

AN ANALYSIS OF THE APPROACH OF THE COURT IN GRANTING MAINTENANCE WITH SPECIAL REFERENCE TO LIVE IN RELATIONSHIP CASES

by

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ABSTRACT

In India, live-in relationships are on the rise as a convenient alternative to marriage. A live-in relationship, according to the law, is a living arrangement in which an unmarried couple lives together for the purpose of maintaining a long-term connection that is akin to marriage. Domestic cohabitation between an adult couples who are not married is what it is characterized as. It appears to be a stress-free relationship with no legal obligations; nonetheless, it comes with a slew of complexities, responsibilities, and legal liabilities. Attempts have recently been made to bring it inside the purview of several legislations, such as maintenance to the female, legitimacy of a child being born out of that relation, protection to women living in a live-in relation from domestic violence, and so on. It is no longer a crime in India, and several recommendations on child support, property, and legal status have been provided by the Supreme Court in various cases. In India, it is still a contentious issue. The article's main goal is to use secondary sources to better understand the concept of a live-in relationship, and if the females who are in a live in relation can claim maintenance under section 125 of CrPC. The paper suggests that a separate, secular, and gender-sensitive law should be enacted for couples who choose to cohabit in a live- in relationship. So now the question rises, can one claim maintenance under section 125 of CrPC, if they were a party to a live-in relationship? Does the judiciary recognize the concept of “Live- In Relationships”?

INTRODUCTION:

The concept of marriage is very holy according to the “Hindu Law”, unlike Muslim marriage, a Hindu marriage is a sacrament, and it is the performance of religious duties for the union of two souls. Unmarried couples agree to live together and have a long-term relationship similar to marriages without getting married formally in a live-in relationship. There is no law in India that

recognizes a live-in relationship. There is no explicit law in India that defines the rights and obligations of the individuals in such a relationship, as well as the status of children born out of such a connection. The courts, on the other hand, have decided that if a man and a woman live together for a long period as if they are husband and wife, the law will presume that they are married. The Hindu Marriage Act, 1955, the Criminal Procedure Code, 1973 and the Indian



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Succession Act, 1925 do not recognize this type of relationship. The phrase "relationship in the nature of marriage," which is included in the definition of "domestic relationship," is defined as follows in the Protection of Women from Domestic Violence Act of 2005 (PWDVA):

- Section 2(a) "Aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.
- Section 2(f) "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.

People choose to enter in live-in relationship to test their compatibility before becoming officially married. In the event that the couple decides to break up, it also protects partners from the stress of family drama and lengthy legal proceedings. Whatever the cause, it is clear that in a traditional society like ours, where marriage is seen as "holy," an increasing number of couples are opting for a live-in relationship, even as a long-term commitment, over marriage. Many legal and social difficulties have arisen as a result of these conditions, and they have become the subject of debate.

RESEARCH QUESTIONS:

- What relations are called a "Live-In Relation? Is it legal in India? Can one claim maintenance if they are a party to a live in relation?
- Down the line how has the judiciary's perspective changed towards "Live-In Relation"? Rights of women in live-in relationships.

OBJECTIVE OF THE STUDY:

- The main objective of this study is to make the reader familiarize with the concept of live-in relationships, and the right to maintenance of the women who is subjected to such relation.

RESEARCH METHODOLOGY:

➤ Research Design-

The study was done in an analytical and descriptive way to make the text comprehensible.

The doctrinal method is a combination of analytical and explanatory method.

➤ Sources of Data-

The study was done with the help of secondary source, like surveys, articles, online published content, and press statements. The writer has tried to be original with the content as well.

LITERATURE REVIEW:

Live-in relations have always been in the spotlight for several reasons, some of them are if one can claim for maintenance if they are a party to live in relation, or what is the status of a child born as a result of such relation and so on. There is no specific law that applies to a live-in relationship. There is no legal definition for it, and no rights or obligations are handed to parties in such a connection. However, there have been other instances where current regulations have been wrongly attributed. This topic is gaining traction as a result of various concerns that have arisen as a result of this model's presence in society. There have been various instances where the judiciary has clarified the concept of a live-in relationship by altering and interpreting existing legislation in a way that prevents its misuse. In India, the legal standing of live-in relationships is hazy, but the Supreme Court has held that a couple who has lived together for a long time is believed to be legally married, and the aggrieved partner can seek support and protection as a result. The court will decide on maintenance in a live-in relationship based on the Domestic Violence Act and the facts of the case. If a live-in relationship does not work out, a woman can seek maintenance, but there is no similar option for men. The focus of this post is on providing maintenance to live-in partners.

ANALYSIS:

Chapter 1

What relations are called a “Live-In Relation? Is it legal in India? Can one claim maintenance if they are a party to a live in relation?

- Marriage is a sacred rite and socially acknowledged institution in India. In essence, it is a partnership between individuals that establishes mutual rights, responsibilities, and legal obligations. Because of India's unique culture, many laws have been enacted that provide the guidelines and procedures for performing marriages in various religions. Marriage rules have been formed in various religions to cope with issues that emerge in marriages between partners. In addition to the regulations relating to maintenance under personal law, section 125 of the Code of Criminal Procedure, 1973, protects the wife with maintenance if she is unable to support herself after the couple parts ways by divorce, and until she remarries.
- In India, live-in relationships have been debated for years, but there is no law binding the partners to each other if one of them wishes to end the relationship. A legal definition of a live-in relationship has yet to be established, as there is no such term. As previously stated, the court determines a wife's claim to maintenance based on the Protection of Women from Domestic Violence Act of 2005 and the facts of the case. Though the concept of a live-in relationship is still controversial in India and is not publicly acknowledged by society, the Protection of Women from Domestic Violence Act, 2005 provides maintenance and protection to an aggrieved live-in partner by awarding alimony.
- For the first time, the legislature has provided protection and rights to women who are not legally married under the Domestic Violence Act of 2005. Because the act does not define such a live-in relationship, the courts must interpret it based on the facts and circumstances of the case. There is significant controversy in the definition of the word "wife" used under section 125 of the Code of Criminal Procedure, which provides for the wife's maintenance. The Indian judiciary has done an excellent job in filling in the gaps that have arisen due to the lack of legislation. In Indian society, this concept is regarded as immoral. Even if it is not unlawful in Indian society, the judiciary has done its utmost to prevent the abuse of existing laws and provide justice to the best of their knowledge under the laws in place. There are a number of case laws that pertain to it.

- In several rulings, the Supreme Court has stated that if a man and a woman live together as husband and wife for a long time and even have children, the judiciary will presume that they are married and that the same laws will apply to them and their relationship. The Allahabad High Court recognized the concept of a live-in relationship in the case of “*Payal Sharma v. Nari Niketan*¹”, where the Bench of Justice M. Katju and Justice R.B. Misra stated that, “In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but it is not illegal. There is a difference between law and morality.” Even though the mainstream view in our society is that sexual contact should take place only between married partners, there is no statutory offence that occurs when adults willingly engage in sexual relations outside of marriage, as in the case of “*S. Khushboo v. Kanniammal*²”, the Court observed that, while it is true that the mainstream view in our society is that sexual contact should take place only between married partners, there is no statutory offence that occurs when adults willingly engage in sexual relations outside of marriage. India's Constitution protects the right to life and personal liberty as a basic right in Article 21. In the case of, “*Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel*³”, the Court held that two persons who live together but are not legally married are not criminals. As a result, in India, live-in relationships are legal.
- According to a bench consisting of Justices Markandey Katju and T S Thakur, a woman must meet the following four requirements in order to receive maintenance, even if she is not married:
1. They must be of a legal age to marry.
 2. They must have voluntarily cohabited and held themselves out
 3. They must be otherwise qualified to enter into a legal marriage including being unmarried
- The Court held in “*Dwarika Prasad Satpathy v. BidyutPrava Dixit and Anr*⁴”, that when there was proof of the parties living together, maintenance could not be withheld. The Privy Council

¹ AIR 2001 All 254

² (2010) 5 SCC 600

³ (2006) 8 SCC 726

⁴ 1999 7 SCC 675

concluded in “*A. Dinohamy v. W.L. Balahamy*⁵”, that if a man and a woman are proven to have lived together as husband and wife, the law will presume that they were living together as a result of a legitimate marriage unless the contrary can be proven. The Supreme Court restated the same principle in “*Gokal Chand v. Parvin Kumari*⁶”, however it emphasized that the pair would not be granted legitimacy if the evidence of their living together was rebuttable. These rulings only served to validate marriages that had been questioned based on the existence of a long-term live-in relationship. The court went on to say that every live-in relationship is not a marriage-like connection that falls under the concept of domestic relationship. The couples cannot be allowed to formally separate until this type of partnership is not recognized in law, as a careful examination of existing marriage laws indicates. It is simple to enter a live-in relationship, whether by choice or circumstance. Furthermore, the legal repercussions of this connection are still unaddressed; for example, there is no statute in place that addresses the division of property gained through a couple's shared profits.⁷

- The Respondent-woman alleged in “*Parveen Tandon vs. Tanika Tandon*⁸” that the Petitioner did not reveal his marital status when they initially met. She also indicated that the petitioner signed a marriage agreement with her in order to demonstrate his sincerity and obligation to her and her child from a prior marriage. The order of the Addl. Sessions Judge directing the Petitioner-man to pay ad-interim support to his live-in partner under the provisions of the Protection of Women from Domestic Violence Act was maintained by the Single Judge Bench of Hon'ble Justice Subramonium Prasad. The Court determined that the parties were adults who had willingly cohabited for a long time.

⁵ (1928) 1 MLJ 388

⁶ (1928) 1 MLJ 388

⁷ Multiplicity of sexual relations shall run counter to the notion of fidelity. Moreover, it is not relevant here to examine the impact of sexual fidelities of a man because his acts of indiscretion can be dealt with under other legal provisions. It is also not relevant because here we are talking about his liabilities which cannot be reduced by his greater infidelities.

⁸ CRL.M.C., 264 of 2021

Chapter 2

Down the line how has the judiciary's perspective changed towards "Live-In Relation"? Rights of women in live-in relationships

- In recent years, recommendations from various committees and non-governmental organizations have reawakened the spirits of justice in favor of women who have been particularly harmed by such partnerships.⁹ Aside from that, the Supreme Court has issued significant decisions stating its position on the matter. For example, in the landmark case of "*D. Veluswamy v D. Patchaimmal*"¹⁰, the Supreme Court held that a woman in a live-in relationship is not entitled to maintenance unless she meets certain criteria, noting that simply spending vacations together or one night together does not constitute a domestic relationship. The Supreme Court stated that not all live-in relationships qualify as a marriage-like arrangement for the purposes of the Protection of Women from Domestic Violence Act, 2005.
- It is not a married connection if a guy has a 'concubine' whom he supports financially and uses primarily for sexual purposes and/or as a servant. The National Center for Women presented recommendations to the Ministry of Women and Child Development to include female live-in partners under Section 125 of the Criminal Procedure Code in order to establish their rights and make them eligible for maintenance.¹¹
- Also, in the case of "*Abhijit Auti vs. State of Maharashtra*"¹², the Honorary Court upheld the above principles, and the Maharashtra government showed positive signs by accepting the reports of the Malimath Commission and the Judiciary Commission. It states that it is life-in a very long-lasting relationship she is entitled to her wife's rights.
- The Apex court of India, i.e., the supreme court, has laid down few guidelines and categories in the case of "*Indra Sarma v. V.K.V.Sarma*"¹³ where the concept of live in can be considered as well as proved in the court of law. They are as follows:

⁹ Cr. M.C. No. 299/2009, decided on August 9, 2010 by High Court of Delhi: <http://lobis.nic.in/dhc/SND/judgement/10-08-2010/SND09082010 CRLMM2992009>.

¹⁰ MANU/SC/0872/2010

¹¹ Duff, Johnette, and George G. Truitt. 1992. *The Spousal Equivalent Handbook: A Legal and Financial Guide to Living Together*. New York: Penguin, NAL/Dutton.

¹² AIR 2003 Bom 304

¹³ AIR 2014 SC 309

1. The term of the relationship
 2. Having/planning children- a very strong signal defined in section 2(s) of the DV Act 2.
Shared household- defined in section 2(s) of the DV Act.
 3. Sexual Relationship—not just for fun, but also for an emotional and deep relationship
 4. Public socialization- posing as a member of the public and interacting with friends and family
 5. Intention and conduct of the parties- the parties' common intention as to what their relationship will be.
 6. Domestic arrangements that provide women with the responsibility of running the household and performing household responsibilities
 7. Resources and financial arrangements pooled to support each other, or any one of them
- In the eyes of the law at the time, children born from a live-in relationship were illegitimate. However, in “*Revanasiddappa & Anr. vs. Mallikarjun & Ors.*”¹⁴, the Supreme Court stated that regardless of the parents' relationship, the birth of a child from such a relationship must be evaluated separately from the parents' relationship. It is as obvious as the sun that a child born from such a connection is absolutely innocent and entitled to all of the same rights and privileges as children born from lawful marriages.

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¹⁴ In *Adams v. Howerton*, 673 F.2d 1036, 1043 9th Cir. 1982 (male couples sought recognition of their marriage, but it was refused on the ground that homosexual couples can never procreate).

CONCLUSION:

The right to maintenance of live-in partners has been established by the courts in several cases. These, however, are contingent on the facts of the case. In India, live-in relationships are not illegal, but there is still a stigma against couples living together without marrying. Because the relationship is similar to marriage but not identical to marriage, live-in partners are entitled to maintenance in the event of abandonment or alienation. In these types of relationships, there must be some level of duty and responsibility to ensure that the spouse who is financially struggling receives support and shelter. As a result, just as there is for marriages, a clear rule governing the responsibilities of partners in live-in relationships is required. It's impossible to dismiss the notion of people entering live-in relationships and then ending them when they're done with them. Families are disintegrated as a result of globalization, and life partners are forced to live alone in different parts of the world away from their wives. It's possible that this societal shift has accelerated the increase of live-in relationships. There have been cases where persons have formed such relationships, abused their partners, and then abandoned them. As a result, a set rule is required to safeguard partners who rely on someone else for a living. The law, on the other hand, should provide equal protection and certainty of maintenance to both men and women. 1973 Criminal Procedure Code, 1973 Section 125. The writer proposes that in Section 125 of the Cr.P.C.'s the definition of wife be revised to include a woman who has had a connection in the form of marriage "for a reasonably extended period of time." This will allow a woman to ask her live-in partner for maintenance.

BIBLIOGRAPHY:

1. Indian Penal Code, 1860
2. Protection of Women from Domestic Violence Act, 2005
3. Code of Criminal Procedure, 1973
4. Lesley Gordon, Jenny Nobbs, Cohabitation: the new legal landscape.
5. Chetan Tripathy*, Live in Relationship- Review and Analysis
6. Atty. Fred " Common-law marriage (live-in relationships) in the Philippines| November 4th, 2006 in Family and Property law
7. Dr. Poonam Pradhan Saxena, Family Law Lectures Family Law II(3rd ed.), Nagpur: Wadhwa LexisNexis Butterworths

WEBSITES:

1. <https://www.lawyersclubindia.com/articles/maintenance-to-live-in-partners-14110.asp#:~:text=According%20to%20a%202018%20Supreme,still%20be%20entitled%20to%20maintenance.>
2. <https://timesofindia.indiatimes.com/india/sc-lays-down-conditions-for-women-seeking-maintenance-in-live-in-relationships/articleshow/6786239.cms>
3. <https://www.indiafilings.com/learn/live-in-relationships-in-india/>

CASE LAWS:

1. Payal Sharma v. Nari Niketan- AIR 2001 All 254
2. S. Khushboo v. Kanniammal- (2010) 5 SCC 600
3. Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel- (2006) 8 SCC 726
4. Dwarika Prasad Satpathy v. BidyutPrava Dixit and Anr- 1999 7 SCC 675
5. A. Dinohamy v. W.L. Balahamy- (1928) 1 MLJ 388
6. Gokal Chand v. Parvin Kumari- (1928) 1 MLJ 388
7. Parveen Tandon vs. Tanika Tandon- CRL.M.C., 264 of 2021
8. D. Veluswamy v D. Patchaimmal- MANU/SC/0872/2010
9. Abhijit Auti vs. State of Maharashtra- AIR 2003 Bom 304
10. Indra Sarma v. V.K.V.Sarma- AIR 2014 SC 309