

SUPREME COURT'S RESPONSE TO A LIVE-IN RELATIONSHIP: MAINTENANCE RIGHTS TO A CHILD BORN OUT OF WEDLOCK

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ABSTRACT

Over the last few decades, technological and industrial breakthroughs have occurred at an astounding rate, revolutionising every part of our lives in the world we live in today, which is always evolving. Globalisation has accelerated development over the last several decades, affecting almost every element of our social lives, including the structure of our families, marriage, and conjugal relationships, among other things. The only form of cohabitation recognised by the law and approved by society is marriage. As a direct result of the higher degree of social structure and cohesion that exists in our society, the institution of marriage is given a larger level of significance. It is not only frowned upon, but extremely unusual, to live together in a relationship that is not a marriage. In recent years, however, there has been a tendency toward unmarried couples living together in the same house. A relationship of this nature can be short-lived or last for a long period. A "live-in relationship" is a term used to denote a long-term cohabitational relationship. What is known as a "live-in relationship" is defined as "continuous cohabitation for an extended period of time between partners who are not married in a legally allowed manner and are sharing a common household." "Continuous cohabitation over an extended period of time" is what a live-in relationship is characterised as.

There are no laws, societal conventions, or traditions in India that regulate live-in partnerships. This is not the case in the majority of other countries. As a result, the Supreme Court has used the authority entrusted to it to build on the notion through its decisions and to set standards for dealing with similar situations. The purpose of this article is to examine Supreme Court decisions from various historical periods in order to determine contemporary legal perspectives on live-in couples by analysing those decisions. In addition, the psychological and social components of these types of encounters are briefly examined.

LIVE-IN RELATIONSHIP AND LAW IN INDIA

In India, there is no rule of law that specifically addresses cohabitation. There is not a single piece of legislation that defines the rights and responsibilities of people who are living together or the legal standing of their children. Because there is no established definition of "live-in relationship" in the law, it is difficult to ascertain what the legal standing of such relationships is. Cohabitants in India are not granted any rights or responsibilities by the country's legal system. On the other hand, the definition of what it means to cohabit has become increasingly specific thanks to the work of the judicial system. In spite of the fact that the legal status of these partnerships is not yet entirely apparent, some rights have been established through the interpretation and modification of the laws that are currently in place in an effort to stop partners from abusing these relationships. The following is a discussion of many statutes:

DOMESTIC VIOLENCE ACT, 2005

Protection of Women from Domestic Violence Act, 2005 (PWDVA) is the first time the government has recognised live-in relationships by granting rights and protection to women who are not legally married but are living with a man in a relationship that is similar to marriage, but not exactly the same as marriage. This act was passed in response to the Protection of Women from Domestic Violence Act, which was passed in response to the Violence Against Women Act, which was passed in response to the Violence Against Women Act.

The following is what the Domestic Violence Act of 2005 stipulates in section 2(f):

The term "domestic relationship" refers to a connection that exists between two people who currently reside together or who have in the past shared living quarters. They could be related by blood, through marriage or adoption, or they could be members of the same extended family unit.¹

It is up to the courts to define the meaning of a live-in relationship, despite the fact that the Act does not contain a specific definition of what is meant by this phrase. The precedent legislation served as the basis upon which the court constructed its interpretation of "connection in the nature of marriage." The requirements of Pwdva are now applicable to those who are living with a roommate or roommates. Because "nature of marriage" and "live-in relationship" are on the same line and have the same meaning, the courts presumptively recognise live-in partnerships as falling within the scope of the phrase. This affords women essential protections against the harm that can result from having many relationships or participating in fraudulent marriages.

CRIMINAL PROCEDURE CODE, 1973

In order to prevent a spouse, young children, or elderly parents from becoming homeless or impoverished, section 125 of the Criminal Procedure Code was enacted. Domestic partners are now included in this protection once the courts made the decision.ⁱⁱ

The Malimath Committee, which is also known as the Committee on Reforms of the Criminal Justice System, was founded in November of the year 2000. Under the heading "crimes against women," the Malimath Committee included a number of suggestions in the report that it published in 2003. It suggested that the meaning of "wife" in Section 125 of the Criminal Code be changed, which was one of its suggestions.ⁱⁱⁱ Because of this change, the term "wife" can now be applied to women who were previously in a live-in relationship with their husbands but whose husbands subsequently left them. This paves the way for a woman who is currently in a domestic partnership to legally wed her partner. It essentially states that a woman should have the same legal rights as a spouse and that she can make a request for assistance under Section 125 of the Criminal Procedure Code if she has lived with a man for a reasonable period of time. This means that she has been living with the man for at least a year.^{iv} When a man and a woman live together in the same household as if they were husband and wife, the probability that they are married is increased. In a recent disagreement, it was decided that in order to be recognised a wife under Section 125 of the Criminal Procedure Code and to be eligible for support, a

woman must first have been divorced. Due to the impossibility of divorcing cohabitants who are not legally married, those individuals are ineligible for support under this clause.

EVIDENCE ACT, 1872

The court may presume the occurrence of any event that it deems to be plausible by considering the regular way things occur in nature, how people behave, and how public and private business is handled. This is called the presumption of regularity. If a man and a woman have been cohabitating for a considerable amount of time, it is reasonable to assume that they are married.^v

A live-in relationship's legality depends on a number of important aspects, including the following:

In order to be considered "marriage-like," a relationship must comply with a number of essential prerequisites that were outlined by the Supreme Court in the cases of *D Patchaiammal v. D Velusamy*^{vi} and *Indra Sarma v. V.K.V.Sarma*.^{vii} These cases were decided in 2005. In order to qualify for help from the PWDA, the women involved in these partnerships need to satisfy a number of conditions, including the following:

1. Age:

To be eligible for marriage under Indian law, a person must have reached the age of majority, often known as the legal age. The Allahabad High Court made the following ruling in the case of *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others*: "A woman of around 21 years old who is a major has the right to go anywhere, and any man and woman may live together if they so choose, even if they are not married."^{viii} In spite of the fact that, in a recent case called *Nandakumar vs. The State of Kerala*, the Kerala High Court determined that an adult couple can live together even if the guy is under the legal marriage age of 21 years old, this is not the case in the state of Kerala.^{ix}

2. A significant time period:

The phrase "at any time" may be found in Section 2(f) of the PWDA. This phrase alludes to a considerable or reasonable period of time that is required in order to continue a relationship. On the other hand, depending on the particulars, it could be different in each instance.^x Do not assume that the connection will always exist. Both parties are required to be honest and to treat the relationship seriously in order to establish that it is within the bounds of the law. A one-week fling or a one-night stand is not the same thing as being in a committed relationship with someone. The *Madan Mohan Singh v. Rajni Kant* case indicates that there is a presumption of marriage between the two individuals when they have lived together for an extended period of time and cannot be referred to as a "walk-in, walk-out" relationship.^{xi} This demonstrates that the Court wants long-term living relationships to be recognised marriages rather than as a novel sort of connection such as a live-in relationship. The Court's goal is to eliminate the distinction between marriage and live-in relationships. In the case of *Badri Prasad v. Dy. Director of Consolidation*, the Supreme Court for the first time acknowledged live-in relationships and gave legal validity to a couple's fifty-year live-in relationship. This case was brought about by *Badri Prasad v. Dy. Director of Consolidation*. According to what Justice Krishna Iyer had to say about the matter, there is a substantial basis for the presumption that two people are married if they have cohabitated as husband and wife for a considerable amount of time. Even if it is possible to rebut the presumption, the person who wants to get rid of the legal foundation for the connection still has a lot of work to do.^{xii}

3. The two people must have decided to live together.

One of the most important things about a live-in relationship is that both people have agreed to share a living space. It includes things like helping each other, sharing roles and responsibilities, making plans for money, hanging out in public, and other things that show how loyal and strong their relationship is.

SUPREME COURT JUDGMENTS REGARDING LIVE-IN RELATIONSHIPS- VALIDITY OF LIVE-IN RELATIONSHIPS

In 2010, the Supreme Court of India ruled in the case of *S. Khushboo vs. Kanniammal* that there is no law that says people can't have sexual relationships with each other that don't involve marriage.^{xiii} This means that people don't break the law when they have sexual relationships with each other that don't involve marriage. The Court also heard the case of *Lata Singh vs. State of Uttar Pradesh and Others* (2006).^{xiv} In that case, the Court said that a major girl can marry or live with whoever she wants. The court also said that the accused person hadn't done anything wrong and that this case was a misuse of the legal system and how things are run.

In the case of *Alok Kumar vs. State* (2010), the court said that a live-in relationship does not create any legal ties between the people involved and that there are no strings attached in such a relationship.^{xv} The court also said that this kind of relationship doesn't make the people involved feel anything for each other. The court called the live-in relationship a "walk-in, walk-out" arrangement and said that people who don't want this kind of relationship can get married instead. When two people get married, they form a bond that can't be easily broken. As a result, they have legal responsibilities to each other. Most of the time, a live-in relationship is between a married man and a single woman, or a married woman and a single man.

WHAT IS THE PRESUMPTION REGARDING LIVE-IN RELATIONSHIPS?

In the case of *Badri Prasad vs. Dy. Director of Consolidation and Others*, which happened in 1978, the Supreme Court of India said that there is a strong presumption that a couple who has been living together like husband and wife for a long time is actually husband and wife. This presumption can be shown to be wrong, but the person who wants to do so must show that the relationship in question has no basis in the law.^{xvi} In 1993, the Court made a decision that was similar to this one in the case of *S.P.S. Balasubramanyam vs. Suruttayan*. It was said that if a man and a woman live together as husband and wife for a long time, it is assumed that they are married until it can be shown that they are not. Even if they haven't been married yet, this is still true. A child born of this kind of relationship is not considered an illegitimate child and can inherit the man's property.^{xvii}

In the 2008 case *Tulsa & Ors. vs. Durghatiya*, the court looked at Section 114 of the Indian Evidence Act of 1872 and said that its rules apply to the normal course of natural events, human behaviour, and private business. When the court looked at Section 114 of the Indian Evidence Act of 1872, this was said. The court will work under the assumption that things that seem likely to have happened did happen.^{xviii} When you read Sections 50 and 114 of the Indian Evidence Act of 1872 together, it becomes clear that the act of marriage should be assumed based on how things are usually done.

ISSUE OF LACK OF LEGISLATION

In the 2013 case *Indra Sarma vs. V.K.V.Sarma*, the Supreme Court of India said that long-term live-in relationships can lead to dependence and vulnerability, and that as the number of live-in relationships grows, women and children born from these relationships need more protection. The court also said that as the number of live-in relationships goes up, women and children born from these relationships need more protection.^{xix} The government can't encourage sexual behaviour before marriage, and people are free to support or criticise live-in relationships based on their own preferences. The government needs to think about this and come up with different rules to protect women and children who are born from live-in relationships.

WHETHER MAINTENANCE CAN BE OBTAINED IN A LIVE-IN RELATIONSHIP

In 2003, the Justice Malimath Committee was one of the first to suggest that the definition of Section 125 of the Code of Criminal Procedure, 1973 should be changed to include a woman who lived with a man as his wife for a long time during their first marriage. This suggestion came from the committee, which was one of the first to make it.^{xx}

In its 2010 decision in the case *D.Velusamy vs. D.Patchaiammal*, the Supreme Court of the United States explained the difference between living together and getting married. It also explained what a woman in a live-in relationship needs to do to be able to file a maintenance

claim under Section 125 of the Code of Criminal Procedure, which was passed in 1973.^{xxi} For a live-in relationship to bring in money, the following things need to happen:

- They have to act like they are married to the outside world.
- Both people in a long-term relationship must be old enough to get married. To get married legally, both people in a relationship must meet certain requirements. One of these is that they have never been married before.
- Both people in the relationship need to be willing to live together for a long time and act like a married couple.

In the case of *Ajay Bhardwaj vs. Jyotsna and Others* (2016), the Punjab and Haryana High Court said that Section 125 of the Criminal Procedure Code was made to keep the wife, minor children, or elderly parents from being forced to live in abject poverty and without a safe place to call home. The court said this rule was put in place to protect these weak groups. The same rule has also been used to cover couples who live together, but the type of relationship must be considered when figuring out how much maintenance will be paid.^{xxii} The main question in this case was whether or not Section 125 of the Criminal Procedure Code allows a woman who is not a wife but lives with her boyfriend to get support payments. In the case *Chanmuniya vs. Virendra Kumar Singh Kushwaha & Ors.* (2010), the Supreme Court said that when a man and a woman live together as husband and wife, there is a presumption in favour of wedlock. The High Court in the *Ajay Kumar Singh* case also said that when a man and a woman live together as husband and wife, there is a presumption in favour of wedlock.^{xxiii}

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

In the case of *Lalita Toppo vs. The State of Jharkhand* (2018), the Supreme Court of India ruled that the Protection of Women from Domestic Violence Act, 2005 gives the female partner in a live-in relationship more rights than Section 125 of the Code of Criminal Procedure, 1973. This choice was made because Lalita Toppo brought up a challenge.^{xxiv}

In the case of *D.Velusamy vs. D.Patchaiammal* (2010), the Supreme Court of India interpreted the Acts of Parliament to make a difference between marriage and a relationship that is similar to marriage. The Acts of Parliament say that marriage is a legal union between one man and one woman, so this is how it was seen. The court decided that the Protection of Women from Domestic Violence Act, which was passed in 2005, gives anyone in a relationship like this the right to protection in either case. The Court also said that a person must first meet certain requirements before they can get protection under the Act of 2005.^{xxv}

WHAT ARE THE RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS

In 2008, the Supreme Court of India ruled in the case *Tulsa & Ors. vs. Durghatiya* that a child born into a live-in relationship has the right to property and shouldn't be considered illegitimate if the parents have lived together for a long time. This means that a child born into a live-in relationship has the right to property and shouldn't be treated as an illegitimate child.^{xxvi}

Section 16 of the Hindu Marriage Act of 1955 and Section 26 of the Special Marriage Act of 1954 protect the rights of any child or children born into a void or voidable marriage. This includes a live-in relationship. Both of these laws were made by the Indian government. A child or children born from a cohabiting relationship have the same inheritance rights as a child or children born from a legally recognised marriage. But these rights aren't very broad because they only apply to the property that the parents own. They don't protect the rights of co-parents in a Hindu family that hasn't been split up. In the case of *Bharatha Matha & Anr vs. R. Vijaya Renganathan & Ors.* (2010), the Supreme Court of India said that a child born in a void or voidable marriage has no right to inherit the property of the parents. This decision was made because *Bharatha Matha & Anr.* brought a case against the government. On the other hand, a child in this situation is entitled to a share of any property they have earned on their own.^{xxvii}

In the case *Revanasiddappa and Anr. vs. Mallikarjun and Ors.* (2011), the Supreme Court of India said that an illegitimate child's right to property is a Constitutional right. The court also said that children born from a live-in relationship could still inherit.^{xxviii}

CONCLUSION

Live-in relationships have always been a controversial topic of discussion because they threaten the way our society works. Since there is no law yet that makes this kind of connection illegal, it is not a crime. So that Indian women who have been hurt by live-in relationships can get justice, the country's judicial system has acted, given interpretations, and said that live-in relationships are okay. But India has not yet stopped making it a crime. Making something legal involves making laws regarding it. At the moment, there is neither a law nor a guideline that says how things like guardianship, financial support, and inheritance should be handled in live-in partnerships. But the Protection of Women from Domestic Violence Act of 2005 says that if one partner in a live-in relationship hurts the other, they both have the right to be protected. It has done this through a number of court rulings to make sure that people in live-in relationships are not abused while they are in those relationships. But courts often didn't do anything to make this practise legal, like letting unmarried couples sign contracts that were legally binding, because it might go against what society as a whole wanted. It is clear that India's legal system is not yet ready to treat all kinds of romantic relationships the same way it treats marriages. The Act of 2005 only helps married couples who have been together for a long time and have been stable. The judicial system is in charge of making sure that the law is changed to reflect how society is changing. Even though the courts have tried to learn more about how live-in relationships work through a number of decisions and case laws, there are still a lot of things that aren't clear. When it comes to this kind of partnership, there is an immediate need for different rules and laws, as well as for putting these ideas into writing.

ⁱ S. 2(f) of the Domestic Violence Act, 2005.

ⁱⁱ Ajay Bhardwaj v. Jyotsna, 2016 SCC Online P&H 9707.

ⁱⁱⁱ Justice V.S. Malimath Committee Report, available at <https://mha.gov.in/sites/default/files/criminal_justice_system_2.pdf>, pp. 181-194.

^{iv} Justice V.S. Malimath Committee Report, available at <https://mha.gov.in/sites/default/files/criminal_justice_system_2.pdf>, pp. 181-194.

^v S. 114 of the Evidence Act, 1872.

^{vi} AIR 2011 SC 479.

^{vii} CrI. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448.

^{viii} 2001 SCC Online All 332

^{ix} Nandakumar vs The State Of Kerala on 20 April, 2018, CRIMINAL APPEAL NO. 597 OF 2018 (Arising out of SLP (CrI.) No. 4488 of 2017)

- ^x Rajagopal, Krishanadas (2010). "Living together a part of Right to Life, not an offence: SC." The Indian Express, < <http://indianexpress.com/> > retrieved on 20/07/20.
- ^{xi} (2010) 9 SCC 209 : AIR 2010 SC 2933
- ^{xii} Anuja Agrawal (2012), Law and 'Live-in' Relationships in India, Economic & Political Weekly, vol xviii no 39.
- ^{xiii} CRIMINAL APPEAL NO. 913 of 2010, [Arising out of SLP (Crl.) No. 4010 of 2008]
<https://indiankanoon.org/doc/1327342/>
- ^{xiv} Lata Singh v State of UP .AIR 2006 SC 2522.
- ^{xv} Alok Kumar v. State, 2010 SCC OnLine Del 2645, 09-08-2010
- ^{xvi} 1978 AIR 1557, 1979 SCR (1) 1
- ^{xvii} 1994 AIR 133, 1994 SCC (1) 460
- ^{xviii} Appeal (civil) 648 of 2002
- ^{xix} CRIMINAL APPEAL NO. 2009 OF 2013, SPECIAL LEAVE PETITION (CRL.) NO.4895 OF 2012)
- ^{xx} Dr. Justice V.S. Malimath Report . Committee on Reforms of Criminal Justice System. Government of India, Ministry of Home Affairs. Report Vol I; March 2003.
https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf
- ^{xxi} D. Velusamy vs. D. Patchaiammal (10 SCC 469) . 2010. <https://indiankanoon.org/doc/1521881/>
- ^{xxii} Ajay Bhardwaj vs Jyotsna (SCC Online P&H 9707) . Indian Kanoon website.
<https://indiankanoon.org/doc/182660125/>.
- ^{xxiii} Arising out of SLP (Civil) No.15071 of 2009
- ^{xxiv} Lalita Toppo vs State of Jharkhand . Indian Kanoon website. <https://indiankanoon.org/doc/6354756/>. 2018
- ^{xxv} D. Velusamy vs. D. Patchaiammal (10 SCC 469) . 2010. <https://indiankanoon.org/doc/1521881>
- ^{xxvi} Tulsa & others vs Durghatiya and others ((4) SCC 520) . <https://indiankanoon.org/doc/988131/>
- ^{xxvii} CIVIL APPEAL NO. 7108 of 2003
- ^{xxviii} Arising out of Special Leave Petition (C) No.12639/09