



New dimensions of maintenance in India

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Abstract

This article explores a dynamic environment where changing societal norms collide with established legal frameworks as it explores the complex legal issues surrounding maintenance and alimony in the context of live-in relationships. The story is told via a thorough analysis of historical viewpoints, case law, regional differences, and new developments, with the goal of shedding light on the challenges faced by people negotiating the murky waters of cohabitation. This article invites further discussion on the recognition, regulation, and fair treatment of couples who choose to cohabit as the legal system adjusts to the patchwork of contemporary relationships. The conclusion emphasises the need for continuous legal reform to guarantee that people in live-in relationships find justice, fairness, and clarity in a quickly changing legal landscape. It also advocates for a nuanced and context-specific approach.

Keywords: Maintenance, alimony, live-in-relationship, rights, legality

Introduction

The relationships that result from the idea of family are central to the concept of maintenance. A fundamental social structure that has changed to meet the needs and demands of both individuals and society as a whole is the family system. Many cultures saw a decline in their ties to their extended families with the advent of modernity and the industrial age in western society. Analysts wonder if the family is disintegrating or just changing into a different structure. A concerning number of divorces and children being raised in single-parent households are indicators of family disequilibrium. As a result, it is clear that the right to maintenance depended on the family structure and relationship; therefore, it should likewise be updated to reflect the current circumstances and address any legal issues that may arise.

Live in Relationship in Indian Perspective

When two people live together without getting married, it's referred to as a live-in relationship. Many nations all over the world have already accepted and legalised the idea. The Supreme Court ruled that "for a man and a woman in love to live together is part of the right to life," meaning that cohabitation is now permissible. Groundbreaking recommendations were made possible in 2003 by the Malimath Committee. Notably, it defines "wife" more precisely and accepts that a woman living with her partner qualifies as a wife. After that, relationships other than marriage were given legal recognition by being classified as "like marriage" under the Protection of Women from Domestic Violence Act (PWDVA) 2005, which is widely considered to be the first piece of legislation. To control the evolving elements of this new social order, numerous attempts have been made to include it under the purview of specific laws, including those pertaining to domestic abuse, property, maintenance, and a child's legal status. However, it is still taboo in India and is always debatable on moral and social grounds.

In Indian culture, marriage has been revered as a sacred oath since the Vedic era. The idea of marriage has changed over time. Concepts surrounding marriage and relationships have

changed as human psychology and society have progressed. In the modern era, cohabitation is seen as a more liberal and giving idea. It has many complexities, responsibilities, and legal liabilities, despite the fact that it seems to be a peaceful, easygoing friendship with no obligations to one.

Meaning of Live-in Relationship

Cohabitation, another name for a live-in relationship, is an arrangement in which two people who are romantically involved live together but are not married. The pair decides against getting married in order to keep their relationship casual despite living together and having a sexual relationship.

The advantages of cohabitation are enjoyed by the couple in a live-in arrangement without the formalities and legal requirements of marriage. This entails reaching decisions jointly, delegating tasks and responsibilities around the house, and enjoying the independence to select their own activities and way of life free from outside influence.

It is significant to remember that live-in couples do not have the same legal rights as married couples because they are not regarded by Indian law as legitimate unions. Nonetheless, the Indian Supreme Court has ruled that cohabiting as partners without getting married is neither unlawful nor punishable by law.

In contemporary society, living together prior to marriage or as an alternative to marriage is becoming more and more common, especially among younger generations. Although some jurisdictions may not recognise live-in relationships as legally equivalent to marriage, they still give couples the chance to test their compatibility and commitment before committing to one another more permanently through marriage.

Legality of Live-in-Relationship

The judiciary will assume that a man and a woman are married and that the same laws will apply to them and their relationship if they live together as husband and wife for an extended period of time and even have children, according to the Supreme Court's numerous rulings. In Payal Sharma v. Nari Niketan, the Allahabad High Court acknowledged

the existence of a live-in relationship. The bench, which included Justices M. Katju and R.B. Misra, noted that "a man and a woman, even without getting married, can live together if they wish to." Though it may not be legal, society may view this as immoral. Morality and the law are not the same thing. Following that, the Supreme Court noted in the *S. Khushboo v. Kanniammal & others* case that a live-in relationship between two adults who are not legally married cannot be interpreted as a crime. It is also stated that premarital sex and live-in partnerships were not illegal. The right to life and personal liberty are recognised as fundamental rights under Article 21 of the Indian Constitution. The Court noted that two individuals who live together but are not legally married are not criminal offenders in *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel*. Live-in partnerships are therefore permitted in India.

Adultery

Since it allows a married adult woman to live with an unmarried adult male, which was previously illegal under section 497 of the Indian Penal Code, the third category established under the previous categories is controversial. However, on September 27, 2018, a five-judge Supreme Court Constitution bench decided unanimously to strike down Section 497, making it no longer illegal in India in the case of *Joseph Shine v. Union of India*. Two articles of the Indian Constitution, Article 14 (Within the borders of India, neither equality before the law nor equal legal protection may be denied by the state) and Article 15 (Any citizen shall not be subjected to discrimination on the basis of religion, race, caste, sex, place of birth, or any combination thereof), have been cited as being violated by this section. Adultery "cannot be a criminal offence," Chief Justice Dipak Misra stated during the reading of the verdict, but it may be a reason for civil disputes like divorce.

Landmark Case on Live-In-Relationship

Live-in relationships have been the subject of several historic rulings in India, which have been crucial in granting legal recognition and protection for these kinds of relationships. Among the most significant decisions are.

S. Khushboo v. Kanniammal

The Indian Supreme Court ruled in this case that a live-in relationship cannot be considered unlawful or illegal because it is the choice of two adults to exercise their right to life as guaranteed by Article 21 of the Indian Constitution.

India's Supreme Court Provides Clarification on Live-in relationships

Unmarried men and women who live together as husband and wife without the official status of marriage are said to be in a live-in relationship. In India, there is a lack of social acceptance for this concept. When live-in relationships were first made public, the public was outraged because they were seen as a violation of Indian morality and culture. Recent court rulings regarding cohabitation have brought this social issue to the public's attention.

Court Judgments: Domestic Violence Act Applicable to Live-in Relationships

Various court rulings have addressed a range of disputes related to cohabitation. A new domestic abuse law in India now considers live-in relationships to be equivalent to

marriage. The Domestic Violence Act of 2005 has been expanded to include provisions for individuals living together. The purpose of the amendments is to safeguard those who are abused at home while living together. A relationship between two people who live together or have lived together in the past is regarded as a domestic relationship, according to Section 2(g) of the aforementioned Act. In the event of abuse or harassment, a woman who shares a home with her partner may file a lawsuit against him or her. The new law also offers protection to Indian women who are forced into illegitimate or fraudulent marriages.

Court Decisions: SC Rules That Children Born to a Live-In Couple Are Not Illegitimate

Court rulings have consistently provided a liberal interpretation of the law to safeguard women's and children's rights. Court rulings have deemed it crucial to protect children's rights, particularly in live-in relationships. A Supreme Court bench led by Justice Arijit Pasayat ruled in January 2008 that children born into live-in relationships would not be regarded as illegitimate. The statement read, "The law favours legitimacy and rejects whoredom or the fruit of adultery."

The Supreme Court ruled in August 2010 that a long-term live-in partnership would be regarded as a marriage and that any children born to this couple would not be considered illegitimate. This ruling, which was rendered by Supreme Court Justices P Sathasivam and BS Chauhan, will have significant legal ramifications for disagreements concerning the legality of children born to cohabiting partners.

Legal Status and Property Rights of Children Born Out of Live-in-Relationship

a. Legal status: A child born out of such a relationship would no longer be regarded as an illegitimate child, the Supreme Court ruled in *Tulsa v. Durghatiya*. One important requirement for the same is that the parents have to cohabit for a considerable amount of time, showing their sincerity in the relationship, and live under the same roof.

The first case to recognise the legitimacy of children born out of a live-in relationship was *S.P.S. Balasubramanyam v. Suruttayan*. According to the Supreme Court, "there will be a presumption under Section 114 of the Evidence Act that a man and woman live as husband and wife and the children born to them will not be illegitimate if they are living under the same roof and cohabiting for some years." The Court also explained the meaning of Article 39(f) of the Indian Constitution, which directs policymakers to ensure that children are provided with opportunities and resources to develop in a healthy way, in conditions of freedom and dignity, and that childhood and youth are shielded from exploitation and from material and moral abandonment.

b. Property Rights: In *Revanasiddappa v. Mallikarjun*, the Supreme Court recognised the four children born out of the live-in partnership as "legal heirs," thereby approving their inheritance. As a result, the Court has promised that no child born into a long-term live-in relationship will be denied their inheritance. The Supreme Court also granted legal legitimacy to a child born out of a live-in relationship in the *Bharatha Matha v. R. Vijaya Renganathan* case, holding that the child might be eligible to inherit the parents' property. The Supreme Court ruled that while a child born to live-in

parents may be eligible to inherit their possessions, the child is not entitled to any Hindu ancestral coparcenary property.

Issues and Challenges of Live-In-Relationship

Even though live-in relationships are now not legal but not illegal and supported by numerous rulings, there are still a number of issues that require important discussion. Because live-in relationships are not recognised by Indian law, couples in such relationships may encounter a number of social and legal obstacles.

Live-in Relationship: Laws in India

In India, living together without marriage is referred to as a live-in relationship. Even though live-in relationships have gained popularity recently, India's laws governing them are still developing. In contrast to certain other nations, live-in partnerships are not legally recognised as a marriage in India.

The Indian Supreme Court has ruled, however, that cohabiting as partners without getting married is neither unlawful nor criminal. Although they are not entitled to the same legal protections as married couples, live-in partners do have certain legal protections. To safeguard the rights of people in live-in relationships, it is crucial to comprehend the legal framework that governs them in India.

Living together does not grant partners the same legal rights as married couples do. For instance, cohabiting partners are not entitled to maintenance in the event of a separation and cannot inherit each other's belongings. A child born into a live-in relationship, however, is entitled to the same legal protections as a child born into a married couple.

The Domestic Violence Act of 2005 provides protection to women who are victims of domestic violence in live-in relationships. According to the Act, a domestic relationship is one in which the two people are in a relationship that is similar to marriage and live together in a shared household. Consequently, under the Domestic Violence Act, a woman in a live-in relationship may petition the court for protection.

Despite the fact that live-in partnerships are not legally recognised as marriages in India, the Supreme Court of India ruled in 2015 that a woman who has been in a long-term live-in relationship should be entitled to maintenance from her partner following a separation.

In the event of a separation, it is advisable for cohabiting partners to have a written agreement that details their rights and responsibilities, including financial obligations. If Indian law does not formally recognise their relationship, this can offer some legal protection to both partners.

Maintenance in Live-In Relationships

A live-in relationship is a living arrangement in which unmarried couples choose to cohabit and maintain a committed relationship without legally getting married. There is no legal framework in India that acknowledges cohabitation. There is no specific law in India that defines the rights and obligations of the parties involved in such a relationship, nor does it specify the status of any children born out of it. Nonetheless, the courts now believe that if a man and a woman cohabit as husband and wife for an extended period of time, the law will presume that they are married.

The Protection of Women from Domestic Violence Act of 2005 grants the female partner in a live-in relationship

protection, maintenance, and the right to palimony a type of alimony paid to a former partner in a non-marital relationship upon her complaint. The judicial system has thus provided sufficient protection for female live-in partners and their children. Although live-in partnerships are unethical in Indian society, they are not prohibited by law.

Basically, no statute defines the term "relationship" in the sense of marriage; however, Section 2(f) of The Protection of Women from Domestic Violence Act, 2005 (henceforth PWDV Act, 2005) uses this word. A domestic relationship is defined as a relationship between two people who currently live together or have lived together in the past provided that, in line with Section 2(f) of the Act of 2005, they are related by marriage, adoption, or as members of the same family cohabiting as a joint family.

However, Indian law only permits progressive judicial interpretation; legislation governing this kind of progressive relationship is nonexistent. The researcher believes that although the law grants married women rights and grounds them to demand maintenance from their husbands, women's rights in live-in relationships remain unclear because there is no concrete statute protecting them. Judicial interpretation is reliant on the discretion the parliament grants the judiciary through the enactment of laws, and the current acts of parliament are insufficient to enable the judiciary to provide appropriate maintenance to the woman and the child born out of a live-in relationship.

Right of Maintenance in Same Sex Relationships

In the case of *Navej Singh Johar v. Union of India*, the Honourable Supreme Court of India rendered a significant ruling. The colonial law was read down by a bench led by the former Chief Justice, Honourable Justice Dipak Misra, to the extent that it restricted the rights and individual freedoms of the LGBTQ community in this nation.

Individual differences exist in sexual orientation. There is never a perfect general rule. It's not always the case that a woman is drawn to a man or vice versa. 'Sexual Orientation and Gender Identity' a new province of law for India' was the theme Michael Kirby, a former president of the International Commission of Jurists and judge of the High Court of Australia, covered in his 2013 Tagore Law Lectures. Justice Kirby had disclosed his sexual orientation to the public in 1999.

While it does draw a distinct sexual orientation, being homosexual is by no means a crime. Although the majority of religions oppose it, secular nations shouldn't be influenced by religious principles when enacting secular laws. Consequently, in September 2018, the Honourable Supreme Court of India invalidated a portion of Section 377, which prohibited consensual sexual relations between same-sex couples, in its ruling in *Navej Singh Johar v. Union of India*.

In delivering its ruling, the Supreme Court noted that procreation was viewed as the exclusive goal of sexual relations at the time Section 377 was drafted, and any departure from this notion was deemed to be abnormal. However, the court clarified that since "homosexuality" is no longer "unnatural," it makes no sense to include it under the category of "unnatural offences."

Therefore, creating consensual homosexual relationships is not punishable under Section 377 of the current legislation.

The main piece of legislation in India pertaining to substantive criminal law is the Indian Penal Code, also

known as "the IPC." The IPC contains a number of provisions that penalise different offences. Section 377 was one such law. People who engaged in sexual activity "against the order of nature" were penalised by the law. The lack of a consent clause in that provision was the issue. Section 377 penalised anyone for engaging in sexual activity against the natural order, whether with or without consent, in contrast to Section 375, "Rape," which punishes anyone for coercing a woman into having sex against her will and without her consent. But before we continue this conversation, let's clarify two concepts: "against the order of nature" and "consent."

Conclusion

Live-in-relationship shows as a dynamic representation of how society's structures are changing. In an effort to give people in live-in relationships a fair and logical starting point, legal frameworks must adjust as family dynamics shift in reaction to shifting norms, expectations, and lifestyles. The path forward, navigating the complex legal considerations surrounding maintenance and alimony in these unconventional unions, has been illuminated by a journey through historical perspectives, legal precedents, jurisdictional variations, and emerging trends.

The legal issues surrounding maintenance and alimony in cohabiting relationships invite us to reflect on the changing nature of human relationships as well as the complexities of the law as we stand at the crossroads of tradition and modernity. In this age of constant change, it is imperative that the legal system adapt to cultural changes as well in order to guarantee that people in cohabiting relationships are well-positioned legally as they negotiate the complex dance of modern partnership.

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