**What is the legal position on live-in relationships?**

The story so far:

The Lucknow bench of the Allahabad High Court stated earlier this month that a Muslim cannot claim rights in a live-in relationship when he or she has a living spouse. A two judge Bench of Justices A.R. Masoodi and A.K. Srivastava called such a relationship against the tenets of Islam while hearing a writ petition by Sneha Devi and Mohammed Shadab Khan. Ms. Devi and Mr. Khan had sought protection from police action after the woman’s parents filed a kidnapping case against Mr. Khan.

What happened?

The couple had told the court they were adults in a live-in relationship and that they sought protection under Article 21 of the Constitution (protection of life and personal liberty). The judges, however, stated, “Islamic tenets do not permit live-in relationships during the subsisting marriage. The position may be different if the two persons are unmarried and the parties being major choose to lead their lives in a way of their own.” Incidentally, Mr. Khan was married to one Farida Khatoon since 2020.

“The constitutional morality may come to the rescue of such a couple and the social morality settled through the customs and usages over ages may give way to the constitutional morality and protection under Article 21 of the Constitution of India may step in to protect the cause. The case before us is, however, different,” the court said, adding, “The constitutional protection under Article 21 of the Constitution of India would not lend an un-canalised support to such a right.”

What have been previous orders?

Live-in relationships with variables of marital status of the partners, their possibly different faiths, birth of children and even separation have occupied the attention of the judiciary at various levels in recent years. If in the case of Ms. Devi and Mr. Khan, only the latter was married, in another case last year, both partners were married but involved in a live-in relationship away from wedlock.

In November last year, the Supreme Court stayed orders passed by lower courts and the Gujarat High Court awarding maintenance to a woman from the man she had been living with. The top court order came after a Surat-based man challenged the High Court order arguing that their relationship could not be termed a domestic relationship as they were both married to other people at the time of cohabitation. While their respective marriages subsisted, they lived together in 2012 and had a daughter too a couple of years later. The woman had approached the judiciary as the live-in relationship did not work out, and sought relief under the Protection of Women from Domestic Violence Act, 2005. She sought maintenance too.

Interestingly in the same month, the Punjab and Haryana High Court stated that a couple living together without obtaining a divorce from their previous spouse cannot be classified as being in a “live-in relationship” or being in a union similar to marriage. The court even felt that such an arrangement would amount to the offence of bigamy under Sections 494/495 of the Indian Penal Code. In this case, the man was already married. The court refused to provide protection to the couple, stating, “The male partner is engaging in a lustful and adulterous life with the female partner without obtaining a valid divorce from his previous spouse.”

What have the Courts said about live-in relationships?

India does not have any laws that directly address a live-in partnership. As per the top Court, for a man and a woman to live together is part of ‘the right to life’; therefore, a live-in relationship is no longer an offence. The Supreme Court in its various judgments has stated that a man and a woman living like a husband and a wife in a long-term relationship, and even have children, the judiciary will presume that the two were married and that the same laws would be applicable to them and their relationship. The concept of a live-in relationship was recognised in Payal Sharma versus Nari Niketan by the Allahabad High Court, where the judges felt, “A man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but it is not illegal. There is a difference between law and morality.”