

● DOMESTIC VIOLENCE IN LIVE-IN RELATIONSHIP : A JUDICIAL DISCOURSE



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Abstract

Live-in relationship is relatively a new phenomenon for the Indian society. There has been an on-going debate on live-in relationship as the concept strikes the very spirit so called societal morality in India. The Indian judiciary has always interpreted the law in the favor of Live-in relationship therefore it becomes vital to protect the partners in case of any kind of violence witnessed in such relationships. Although Domestic violence is very widespread, but has mostly gone unnoticed by the general population. The Act seeks to reduce domestic abuse offences involving women who are legally married or who are in relationships that resemble marriage, such as live-in relationships. The work aims to mainly focus on the various aspects of live-in relationship with a special reference to Domestic violence in live-in relationship in India.

Keywords: *Live-in relationship, Domestic violence, Cohabitation, Marriage.*

1. Introduction

Cohabitation or Live-in relationship is a setup in which two consenting individuals comprising of male and female decides to live together without tying the knot of marriage. Such kind of relationship are getting more and more prevalent in the society as the young generations finds such relationship to be much suitable to their living conditions. The fact that such relationship are increasing in number but still such relationship is not governed by any specific law in India.

The concept of live-in relationship does not have a specific law in India and there is no specific statute related to it. The rights and responsibilities of parties in a live-in relationship as well as the legal liability of any children they may have are not defined by any laws. The legality of these kinds of relationships is also unknown because there is no statutory definition of a live-in relationship. Under Indian law, no rights or obligations are conferred upon the participants to a live-in relationship. However, the court has thrown some light on the idea of a live-in relationship in a number of rulings. Despite the fact that the law is still unclear on the legal standing of these relationships, some rights have been established by interpreting and amending the current legislation to forbid the improper use of these ties.

2. Live-in Relationship and Law in India

Live-in relationship has occupied a legal position in many Indian laws by judicial interpretation granting legal status to live-in relationship. As in *Khushboo v.*

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Kanniammal,¹ it was stated in this case that live-in relationships come under the purview of the Right to life guaranteed under Article 21² of the Indian Constitution, making it legally valid. The Hon'ble Supreme Court in numerous cases has given decisions in the favour of Live-in relationship. The judiciary neither supports nor denies live-in relationship it just wants to create balance and justice in the society. The Indian court has largely focused on legitimizing live-in relationship. The government in the year 2008 in Maharashtra made an attempt to rearrange Section 125 of the Criminal Procedure Code to widen the scope of definition of the term "wife" in order to include a female who has been living with a male "like his wife" for a term for reasonably long period as defined in the section. This attempt was followed by the recommendations of the Malimath Committee in 2003 to widen up the scope of the word "wife" There have been instances in which the court have tried to interpret the definition of wife in view of the recommendations given by Malimath committee.³

The legislation like Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as PWDV Act, 2005), which is considered to be the first piece of legislation that, in having covered relations "in the nature of marriage", has provided a legal recognition to relations outside marriage.

A woman who experiences cruelty or harassment from her husband or his relatives can only file a complaint under section 498A of the Indian Penal Code, which clearly does not cover all forms of violence against women that take place inside the four walls of the home. Before the PWDV ACT of 2005, there was no law that could address all forms of violence against women. The other key phrase that has been recognised in this Act is a live-in relationship, which was previously not recognised by Indian law. Since the PWDV ACT 2005 was put into effect in India, there is little doubt that living together has gained legal protection. Relationships that have the same legal status as marriage, such as live-in relationships, have also been legalised under various personal laws like the Hindu Marriage Act. Referring to the pertinent definitions of the PWDV ACT 2005, where the term "live-in relationship" received legal sanction, is crucial for a clearer understanding of the term and its legitimacy in India.

3. Live-in relationship and Domestic Violence in India

In the PWDV Act of 2005, the legislature acknowledged live-in relationships for the first time by granting rights and protection to females who are not legally married but are instead residing with a male person in a relationship that is in line with marriage, also similar to being a wife but not the same as being a wife.

The PWDV Act, 2005 defines "Domestic relationship".⁴ The Act does not clearly define a live-in relationship; the courts are free to interpret it. In light of the aforementioned clause, the court gave the word "relationship in the kind of marriage" an interpretation. The Domestic Violence Act of 2005's restrictions currently applies to those who are in

¹AIR 2010 SC 3196

²Constitution of India, 1950; Article 21: "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

³www.lawyersclubindia.com/articles/live-in-relationship-and-protection-of-women-from-domestic-violence-act-2005-7565. (Last visited on 5-01-2021).

⁴Section 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."



live-in relationships. Since "nature of marriage" and "live-in relationship" have a history and definition, courts presume that live-in relationships are encompassed by the term. This gives women some important safeguards against illegitimate marriage, bigamy, and similar live-in relationships.

Women who are in "relationships in the nature of marriage" are given protection under Section 2(f)⁵ of the PWDV Act, 2005, but all live-in relationships do not fall under this definition. A live-in partner could be bigamous, adulterous, or involved with a minor. These relationships are unlawful, and the persons engaged will face consequences in court. The law is also silent about same-sex relationships. Although they are not exhaustive, the Supreme Court has established certain parameters for determining whether a live-in relationship may be considered to be "a partnership in the nature of marriage" for heterosexual adults.

The key determining factors are: a substantial length of time of relationship, to be determined subjectively; partners should have lived together as a shared household, as defined in Section 2(s)⁶ of the PWDV Act, 2005 (simply dating for one night or spending weekends together is not sufficient); there must be some kind of financial pooling and domestic arrangements; and having a reasonable length of relationship. The nature of the relationship is primarily determined by the parties' shared intentions regarding what their relationship is to be and involve, as well as their respective roles and responsibilities. Common intentions include having children and sharing the responsibility for raising and supporting them, portraying themselves publicly as husband and wife, and socialising with friends, relatives, and others as though they are husband and wife.

According to the PWDV Act of 2005, women in relationships that have the characteristics of marriage are entitled to protection and maintenance. However, couples that do not pass the aforementioned standard are not eligible to apply for protection under the PWDV Act. Pre-nuptial agreements, cohabitation agreements, or any other legal instrument describing the roles and obligations of each partner before moving in together would be a smart choice in these situations to protect the parties' interests in the event of a relationship collapse. Pre-nuptial agreements are not common in India due to the lack of societal acceptability of them. People believe it to be a factor that encourages breakups or marriage dissolution.

Pre-nuptial agreements are not recognised by Indian law because it views marriage as a sacrament rather than a contract. Additionally, the legal status of pre-nuptial agreements is unclear, making it a murky area of the law. The term "Palimony" refers to a financial settlement that a court orders for partners in live-in relationships in the US. The phrases "pal" and "alimony" were combined by the California Supreme Court in *Marvin v.*

⁵*Ibid*

⁶"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

Marvin in 1977⁷ to create the term "palimony,"⁸ which is a colloquial term rather than a formal legal term. In 2011, the Supreme Court of India also said that India should develop the idea of palimony in light of shifting social mores (*D. Veluswamy v. D Patchaiammal*).⁹

Another issue that requires clarification is rape in live-in relationships. The Supreme Court stated in *Shivashanka Shiva v. State of Karnataka & Another*¹⁰ that long-term sexual activity in a relationship cannot be characterised as rape, particularly in light of the complainant's own claim that they cohabited as husband and wife. This does not, however, imply that men who live with their female partner have unrestricted access to her because the defence of presumed matrimonial consent to cohabit is only available to legally married husbands and not to live-in partners who would have to ask permission each time they wanted to have a sexual relationship. As a result, if a woman has a sexual relationship with a man without her consent, she may accuse him of rape.

The word 'violence' refers to act which causes harm to another, which can be either physical or mental. The women are considered to be a subject of violence whether being in a husband wife relationship or even in live-in relationship. The courts have also included live-in partners under the purview of PWDV Act, 2005. Now the fact that such relationships are morally correct or not does not matter as judiciary in its various decisions have accepted and given relief to the aggrieved party in case of any dispute arising due to violence in such relationship.

Immorality and illegality are distinct. People may believe that live-in relationships are immoral, but that is their opinion, and it cannot be permitted to sway another person's choice. Moral policing is not acceptable, especially when the arrangement has the support of the fundamental rights touchstone. Although millennials prefer to enjoy relationships while they last rather than clutch to their relationship's relics, it's crucial to realise that healthy relationships take work. They require two people who genuinely want to be together as well as patience and time. Love, trust, and respect for one another are the three most crucial components of any relationship. Regardless of the social acceptance of marriage, the presence of these makes any partnership happy.

4. Judicial Response

"With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today."

- Honourable Justice A.K. Ganguly in *Revanasiddappa v. Mallikarjun*¹¹

The Indian judiciary has taken the initiative to close the gap left by the lack of a live-in relationship-specific statute. Although it might be viewed as immoral by society, it is not at all "criminal" in the eyes of the law. The Indian judicial system seeks to provide justice to those involved in live-in relationships who, up until this point, had no legal protection against abuse resulting from such relationships. The judiciary neither explicitly

⁷<http://online.ceb.com/calcases/C3/18C3d660.htm> (Last visited on 16-11-2022)

<https://www.lawyersclubindia.com/articles/live-in-relationship-and-protection-of-women-from-domestic-violence-act-2005-7565>. (Last visited on 16-11-2022)

⁸<https://dictionary.cambridge.org/dictionary/english/palimony>

⁹AIR2011SC479

¹⁰[Criminal Appeal Number 504 of 2018, disposed of on 6th April, 2018]

¹¹(2011) 11 SCC 1



supports nor forbids these kinds of relationships. However, it only cares that there won't be any injustices committed. Consequently, the judiciary has considered several issues while making decisions in various situations, including both societal norms and constitutional.

Under the PWDV Act, 2005, a relationship like marriage must agree to a few fundamental requirements. It stipulates that the pair must be of legal age to get hitched or must meet the requirements for a valid marriage. The couple had to have lived together voluntarily and pretended to be wives for a sizable amount of time, it was further revealed. There shouldn't be any exceptions to the PWDV Act of 2005 for all types of live-in relationships. A one-night stand or a weeklong connection cannot be considered to be a household partnership. It further stated that a connection in the form of marriage would not be accepted if a man has a "keep" that he financially supports and uses primarily for sexual purposes or possibly as a slave.¹²

The Supreme Court emphasised the importance of expanding Section 2(f) of PWDV Act, 2005's definition of "domestic relationships," to cover impoverished, illiterate people who are in illegal relationships as well as their offspring who are born into such relationships and have no other means of support. In addition, the Supreme Court asked Parliament to pass new legislation in accordance with certain directives it provided in order to safeguard the victims from any societal harm brought on by such interactions. The Supreme Court¹³ has also laid down the conditions for live-in relationships to be considered as relationships in the "nature of marriage" to be given benefits under the legal provisions.

5. Conclusion

A person is said to be in a live-in-relationship if they cohabit, i.e. share a house with their partner without married to him or her. It is considered a domestic relationship between an unmarried adult woman and an unmarried adult male who live or, at any point of time lived together in a shared household.¹⁴ Live-in partnerships are only legally accepted as lawful if they have the "nature of marriage," or at least some of the key elements of a marriage, even though they are not legally recognised as such. When making decisions about live-in partnerships, the courts consider marriages to see if the relationship meets the criteria for a typical marriage.

Indian women must be shielded from domestic violence. Despite the fact that women are treated equally with men in India and despite the country's advancements, violence against women and girls remains one of the factors holding it back. It has a harmful effect on kids, and sometimes domestic abuse spreads beyond husband and wife relationships, involving kids as well. They are typically severely beaten by the father. Men think they have sole authority over women, and they believe they can act however they like even if it means endangering the lives of women. Burns from cigarettes can be observed on the body, as well as red swelling around the face and occasionally head trauma. Violence continues because proper regulations and legislation have not yet been established. Women never want to oppose their husbands or partners, so they are unable to even stand up to these individuals. In case of live-in relationship especially the women due to the fear of society would not complain of violence as she is already in the

¹²D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469: AIR 2011 SC 479.

¹³Revanasiddappa v. Mallikarjun (2011) 11 SCC 1.

¹⁴Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755.

guilt of living in such relationship. Therefore it is futile to discuss about Right to life and personal liberty where a woman living with her own choice cannot even freely talk about the violence committed on her. So what is needed is to bring awareness among the people to accept such relationship. Instead of attempting to include live-ins within the purview of the current laws, the Parliament should attempt to pass a distinct branch because such a fruitless approach would further severely confuse the legal system. This would be a righteous way to bring about justice and equality in the society.