



ORIGINAL RESEARCH PAPER

Law

INDIAN LAW OF MAINTENANCE IN RESPECT TO LIVE IN RELATIONSHIP

KEY WORDS:

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In the preceding year, the lamentable demise of Shraddha Walker, a woman of 27 years, occurred at the hands of her erstwhile live-in partner, Aftab Poonawala, in a manner that can only be described as ruthlessly violent. Similarly, Nikki Yadav was brutally killed by her live-in boyfriend. The current trajectory of crime rates exhibits an upward trend, which can be attributed to the increased prevalence of cohabitation within contemporary society. These murders led to a draw-out blame game and brought important issues regarding relationships outside of marriage to light. Stories regarding the ethics and dangers of cohabitation appeared in the media, and conversations veered from victimisation to their ecumenical cooperation. The concept of live-in relationships has mixed opinion in Indian families and this is the idea endorsed by hollywood and bollywood celebrities primarily. There is a possibility that the process of modernization is gaining momentum in India. Therefore, a need for proper mechanism can be adopted to respond the issues in live-in relationships.

For years, Indian society frowned against live-in relationships. Previously, live-in relations before marriage were illegal in India. In the context of a conventional marriage, it is customary for both parties involved to possess certain entitlements and obligations. Since 'live-in relationship' is not allowed in India, unmarried couples who live together have no legal implications. There is no statute directly regulating live-in partnerships, but the Indian judiciary has established jurisprudence over the years through a series of rulings. Moreover, live in relationships were legally considered void-ab-initio till the apex court for the first time legalised such links in 1978 in *Badri Prasad vs Board of Consolidators*, ruled that if the couple in live-in relationships in India are legal but subject to caveats like age of marriage, consent and soundness of mind. Similarly, in 2001, the Allahabad High Court declared in *Payal Sharma vs Nari Niketan* that men and women might live together. Here the HC separated 'law and morality' in term of societal point of view that it may be considered immoral by society but it is not illegal.

Likewise, the Supreme Court in *Lata Singh vs State of UP* ruled that two persons of opposite sex living together are not doing anything illegal. In the year 2010, the Supreme Court, in the case of *S. Khushboo vs Kanniammal & Another*, reaffirmed the verdict from 2006 and observed that a consensual cohabitation arrangement between two adult individuals of opposite genders does not constitute any criminal offence, except for the specific circumstance of 'adultery'. It was acknowledged that while such a relationship may be deemed morally objectionable, it does not warrant legal condemnation.

In 2015, the Supreme Court of India, in the case of *Indra Sarma v. V.K.V. Sarma*, held that a live-in relationship between two consenting adults should not be considered 'illegal or a criminal offense'. This case also emphasized the rights and entitlements of women in live-in relationships to maintenance if she fulfils the criteria under Section 125 of the Code of Criminal Procedure (CrPC). Additionally, the Supreme Court

has also held that adults have the 'right to live together' in a consensual relationship without marriage, and this falls under the realm of the 'right to privacy'. The said judgement by apex court can be linked to the constitutional provisions enshrined in Articles 19 (a) Right to life emphasises the freedom to enjoy life unless it's illegal. One can live anywhere in this free society and Article 21, an individual has the right to live-in with a person of interest, whether or not they are married. Further, in a landmark ruling, the Orissa High Court ruled that a person might live with a partner of their choice even if they were the same gender. In this case, responding to a habeas corpus plea on behalf of his female partner. In this case court said that Rashmi's choice to choose her life partner could not be repressed or invalidated because the parents could face social humiliation or emotional anguish. Further, court also said that the two people in this instance who have decided to date and live together have freedom of choice and society should encourage them.

Live-in relationships in India have gained popularity over the years, but they exist in a somewhat legal gray area. Here is an overview of their legality and some of the challenges associated with them. Discussing about the status-quo of live-in relationship, till now there is no specific legislation existed in India like some western countries. The lack of regulation in India leaves the couples in a state of uncertainty. Further, the top court has recognized live-in relationships as a legitimate way of life and has accorded legal status to partners in such relationships. In several landmark judgments, the court has held that women in live-in relationships are entitled to rights like those of legally married women, such as maintenance and protection from domestic violence.

In the case of *D. Velusamy vs. D. Patchaiammal*, the Supreme Court defined the criteria for a relationship to be considered a 'relationship in the nature of marriage'. It laid down essential conditions for granting maintenance to women in live-in relationships, such as mutual consent, exclusivity, evidence of a long-term relationship, the parties must have lived together in a 'shared household' and a public perception of being akin to a marriage. Similarly, *Chanmuniya vs. Virendra Kumar Singh Kushwaha & Anr*, the court reiterated the rights of women in live-in relationships and entitlement to maintenance if she was in a domestic relationship and was subjected to violence, whether actual or threatened. Again, in the case of *Sunita vs. Sunil*, the Supreme Court emphasized the need for a 'strong prima facie case' before granting maintenance in live-in relationships subject to various legal provisions, including Section 125 of the CrPC.

However, the situation is very complex when it comes to maintenance. Though the live-in relationships are generally considered permissible, they do not have the same legal recognition and rights as a formally registered marriage. This lack of legal recognition can sometimes lead to complexities, especially when it comes to issues of maintenance and financial support. But in few instances maintenance can be claimed, these are; (a) In live-in relationships, there is no legal obligation for one partner to provide financial support to the

other. However, if there is an agreement between the partners or if one partner has been financially dependent on the other, the dependent partner may seek financial support through civil laws like the Domestic Violence Act, 2005. This act provides protection and relief to women who are in domestic relationships, including live-in relationships. Under this law, a woman in a live-in relationship can seek protection, maintenance, and residence rights if she can establish that she has been subjected to domestic violence; (b) In a live-in relationship, property rights may be challenging to establish, as there is no automatic right to share property as in a marriage. However, property rights may be recognized in cases where the partners have jointly acquired property, or through legal action under specific circumstances; (c) In the *Tulsa & Ors. v. Durghatiya and Others*, the Supreme Court held that children born out of live-in relationships are not illegitimate, and they are entitled to inherit the property of their parents. If a child is born out of a live-in relationship, custody and maintenance for the child can be decided through the Guardians and Wards Act, 1890, and the provisions of the Hindu Adoption and Maintenance Act, 1956.

In India, society is traditionally conservative, and live-in relationships in most of the cities in India are in growing stage that is facing social stigma and disapproval, especially in rural areas and among older generations. Secondly, the crime rate in live-in relationship is simultaneously reported in many parts of the country. The absence of specific legislation, maintenance and inheritance rights may be uncertain for partners in live-in relationships. This can lead to disputes in cases where one partner dies without a will. It's essential for couples in live-in relationships to be aware of their legal rights and take measures to protect themselves, such as drafting cohabitation agreements and wills. It is important to note that the legal framework regarding live-in relationships in India is evolving, and legal precedents may vary depending on the specific circumstances of each case. It is advisable for individuals in live-in relationships to be aware of their legal rights and consult with legal experts if they face maintenance or other issues. Additionally, drafting a cohabitation agreement or a written agreement between partners can help clarify financial and property matters in case of a breakup.