



Judicial Approach Amidst Growing Live-in Relationship

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ABSTRACT

Purpose: The purpose of this article is to comprehend the Judiciary's response and apprehend the pace of change in the social dynamics of the society about live-in relations. This article also comprehends the inter-linkage of the concept of live-in relationships vis-à-vis other laws, which require more clarity.

Design/Methodology: In this study, the research brings down the concept of a live-in relationship by analyzing various judgments down the link from pre-independence to post-independence through the *Protection of Women from Domestic Violence Act, 2005* (PWD-WA). This study analyzed the data of the Supreme Court and High Courts down the line from 2010 to 2021 and analyzed the high courts that have the maximum number of cases. The approach is to identify how Judiciary interprets the live-in relationship in different facts under the light of various laws.

Practical Implication: This study helps to identify the way forward in the absence of the legislative framework on live-in relationships through the interpretation by the Hon'ble Supreme Court and other High Courts.

Originalities/Value: This study is predominantly based upon the question placed before the larger bench by Madras High Court as

to whether the woman is entitled to get a pension in a live-in relationship. The resultant of this work is based upon the opinion of the existing judgment that brings support to reach out to the conclusion.

Outcome/Finding: The dimension of the social changes and changing the mindset of youth is an accepted fact to give legal recognition to live-in relationships. The Court has paved the way for a live-in relationship in property, maintenance, and domestic violence. This is high time for the legislature to code the separate statute for the live-in relationship so that the women from this relationship have not exploited due to the non-presence of the statute.

INTRODUCTION

In the present era, the social structure changes because of the change in the mindset of the people and social dynamics. The factors that change society's mindset are globalization, freedom, privacy, and profession. They are chiefly responsible for fading society's cultural normative ideology towards 'live-in relationship.'

Through a process of amendment, the law takes its time to explain such societal changes. As a result, the law cannot afford to remain stagnant in a changing world. If one examines the evolution of Hindu law across time, it becomes apparent that it was never static and has altered to meet the challenges of changing societal patterns at various times¹.

In the case of *Velusamy vs. D. Patchaiammal*² the expression "relationship in the form of marriage," which is contained under the definition of "domestic relationship," as not being crystal clear, as respects the scope of the definition as would have been necessary. So the Hon'ble Supreme Court defines the "relationship in the nature of marriage," in conjunction with the eligibility criteria being read into it.

The Supreme Court and various High courts pronounce the judgment on many issues which involve property, alimony, and the rights of the children born out from the relationship. Recently, the Madras High Court referred to the question of whether a woman in a live-in relationship can be entitled to a pension of the deceased partner to the larger bench. The present case brings many issues concerning the

live-in relationship in the absence of any statute. Therefore, the solution related to the issue requires an analytical view from various judicial pronouncements on the subject matter.

1. LITERATURE REVIEW

Anuja Agrawal describes in her paper *Law and live-in relationships in India (2012)* that the nature of heterosexual relations is in focus since the early recommendations were made by Malimath Committee Report. However, she opines that the nature of the legal sanction accorded to the live-in relationships in India is far from reaching the legal consensus that has arrived in western countries.

In his research, *Judicial approach to the live-in relationship in India; Its impact on other related Statutes (2014)*, the author Sonali Abhang examines the judicial approach and finds that the laws need to change for the child borne out of such relations are not getting the full access to the rights which the other children born out of the legally sanctioned marriage are given. For instance, the former is not liable to avail the ancestral properties. Moreover, she also finds out that most countries have given legal sanctions to the live-in relationship. Furthermore, she also calls for amendments to CrPC, IEA, and the Hindu Marriage Act.

Dr. Swarupa N Dholam examines the context and relevance of the impugned inquiry and explains that there ought to be separate law. Furthermore, he states in his paper *Socio-legal dimensions of live-in Relationship in India (2015)* that such sep-

1 Revanasiddappa v. Mallikarjun, 2011 11 SCC 1.

2 2010 10 SCC 469.

arately existing law is necessary because such cohabitation affects them and the children born out of such relationship.

Sweta Gupta describes the state of those in such relationships in her Ph.D. thesis entitled *Women and law in India with particular reference to the live-in relationship (2017)* as ones with too many dilemmas about succession, divorce, maintenance, guardianship, domestic violence, etc. One fundamental question she arouses is the unanswered question of law in terms of the break-up. She opines that sanctity ought to be given to such live-in relationships after a certain period. This endeavor will undoubtedly enhance the nature of legal rights envisaged by the parties when they consented to cohabit together. The law has to play a central role in reforming and bringing positive modern values into the relationships built thereupon by two adult consenting parties.

Astha Saxena, in her paper *Live in a relationship and Indian Judiciary (2019)*, states that so far, the Judiciary has shied away from treating all the living relationships as in nature of marriage. This eventually has led to no similar judgments being pronounced in like cases. Moreover, she reiterates a need for a definite law so that the scope of different opinions is slimmed away.

On theme *Social and legal provisions related to live-in relationship in India: an Evaluation (2021)*, its author Shyam Prakash Pandey states that the Indian Judiciary has a divergent view on the current topic and therefore underscores the need for the law. He furthermore opines that law traditionally has been biased in favour of the marriage, however, where two-person consent to live together in nature of marriage. However, without marrying, then in such a case, the law must come to protect the women as they are not equal to men due to patriarchal society.

Meanwhile, Choudhary Laxmi Narayan and ors. in their paper entitled *Live-in relationships in India; legal and psychological implications (2021)*, delves upon the issue under consideration and states that it is good to be in a good-quality relationship from the perspective of mental health. He states the research carried on by Harvard University wherein the findings published in 2012 after many years of the study show that health and happiness do not result from wealth, fame, or hard work but instead from relationships.

2. JUDICIAL DEVELOPMENT ON LIVE-IN RELATIONSHIP

In India, there is no law explicitly addressing live-in relationships. In the absence thereof, many provisions are read into for understanding the implications of such a relationship. One such law is *The Hindu Marriage Act of 1955* which establishes the legitimacy of children born of invalid or voidable marriages and their succession and property rights.

2.1. Privy Council view on the Concept of Living partners before Independence

The Privy Council³ elucidates on the concept of Living partners by stating that if a man and a woman are proven to have lived together as husband and wife, the law will postulate that they were living together as a result of legitimate marriage and not in a condition of concubine unless the reverse is convincingly demonstrated. The case of the Privy Council was referred in the case of *Tulsa & Ors vs. Durghatiya & Ors*⁴, wherein the Supreme Court held that there is a 'presumption of marriage' u/S.114⁵, when a man and a woman live together as husband and wife for a prolonged period. In another case where the Lahore High Court⁶ said that when a man and a woman have cohabited regularly for several years, the law presumes in favor of marriage and against concubine.

2.2. The Hon'ble Supreme Court precedents on the Concept of Living partners

The Supreme Court, in various judgments, streamlines the concept of a live-in relationship. In the case of *Badri Prasad v. Dy. Director of Consolidation*⁷ the Court held that very few of the married couple would succeed if they require proof as husband and wife in a society where they have to establish by an eye-witness proof that they were legiti-

3 A. Dinohamy v. W.L. Blahamy AIR 1927 P.C. 185.

4 AIR 2008 SC 1193.

5 Indian Evidence Act, 1872.

6 *Indar Singh v. Thakar Singh* (2 Lah, 207).

7 1978 AIR 1557, 1979 SCR (1) 1.

mately married fifty years earlier after half a century of wedlock.

There is a strong conjecture in favor of wedlock in the scenario in which the couples have lived as husband and wife for a more extended period. Whereas, the presumption is rebuttable on the ground that the person seeking to deprive the relationship of its legal genesis bears a hard difficulty to prove it. When oral and other trustworthy evidence shows that the couple lived as husband and wife, the family record does not reflect them as husband and wife is not conclusive evidence to dispute their husband and wife connection.⁸

In the case of *Madan Mohan Singh v. Rajni Kant*⁹ The Court categorically referred that the long-term relationship cannot be considered a walk-in and walk-out relationship. The Court inferred through this point that the long-term relationship could be treated as like marriage. In another case of *S. Khushboo v. Kanniammal*¹⁰ the Court ruled that a living relationship falls within Article 21 of the Indian Constitution's right to life. The Court went on to say that live-in relationships are legal and that the act of two adults living together is not illegal or criminal.

The Hon'ble Supreme Court precedent on the point of maintenance under S. 125 CrPC of Live-in partners

A question raised before the apex court¹¹ whether the partners live-in together as husband and wife are entitled to get maintenance under S. 125 of CrPC. The Court held that the term 'wife' includes a man and a woman living together as husband and wife for an extended period. To fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125 of the Cr.P.C, strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C.

In the case of *Chanmuniya v. Virendra Kumar Singh Kushwaha*¹², the question was raised before the Court whether the women entitled to get maintenance if not legally wedded, under sec. 125 Cr.P.C. The Court held that the cause of maintenance

should be read in the light of sec. 26 of Protection of Women from Domestic Violence Act, 2005 (PWDVA), and hence the maintenance was granted in this case.

2.3 The Hon'ble Supreme Court precedent on the point of an aggrieved person under Domestic Violence Act, 2005

For the first time in the field of the live-in partner, the statute to provide the structural support by acknowledging the live-in relationship was under the ambit of Protection of Women from Domestic Violence Act, 2005 (PWDVA). The act protected the woman who is not married but living with the male partner in a relationship akin to the idea of marriage. The definition of 'domestic relationship'¹³ means a relationship of two-person people living together in a shared household, and the definition expressly used the term 'in the nature of marriage.'

The question frequently raised before the Court is about the maintenance of a woman who lived together with a man as husband and wife, wherein the Court has to decide what a *relationship like marriage is*. The Court mentions the elements of a 'Common Law Marriage,' stating that not all "live-in relationships" are equivalent to "marriage-like relationships." As an example, the Court adds that simply spending weekends together, or "a one-night stand" in a case, is not enough. The Court also added into it that "Indian society is changing, and this change has been reflected and recognized by Parliament by enacting The Protection of Women from Domestic Violence Act, 2005".

In the case of *Indra Sarma v. V.K.V. Sarma*, the Court emphasized the facts of the case and held that if a woman is aware that the man is married, knowing the fact entered into a relationship, and under that circumstances, the Court denies the relief, which evidently is a gross injustice to the victim of such relationship. This case brings out many folds on a live-in relationship where the Supreme Court requests the parliament to legislate the statute to bring down the clarity for the Judiciary and society.

8 Lalta v. District IVth upper Distt. Judge Basti, AIR 1999 All 342.

9 2010 9 SCC 209.

10 2010 5 SCC 600.

11 Captain Ramesh Chander Kaushal v. Veena Kaushal and Ors. [AIR 1978 SC 1807].

12 2011 1 SCC 141.

13 Section 2(f) of Protection of Women from Domestic Violence Act, 2005.

2.4. Malimath Committee Report on Live-in Relationship

The Committee give its suggestion regarding the maintenance of a second wife in the presence of the first wife. An attempt was made to address injustice with the second wife-like relationship of a woman. The committee referred that the illegal act of the man should not give unnecessary suffering to a woman who might be under dark relating to the information of his marriage. During 2008, the state of Maharashtra brought into effect the suggestion and incorporated into law which brought the legal status for 'live-in relationship' into the public domain. A critical examination of some of the Malimath Committee's recommendations and aspects, as well as the debates surrounding the Protection of Women from Domestic Violence Act 2005, reveals that the legal changes are primarily aimed at recognizing women's vulnerable position within traditional forms of non-marital relationships¹⁴.

3. THE PRESENT QUESTION IS WHETHER THE WOMAN IN A LIVE-IN RELATIONSHIP CAN BE ENTITLED TO THE DECEASED PARTNER'S PENSION

The concept of a live-in relationship or live-in partner does not have a statute. In contrast, the change in the mind of the society and the judicial interpretation progressively focussed on the social justice to the woman who is in the long period of a relationship. The Hon'ble Supreme Court in the case of Captain Ramesh Chander Kaushal v. Veena Kaushal and Ors¹⁵ held that Section 125 is essentially the same as Section 488 of the Cr.P.C. of 1898, except that parents are now included in the group of people entitled to support. It was noted that this provision is a measure of social justice explicitly designed to safeguard and prevent the neglect of women, children, the elderly, and the infirm and that it fits within the constitutional sweep of Art. 15(3), which Art reinforces 39.

14 Agrawal, A., (2012). Law and 'live-in' relationships in India. *Economic and Political Weekly*, XLVII (39), 50-56.

15 AIR 1978 SC 1807.

Justice Krishna Iyer observed that – "We do not doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it is to have social relevance. So viewed, it is possible to be selective in picking that interpretation out of two alternatives which advance the cause – the cause of the derelicts."

In the case of Savitaben Somabhat Bhatiya v. State of Gujarat & others¹⁶, the Court held that it was desirable to recognize the predicament of an unfortunate lady who inadvertently comes into wedlock with a married man, as there is no scope to include a woman who is not lawfully married under the word of 'wife.' Only the Legislature, according to the Court, may correct this legal shortcoming.

4. STATISTICAL ANALYSIS OF SUPREME COURT AND HIGH COURTS FROM 2010 TO 2021

The term 'live-in relationship' was searched in the database of manupatra from the year 2010 to 2021, and the researchers found a mixed analysis of the increase and decrease of cases in the apex courts. The database of manupatra filter out by selecting the judgment of Supreme Court and High Courts down the line year-wise that there is the constant increase of cross-laws like from property acquisition to succession; from claim-maintenance to maintenance entitlement which leads the legislature to integrate the live-in relationship law into various other existing statutes.

16 AIR 2005 SC 1809.

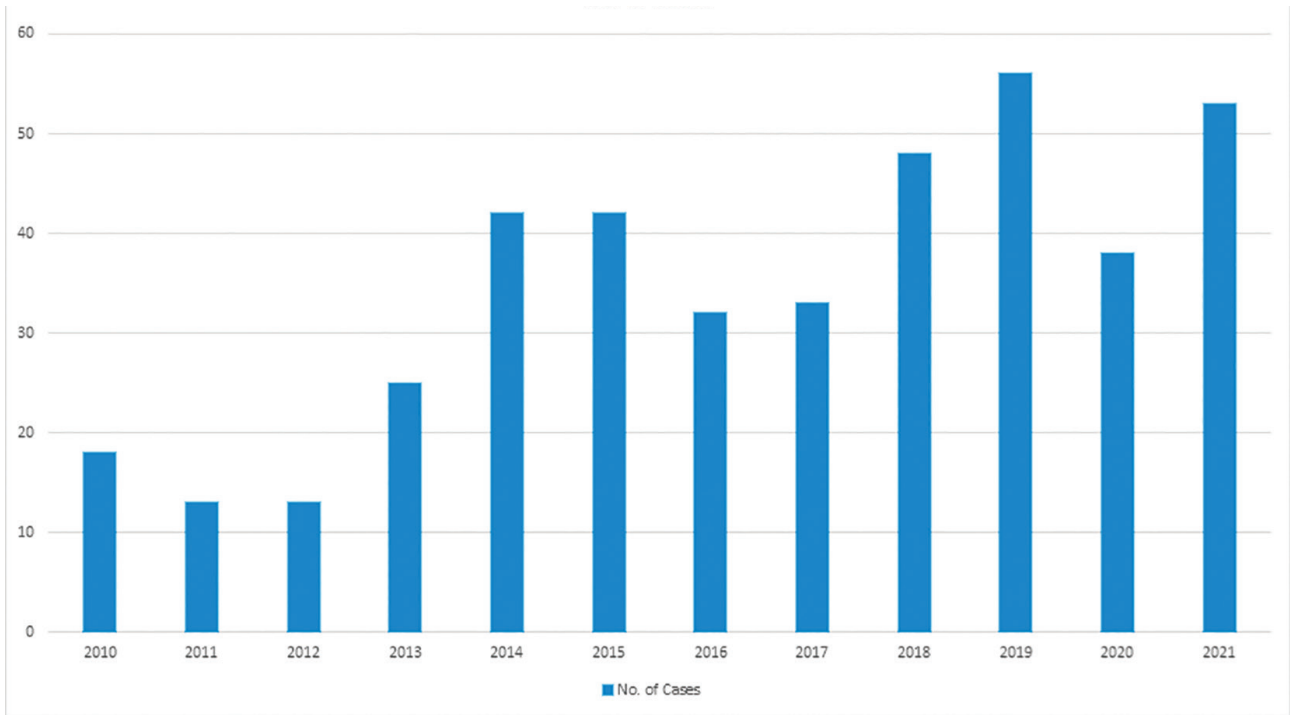


Fig. 1 The year-wise case on the live-in relationship of Supreme Court and High Courts

The above graphical shows the structure of increase and decrease of cases whereas in the year 2020 due to pandemic there is less number of the case whereas the increase of case is the resultant of

the year 2020. The case related to live-in relationships saw a sharp rise in 2021 because, during the pandemic, not many cases were entertained, but after, there was a significant rise of cases before the high courts.

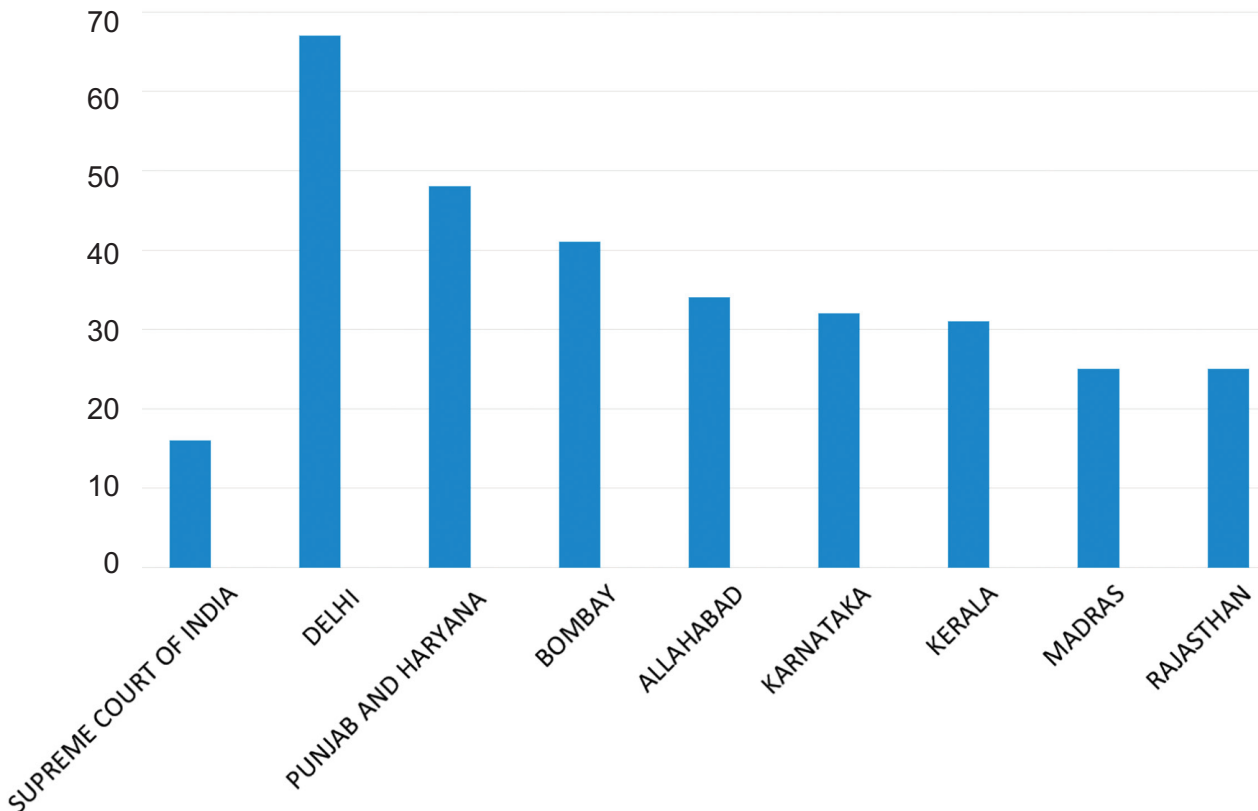


Fig. 2 Cases in Supreme Court and High Courts (top ten based on no. of the case)

The above represent that in the year 2021, the Court that leads in terms of case related to live-in relationship followed by Punjab and Haryana High court, which are neighbouring state and the reason behind these high statistics based on the societal change. The cosmopolitan nature in this area is the core reason for an increasing live-in relationship which creates issues that land in the courts for resolution.

5. CONCLUSION & SUGGESTION

Inadvertent relationships or relationships made in an attempt to evade the controversies with the society may promote live-in relationships among the newer generation. They are not legally wedded by cohabiting together in a relationship in the nature of husband and wife. In such circumstances, what would be the rights and duties of the parties therein? There ought to be a legal statute on that issue to address such a question. However, if any such particular law is absent, then what? Such was the question before us in the present context of live-in relationships.

It is found, as stated, that there is no statute specifically dealing with the matter under consideration. So should it be assumed that the parties have no rights and obligations? Should no *Acts* affect such instances? It seems any strict interpretation of laws would deprive many of the rights that could have been brought in under the assumption of various provisions. Furthermore, therefore, the people in a consensual relationship would have borne hardship had

no obligations been imposed upon them as per some *Acts*. Furthermore, various statutes have implications for the live-in relationship, by way of judicial interpretation, in the absence of any specific laws, such as *Protection of Women from Domestic Violence Act, 2005*, *Hindu Marriage Act, Cr.P.C.*, etc. Hence the judicial interpretation is that no person should be allowed to walk in and walk out on any other person with whom they have cohabited for an extended period in a relationship in nature of marriage.

However, merely because the live-in relationship can be read into with the help of the other statutes does not necessitate the absence of specific law to regulate it. There comes the point when there may be conflicting judgments of the courts on issues *pari-materia*, such as maintenance, pension, children born thereof, and other miscellaneous matters. Hence it becomes effectively *sine qua non* to have laws dealing mainly on matters which have gained eminence in the society, such as live-in relationships. More so because the function of the Court is to interpret the laws and not to legislate. The graphical representation of the data in various high courts where there are more cases is directly linked with the change in the lifestyle dynamics in the metro cities.

Moreover, the definition as provided by the *Protection of Women from Domestic Violence Act, 2005* is of minimal scope. Nor can it deal with matters under consideration effectively. Therefore, the legislature ought to draw out a bill to effectively address live-in relationships. Any such bill must consider the implications upon the women and the children, for they are more likely to be abused.

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