



LIVE-IN RELATIONSHIP: RIGHT TO MAINTENANCE

Rose*

ABSTRACT

The idea of a long-term, committed, and close relationship between a male and a female in the vicinity of their society is becoming increasingly popular in today's India. The legal system plays a prominent role in shaping the dynamics of these relationships. This article explores the social and legal aspects of these long-term partnerships, along with their right to be maintained specified in our legislature, which are becoming significant in today's world. The debate over the legality of these relationships is particularly heated, especially following decisions by the highest court in the land that have supported them lately. The court has declared that these partnerships are legal and not subject to punishment, but still, the validity of these relationships is subject to morality and societal norms. This article addresses the issues regarding their societal status and the legal rights, i.e. to be maintained, that couples living together have and illuminates how courts interpret these living arrangements. India currently lacks specific laws regarding these relationships, the rights, and the duties of those living together. Still, there are cases present which will be illustrated in this paper where these types of living arrangements are said to be valid in society, irrespective of the fact that there are no legally constituted laws which define the rights in a prominent manner. The judiciary acts as a guardian, encouraging these living arrangements and challenging traditional societal views. This article will also be seen as a comparative analysis of other countries' laws regarding the right to be maintained in a live-in relationship with Indian laws.

Keywords: Long-term Relationships, Long-term Partnership, Maintenance, Partnerships, Punishments.

*BBA LLB, THIRD YEAR, BHARATI VIDYAPEETH UNIVERSITY, NEW LAW COLLEGE, PUNE.

INTRODUCTION

There are two types of specific spectrum: 'Social spectrum' – which the society considers in their vicinity & 'Judicial spectrum'- where the legal system is taken into consideration. There are particular laws made by our legislature that are significantly related to various topics, and one of them is long-term relationships, i.e. live-in relationships. For the same reason, societal consideration is taken away, even though prominent laws are made. A live-in relationship, in general terms, means a long-term arrangement where two people live together in a sexually and/or emotionally intimate relationship, but are not married. In legal terms, “A live-in relationship is a long-term arrangement between two unmarried adults who live together, similar to a marriage, but without legal recognition.” The mere concept of a live-in relationship is not defined in India, but several High Courts, as well as our apex court, have held out certain judgments where a live-in relationship has its significance. Supreme Court in the case of D. Velusamy vs D. Patchaiammal¹ held that a live-in relationship can be considered a valid marriage if the couple have lived together for a long time and there is evidence that they have established themselves in society as intimate spouses.

Live-in relationships prior to marriage were once forbidden in India. Within the framework of a traditional union, it is customary for both parties to have particular rights and duties. Since living together is not the same as in India, live-in relationship couples are permitted to have no ramifications under law. The legal rights and obligations that apply to married couples do not apply to live-in relationship couples. They are not entitled to inheritance because they are not regarded as legitimate heirs. They do, however, have some rights, like the ability to live together, the right to maintenance under section 125² of the Code of Criminal Procedure (Section 144 of Bharatiya Nagarik Suraksha Sanhita)³ right to life under Article 21 held by Allahabad High Court, protection under the Domestic Violence Act, 2005, for women under section 2(f)⁴ of the act, property rights, child's custody, etc.

¹ D Velusamy V. D. Patchaiammal AIR 2011 SC 479

² Section 125 in The Code of Criminal Procedure, 1973 - Order for maintenance of wives, children, and parents

³ Section 144 in Bharatiya Nagarik Suraksha Sanhita, 2023 - Order for maintenance of wives, children and parents

⁴ Section 2(f) in Domestic Violence Act, 2005 – “domestic relationship” means a relationship between two persons who live or 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.

RESEARCH AIM AND OBJECTIVE

1. The purpose of this article is to pinpoint the rights and maintenance provided by the legislature which are given to the partners who are entitled to themselves in the vicinity of a live-in relationship.
2. This article also signifies the paramount study of all the prominent landmark judgments and case laws which are constituted from earlier times to the present, where the right to maintenance is provided to couples constituted under live-in relationships.
3. Suggestive empirical research where the ideology of partners in live-in relationships, by the rights available to them in various segments, where the protection is discussed.
4. General views and beliefs of society are also taken into consideration by the means of qualitative data collection.

THE CONTEXT AND THE VALIDITY OF LIVE-IN RELATIONSHIP

Changes in how marriages are perceived worldwide and the extent to which they influence social life are inextricably linked to the rise of live-in partnerships. In India, this shift in perception took a long and difficult process. This is because marriage is an extremely significant social and religious institution in India, and it has been for a long time.

THE VEDIC ERA

In this era, what Manu⁵ affirms albeit early associations existed in the Vedic period and from then on, they were remarkable. As a result, live-in relationships have been around for a long time in India, so the idea of living together before getting married is not new. Hindu scriptures depict and acknowledge premarital relationships, although marriage was the norm in ancient India. The term "live-in relationship" may appear novel, but the concept is not. According to the Vedas, there are eight distinct types of marriage.⁶ Gandharva marriage, one of the eight types of Hindu marriage, has events that are strikingly similar to those in a live-in relationship. A "*Gandharva marriage*" is a type of marriage in which the couple lives together out of love and consent before getting married. They meet on their own and mutually agree to live together. This type of marriage did not require parental consent.

⁵ The Manusmṛti (Sanskrit: मनुस्मृति), also known as the Mānava-Dharmaśāstra or the Laws of Manu, is one of the many legal texts and constitutions among the many Dharmaśāstras of Hinduism

⁶ Brahma, Daiva, Arsha, Prajapatya, Gandharva, Asura, Rakshasa, and Paishacha

THE MODERN ERA

The Privy Council's inception, couples who live together without getting married are presumed to be married. In the case of *Andrahenedige Dinohamy v. Wijetunge Liyanapatabendige Blahamy*,⁷ this fact is demonstrated. "Where a man and a lady are proved to have lived respectively as a spouse, the law will presume, unless the opposite is demonstrated, that they were living respectively in the result of a legitimate marriage, and not in a condition of concubinage,". The Hon'ble High Court in *S. Khushboo v. Kanniammal*,⁸ a couple living together without getting married cannot be considered an offence. "What is the offence when two adult individuals want to live together? Is it a crime in any way? It is not a crime to live together. It can't be an offence," the Chief Justice and two different adjudicators noticed. The court even mentioned the myth that Lord Krishna and Radha had a similar relationship and lived together. In the landmark case *Lata Singh v. State of Uttar Pradesh*,⁹ the court ruled that it is not illegal for two consenting people of the opposite sex to live in the same household without getting married. The Supreme Court of India has made it abundantly clear that the practice of such live-in relationships between couples cannot be considered illegal, despite the fact that there are no laws governing such relationships.

PRE-REQUISITES OF THE RIGHT TO MAINTENANCE

The judiciary has often intervened to protect the well-being of women and children in live-in relationships, especially when the law was unable to do so. There are no laws in India specifically addressing live-in relationships. In 2001, the concept of a live-in relationship was recognised by the Allahabad High Court in the case *Payal Sharma v. Nari Niketan*,¹⁰ judges held that a man and a woman, even without getting married, can live together if they wish. This may be considered immoral by society, but it is not said to be illegal. There is a major difference between law and morality. When talking about women's safety, the concept of live-in relationships was given official legal recognition by the Supreme Court. In the case of *Khushboo v. Kanniammal*, the Supreme Court held that live-in relationships were not illegal, and there is no such law that prohibits live-in relationships or pre-marital sex. It also stated that living together is a right to life as per Article 21 of the Constitution of India.

⁷ *Andrahenedige Dinohamy v. Wijetunge Liyanapatabendige Blahamy* AIR 1927 PC 185

⁸ *S. Khushboo v. Kanniammal* (2010) 5 SCC 600

⁹ *Lata Singh v. the State of U.P*

(2006) 5 SCC 475

¹⁰ *Payal Sharma v. Nari Niketan* AIR 2001 All 254

In the case of *D. Velusamy v. D. Patchaiammal*¹¹, the Supreme Court, while bestowing the difference between live-in relationships and relationships like marriage, laid down the conditions under which the women in a live-in relationship can claim maintenance under Section 125 of the Code of Criminal Procedure, 1973. The conditions required to be followed to be held liable for maintenance are:

- The couple must hold themselves out to society as they are acclaimed to be a spouse.
- They must be of the legal age of majority.
- They must be otherwise qualified to enter into the marriage.
- They must stay together for a considerable period. (How much time is not specified.)
- Society must be under the impression that they are getting married.

In the case of *Ajay Bhardwaj v. Jyotsna and Ors*¹², the Punjab and Haryana High Court has held that the powers under Section 125 CrPC were created to prevent unstable residence and destitution of wives, minor children, or aged parents, and these powers have been extended by judicial interpretation to partners as well. However, in the case of 'LIVE IN RELATIONSHIP' relationships, the nature of the relationship has to be taken into consideration while determining maintenance.

The primary question which arose in the case of *Ajay Bhardwaj v. Jyotsna and Ors* was whether a woman is entitled to maintenance under Section 125 CrPC on account of a live-in relationship, not being a wife, and the same question was answered in the case of *Chanmuniya vs. Virendra Kumar Singh Kushwaha & Ors*,¹³ where the Supreme Court ruled that in situations where the partners live together as husband and wife, there lies a presumption in favour of wedlock, and as a result, the High Court in the case of *Ajay Bhardwaj* held that women in live-in relationships are entitled to maintenance similar to legally married wives.

SECTION 125 OF THE CODE OF CRIMINAL PROCEDURE

Section 125 of the Code of Criminal Procedure (CRPC) deals with maintenance orders for wives, children, and parents. It states that a first-class magistrate can order a person to pay a monthly allowance for the maintenance of their spouses, child, parents, or other family

¹¹ *D Velusamy V. D. Patchaiammal* AIR 2011 SC 479

¹² *Ajay Bhardwaj v. Jyotsna and Ors* 2016 SC

¹³ *Chanmuniya vs. Virendra Kumar Singh Kushwaha & Ors* AIR (2011) 1 SCC 141

members if they neglect or refuse to do so. The Malimath Committee,¹⁴ which was a Committee on Reforms of the Criminal Justice System, the system was appointed by the Home Ministry in November 2000. In its 2003 report, the Committee made a number of recommendations regarding crimes against women.

One suggestion was to change the definition of 'wife'¹⁵ in Section 125 of the Code of Criminal Procedure. The new definition of "wife" includes women who were previously in a live-in relationship but whose partner has now abandoned her at his *will*. As a result, a woman in a live-in relationship can now be considered a wife. It means that if a woman has been living with another person for a reasonable amount of time, she should be able to claim maintenance under Section 125 of the Criminal Procedure Code and have the same rights as a spouse. It was noted that there would be a presumption in favour of being married when partners live together as husband and wife.

In the case of *Chanmuniya v. Virendra Kumar Singh Kushwaha and another*, the aforementioned judgment states in paragraph 42: "We believe that to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125, a broad and expansive interpretation should be given to the term 'wife'," which should include even those situations where a man and a woman have been living together as wife and husband for a long period. Furthermore, strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC. Additionally, we believe that such an interpretation would be a fair application of the Preamble's principles of social justice and upholding the individual's dignity. The obligation to provide maintenance to a wife, minor children, or elderly parents has been enshrined in Section 125 of the Code of Criminal Procedure to prevent destitution and homelessness. Instead of adding a new concept of maintenance for a live-in partner to Section 125 of the CrPC, the Supreme Court of India has expanded the definition of "wife" to include relationships that are not legally married but are still considered to be legitimate. In the case discussed below, the Supreme Court imposed a number of requirements on a live-in couple for them to be treated as a married couple.

¹⁴ The Malimath Committee was established by the Ministry of Home Affairs in 2000, which aimed to reform India's criminal justice system. It presented its recommendations in its report titled the Report of the Committee on Reforms of the Criminal Justice System in 2003. The Committee was headed by Justice V.S

¹⁵ Section 125(1) Explanation (b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married"

SECTION 2(F) OF THE DOMESTIC VIOLENCE ACT, 2005

Although the Protection of Women from Domestic Violence Act, 2005,¹⁶ Section 2(f),¹⁷ is moderately concerned with the concept of a live-in relationship and states that a live-in relationship falls within the ambit of a domestic relationship, the Indian legal mechanism certainly lacks separate legislation regarding a live-in relationship. Women in live-in relationships are safeguarded by the Act of 2005 in Section 2 (q).¹⁸

Under the Protection of Women from Domestic Violence Act of 2005, Indian laws also protect women in live-in relationships in addition to married women. The Indian judiciary has developed jurisprudence over the years through the aforementioned judgments, despite the fact that there are no specific laws governing the legal status of a live-in relationship in India. The introduction of a number of rights for a woman in a live-in relationship has been aided by different judgments. The right to protection from domestic violence is the most significant. In the case, *Indra Sarma v V.K.V. Sarma* 2013 Supreme Court¹⁹ explained the live-in relationship in the following categories in its recent judgments.

- a) A domestic relationship between an adult male and female.
- b) A domestic relationship between a married man and an adult unmarried woman entered knowingly.
- c) A deliberate domestic relationship between an unmarried adult man and a married woman. In this case, you may be convicted of adultery under the Indian Penal Code.
- d) Family relationships between same-sex partners (gay or lesbian) are entitled to the same rights to alimony as a legal wife.

The court said the expression "relationship like marriage" under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, provides guidelines for such relationships.

¹⁶ The Protection of Women from Domestic Violence Act 2005 is an Act of the Parliament of India enacted to protect women from domestic violence. The law came into force on 26 October 2006

¹⁷ Section 2(f) of the Domestic Violence Act, 2005 states that "domestic relationship" means a relationship between two persons who live or have, at any point in 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

¹⁸ Section 2(q) in The Protection of Women from Domestic Violence Act, 2005 "(q) respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act"

¹⁹ *Indra Sarma V.V.K.V. Sarma* (2013) 15 SCC 755

In the *D. Velusamy vs. D. Patchaiammal* case, the Supreme Court laid down certain criteria to define whether a relationship between two unmarried adults qualifies as a 'Relationship like marriage' and is within the provisions of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005.

PALIMONY AND THE RIGHT TO MAINTENANCE IN LIVE-IN RELATIONSHIPS

In *Marvin v. California*, the term 'Palimony'²⁰ was first used by the Supreme Court. In 1976, Marvin Palimony was the financial support given to a woman who had been living with a man for a long time without marrying him and was then left by him.

In *Chanmuniya v. Virendra Kumar Singh Kushwaha* and *D. Velusamy v. D. Patchaiammal*, the Indian courts first discussed the concept of "Palimony." Section 25 of the Hindu Marriage Act,²¹ Section 125 of the Criminal Procedure Code, the Domestic Violence Act of 2005, and Section 37 of the Special Marriage Act 1954²² all contain provisions about the maintenance of married women. Be that as it may, there is no particular regulation connected with Palimony in India.

The Malimath Committee, which was a Committee on Reforms of the Criminal Justice System, was appointed by the Home Ministry in November 2000. In its 2003 report, the Committee made a number of recommendations regarding crimes against women. One suggestion was to change the definition of "wife" in Section 125 of the Code of Criminal Procedure. The new definition of "wife" includes women who were previously in a live-in relationship but whose partner has now abandoned her at his will. As a result, a woman in a live-in relationship can now be considered a wife.

It means that if a woman has been living with another person for a reasonable amount of time, she should be able to claim maintenance under Section 125 of the Criminal Procedure Code and have the same rights as a spouse. It was noted that there would be a presumption in favour of being married when partners live together as husband and wife. However, since the Section covers women who are legally married, many people have opposed the same. According to a report published in the *Jus Corpus Law Journal*, a woman can file a claim for compensation

²⁰ Palimony is the division of financial assets and real property on the termination of a personal live-in relationship wherein the parties are not legally married

²¹ Section 25 in The Hindu Marriage Act, 1956, "Permanent alimony and maintenance."

²² Section 37 of the Special Marriage Act of 1954, "Permanent alimony and maintenance."

under Section 20(3)²³ of the Protection of Domestic Violence Act 2005 if she can demonstrate that her live-in relationship was domestic and resembled a marriage.

DESCRIBING LANDMARK JUDGMENTS RELATED TO THE RIGHT TO MAINTENANCE

Lalita Toppo vs. State of Jharkhand & Anr:²⁴ This case had a significant impact on the definition of live-in relationships in India. According to the Protection of Women from Domestic Violence Act of 2005, a woman in a live-in relationship for a significant amount of time is entitled to claim maintenance under the recent judgment in the Lalita Toppo case. Women in live-in relationships were given legal protection and financial assistance as a result of this decision, which acknowledged their rights. Aside from this, there are certain decisions conveyed by the High Courts that permit the option to acquire properties in the event of live-in relationships. The scope of property rights for partners in live-in relationships has been expanded by these rulings, ensuring some level of financial stability.

Ajay Bhardwaj vs. Jyotsna & Ors (2016):²⁵ The Punjab and Haryana High Court ruled that the jurisdictions of Section 125 of the CrPC were established to prevent any unsettled residence and poverty of a wife, minor children, or elderly parents. However, the nature of a live-in relationship must be taken into consideration when determining maintenance. In this case, the primary question was whether a woman who is not a wife and lives with another person is entitled to maintenance under Section 125 of the Criminal Procedure Code.

Chanmuniya vs Virendra Kumar Singh Kushwaha & Ors (2010):²⁶ In this case, the Supreme Court ruled that there is a presumption in favour of wedlock when partners live together as husband and wife. As a result, the High Court in the Ajay Bhardwaj case ruled that women in live-in relationships are entitled to maintenance in the same way that wives who are legally married are entitled to maintenance.

²³ Section 20(3) in The Domestic Violence Act, 2005 “The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require

²⁴ Lalita Toppo vs. State of Jharkhand & Anr. AIR 2018 SC

²⁵ Ajay Bhardwaj v. Jyotsna and Ors 2016 SC

²⁶ Chanmuniya versus Virendra Kumar Singh Kushwaha and another (2011) 1 SCC, 14

COMPARATIVE STUDY OF LIVE-IN RELATIONSHIPS BETWEEN INDIA AND DIFFERENT COUNTRIES

There are several countries where this right to maintenance is a significant right given to couples living in this arrangement of live-in relationship. The best course of action for India is to follow these nations' lead and enact laws to protect partners who live together without getting married. Among these nations are:

Philippines: Under Chapter 4 Conjugal Partnership of Gains, Article 147 of the Family Code, the rules on equal co-ownership govern property relations in the Philippines, where live-in relationships are recognised. In the Philippines, a man and a woman who are eligible to wed live solely together, just like a husband and wife, but without the advantages of marriage (or when the marriage is null and void). In such a scenario, the equal co-ownership rule applies to all assets owned by both spouses as a result of their employment, including their wages and salaries. As a result, the Philippines' law regarding maintenance is crystal clear.

United States of America: The concept of palimony, or caretaking for women in live-in relationships, is changing in the United States. In *D. Vs. Velusamy D. Patchaiammal*, the Supreme Court inspected the pattern of attempting to apply or notice, assuming that the idea of palimony, which emerges out of the known instance of *Marvin v. Marvin* from the California Supreme Court, can also be used in India.

CONCLUSION

To conclude the article constituting about the live- in a relationship – the ideology of partners living together in a condition while cohabiting, which is not equivalent to marriage is a concept that is beyond any parts and parcel at present as it is not codified under any laws and is not punishable in any instances unless and until certain traditions are hampered which are sanctionable in their laws. The point to be noted is that there should be laws made under the legislation for providing maintenance for women as well as men in cases where the other party has caused any inconvenience to the other. The right to maintenance should be recognised as a right for the aggrieved party, as it is a fundamental right that every person should have.