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LEGAL VULNERABILITIES IN LIVE-IN-RELATIONSHIPS: MAINTENANCE RIGHTS AND PROTECTION OF WOMEN

~Shayantika Dey Tarafder

ABSTRACT

The idea of cohabitation which involves the idea of men and women interacting has significantly changed in post – modern era. “Live in relationships” have become quite apparent in Indian Society, yet they have no specific statutory framework which deals with such relationship, they are left legally unsettled. This uncertainty has most acutely affected women particularly in relation to maintenance and protection from abuse. This paper examines how courts in their limited capacity, have attempted to address these concerns by interpreting existing laws, especially through the concept of a “relationship in nature of marriage”¹. The study analyses judicial approaches to maintenance claims, the application of protective remedies under domestic violence law. The argument is that even though courts have provided us some great safeguards, the inconsistent standards and discretionary outcomes still continue to erode legal certainty. The article concludes by stating that judicial interference alone cannot suffice the matter² and points out that clearer legislative guidance is indispensably needed for effective and uniform protection.

Keywords- Cohabitation, Protection, Maintenance, Live-in-relationship

INTRODUCTION

A live-in relationship refers to an arrangement where a couple chooses to live together or cohabit without formally registering their partnership as a marriage.³ Cohabitation refers to an arrangement of intimate relationship in which two people apart from living together also shares

¹ Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

² Law Commission of India, 205th Report on Proposal to Amend Section 125 of the Code of Criminal Procedure, 1973 (2008).

³ Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

domestic life and shared household responsibilities which in turn resembles marriage without formally getting married. Although most of the countries had accepted such kind of arrangement⁴ but in India it has still been socially unacceptable to some extent though have gradually emerged as visible form of intimate partnership mainly in urban areas. The institution of marriage was only established after the civilisation in order to prevent confusion and conflict among human beings therefore legalised to gain social approval⁵.

However, the Indian “concept of marriage” being considered as a “sacrament”⁶ and not just contract it has more stringent social rules and norms. While the recent trends of partnership have questioned the social norms but the Supreme Court reiterated that it is a part of right to life (fundamental right) to live with each other if they are in love⁷. However, the society evolved but the law has not progressed with the ever-changing society. Hence Indian statutes neither expressly recognize nor prohibit live-in-relationship⁸ leaving it in a rather grey zone resulting in various critical legal questions unresolved.

LITERATURE REVIEW

The emergence of cohabitation as an alternative form of intimate partnership have been observed as a challenge to traditional legal framework which primarily recognises marriage as the foundation of family rights and obligation. Therefore, in India, the legal status of live-in relationship has been the subject of increasing academic and judicial attention. The literature suggested that although after a number of attempts by the court to bridge the legislative vacuum through progressive interpretation but significant gaps continue to exist in the protection afforded to women in such relationships.

Cautious evolution is unfolded through scholarly discussions and judicial precedents on live-in relationships in India. Privy council cases such as *A.Dinohamy v. w.L. Blahamy*, recognised presumptions of marriage founded on prolonged cohabitation. Prior research demonstrates the constitutional dimensions of live-in relationships, i.e., consensual cohabitation between adults falls within the ambit of personal liberty and privacy guaranteed under Article 21 of the Constitution of India. Judicial pronouncements such as *Lata Singh v. State of U.P.* and *Indra*

⁴ Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, 22d ed. 2021).

⁵ Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, 22d ed. 2021).

⁶ Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, 22d ed. 2021).

⁷ INDIA CONST. art. 21.

⁸ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

Sarma v. V.K.V. Sarma, acknowledged personal liberty of adults to choose their partners and cohabit without legal sanction.

Judiciary developed another body of literature which evaluates the concept of a “relationship in the nature of marriage”. It was noted that there was existence of inconsistent interpretation by the court because of the absence of a statutory definition. The principle emphasized in *D. Velusamy v. D. Patchiamal* criticised for being restrictive and for imposing a rigorous evidentiary burden on women seeking relief.

The social justice objective provisioned in Section 125 of the Criminal Procedure Code (now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been highlighted by the research concerning maintenance rights. Despite the welfare purpose of maintenance laws, the maintenance to women who have cohabited in long term relationships is denied. Therefore, scholars argue that it defeats the very purpose of the law as well as perpetuates economic vulnerability. The progressive inclusion of women in relationships resembling marriage is acknowledged by the studies on the Protection of Women from Domestic Violence Act, 2005 but on the other hand, pointed out practical difficulties in proving the existence of such relationships.

The existing literature highlights the lack of comprehensive legislation which continue to create uncertainty despite judicial innovations on protection to women in live-in relationship. It is noted that reliance on discretionary interpretation led to uncertainty and uneven application. Many scholars argue that a dedicated statute is a necessity for uniform standards on maintenance, property rights and child legitimacy.

Therefore, existing literature predominantly emphasized a tension between progressive judicial interpretation and the need for legislative clarity to better protect vulnerable partners, especially women.

PROBLEM STATEMENT

In contemporary urban society, live-in relationships have become increasingly prevalent especially among urban youth seeking to explore compatibility before formal marriage. This created a legal challenge and Indian law has struggled to keep pace with this social shift due to absence of a comprehensive statutory framework governing such relationships. However, efforts are made by courts to recognize certain rights of partners in long- term cohabitation arrangements through judicial pronouncements but it remains a grey area without dedicated

legislation defining rights and responsibilities of partners unlike marriage which enjoys clear statutory recognition and associated rights.

A legal vacuum is created because of the significant vulnerabilities, mainly for women, upon the breakdown of a live-in relationship, as difficulties are faced by them relating to claiming maintenance, residence rights, and protection from domestic violence. The criteria for determining the existence of relationship which was in “in nature of marriage” lacks uniformity and upon which is contingent to prove to enjoy such rights. Therefore, proving this kind of relationship depends entirely on facts, evidence of long-term cohabitation and societal perception. Hence such situation not only gives rise to inconsistent judicial outcomes but also imposed a heavy burden of proof on women seeking relief which thereby obstructs access to justice.

The central problem addressed by this research is whether the judicial interpretation which forms the primary current legal framework provides adequate protection to women in live-in relationship as well as whether legislative reform is essential to ensure certainty, uniformity and effective enforcement of rights.

RESEARCH OBJECTIVE

The primary aim of this study is to critically examine the legal position of live-in relationships in India, with special focus on maintenance rights and safeguards for women against domestic violence. Specific objectives include:

1. To analyse the legal status and judicial recognition of live-in relationships in India.
2. To examine the evolution of the concept of a "relationship in the nature of marriage" through judicial decisions.
3. To evaluate the extent of maintenance rights available to women in live-in relationships under existing laws.
4. To assess the effectiveness of the Protection of Women from Domestic Violence Act, 2005, in safeguarding women in live-in relationships.
5. To identify the legal limitations, ambiguities, and practical challenges associated with obtaining relief in such relationships.
6. To examine the impact of the absence of a specific statutory framework governing live-in relationships.
7. To suggest legal and policy reforms for ensuring greater protection, legal certainty, and gender justice.

RESEARCH METHODOLOGY

The research adopts a doctrinal legal research approach, driven by analytical and critical methods. Primary sources comprise relevant statutes such as the Protection of women from Domestic Violence Act, 2005, provisions relating to maintenance under criminal procedure laws and Hindu personal laws on succession and maintenance. Key judicial pronouncements from the Supreme Court and High Court have been examined in detail to trace the evolution of legal principles.

Secondary source includes legal commentaries, journal articles and reports on family law reforms. The study involves qualitative analysis of case law to identify patterns, inconsistencies and emerging trends in judicial reasoning. The focus remained on doctrinal interpretation and normative suggestions for reform instead of empirical fieldwork. Cases were selected based on their landmark status and relevance to maintenance and domestic violence issues in live-in contexts. While acknowledging the socio-legal dimensions of the subject, the study aims for objective.

FAVOURABLE POSITION OF LIVE-IN-RELATIONSHIP

Marriage is perceived as a licence for a man and woman to involve in a romantic and sexual relationship mainly to procreate for the survival of the human race⁹. The social institutions of kinship, inheritance, lineage to be carried forward is part of social obligation of marriage. Apart from this, married couples have various other societal and marital obligation and duties to be performed and fulfilled. However, in Live-in-relationship, no such obligations or duties are expected to be performed. Therefore, young couples are more fascinated and tending towards live-in-relationship before marrying each other to check their compatibility with each other. In case it doesn't work out, they may move out of such relationship easily unlike dissolution of marriage i.e. divorce which is perhaps a protracted form of legal proceeding.

JUDICIAL RECOGNITION OF LIVE -IN-RELATIONSHIP

In the era of westernisation, there has been a significant shift in cultural practices, beliefs and social policies. People especially the youth is trying to adapt the Western culture in many cases. However, in India, there is no statute or law regulating or defining "live-in-relationship". The "Supreme Court of India" has extended protection to the young couples as has been held in many decisions that if two major persons (man and woman) live together for a long period and

⁹ Paras Diwan, Modern Hindu Law (Allahabad Law Agency, 22d ed. 2021).

procreate, courts will assume they are married. Therefore, their relationship and they themselves will be subjected to same laws as are applicable to Indian Marriages. The courts through interpretation of existing statutes have explained that consensual cohabitation between adults falls within the ambit of personal liberty under the Article 21 of Constitution of India.

In the case of *A. Dinohamy v. W.L. Blahamy*,¹⁰ the “Privy Council” held that upon being proved that two major persons are living together for a long period of time, it is a presumption of the law unless the contrary is proved beyond doubt that they were residing together in consequence of a valid legal marriage, and not in a state of concubinage. In *Lata Singh v. State of U.P.*,¹¹ the court observed that even though the concept of a “live-in relationship” is considered immoral in society’s eyes, consenting adults of the opposite sex is not illegal in the eye of the law. In the case of *Badri Prasad vs Dy. Director of Consolidation*¹² Supreme Court held that few would be successful if a man and woman who are legally married and live as husband and wife had to demonstrate through eyewitness testimony that they were legally married fifty years back. Where the couples have cohabited for a considerable period as husband and wife, then there is a strong presumption in favour of marriage. Although the presumption can be rebutted, the burden of proof is on that person who wants to deprive the legal foundation of such a relationship.

In a landmark case of *Indra Sarma v. VKV, Sarma*¹³ Supreme Court held that if both parties are unmarried and enter into a “live-in relationship” and several types of implications were examined, it does not fall under any offences.

In 2001, the Supreme Court clearly stated in the case *Payal Sharma vs. Superintendent Nari Niketan, Agra*.¹⁴ that being a major, a man and a woman can live together, even without getting married, if they wish. According to the law, living together without getting married is not considered illegal, but society may consider it immoral. Patel and others’ Case The Supreme Court held that two adults living together without getting married. legally are not criminal offenders. The Indian Parliament also never passed any legislation that declares a live-in relationship as illegal or unlawful. The same rule was upheld in the case of *Tulsa vs. Durghatiya*¹⁵, where longterm cohabitation was considered equivalent to marriage.

¹⁰ A. Dinohamy v. W.L. Blahamy, AIR 1927 PC 185 (Privy Council).

¹¹ Lata Singh v. State of Uttar Pradesh, (2006) 5 SCC 475.

¹² Badri Prasad v. Dy. Director of Consolidation, (1978) 3 SCC 527.

¹³ Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

¹⁴ Payal Sharma v. Superintendent, Nari Niketan, AIR 2001 All 254.

¹⁵ Tulsa v. Durghatiya, (2008) 4 SCC 520.

After 2010, the Supreme Court and the High Court, in various judgments, laid down guidelines for the validity of live-in relationships. *Khushboo vs. Kanniammal and Anrup*¹⁶ held the verdict of *Lata Singh vs the State of UP*. that a "Live-in relationship between consenting adults of heterogenic sex does not amount to any offence even though it may be seen as immoral". Although our society's consensus is that sexual contact between unmarried partners is immoral, according to the law, sexual relationships between unmarried couples are not a statutory offence. Supreme Court added that article 21, right to life, includes the right to live with the partner of their choice, guaranteed to all people.

This recognition distinguished law from morals as well as marked a substantial shift signalling morality is not always the guide to legality. However judicial acceptance of live-in-relationship has not vanquished the necessity of comprehensive legal rights, particularly in matters of maintenance, protection of women.

To address this gap, courts have developed the concept of a “relationship in the nature of marriage,” which acts as a threshold for granting legal remedies.

TEST TO RECOGNIZE “LIVE-IN-RELATIONSHIP IN THE NATURE OF MARRIAGE”

In the case of **D. Velusamy and D. Patchaimal**¹⁷ the apex Court established specific guidelines for recognising the nature of marriage in relation to “live-in relationships.”

1. The couple must be seen in society as akin to spouses.
2. They must be of legal marriageable age.
3. They must be qualified to enter legal marriage, which includes being unmarried.
4. They must have voluntarily cohabited and been seen by the world as akin to spouses for a significant period.

This judicially created standard attempts to differentiate casual relationships from stable domestic partnerships resembling marriage, but its application remains inconsistent and fact-specific.

¹⁶ S. Khushboo v. Kanniammal, (2010) 5 SCC 600.

¹⁷ D. Velusamy v. D. Patchaimmal, (2010) 10 SCC 469.

MAINTENANCE RIGHTS IN LIVE-IN-RELATIONSHIP

Right of Maintenance while being the paramount for ensuring the well – being and welfare of dependents (i.e. wives, children) has been one of the most contested issues arising from live-in-relationship. Although Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023¹⁸ (previously Section 125 of CrPC, 1973¹⁹) provides quick and effective remedy to prevent destitution of wives, children and parents but traditionally, this provision applied only to legally wedded wives. In the case of *Chanmuniya V. Virendra Kumar Singh Kushwaha & Anr* (2011)²⁰ the Supreme Court observed that denying maintenance to women who have lived with a man for a significant period for would defeat the object of Section 125 CrPC which is social justice as well as stated that section 125 of CrPC must be read with section 26 of PWDVA, 2005²¹, i.e. Women in "live-in relationships" are legally entitled to all the reliefs provided to lawfully wedded wives.

While these judgments represent progress, they also impose a high evidentiary burden on women. Courts may often reject maintenance claims if the relationship does not meet specific judicial criteria²². This puts women in a difficult situation to prove not just that the relationship exists, but also that it is similar to marriage. Consequently, maintenance is still a discretionary remedy instead of a guaranteed right²³.

PROTECTION OF WOMEN UNDER THE DOMESTIC VIOLENCE ACT

The Protection of Women from Domestic Violence Act, 2005 (PWDVA)²⁴ being a welfare legislation provides a broad interpretation which marks a significant legal development in safeguarding women in live -in-relationship.

In *Indra Sarma v. V.K.V. Sarma* (2013),²⁵ the Supreme Court acknowledged that women in live-in relationships are entitled to protection against domestic violence, emotional abuse, and economic deprivation²⁶. However, the court shall grant protection only if the live-in-relationship falls within the “relationship in nature of marriage”. This nuanced approach while intended to prevent misuse, has led to inconsistent outcomes of many women continue to be

¹⁸ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 144 (India).

¹⁹ Code of Criminal Procedure, No. 2 of 1974, § 125 (India).

²⁰ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

²¹ Protection of Women from Domestic Violence Act, No. 43 of 2005, § 26 (India).

²² *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

²³ *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188.

²⁴ Protection of Women from Domestic Violence Act, No. 43 of 2005, § 2(f) (India).

²⁵ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

²⁶ *Lalita Toppo v. State of Jharkhand*, (2019) 13 SCC 796.

denied protection due to narrow judicial interpretation. Regardless of these limitations, the PWDVA remains the most effective legal tool offering remedies such as protection orders, residence rights, and monetary relief²⁷.

LEGAL LIMITATION AND CHALLENGES

Although judicial efforts to extend protection to individuals especially women in live-in relationships, several legal limitations continue to undermine the effectiveness of such recognition.

- **No Statutory Framework** – Live-in relationships lack explicit legislative recognition, creating uncertainty in rights and obligations²⁸.
- **Inconsistent Judicial Interpretation** – Courts apply varying standards to determine a “relationship in the nature of marriage,” leading to unpredictable outcomes²⁹.
- **High Evidentiary Burden** – Women must prove duration, stability, and public recognition of the relationship, making relief difficult after separation³⁰.
- **Social Stigma and Enforcement Gaps** – Moral bias and lack of institutional sensitivity often weaken practical access to legal remedies³¹.

ROAD AHEAD TO LEGAL REFORM

Meaningful reform requires a clear statutory framework recognising live-in relationships and defining the rights and obligations of partners without equating them entirely with marriage³². Maintenance laws should be amended to expressly include long-term live-in partners to prevent economic vulnerability, particularly of women³³. The Domestic Violence Act must be applied uniformly with clearer guidelines to avoid inconsistent interpretations³⁴. Children born from such relationships should be granted unconditional legitimacy and equal inheritance rights through necessary amendments to succession laws³⁵. Alongside legislative reform, judicial

²⁷ Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 17–23 (India).

²⁸ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

²⁹ *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

³⁰ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

³¹ Flavia Agnes, *Family Law: Family Violence and Constitutional Claims*, 3 NUJS L. Rev. 1 (2010).

³² Law Commission of India, 205th Report on Proposal to Amend Section 125 of the Code of Criminal Procedure, 1973 (2008).

³³ *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188.

³⁴ Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 17–23 (India).

³⁵ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483.

sensitisation³⁶ and public awareness are essential to ensure a rights-based and non-discriminatory approach in practice.

CONCLUSION

Live-in relationships in India reflect changing social realities, yet the legal framework governing them remains fragmented and uncertain. While the judiciary has made significant strides in recognising maintenance rights³⁷, protecting women from abuse these protections rely heavily on interpretation³⁸ rather than clear statutory mandate. This creates inconsistency and leaves vulnerable individuals dependent on case-specific outcomes. A balanced legislative response is therefore necessary to ensure clarity, fairness, and uniform application of rights. Recognising live-in relationships within a structured legal framework would not undermine marriage³⁹ but would strengthen constitutional values⁴⁰ of dignity, equality, and social justice⁴¹.

³⁶ Law Commission of India, 205th Report on Proposal to Amend Section 125 of the Code of Criminal Procedure, 1973 (2008).

³⁷ Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.

³⁸ D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469.

³⁹ Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368.

⁴⁰ INDIA CONST. art. 21.

⁴¹ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.