *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Blahamy*,¹¹ where the Privy Council stated that *"Where a man and woman are proved to have been living together as spouse, the law will presume, unless the opposite be demonstrated that they were living as a result of legitimate marriage and not in a condition of concubinage."* Even in *Mohabbat Ali Khan*

⁶ Justice v. Malimath Committee Report, pp. 181-194

⁷ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

⁸ The Evidence Act, 1872, No. 1, Acts of Parliament, 1872.

⁹ Section 11 of the Indian Evidence Act, 1872.

¹⁰ *Payal Sharma v. Nari Niketan*, 2001 SCC Online All 332.

¹¹ *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Blahamy*, 1927 SCC Online PC 51: AIR 1927 PC 185.

v. Md. Ibrahim Khan¹² the same view was adopted by the Court and it was held that since the couple had lived together as spouse, it would give rise to a legitimate marriage.

The inclination of the Court to treat the live-in relationships of long duration as marital relations was observed in Madan Mohan Singh v. Rajni Kant,¹³ where the Court held that long time live-in relationships shall not be considered as ‘walk-in and walk-out relationships’ but should be presumed to be a married relation between the parties. In Badri Prasad v. Director of Consolidation¹⁴ the apex court legitimised a live-in relationship standing for 50 years. However, the Court also observed that “*The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon a bastard.*” Although it may be presumed to be a relationship in the nature of marriage, but occurrence of certain situations may force the Court to rebut this presumption.¹⁵

In Ramdev Food Products (P.) Ltd. V. Arvindbhai Rambhai Patel¹⁶ the court held two people in a live-in relationship without a formal marriage to be non-offenders, and this judgement was followed in later cases. The constitutional relation of the live-in relationships was observed in S. Khushboo v. Kanniammal,¹⁷ where the apex court held such relationships to be falling under the ambit of Article 21 of the Constitution of India which guarantees the right to life and personal liberty. Thus, the couple had a right to be in live-in relationships as it was not illegal or unlawful.¹⁸

Another issue related to live-in relationships arose in the later part of 2010, when the case of Alok Kumar v. State¹⁹ came forward. In this case, the complainant and the petitioner were in a live-in relationship. The complainant had a child of her own, whereas the petitioner too had a child and a previous wife with whom he was not even divorced. The Delhi High Court, then observed that the live-in relationship between the complainant and the petitioner was a walk-in and walk-out relationship having no legal strings attached to it. It further stated that “*It is a contract of living together which is renewed*

¹² Mohabbat Ali Khan v. Md. Ibrahim Khan, 1929 SCC Online PC 21: AIR 1929 PC 135.

¹³ Madan Mohan Singh v. Rajni Kant (2010) 9 SCC 209.

¹⁴ Badri Prasad v. Director of Consolidation, (1978) 3 SCC 527: AIR 1978 SC 1557.

¹⁵ Gokal Chand v. Parvin Kumari AIR 1952 SC 231, 333.

¹⁶ Ramdev Food Products (P.) Ltd. V. Arvindbhai Rambhai Patel (2006) 8 SCC 726.

¹⁷ S. Khushboo v. Kaniammal (2010) 5 SCC 600.

¹⁸ *Ibid.*

¹⁹ Alok Kumar v. State, 2010 SCC Online Del 2645.

everyday by the parties and can be terminated by either of the parties without consent of the other party. Those who do not want to enter into such relationships enter into a relationship of marriage which creates a legal bond that cannot be broken by either party at will. Thus, people who choose to have “live-in relationships” cannot later complain of infidelity or immorality.” On the contention of the defendant that Section 498 A of the Indian Penal Code, 1860 did not concern him for dowry as it concerns only the husband or a relative of husband liable for dowry and he was not legally married to the complainant, the court rejected the contention and held that ‘dowry’ is a request of cash in connection to a conjugal relationship.²⁰

The question of maintenance for women in live-in relationships arose in the case of *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*²¹ where the High Court decision indicated on non-entitlement of maintenance to women in live-in relationships as Section 125 of Criminal Procedure Code, 1972 awarded maintenance rights to only those women who were legally married. However, this judgement of the High Court was rejected in the Supreme Court in the same case,

where the Court awarded maintenance to the complainant contending that Section 125 of CrPC should be considered in the light of Section 26 of the Domestic Violence Act, 2005.²² It further stated that the women in live-in relationships were entitled all such rights and privileges that are available to a legally wedded woman.²³

In *D. Velusamy v. D. Patchiammal*²⁴ the Court laid down certain procedures to determine live-in relationships in the nature of marriage. The procedures prescribed were - *“The couple must hold themselves out to society as being akin to spouses and must be of a legal age to marry or should be qualified to enter into a legal marriage, including being unmarried. The couple should have cohabited voluntarily and held themselves out to the world as being akin to spouses for a significant period of time.”*²⁵

The Court also clarified that not all relationships would be considered under relationships in the nature of marriage and get the benefit of the Domestic Violence Act, 2005. Relationships where women are treated as a servant and financially maintained and used mainly for sexual purposes would not be considered relationships in the nature of marriage. Spending a week together or a one-night

²⁰ *Koppiseti Subbharao v. State of A.P.* (2009) 12 SCC 331.

²¹ *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha* (2011) 1 SCC 141.

²² *Ibid*, para 39.

²³ *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha* (2011) 1 SCC 38, para 38.

²⁴ *D. Velusamy v. D. Patchiammal* (2010) 10 SCC 469; AIR 2011 SC 479.

²⁵ *Ibid*.

stand would not amount to relationships in the nature of marriage.

The case of *Indra Sarma v. V.K.V. Sarma*²⁶ put forward the grave issue of live-in relationships that were illegal and the protection of rights of the woman in such illegal relationship. The two-Judge Bench of the Supreme Court held that “*where the woman in live-in relationship is aware that the man with whom she is in a live-in relationship already has a legally wedded wife and two children, shall not be entitled to the various reliefs that are available to a legally wedded wife, including those who enter into a relationship in the nature of marriage under the Domestic Violence Act, 2005*”. However, the court also felt the need of those women who would face injustice due to the denial of protection provided to them. Therefore, the Supreme Court emphasised on the need to extend the definition of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 so as to include such women who are in such illegal relationships and are poor, illiterate along with their children born out of such relationships and have no source of income. The Court also emphasised on the need of a legislation based on certain guidelines prescribed by the Court which tend to protect the victims from any societal wrong resulting from such relationships.

The Guidelines prescribed by the Court were as follows:

a. Duration of the relationship – Section 2(f) of the Domestic Violence Act uses the term ‘at any point of time’ which implies a reasonable amount of time to maintain and continue the relationship. The duration may vary from case to case, depending upon the facts.

b. Shared Household – The term ‘shared household’ has been mentioned under Section 2(s) of the Domestic Violence Act, 2005 and therefore required no elaboration by the Court.

c. Pooling of resources and Financial Arrangements – Financially supporting each other or any one of them, immovable properties in joint names or in the name of the woman, sharing of bank accounts, shares in separate and joint names, long-term business investments, etc. which may indicate towards a long-standing relationship.

d. Domestic Arrangements – Consigning household responsibility, especially on the woman to do the household chores, running the house, etc. may also indicate towards a relationship in the nature of marriage.

e. Socialisation – Holding out to the public, friends or relatives as husband and wife is

²⁶ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

also an indication of a relationship in nature of marriage.

f. Intention and conduct of parties – Common intention of the parties as to the kind of relationship they wish to have, sharing of responsibilities and roles, determining the nature of the relationship.

g. Sexual relationship – Relationship in the nature of marriage also includes sexual relationship, not merely for pleasure, but also for emotional and intimate compatibility, for child procreation, companionship, etc.

h. Children – Couple having children is a strong indication of the parties being in a long-standing relationship which is in the nature of marriage. Sharing the responsibility of bringing up and supporting the child is also a strong indication.

In a landmark judgement, the Court held that couples living in a live-in relationship would be considered as a legally married couple and the woman would be entitled to inherit the property after the death of her partner.²⁷

In a situation where the woman, a major and of marriageable age and the man, a major but not of marriageable age were living together, the Court held that the woman was

well within her right to take decisions for herself, whereas the man who was although not of a marriageable age but a major has the right to live his life on his own terms. It further stated that “*Where a boy and a girl are major and are living together at their own free will, then nobody has the authority to interfere with their relationship and living together.*”²⁸

The case of *Chinmayee Jena @ Sonu Krishna Jena v. State of Odisha & Ors.*²⁹ highlighted both the societal and legal impact on live-in relationships, where a same-sex couple (women) had been living together in a live-in relationship since 2017 and were thereby stopped from doing so by one of the partners’ mother and uncle. The Court in this case held that “*The woman shall have all the rights of a woman as prescribed under the Domestic Violence Act, 2005*”. It further stated that “*The couple have a right of choice of relationship as well as the right to live together and society should support their decision*”.

Children Born Out Of Live-In Relationships:

The Indian Judiciary has been protecting the rights of children born from live-in relationships through a broader interpretation of law, due to the absence of

²⁷ *Dhannulal v. Ganeshram*, (2015) 12 SCC 301.

²⁸ *Priyapreet Kaur & Anr. V. State of Punjab & Ors.* [CRWP-10828-2020 (O&M)]

²⁹ *Chinmayee Jena @ Sonu Krishna Jena v. State of Odisha & Ors.*, Writ Petition (Criminal) No. 57 of 2020.

any legislation so that no child is 'bastardised' or exploited without any fault of their own.

The issue of legitimacy of children born out of live-in relationship was raised in *S.P.S. Balasubramanyam v. Suruttayan*³⁰ where the Supreme Court stated that "*If a man and a woman have been living together under the same roof for some years, then it shall be presumed that as an evidence under Section 114 of the Evidence Act that they have been living as husband and wife and the child/children born to them shall not be considered illegitimate.*" The Court also extended the status and legislation for such children by interpreting it along with Article 39(f) of the Constitution of India which sets out the obligation of the State to provide adequate opportunity to the children for the development of the children in a proper manner and to safeguard their interests.

In *Tulsa v. Durghatiya*³¹ the apex court held that children born out such relationships which are in the nature of marriage will not be considered as illegitimate; and, the essential precondition for this is that the parents of the child should have cohabited under one roof for a significant period of

time and have not been in a walk-in and walk-out relationship.³²

In *Bharatha Matha v. R. Vijaya Renganathan*³³ the Court held that a child conceived out of a live-in relationship shall be given the inheritance rights of the property of the parents and shall be considered as a legitimate child of the parents. The same idea was prescribed in *Revanasiddappa v. Mallikarjun*³⁴ where the Supreme Court held that a child/children born out of a live-in relationship should be considered independently, irrespective of the relationship between the parties. Children born out of such relationships are innocent and are therefore entitled to all the rights and privileges which are available to the children born out of valid marriages. This is what the Court held is the crux of Section 16(3) of the amended Hindu Marriage Act, 1955³⁵.

Position Of Live-In Relationships Outside India:

In France, couples have been allowed to enter into a union without marriage and even same-sex couples are included under the law. The partners are entitled to the same rights and privileges as the partners of

³⁰ *Balasubramanyam v. Suruttayan*, (1994) 1 SCC 460: AIR 1994 SC 133.

³¹ *Tulsa v. Durghatiya*, (2008) 4 SCC 520: AIR 2008 SC 1193.

³² *Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209: AIR 2010 SC 2933.

³³ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483: AIR 2010 SC 2685.

³⁴ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1: (2011) 2 UJ 1342.

³⁵ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955.

a marriage, such as in areas of inheritance, housing, income tax, social welfare, etc. Also, the couples require to register themselves by signing up a contract before a court clerk and also have the option of revoking the contract either unilaterally or bilaterally through a simple written declaration, whereby the other partner is provided a three months' notice.

In Philippines, Article 147 of the Family Code states that if a man and a woman capacitated to marry each other, live together as husband and wife without a marriage or under a void marriage, they shall own the wages and salaries in equal shares as well as the property acquired through their work or industry shall also be governed under the rules of co-ownership.

Conclusion:

Live-in relationship has always been considered to be a social stigma which pollutes the sacred bond of marriage. However, the legal framework has never considered live-in relationship to be illegal or invalid. Even though the Court has made sure through its judgements that the rights and privileges of women and children are protected and their exploitation are avoided to the extent possible, still the lack of any particular dealing with maintenance, succession, guardianship, etc. with regard

to live-in relationships has lead to such arising issues and lack of societal acceptance. Mere consideration of such relationships to be 'in the nature of marriage' will not suffice as vagueness of terms and laws leads to many issues. Even the Domestic Violence Act of 2005 considers relationships in the nature of marriage and for a longer duration of time, which leads to the abuse experienced by women in relationships of shorter duration or relationships which have ended up in a shorter duration due to the abusive nature of the other partner.

It is the duty of Judiciary to ensure that all such laws are included which provide justice and prevent exploitation of any individual. Mere judgements cannot prove to be beneficial unless there is a stable law and in picture. Therefore, there is an urgent need of codified laws or sets of rules and regulations dealing with relationships other than marriage.

In *Savitaben Somabhat Bhatiya v. State of Gujarat & Ors.*³⁶ the Court held that however desirable it may be to consider a woman's plight who enters into a wedlock with a married man, there is no scope for a woman who is not lawfully married with the expression 'wife'. Thus, this

³⁶ *Savitaben Somabhat Bhatiya v. State of Gujarat & Ors.*, AIR 2005 SC 1809.

inadequacy could be fulfilled only through a legislation.

With the changing times there is a necessity for acceptance of certain ideas, just as in the case of decriminalization of Section 377 and Section 497. *“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”*³⁷

³⁷ Revanasiddappa v. Mallikarjun, 1929 SCC Online PC 21:AIR 1929 PC 135.