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This is to Certify that Sushma, Reg. No: LM0120020 has submitted her Dissertation titled “**LEGAL RECOGNITION TO LIVE-IN RELATIONSHIP IN INDIA AND ISSUES INVOLVED**” in Partial Fulfillment of the requirement for the award of Degree of LLM. Masters in Law in Constitutional and Administrative Law to the National University of Advanced Legal Studies (NUALS), Kochi under my Guidance and Supervision. It is also declared that the Dissertation submitted by her is original, bona fide, and genuine.

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**LEGAL RECOGNITION TO LIVE-IN
RELATIONSHIP IN INDIA AND ISSUES INVOLVED**
UNDER THE GUIDANCE & SUPERVISION OF MRS. NAMITHA KL

**THE NATIONAL UNIVERSITY OF ADVANCE LEGAL
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TABLE OF CASES

- Dinohamy v. W. L. Blahamy AIR 1927 PC 185
- Minaxi Zaverbhai Jethva v. the State of Gujarat Special Civil Appeal No.3708 of 1998
- M. Palani v. Meenakshi C.R.P. No. 238 of 2008
- Indira Sarma vs. V.K.V Sarma 2013 15 SCC 755
- D. Velusamy vs. D. Patchaiammal 2010 10 SCC 469
- Aruna Parmod Shah Vs. Union of India WP(CRL) Appeal No. 425 of 2008 Decided On, 07th April 2008
- S. Khushboo v. Kanniammal & Anr (2010) 5 SCC 600
- Koppiseti Subbarao Subramanian vs. State of Andhra Pradesh Crl.A.No.898 of 2005 Decided On, 13th July 2006
- Mohabbat Ali vs. Mohammad Ibrahim Khan AIR 1929 PC 135
- Thakur Gokal Chand vs. Parvin Kumari, AIR 1952 SC 231
- Badri Prasad vs. Deputy Director of Consolidation 1978 AIR 1557
- Payal Katara vs. Superintendent, Nari Niketan, and Ors. AIR 2001 All 254
- Patel and Others 2006 (8) SCC 726
- Muhammed Riyad vs. State Police Chief Trivandrum, WP(Crl.) No. 178 of 2018
- Chinmayee Jena Vs. State of Odisha & Others Writ Petition (Criminal) no. 57 of 2020
- National Legal Services Authority (NALSA) vs. Union of India and others (2014) 5 SCC 438
- Anuj Garg vs. Hotel Association of India 2008 3 SCC 1
- Navtej Singh Johar vss. Union of India AIR 2018 SC 4321
- Pardeep Kumar and Ors. Vs. State of Haryana and Ors CRR Nos. 1354 and 1574 of 2019 (O&M) Pardeep Kumar and Ors. vs. State of Haryana and Ors. (14.05.2020 - PHHC) : MANU/PH/0408/2020
- Ujjawal and Another vs. State of Haryana and Ors. CRWP-4268-2021
- Gulza Kumari And Another v. State of Punjab and Others (High Court Of Punjab And Haryana) CRWP-4199-2021 (O&M)
- Shafin Jahan vs. Asokan K.M 2018 16 SCC 368
- Shakti Vahini vs. Union of India 2018 7 SCC 192,

- Chanmuniya v. Virendra Kumar Kushwaha and Anr. 2011 1 SCC 141
- Soniya and Anr v. State of Haryana and Ors. CRWP-4533-2021
- Nasima and Anr v. State of Haryana and Ors. CRWP-2148-2021
- Priyapreet Kaur and Anr v. State Of Punjab and Ors. CRWP-10828-2020
- Paramjit Kaur and Anr v. State of Punjab and Others CRWP-5024-2020
- Kamini Devi and Anr v. State of U.P. and Ors WRIT-C No. 11108 of 2020
- Lata Singh v. State of U.P 2006 5 SCC 475
- Chinmayee Jena and Sonu Krishna Jena v. the State of Odisha Ors. (2020) 214 AIC 751
- Yash Pal And Another vs. State Of Haryana and Ors. CRWP-4660-2021
- Gurwinder Singh and Anr vs. State of Punjab and Others SLP (Crl.) No. 4028 of 2021
- Soniya and Another vss. State of Haryana and Ors. CRWP-4533-2021
- Pardeep Singh and Another vs. State of Haryana and Ors. CRWP-4521-2021(O&M)
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CHAPTER- 1

1.1 INTRODUCTION

The live-in relationship is a domestic cohabitation between an unmarried man and an unmarried woman or, in some cases, persons of the same sex. It involves cohabiting together without any legal obligations or responsibilities towards each other. There is no law tying the partners together, and consequently, either of them can walk in and out of the relationship as and when they want.

The traditional Indian society has stigmatized non-marital live-in relationships, but the increasing number of live-in couples indicates the trend of social acceptance. Under the practice of live-in-relationship, a heterosexual couple of a man and a woman or a homosexual couple, generally both unmarried, live together without getting formally married. This practice is prevalent in metropolitan cities where while working at the same place, most people find it convenient to reside together like a married couple and enjoy life without taking the risk and responsibility of marriage.

India is a developing country. Younger generations are slowly accepting western ideas and lifestyles, including non-marital living together; one of the most crucial developments amongst the concept of relationships. Because of this concept, many legal issues have been raised in the courts regarding the legality of such relationships and the impact of such relationships on Indian society. Since no legislation explicitly governs this subject matter, the definition and ambit of such a relationship are not clear. Although, if we look at the judicial approach, the Courts have always been active and played a decisive role in protecting the rights and interests of individuals in such relationships through various judgments. However, the main issue which is involved in such relationships is the extent of giving legal recognition to them. When legal recognition seems to be necessary for some aspect, it may give rise to other legal problems and affect the rights of the third party involved directly or indirectly in such relationships. For instance, if one party in a live-in relationship already has a legal spouse, that person's right may be affected. A married man and unmarried woman or vice versa cannot claim protection if they enter such relationships as it would be an offense to

cohabit with another person without obtaining a divorce. It may give rise to legal problems and affect the right of parties. Such a relationship does not fall within the ambit of a live-in relationship or relationship in nature of marriage. Therefore, there are consequences of legalization or giving legal recognition to such relationships on married partners. Live-in relations in India fall under the presumption of marriage; women, however, are still the losers.¹ Live-in relationship directly affects the status of wife, children, and family. If a child is born out of a live-in relationship, there might be issues of legitimacy, custody, inheritance. The Indian courts are trying to find a solution to these problems in the existing laws.²

Thus, through this Dissertation, the author will analyze the socio-legal status of live-in relationships in India and the rights of affected parties. The author will analyze the pros and cons of such relationships and address critical issues such as rights of children born out of such relationships, their legitimacy and focus on a balanced approach, put forth some recommendations so that the rights of all affected parties are addressed, and justice is served.

1.2 OBJECTIVE OF THE STUDY

1. To analyse the socio-legal status of Live-in relationships in India.
2. To analyse the pros and cons of Live-in relationship and the extent of giving legal recognition to it.
3. To analyse the rights of affected parties in Live-in relationships under the Indian law.

1.3 REVIEW OF LITERATURE

- Socio-Legal Dimension of Live-in Relationship: A Challenge to Society – Vijay V. Muradande B.A., LL.M.
- Socio-Legal Perspective of Live-in-Relationship in India - Mr. Yuvraj D. Patil, BS. L, LL.M

¹Posted in Crime Against Women, Domestic Violence, Live in Relationship, Marriage Laws by NNLRJ India on December 20, 2010

²Yuvraj D. Patil, "Socio-Legal Perspective of Live-in-Relationship in India"

- Socio-legal status of live-in relationship a comparative study of France Philippines Scotland and India – Shashi Bhushan

1.4 RESEARCH QUESTIONS

1. What is the socio-legal status of live-in relationships in India?
2. What are the pros and cons of a live-in relationship, and to what extent should it be legally recognized?
3. What issues arise in live-in relationships, and how can they be addressed to serve justice to the affected parties?

1.5 HYPOTHESIS OF THE STUDY

- ✓ Present laws are insufficient to address the issue of live-in relationships in India.
- ✓ The concept of live-in relationships in India can only be given legal recognition in some aspects.
- ✓ A balance needs to be drawn so that justice is served to all affected parties in such relationships.

1.6 OUTLINE OF THE STUDY

The research has been categorized into different chapters briefly described below:

Chapter 1: Introduction

Chapter 2: Concept of Live-in relationship in the Indian context

Chapter 3: Legal recognition- Issues & Challenges

Chapter 4: Judicial Approach – Observations of Supreme Court & High Courts

1.7 METHODOLOGY OF THE STUDY

The method used in the Dissertation will be doctrinal, non-empirical research, and theoretical research. As the topic is a socio-legal issue, the doctrinal form of study was the most appropriate. To conduct the research, the author has collected mostly primary data sources, including research papers published in legal periodicals/ journals, reports, thesis and conferences papers, and judgments of different law courts of India. For secondary source of data abstracts, bibliographies, dictionary, encyclopedia, commentaries, and digest has been used to carry out the research work.

CHAPTER – 2

2.1 CONCEPT OF LIVE-IN RELATIONSHIP IN INDIAN CONTEXT

Meaning & Definition

A live-in relationship is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and sexually intimate relationship. The legal definition of a live-in relationship is “*an arrangement of living under which the couple, that is unmarried, lives together to conduct a long-term relationship which resembles a marriage.*”

The approach and attitude towards live-in relationships in different societies are diverse, but its definition is almost everywhere. It is a kind of relationship where a couple lives together without marrying each other and without legal or social commitment. This arrangement is like a marriage between two individuals living together, but there are no rights and obligations on either of the partners.

Live-in relationships are also known as *de facto* Marriage and have gained popularity and acceptance among younger generations. It is seen as an alternative to Marriage. Youngsters generally opt for such relationships over marriage either to test the partner's compatibility or simply because such relationships do not involve a formal marriage's hassles. People involved in such relationships choose to stay together either "by choice" or "by circumstance." For example, when two persons “voluntarily” decide to live together under the same roof, such relationships fall in the former category. In contrast, people may also find themselves in such relationships under the circumstances, such as when one or both partners are divorced and stay together but cannot afford to marry again due to economic reasons. This would fall in the latter category.

To understand the true meaning of the concept of live-in relationships, woman and concubine/keep/mistress should not be differentiated. Any woman involved in such

relationships should not be given the status of 'keep.' In a live-in relationship, a woman is not a "keep." Men and women both equally contribute and live together and are presumed to be husband and wife by law.³

Such kind relationships or pre-marital sex is not an offense. Living together is a right to live under Article 21 of the Indian Constitution, which guarantees personal life and liberty.

2.2 HISTORY AND ORIGIN

Pre-marital relationships existed both in the Vedic period and afterward but were a rare occurrence ~ Manu.

Live-in-relationship is not new in our society. In India, people who stigmatize such a relationship or consider it a social taboo are often under the presumption that such relationships are a practice of western culture and have been followed by people of our country. However, some might not be aware that various kinds of cohabitation and non-marital live-in relationships prevailed in India among different communities. The only difference that can be seen now is people have become quite open about it.

People in our society have gradually shifted from arranged marriages to love marriages and now to 'live-in relationships.' If an analysis is made of the need for such relationships, less responsibility will emerge as the prime reason, no legal obligations, the disrespect of social bonds, and the lack of tolerance in relationships have given rise to an alternative to marriages. Joel D Block, a leading Psychologist in New York, has differentiated between three kinds of relationships based on assumed commitments. "Going together implies sexual individuality; living together adds to this an agreement to merge living routines and Marriage the implication of permanence. Living arrangements are the mid-point between the very least restrictive (going with someone) and the most complicated (the Marriage). The very nature of proximity allows a couple to provide feedback to recognize and modify relationship-defeating behaviors. It contains an element of convenience."⁴

³A. Dinohamy v. W. L. Blahamy AIR 1927 PC 185

⁴ Bhumika Sharma, Live-in-Relationships: The Indian Perspective, "INDIA LAW JOURNAL" -http://www.indialawjournal.com/volume2/issue_2/article_by_saakshi.html

Maitray-Karars

One similar kind of such relationship is known as "*Maitray karars*" or the "companionship contract" in which people of two opposite sex (heterogenous) would enter into a written agreement to be friends, live together, and look after each other. This was an innovative alternate to bigamy and was originated in Gujarat and practiced in few parts of Maharashtra in the '60s and '70s until the Government officially banned it. These agreements were registered in District Collector Office and were later known as live-in relationships.⁵The *Maitray - karar* often took the form of a pact between a married Hindu man and his 'other woman' to circumvent the provisions of the Hindu Marriage Act, which prohibits the re-marriage of such a man if the wife is alive and not divorced from him. Thus, the agreement was essentially a method to bypass the stringent provisions of the said Act and enter an undeclared second marriage. Though not legally enforceable, the document was meant to give solace and a sense of security to such 'other woman'.⁶

Thus, a Maitray Karar is a contract between a married man and an unmarried woman through formalizing the terms and conditions of maintenance, food, clothing, shelter, and all other necessities of life between them for living together and usually by the man all the expenses are maintained for his companion. However, women contracted in Maitray Karar had a more robust status than women in a live-in relationship.⁷

However, in **Minaxi Zaverbhai Jethva v. the State of Gujarat**, the Gujarat High court held that "Maitray Karar is illegal as it is opposed to public health and morality."⁸

The contents of the Maitray karar agreement are like, "If in the course of our companionship, we would make love together, and if of this love-making an offspring is born, then we shall be jointly responsible for that child."

Later it was officially banned by the Government in both Gujarat and Maharashtra as the offspring born out of such relationship were not considered legitimate. It was also considered violative against the provision of the Hindu Marriage Act, 1955, especially section 5(i), which compulsorily mandates monogamy for a valid marriage.

⁵Pragati Ghos, Essay on the Maitray Karar under the Hindu Marriage Act

⁶ <https://unlocking-the-future.com/essay-on-the-maitri-karar-under-the-hindu-marriage-act/>

⁷ Vijay Sharma, Monogamy: It is Inefficacious Legal Imposition, In Protection to Women in Matrimonial Home, 116-117, (Deep and Deep Publications, 1994)

⁸ Special Civil Appeal No.3708 of 1998

Gandharva Vivah/Marriage

Proof of the existence of live-in relationships can also be found in ***Gandharva Vivah*** where man and woman mutually consent to get married, and neither involves the family of the couple nor a particular ritual to solemnize the Marriage.

"A Gandharva Marriage is considered to be one of the eight classical types of Hindu Marriage. This classic & historical marriage tradition from the Indian sub-continent was based on mutual fascination between a man and a woman, with no rituals tied, witnesses, or family participation".⁹ The Marriage of Dushyanta and Shakuntala was a historically celebrated example of this class of Marriage.¹⁰

Non-marital Cohabitation or “Dapa” among GARASIA COMMUNITY – RAJASTHAN

As mentioned earlier, live-in relationships may be a presumption of most Indians as a practice of western culture followed by people in India. However, for indigenous Garasia community in Rajasthan, this practice has been a tradition since time immemorial. This arrangement in the northwestern state of Rajasthan is also referred to as “Dapa” by some experts.¹¹

The tribals of Garasia community have been following this custom for thousand years which has proven evident in low rape and dowry death cases as women retain a high status in such arrangement.

The primary cause of not marrying and entering such a relationship is mainly because of financial issues. The tribals are primarily dependent on farming, agriculture, and labor, so they choose to marry their live-in partners when they have sufficient money, which happens later in their lives. In the absence of money, they continue to live together and even become parents without the fear of bearing a child without getting formally married.

⁹Catherine Benton, *God of Desire: Tales of Kamadeva in Sanskrit Story Literature*, SUNY Press, 2006, ISBN 978-0-7914-6566-0

¹⁰ https://en.wikipedia.org/wiki/Gandharva_marriage#cite_ref-ref77yodur_1-0

¹¹Shahnawaz Akhtar, Marriage an alien notion for Indian tribe Live-in relationship are the norms of Garasia community where women retain a high status in western state of Rajasthan, 17th June 2014, Aljazeera, <https://www.aljazeera.com/features/2014/6/17/marriage-an-alien-notion-for-indian-tribe#:~:text=Live%2Din%20relationships%20are%20the,in%20western%20state%20of%20Rajasthan.&text=Members%20of%20the%20indigenous%20Garasia,outside%20wedlock%20since%20time%20immemorial.>

Thus, Live-in relationship are the heart and culture of Garasia community something which most Indians are yet to accept.

NATA PRATHA

“Nata Pratha” is a century old custom which is still alive in several states like Rajasthan, Madhya Pradesh and Gujarat. The custom allows a male person to live with as many females which results in children being abandoned by their parents. Nata Pratha is practiced by the Bhil tribe, which is one of the largest tribes in South Asia. Traditionally, both the persons i.e., man and the woman are supposed to be married or widowed, but the custom has evolved to include single people as well.

This Nata relationship without Marriage allows men and women to have non-marital cohabitation for number of times as much as they want. However, this custom has made it compulsory for a man to pay some amount of money to the woman with whom he wants to live in without a legal marriage, and the parents and members of the community will decide the amount. However, she will not receive the money, sometimes nor her consent will be taken for this relationship. So, this is something depressing. Nata relationship is a similar concept of re-marriage, which is widely practiced and socially accepted among Bhil tribe but not legal.¹²

Like a marriage in every sense, the women in Nata relationship engage in cohabitation, childbearing, household works, caretaking, nurturing of child, fieldwork in farms, any work of necessary and sexual relationship etc.¹³

In the Bhil community, there is a traditional perception of women in ‘good’ Nata and women in ‘bad’ Nata relationship. The ‘good’ Nata relationship is based on mutual consent; by way of dissolution of a prior marriage either by death or by desertion, and it must be acceptable by the family and the community. However, a 'bad' Nata relationship is defined as the relationship is forced to adopt, secretly engaged, by way of abduction, and entered with an illegal reason. Man with any woman also practices nata relationship during marital cohabitation with his wife is continue, but Nata for a woman is permissible as monogamy.¹⁴

¹² Tariq Anwar, *'Nata Pratha' : An Unusual Marriage That Overrides 'Spousal Desire'*, June 15, 2019, NewsClick, (06th June, 2021, 07:12PM) <https://www.newsclick.in/Nata-Pratha-Marriage-Spousal-Desire>

¹³ Annie Zaidi, *What India's old and unusual marriage customs tell us about a woman's consent*, 30th June 2015, Daily, (06th June 2021, 08:48 PM)

<https://www.dailyo.in/politics/child-marriage-nata-pratha-divorce-dowry-women-consent-inheritance/story/1/4683.html>

¹⁴ Uday Chander Singh, no cumbersome divorce proceedings, people of Ahmedabad opt for Maitri karar contract October 24, 2013 (06th June 2021, 09:01 PM)

NON-MARITAL COHABITATION AMONG TRIBES OF JHARKHAND

The men and women have equal rights in almost all tribal societies, including the right to choose a life partner. So, a tribal girl from Oraon, Munda and Ho tribes of Jharkhand can choose a non-marital relationship with her male partner without getting married to each other in the form of 'Dhuku' marriage and the women in such relationships are called 'Dhukua' or 'Dhukni' without having legal rights on property and any other assets because of non-social recognition of the relationship. For social recognition, the couple must arrange a wedding feast in the village and invite all villagers to participate, which is very expensive to bear. So, they prefer live-in relationship status in the form of 'Dhuku' Marriage. Many couples in live-in relationship for more than 20 years as they could not organize a wedding feast, so they simply move in together and start a family¹⁵

These couples have poor backgrounds and doing brutal struggle to pay for a grand feast for the entire village. However, they could not make it possible for many years, thus this leads to a legal problem. The women do not have any legal or social rights to get ancestral property, and in some situations, if the men die early and young, women and children are left "empty-handed". Sometimes this waiting period becomes so long that many of these live-in couples having their grandchildren without a getting married. Dhukni or Dhukua relationship in the form of live-in relationships without Marriage is a common practice among the impoverished tribal people in Jharkhand, who are unable to arrange their wedding followed by a feast for the entire village to make the wedding socio-legal recognition¹⁶

2.3 EVOLUTION IN PRESENT TIMES

India is a country where marriage is a sacrament. The concept of marriage - husband, wife and family is still given utmost importance in many country communities. Talking about the

<https://www.indiatoday.in/magazine/living/story/19811215-no-cumbersome-divorce-proceedings-people-of-ahmedabad-opt-for-maitri-karar-contract-773519-2013-10-24>

¹⁵ Mukesh Ranjan, *after 14 years of living-in, Jharkhand tribal couple gets support for wedding*, Jan. 14, 2019, The New Indian Express,

<http://www.newindianexpress.com/nation/2019/jan/14/after-years-of-living-in-jharkhand-couples-get-support-for-wedding-1924783.html>.

¹⁶ Staff Report, *Jharkhand: After living in for 20 years, elderly tribal couple ties knot in a mass marriage ceremony*, 15th January 2019, News, <http://newsd.in/jharkhand-after-living-in-for-22-years-elderly-tribal-couple-ties-knot-in-a-mass-marriage-ceremony>

culture of India, It is well known that the majority of the Indians are traditional in the way they lead their life. Encouraging an unconventional concept like live-in relationship would undoubtedly create a stir in the society leading to multiple disturbances. It also harms the long-cherished values of institutions such as marriage and family. It may lead to situations where such practices may affect women's status and rights, which is already being neglected for centuries. Most importantly, young girls are invulnerable to being abused by men where girls end up being victims of lust and ruin their life on false beliefs. Indians are well known in the entire world for their culture, tradition usages, customs etc. For ages they have strictly adhered to their cultural values, morals. The concept like live-in relationship is still not acceptable to Indian traditional mindset. Though the divorce rate is increasing at an alarming rate, live-in relationship in India is still not an acceptable norm.

When it comes to live-in relationship and Indian mindset on such relationships. It is essential to mention an eminent personality, an activist from the Indian Independence and a socialist leader, Dr. Ram Manohar Lohia, who had famously said.

“Between a man and a woman, everything is permissible, so long as there is no use of force or breach of commitment.”

Dr. Ram Manohar Lohia never married. He lived almost all his life with her partner Rama Mitra, a lecturer at Delhi University, an arrangement which psephologist Yogendra Yadav describes as **"similar to a modern-day situation of living together and rather bold by the standards of the 60s"**.

It is pretty evident from the above statements that Dr. Lohia was living ahead of his time, and he took a step no one could ever imagine doing in the 20th century.

The hatred to this concept among most Indians is not new nor will it end shortly, because societal acceptance takes much more time than judicial overhauling of the system.

MARRIAGES IN INDIA

In India, as per Hindu culture, tradition, customs and practices, Marriage is made in heaven and celebrated on earth.¹⁷ Hindus and Marriage from the majority population are seen as a

¹⁷Socio-legal Dimension to Live-in Relationship: A challenge to society by Vijay V. Muradande pg. 1

sacred union which entails both religious and social obligations. Therefore, marriages in India are the highest form of social relationship. The rituals and customs related to Marriage differ due to different religions such as Hinduism, Islam, Sikhism, Buddhism & Christianity.

However, in general, it is a sacred relationship where two people are bound together for a lifelong journey. There are certain rites which must take place to complete a Hindu Marriage. The four main rites associated with Marriage are: offerings to the sacred fire (Homa), holding the hand of the bride (Panigrahana), taking of the seven steps around the fire by bride and bridegroom together (Saptapadi) and tying of Mangal sutra (Mangalaya Dharna)¹⁸

Muslim marriages in India, are also referred to as *Nikaah* and is a social contract. The husband and the wife and their respective families enter into an agreement whereby the husband's family pays an amount of money called (*Meher*) dowry to the girl and her family. In return, the girl agrees to marry the boy.

Sikh Marriage

The marriages among the Sikhs and their registration are regulated under Anand Marriage laws.¹⁹ **Anand Karaj** is the official Sikh marriage ceremony, meaning "Act towards happiness" or "Act towards happy life". It is based on Anand Kaarya of Sanskrit.

In a recent Sri Akal Takht Sahib verdict, it was held that the ceremony of Anand Karaj can only take place in a Sikh temple (*Gurudwara*) and any baptized (*Amritdhari*) Sikh may perform the marriage ceremony.

The following are other important elements that must be followed by the Sikh couple and their families:

- Marriage is the partnership of equals.
- No consideration should be given to caste, social status, descent, or race.
- No dowry is permissible.

¹⁸Vidya Bhushan & D.R. Sachdeva, *An Introduction to Sociology* (44th Ed.).

¹⁹ The Anand Marriage (Amendment) Act 2012, No. 29, Acts of Parliament, 2012 (India).

- No astrological facts are to be made and no superstitions are to be considered in fixing the date of the Sikh marriage.
- The wedding ceremony is to be taken place in the presence of the eternal Guru, *Sri Guru Granth Sahib Ji*.
- Expenses of the wedding is to be shared between the two sides as equally as possible.

The Anand Karaj ceremony is a joyous and festive event in which families and friends from both sides are heavily involved. Most Sikh weddings take place in the morning and are completed before noon. Following the ceremony is a langar or a formal lunch. The wedding event can last for the whole day and may spill into the next day.

Christian Marriage

According to Bible, living with the partner before marriage is sexual immorality. The Bible clearly mentions about sexual immorality. Marriage between two persons is the only justified form of partnership that God accepts and blesses. All non-marital sexual relationships are considered fornication.

“Marriage is honourable among all, and the bed undefiled; but fornicators and adulterers God will judge.”²⁰

Christian weddings take place before a priest in a Church, and the wedding ceremony includes the exchange of vows, readings from Scripture, a blessing, and, sometimes, the eucharistic rite.

India is still looked upon as a country where Marriage occupies a sacramental position both philosophically and practically. When one lives in India, a country renowned for its culture, heritage, and tradition, living in relationships is improper.

Cohabitation has been a taboo since British rule in India. However, this no longer holds good in metropolitan cities like Bangalore, Delhi, and Mumbai, but is not so often acceptable in rural and Semi-urban areas with more conservative values. According to a recent survey

²⁰ Hebrews 13:4, NLT

conducted by newsapp inshorts in 2018, 80% expressed support for such relationships in India but also opined that it is still considered a taboo.²¹

Though it is not illegal in India, the majority considers it aberrant and is looked down upon. Not only it lacks the public backing, but the Indian communal setup also makes it difficult to adopt any legislation regarding the issue.

India is popularly known as a country with strong moral values and traditional culture and integrity. Perhaps, that is why bold exhibitions of romance go for a toss in such a typical & conservative society, least being something like live-in-relationships in India. The holy union of a man and a woman in the form of marriage is considered as one of the most sacred bonds in this country. No wonder, living together before marriage is a bitter dampener for the staunch ethic upholders. However, the new millennium has ushered in significant changes even within the nation that has forever been covered in a blanket of rich culture and heritage.

2.4 PERSONS INVOLVED INTO A LIVE-IN RELATIONSHIPS

The **Protection of Women from Domestic Violence Act (PWDV), 2005** was enacted by the Parliament of India which includes this social phenomenon that has emerged in our country known as live-in relationships. This new concept of relationship is still rare in our country but sometimes it is found in metropolitan and in urban cities. In India, in the wake of changed social context, the judiciary has also stepped in time and again and has taken cognizance of such relationships while interpreting the term, '**Relationship in the nature of marriage**' as used in **section 2** of the aforesaid Act.

For detailed scrutiny of the term, '**Relationship in the nature of marriage**', some key provisions in the Act are necessary to be considered.

Section 2(a) of the Act states: '**aggrieved person**' means any woman who has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

²¹ <https://inshorts.com/en/news/80-indian-women-support-livein-relationship-inshorts-poll-1527001664458>

Section 2(f) states: ‘**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.

Section 2(s) states: ‘**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.

Section 3(a) states that an act will constitute domestic violence in case: it harms or injures or endangers the health, safety, life, limb, or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. It is to be noted that section 2 (f) of the Act has used the term, ‘lived together in a share household’ while defining domestic relationship. The definition is silent about the period of residence of the parties.

In **M. Palani v. Meenakshi**²², the Madras High Court held that the Act does not contemplate that both the parties should live or have lived together for a particular period or for few days. The fact that they shared household at least when they had voluntary sexual intercourse is sufficient to enable women to maintain application for maintenance. In this case there was consensual sex between petitioner and respondent, but there was no promise to marry her.

Generally, the following people are involved into a live-in relationship:

1. *Domestic relationship between an adult male and adult female, both unmarried - Relationship between an adult woman and an adult male, both being unmarried who lived or, at any point of time, lived together in a shared household.*

²² M. Palani v. Meenakshi C.R.P. No. 238 of 2008

2. *Domestic relationship between an adult married man and an adult unmarried woman, entered knowingly* - Situations may arise when an adult woman being unmarried knowingly enters a relationship with an adult male, who is married. Then the question arises whether such a relationship is a relationship “in the nature of marriage”.
3. *Domestic relationship between an adult man being unmarried and an adult married woman, entered knowingly* - Situations may also arise where an adult man who is unmarried marries an already married adult woman, the question is whether such a relationship would fall within the expression relationship "like marriage".
4. *Domestic relationship between an adult female who is unmarried and a married adult male, entered unknowingly* - An adult unmarried woman unknowingly enters into a relationship with an adult married male, may in a given situation, fall within the definition and scope of Section 2(f) of the DV Act and such a relationship will be considered to be relationship in the “nature of marriage”, so far as the aggrieved person is concerned.
5. Domestic relationship between same-sex partners (gay or lesbian)

The Supreme Court in **Indira Sarma Vs. V.K.V Sarma**²³, has laid down the above categories of cases (illustrative purpose) who are generally involved in a live-in relationship but not all would come into the purview of relationship in the “nature of marriage”. Therefore, it is important to consider the various aspects which exist in a particular relationship and then reach a conclusion as to whether such relationship is a relationship in the “nature of marriage”.

2.5 WHAT ARE THE PRE-REQUISITES FOR A LIVE-IN RELATIONSHIP?

The term ‘live-in relationship’ has broader scope than that of ‘relationship in the nature of marriage’. It is to be considered as ‘new social phenomena’ in the definition of “relationship

²³Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755

in the nature of marriage”. However, there are specific issues involved with respect to its validity and therefore, the court in the case of *D. Velusamy v. D. Patchaiammal*²⁴ determined specific pre-requisite to be considered valid.

The fundamental pre-requisite to enter a live-in relationship could be summed as follows:

1. The couple must hold themselves out in society as being akin to spouses.
2. They must be of the legal age to marry.
3. They must be qualified to enter a valid marriage, including being unmarried.
4. They must have voluntarily lived together for a significant period.

In addition to the above conditions, the Supreme court has further culled out some guidelines in the case of **Indra Sarma v. V.K.V. Sarma**²⁵ which gives us some insight to such relationships.

(1) Duration of period of relationship which means a reasonable period to preserve and continue a relationship which may differ from case to case, depending upon the factual situation.

(2) Shared household

(3) Pooling of resources and financial activities supporting each other, or any one of them, financially, sharing joint bank accounts, acquiring immovable properties in joint names or in the name of one the female partner, long term investments in business, shares in separate and joint names, to have a long-standing relationship, maybe a guiding factor.

(4) Domestic agreements entrusting the responsibility, especially on the woman to run the home, do household chores like cleaning, cooking, maintaining, or up keeping the house, etc. is an indication of a relationship in marriage.

(5) Sexual Relationship - Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, to give emotional support, companionship, and material affection, caring etc.

(6) Children - Having children is a strong indication of a relationship in Marriage. Parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

²⁴ *D. Velusamy v. D. Patchaiammal* (2010) 10 SCC 469

²⁵ (2013) 15 SCC 755

(7) Socialization in Public Holding out to the public and socializing with friends, relations, and others, as if they are husband and wife is a strong circumstance to hold the relationship is Marriage.

8) Intention and conduct of the party's Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

Considering the above guidelines to determine the validity of a live-in relationship there could be two scenarios:

i When both, the male as well as his female companion, are not competent to marry as per the statutory provisions but they still opt to marry.

(ii) When both the partners, male as well as female are competent to marry as per the statutory provisions, but they opt not to marry.

In the case where the partners are not competent to marry:

(a) A man, who (may or may not be married to another woman) starts living with a female companion, who is dependent on him for her physical, mental, and economic needs. This relationship may continue for a considerable length of time.

(b) Both man and woman are married to some other person, but they start living together as husband and wife. In the society also they are showing themselves as husband and wife and lend their names to the children who may or may not have been born to them.

(c) A man is already married and gets married to another woman, but with the view to avoid the punishment of bigamy performs the rites of the Marriage in a way that solemnization of Marriage is not fulfilled and completed.

(d) A man first starts living with a woman but does not marry due to cast or religious consideration and may even have children from the relationship. Later due to parental as well as societal pressure he gets married to another woman of their choice and from his own community.

(e) The man hides his marital status from the woman, not disclosing the fact of his earlier Marriage, and the woman marries him under the impression that he is competent to marry.

(f) At the time of Marriage, the man is competent to marry but subsequently this Marriage turns out to be void as the earlier Marriage was not dissolved legally or the ex-parte divorce was set aside.

In the case where the partners are competent to marry:

(a) Both the partners by choice make a conscious decision not to marry and remain in a relationship with each other, more popularly called 'intimate partner relationship' or 'non-marital cohabitation. This may be because of their liberal non-conventional approach.

(b) Both the partners want to get marry and they get married, but the marriage is not considered lawful. In other words, the customary rites and ceremonies as required by law are not complete, for example, a defective ceremony is undergone like merely exchanging garlands, applying *sindhur etc.* This couple is under the impression that they are married but they are not married as per law.

In all the situations the man and the woman are over a period of time in a committed relationship. The natural proposition follows that they both must take the responsibility for the outcome of their actions. They must not only care for each other but must understand sensitivity to each other's needs. Undoubtedly, there is conflict of interests in every relationship and often domestic situations may arise that escalate into arguments. It is unacceptable, if during the arguments, the aggressor uses the violence to show his dominance. Many questions are arisen,

➤ Should not the woman be entitled to protection, when she is subjected to violence, whether physical, mental, sexual, or economic?

➤ Should a man be allowed to exert power and control through money; giving money to the dependent woman when he wants and taking it away on a whim?

➤ Should he be allowed to belittle his partner of several years, undermine her confidence or resort to physical abuse?

2.6 DIFFERENCE BETWEEN LIVE-IN RELATIONSHIP AND MARRIAGE

Marriage is sheltered by law and the Indian society. As already mentioned, Marriage is treated as a sacrament in India. Despite the growth and popularity, Indians still prefer the traditional way of bonding together by marrying their respective partners. Live-in relationships are said to be substitute of Marriage. There are many similarities in both. However, it differs from Marriage in few aspects, some of which are as follows:

Marriage is a huge commitment than a live-in relationship which is generally considered to be a walk-in and walk-out relationship. There are no strings attached in such relationships and no legal bond between the couples, whereas Indian Marriage is an eternal bond. As per the Indian wedding (Hindu religion) rituals a couple once married would remain inseparable for seven births. It is called '*Saat janam ka saath*'.

In Live in relationships, there are no financial obligations of partners towards each other which generally in seen after Marriage. The relationship can be ended abruptly but to end a marriage, one has to undergo lengthy, cumbersome and expensive divorce procedures provided under the law.

Some people are not entirely against Marriage, but they consider live-in relationship as test drive before Marriage. Although their intentions are good, it often leads to several issues and challenges.

2.7 PROS AND CONS OF LIVE-IN RELATIONSHIP

As live-in relationship is gaining popularity in the 21st century, with the advantages it has. There are specific issues or challenges that may arise in a country where there is still a lack of recognition to such relationships. It has its own perks and disadvantages.

1. **Freedom** - Live-in relationship offers personal liberty to partners compared to Marriage which is a prime benefit. neither of the partners has to accept any obligations nor has to give up on any rights. There is no commitment like marriage; relationship suffice if both are content with each other.
2. **Responsibility:** There is a significantly less load of responsibility as compared to Marriage. Married people must manage all the responsibility of family while cohabiters have only their own responsibility.
3. **Hassle-free dissolution (Break-up) :** It takes a lot of effort and money to dissolve a marriage because it is a rigorous and unassailable arrangement. Partners must equally divide debt and family assets, to pay lawyers and to decide with respect to the children. However, cohabiters can break their relation easily.
4. **Rehearsal for a married life** - Live-in is the perfect rehearsal of a married life. Partners know each other 's common interests and views on finance, sex, religion, and politics.
5. Easy to change the partner/Walk-in and out: If partners could not satisfy or get bored seeing the same face every morning, they can pack their bags any day and move out without any legal procedure.
6. **No legal hassle:** There are no financial complications, complex negotiations, or legal hassle like marriages. The arrangements are like a dream come true, like have physical relations, live together, and move out when getting bored.

CONS OF LIVE-IN RELATIONSHIP:

1. **Social Censure** is a significant disadvantage of live-in relationship. Society finds it hard to accept such a relationship open-heartedly. It is considered as non-acceptable especially by the older generation. The society often harasses Couples in such types of relationships for their choice.
2. **Lack of commitment** - Any quarrel or fight can lead to a split, whereas a fight is often followed by reasoning and resolving in a marriage.
3. **Emotional abuse** - A long time into the relationship, one of the partners may feel 'suffocated' due to the lack of personal space. Some may even feel monotony, which causes trouble for the relationship and could eventually lead to a heart-breaking split.
4. **Lack of Social and legal recognition** – There is a lack of social and legal recognition, and partners do not have clearly defined obligations and rights.

CHAPTER - 3

3.1 PROTECTION AGAINST EXPLOITATION IN LIVE-IN RELATIONSHIPS

i. Justice Malimath Committee Report:

The Malimath Committee, also known as, the Committee on Reforms of Criminal Justice System, was set up in November 2000. It was constituted by the then home minister and deputy prime minister L K Advani under the chairmanship of V S Malimath, former chief justice of the Karnataka and Kerala High Courts. In 2003 the Malimath Committee while submitting its report, it made several recommendations under the chapter “offences against women”. The first of these recommendations was to amend **Section 125 of the CrPC**. This section is concerned with maintenance rights of the “neglected wife, children and parents”. It seeks “to prevent starvation and vagrancy by compelling the person to perform the obligation which he owes in respect of his wife, child, father or mother who are unable to support themselves.”

The committee sought to extend the definition of “wife” in **Section 125** “to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage”.²⁶

The Malimath Committee had also recommended that the word ‘wife’ under The Code of Criminal Procedure Code, 1973 be amended to include a ‘woman living with the man like his wife’ so that even a woman having a live-in relationship with a man would also be entitled to alimony.

ii. The Maharashtra Government Proposal, 2008²⁷

In 2008, Maharashtra, following the recommendations of the Malimath Committee, initiated an aborted attempt to amend **Section 125 CrPc** which brought the issue of legal status of live-in relations into the public gaze. The move was construed pattern as an attempt to confer legal status on secondary unions of men as well as legalise live-in relations of the modern

²⁶ https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf (pp 189-94) (13th June 2021, 11:19 am)

²⁷ <https://timesofindia.indiatimes.com/india/maharashtra-to-legalise-live-in-relationships/articleshow/3575090.cms> (13th June, 2021, 11:36 am)

kind in which young men and women choose to enter non-marital heterosexual relations prior to entering a long-term committed stated a marriage tie.

Thus a news item reported that “...a move has been proposed to legalise Live-in Relationship (for those woman living with a man for a reasonable period, without marrying him) by according the status of wife to her” (Agrawal 2008), and another news article titled “Securing Live-in Relations” began with the story of a modern working woman living in an urban location and having a live-in boyfriend away from the prying eyes of her family and community.

The article also mentions that men and women working in the business process outsourcing (BPO) industry are prone to enter such relationship (Menon 2008). Discussing “The Socio-legal Dimensions of Live in Relationships”, Varun (2011) set out the context as “the advent of such relationship practised in the metropolitan cities”. Juneja and Sharma (2009) examine the legal developments in light of marriage the fact that “a change can be seen in our society from arranged definition marriages to love marriages and now to “live-in-relationships”.

The PWDVA and ‘Relations in the Nature of Marriage’²⁸

The PWDVA 2005, has been widely acknowledged as the first enactment to recognize the existence of non-marital adult heterosexual relations. This Act defines an “aggrieved person who is covered under this act as “any woman who is, or has been, in a domestic relationship with the other party and who alleges to have been subjected to any act of domestic abuse or violence by the other party” (Section 21). Further, the Act also defines a “domestic relationship” as ‘a relationship between two persons who or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through relationship in the nature of marriage, adoption or are family members living together as a joint family. (**Section 2[r]**).

It is evident from the above that PWDVA Act, 2005 has added the category of “relations in the nature of marriage” for a broad range of domestic relationships between a woman and her male and female kin related through consanguinity or connubial.

²⁸ <https://legislative.gov.in/actsofparliamentfromtheyear/protection-women-domestic-violence-act-2005> (13th June, 2021, 12:26 am)

This is not to imply that the act deals with all forms and aspects of domestic relations in a comprehensive manner. Hence, it excludes the domestic relationship between an adult male employer and a live-in domestic employee. The Act has also no provision for adult same-sex relationships. Nevertheless, it is possible to say that, unlike the recommendations of the Malimath Committee, the PWDVA, 2005 has implications for a broader terrain of non-marital relations as it does not explicitly limit itself to the secondary relations of men. In having used the concept of “relations in the nature of marriage”, the Act seems to have expanded the scope of legally recognized domestic relationships between men and women.

So, it can therefore be said that this act recognizes the existence of such relationships and the right of women in such relations to protection from abuse and domestic violence.

The Constitutional validity of this Act was challenged in the case of **Aruna Parmod Shah Vs Union of India**²⁹ the grounds on which the petitioner challenged the act were as follows.

Firstly, it is discriminatory against men and secondly, the definition of “domestic relationship” mentioned under Section 2(f) of the act is unacceptable. Regarding the second ground, the petitioner argued that placing “relationships in the nature of marriage” is on an equal footing with “married” status leads to the derogation of the rights of the legally wedded wife.

The Delhi High Court rejected both the above contentions regarding the validity & Constitutional status of the act. Regarding the second contention, the court stated that “*there is no reason why equal treatment should not be accorded to a wife as well as a woman who has been living with a man as his “common law” wife or even as a mistress*” (ibid, emphasis added).

In this case the judges interpreted “relation in the nature of marriage” as covering both a “common law marriage” and a relation with a “mistress” without clarifying the legal and social implications of these terms. Referring to this usage in the judgment, *Staying Alive 2008*, (Lawyers Collective and ICRW 2008) defines a “Common Law” marriage as referring to:

²⁹ WP(CRL) Appeal No. 425 of 2008 Decided On, 07 April 2008

Individuals who have lived together for a substantial period and who represent to the world that they are married. Some of the factors considered to determine a common law marriage are whether the parties reside in the same household, have children from the relationship, share names, etc.

It suggests that such marriages are recognized as valid in law. Although it does not appear that there is any notion of common law marriage which exists in Indian law, the “presumption in favor of marriage and against concubinage” is of long-standing. In fact there have been a number of past judgments in which the courts have used **Section 114** of the Indian Evidence Act, 1872 which states that “Court may presume the existence of any fact which it thinks likely to have occurred, regard being had to the ordinary course of natural events, human conduct and public and private business, in their relation to the facts of a particular case to make a presumption of marriage.”

It is thus apparent that non-marital relations have not had a criminal or “illegal” status in India so far as they are not covered by the adultery law and insofar as the principle of presumption of marriage prevails and this is not a new trend. However, the same is not the situation when one of the parties to the marriage is already married and it is this that can be seen to be a newly recognized thorny issue in the Indian legal domain.

A certain amount of dissonance in the interpretation of the idea of “relation in the nature of marriage” in the PWDVA, 2005 can thus be traced to the legal status of such relationships. The Supreme Court has dwelt at length upon the interpretation of this provision of the Act. In a case which concerned a woman seeking maintenance from an apparently already married man under **Section 125**, the judges ruled that,

Unfortunately, the expression “relations in the nature of marriage” has not been defined in the PWDVA Act, 2005. Since there is no direct ruling of this Court on the interpretation of this expression, we think it necessary to interpret it because many issues & cases may arise before the courts in our country on this point, and hence a definitive decision is required.”

The court further observed that:

The Indian Parliament has taken notice of a new social trend which has emerged in our country known as live-in relationship in the aforesaid act of 2005. This new relationship is

though rare in our country and is sometimes found in big urban cities in India, but it is widespread in North America and Europe.

After making this statement which compares “relation in the nature of marriage” with “live-in relationship” the judges opined that a “relations in the nature of marriage” is like a common law marriage.

3.2 LEGAL RECOGNITION – ISSUES & CHALLENGES

When we talk about granting legal recognition to live-in relationships there are certain issues and challenges that may arise. As already stated above, such relationships are not illegal in our country and there are various legislative protection and judicial pronouncements regarding that. But there should be some grounds on which actions should be taken if there is any unlawful act. For instance, a couple one being a Hindu and the other being Muslim are in a live-in relationship and legally presumed as married. After few years, they chose to split. One of them is being forced to get out of the relationship. How will the judiciary protect the rights of the victim? Which Marriage laws will be applicable? All these issues may arise.

Other issues that are questionable is what if a woman is being raped by her partner after breakup or separation from a live-in relationship (though she has not been raped but physical relationship was there with her consent)?

In live-in relationships some small disputes on minor issues could ruin the life of both partners. Disputes could be intentional just for breaking up for the opportunist one. Some legal protection should also be granted in such cases.

Rape Accusations

In the past various PILs were filed in the courts which sought the government to keep the cases of non-marital relationship outside the purview of rape under the Indian Penal Code, 1860. The High Court dismissed a PIL stating that nobody could be arrested only based on a rape accusation prior to conducting a preliminary inquiry; there are an alarming number of

rape cases registered by the police officials, which the police suspects have arose due to termination of the live-in relationship, fake promises to marry or simply refusal to marry. According to a report by the Delhi Police officials, at least 25% of the registered rape cases in a live-in relationship were false.³⁰ Despite this, an adult unmarried man living in with an adult unmarried woman is not immune to the rape allegations; in furtherance to the concept of rape in a domesticated setting, marital rape is not an offence irrespective of marital status.

Dissolution or break up

In the case of a live-in relationship, there are no obligations on the parties to have a formal divorce under the law. The consequences of the dissolution of such relationship lack clarity and are left unanswered in law, for example, the lack of legal provisions in case of division of their joint property after separation. Though it is easy to get into a live-in relationship, but the aftermath of dissolution is still ambiguous.

Adoption

In September 2018, the Central Adoption Resource Authority (CARA) overruled its previous decision of barring live-in partners from adopting a child with specific requirements like:

- The couple must be financially, physically, and mentally stable to raise a child with higher motivation.
- Equal to a married couple, live-in couples if seek to adopt a child, then both partners must give its consent for adoption, and they must be in a stable relationship for minimum of two years.

Although a huge relief is given to live-in couples by way of right to adopt a child by CARA, but under the Adoption and Maintenance Act 1956 the right to adopt a child is provided for only married couples. There needs to be a specific legislation which gives more clarity and recognition to adoption disputes that may arise in such relationships.

Rights of the Male Partner in a live-in relationship

‘The rights of a male partner’ is controversial amongst the male’s rights activists and the judges. As of today, only women can claim maintenance from their male partner in a live-in

³⁰ All you need to know about Live in Relationships in India. <https://blog.iplayers.in/live-in-relationships-2/>

relationship. In the case of **S. Khushboo v. Kanniammal & Anr.**³¹, the court drew an assumption that ‘a live-in relationship is invariably initiated and perpetuated by men’. While this relationship is based on gender parity, the desired justice is a far cry.

Dowry

The Supreme Court held that the demand of dowry could arise in a marital or non-marital relationship (but resembling a marriage), as it is just an unjust demand for money. In the case of **Koppiseti Subbarao Subramanian vs. State of Andhra Pradesh**³², where the defendant would harass the live-in partner for dowry, the court reject the claim made by him that **Section 498A** did not apply in this instance, as he was not married to the woman. The Supreme Court delivered a landmark judgment, as it went a step further to protect woman from harassment and dowry in a live-in relationship.

CHAPTER – 4

³¹ (2010) 5 SCC 600

³² CrI.A.No.898 of 2005 Decided On, 13 July 2006

4.1 JUDICIAL APPROACH

Live in relationship in India may be regarded as immoral by society, but it is not illegal. No law in India postulates that such relationships are illegal. Before Independence, In *A. Dinohamy vs. W L Blahamy*³³ (1928) and *Mohabbat Ali vs. Mohammad Ibrahim Khan*³⁴ 1929, the court held in these cases that Living together as husband and wife for a long term shall be presumed legally married unless contrary proved.

After Independence, there were a series of decisions through court gave protection to people involved in such relationships. In *Thakur Gokal Chand vs. Parvin Kumari*³⁵, it was held that marriage is presumed due to long cohabitation. In *Badri Prasad vs. Deputy Director of Consolidation*³⁶, the Supreme court for the first time recognised live-in relationships and upheld the validity of a fifty-year live-in relationship. In *Payal Katara vs. Superintendent, Nari Niketan and Ors*³⁷, the court held that live-in relationships may be immoral, but they are not considered to be illegal or against any law. Similar view was also pronounced by the court in *Patel and Others*³⁸, wherein it was held that Live in relationship between two adults without marriage is not an offence in India. In *S. Khushboo vs. D. Kanniammal*³⁹, the court gave its landmark judgment and held that there was no law which prohibits live-in relationships in India or pre-marital sex. Living together was held as a part of right to life and personal liberty under **Article 21** of the Indian Constitution.

From the above few decisions, it is pretty evident that in India, the courts have always been active and have played a pivotal role in protecting the rights of affected parties in a live-in relationship. Keeping aside its personal views regarding morality, it has always ensured to protect the couple's right under **Article 21** of the Indian Constitution.

In the case of *Muhammed Riyad vs. State Police Chief*⁴⁰ The Kerala High Court allowed a young adult male aged 18 year and a young adult female aged 19 year to live-in together, and dismissed a writ of habeas corpus filed by the women's father.

³³ A Dinohamy vs. W L Blahamy , (1928) 1 M. L. J. 388 (PC)

³⁴ Mohabbat Ali vs. Mohammad Ibrahim Khan AIR 1929 PC 135

³⁵ Thakur Gokal Chand vs. Parvin Kumari, AIR 1952 SC 231

³⁶ Badri Prasad vs. Deputy Director of Consolidation 1978 AIR 1557

³⁷ Payal Katara vs. Superintendent, Nari Niketan, and Ors. AIR 2001 All 254

³⁸ Patel and Others 2006 (8) SCC 726

³⁹ S. Khushboo vs. D. Kanniammal AIR 2010 SC 3196

⁴⁰ Trivandrum, WP(Crl.) No. 178 of 2018

The Bench comprising two judges noted that live-in partners cannot be separated by courts by issuing a writ of habeas corpus, provided that both the partners have attained the age of majority.

It observed, “*We cannot deny the fact that live-in relationship has become prevalent in our society and such live-in partner cannot be separated through issue of a writ of habeas corpus provided they have attained majority. The Constitutional Court is obliged to respect the right of a major to have live-in-relationship even though the same may not be acceptable to the orthodox section of the Indian society. We are therefore constrained to set aside this writ petition declaring that the detenue is free to live with her partner or marry him later his attaining the marriageable age.*”

The courts have also considered other unusual instances and have granted protection to couples in those situations as well. In the case of ***Chinmayee Jena Vs. State of Odisha & Others***⁴¹ the Orissa high court allowed same sex live-in couple to stay together.

The matter was heard by division bench comprising of Justice **S. K. Mishra & Savitri Ratho** however, both the judges went out to write separate but concurrent decision allowing the woman to stay with her same-sex partner.

The judges referred to the decision of the Supreme Court in the case of **National Legal Services Authority vs. Union of India (NALSA) and others**⁴² and **Anuj Garg vs. Hotel Association of India**⁴³, Justice S.K Mishra concluded that it is apparent that all human beings have the collective right of enjoyment of human rights, the right to equality (Art. 14) , the right to recognition before the law, right to life (Art. 21), the right to privacy and right to dignity while in detention.

Justice S.K Mishra further acknowledged the fact that there cannot be social reforms till it is ensured that each citizen of the country is able to utilize his/her capabilities to maximum limit.

Justice S.K Mishra also referred to the landmark judgment of the Supreme Court i.e., **Navtej Singh Johar v. Union of India**⁴⁴, the case which held that Section 377 of the Indian Penal

⁴¹ Writ Petition (Criminal) no. 57 of 2020

⁴² (2014) 5 SCC 438

⁴³ (2008) 3 SCC 1

⁴⁴ AIR 2018 SC 4321

Code, 1860, which penalizes self-same couples, transgresses Article 14, 15, 19 and 21 of the Constitution of India.

It may be noted that among other things, the case further held that Section 377 of the IPC, in so far as it criminalizes consensual sexual conduct between two adults of the same sex is unconstitutional. Some of the notable statements from the judgment are quoted below:

“There is hardly any scope to take a view other than holding that the petitioner has the right of self-determination of sex/gender and also he has the right to have a live-in relationship with a person of his choice even though such person may belong to the same gender as the petitioner.”

“The often-quoted maxim – love knows no bound has expanded its bounds to include same-sex relationships. An understanding of the Supreme Court judgments will indicate that individual rights must be balanced with social expectations and norms. The freedom of choice is therefore available to the two individuals in this case who have decided to have a relationship and live together, and society should support their decision.”

In another recent judgment of *Pardeep Kumar and Ors. Vs. State of Haryana and Ors.*⁴⁵

The Punjab & Haryana High Court held that an individual has the right to formalize the relationship with their partner either through marriage or by adopting the non-formal approach of a live-in relationship. The Court observed, **“The Constitutional Courts grant protection to couples who have married against the wishes of their respective parents.** They seek the protection of life and liberty from their parents and family members, who disapprove of the alliance. **An identical situation exists where the couple has entered a live-in-relationship. The only difference is that the relationship is not universally accepted. Would that make any difference?”**

The Court remarked, *“In law, such a relationship is not prohibited, nor does it amount to commission of any offence and thus, in my considered view such persons are entitled to equal protection of laws as any other citizen of the country. The law postulates that the life and liberty of every individual is precious and must be protected irrespective of individual views.”*

⁴⁵ CRR Nos. 1354 and 1574 of 2019 (O&M) Pardeep Kumar and Ors. vs. State of Haryana and Ors. (14.05.2020 - PHHC) : MANU/PH/0408/2020

However, there have been hardships in terms of legal recognition and questions as to what extent protection and recognition to such relationships be awarded.

The above significant observation from the Punjab & Haryana High Court came days after the High Court in the case of **Ujjawal and Another v. State of Haryana and Others**⁴⁶ refused to grant protection to a live-in couple who allegedly faced threats from the girl's family since their elopement while noting that

“If such protection as claimed is granted, the entire social fabric of the society would get disturbed.”

In the second of the case, the High Court's single-judge bench of Justice HS Madan in *Gulzar Kumari and Another v. State of Punjab and Others*⁴⁷ while denying protection goes on to note that "the petitioner in the garb of filing the present petition are seeking seal of approval on their live-in relationship, which is morally and socially not acceptable and no protection order can be passed.

Further In a recent ruling, in the case of *Moyna Khatun and another vs. State of Punjab and Ors*⁴⁸, the Punjab & Haryana Court registered its disapproval of 'new concept of contractual live-in relation' backed by a deed, wherein parties states that their live-in relationship is not 'marital relationship'. The Court held that "especially stating (in the deed) that it is not a 'marital relationship' is nothing but the misuse of the process of law as it cannot be morally accepted in society."

These two judgments passed by the Punjab and Haryana High Court tend to depict a stark reality of "social morality surrendering to constitutional morality".

4.2 JUDGMENTS OF THE SUPREME COURT – IN CONTEXT OF LIVE-IN RELATIONSHIPS

The Supreme Court in a series of rulings has laid great emphasis on the right to choose a partner as a part of Right to personal liberty under Article 21 of the Constitution of India.

⁴⁶ Ujjawal and Another v. State of Haryana and Others [CRWP-4268-2021(O&M)]

⁴⁷ Gulza Kumari And Another v. State of Punjab and Others (High Court Of Punjab And Haryana) CRWP-4199-2021 (O&M)

⁴⁸ Moyna Khatun and another Vs. State of Punjab and others CRWP -2421-2021

Under this section, the author shall discuss few significant decisions of the Supreme Court that shall depict the ambiguity in comparison to two of the recent judgments delivered by the Punjab and Haryana High Court.

Right to Choose of an Adult:

In **Shafin Jahan v. Asokan K.M**⁴⁹, the Supreme Court has reiterated the right of choice of a partner and held:

"The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just, and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of everyone to take decisions on matters central to the pursuit of happiness.

It is important to state here that expression of choice in accord with the law means acceptance of individual identity. Curtailment of this expression and the ultimate action arising therefrom on the conceptual structuralism of deference to the societal will destroy the individualistic entity of a person. The social values, morals and norms have their own space, but they are not above the constitutionally guaranteed freedom & rights. The aforesaid freedom is both a constitutional and a human right."

In **Shakti Vahini v. Union of India**⁵⁰ the Supreme Court has held that "**Assertion of choice is an integral facet of liberty and dignity.**"

"Any kind of torture or torment or ill-treatment in the name of honor that is equivalent to atrophy of choice of an individual relating to love and marriage by any assembly, whatsoever nomenclature it assumes, is illegal and cannot be allowed a moment of existence. When the ability to choose is crushed in the name of class honor and the person's physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large, the 3-judges bench of the Supreme Court has observed.

The Supreme Court in Shakti Vahini case has reminded the Constitutional Courts that it is their obligation as the "*sentinel on qui vive*" to ardently guard the right to liberty of an

⁴⁹ [(2018) 16 SCC 368

⁵⁰ [(2018) 7 SCC 192],

individual as the dignified existence of an individual has an intimate association with liberty. Without sustenance of liberty, subject to constitutionally valid provisions of law, the life of a person is comparable to the living dead having to endure cruelty and torture without protest and tolerate the burden of thoughts and ideas without a voice to dissent or record a disagreement."

The Supreme Court in this case has made it essential for the authorities to follow certain punitive measures to provide security to the couples while keeping in mind their safety and threat to perception. The Court in the instant case has ordered the concerned District Magistrates to ascertain whether the bachelor-bachelorette are capable adults to provide the necessary protection and support.

Considering the above, it is evident enough that the 3-judge bench of the Supreme Court in the Shakti Vahini case extended to protect not just married couples, but also the live-in ones from any threat of violence or abuse.

Live-In partner – Entitlement to Right to maintenance under Section 125 of Criminal Procedure Code, (Cr.Pc) 1973:

The Supreme Court in the case of **Chanmuniya v. Virendra Kumar Kushwaha and Another**⁵¹ for the very first time, held that the right to maintenance can be claimed by live-in couples as well.

"...in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent."

The Supreme Court in **D. Velusamy v. D. Patchaimmal [(2010)⁵²]** while extending the provisions of the domestic violence act to live-in couples pointed that not all live-in relationships were in the 'in the nature of marriage' and further laid down that:

⁵¹ [(2011) 1 SCC 141]

⁵² 10 SCC 469

“...a common law marriage is one which requires that although a couple may not be formally married:

(a) The couple must hold themselves at society as spouses.

(b) the parties must have attained majority.

(c) the parties must be qualified to enter a legal marriage, including being unmarried.

(d) the parties must have willingly cohabited and held themselves out to the world as being like spouses for a specified period.

However, not all Live-in relationships would come under the purview of “relations in the nature of marriage” to avail the benefit of PWDV Act, 2005.

Merely spending weekends with each other, a hook up or a one-night stand would not make it a 'domestic relationship' under the said Act

Furthermore, the Court had also held that independent children born out of live-in relationships are also entitled to maintenance by their parents under the provisions of Hindu law as well as under **Section 125 of the Criminal Procedure Code, 1973**.

4.3 CONTRASTING PUNJAB AND HARYANA HIGH COURT JUDGMENTS – RECENT DEVELOPMENTS

In contrary to the above two rulings in the issue of the High Court of Punjab & Haryana regarding the Live-in relationship, there are several instances when the Indian Courts have continued to positively observe in regard to the granting of protection of the couples in a Live-in relationship.

In a recent judgment the Punjab and Haryana High Court in **Soniya and Another v. State of Haryana and Others**⁵³ went on to observe that a live-in relationship may not be acceptable

⁵³ [CRWP-4533-2021(O&M)]

to all in a society, but it cannot be said that such relationships are illegal or that living together without the sanctity of marriage constitutes an offence.

The single-judge bench of the High Court while taking note that Article 21 of the Constitution of India provides for a citizen's life and personal liberty, went on to observe that:

"Once an individual, who is a major, has chosen his/her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. It is for the State at this juncture, to ensure their protection and their personal liberty."

In another case of **Nasima and Another v. State of Haryana and Others**⁵⁴ where the High Court though adjudged the marriage between a Muslim Women and a Hindu Man as invalid but has ruled that the couple would be entitled to live in a live-in-relationship in nature of marriage and to the protection of their life and liberty.

In another contrasting judgment delivered last year in **Priyapreet Kaur and Another v. State of Punjab and Others**⁵⁵ the single-judge bench of Punjab and Haryana High Court had upheld a couple's right to be in a live-in relationship. The Court has further observed that:

"The petitioners are both major and have every right to live their lives as they desire within the four corners of the law. The society cannot determine how an individual should live her or his life. The Constitution of India guarantees every individual the right to life and the choice of a partner is an important facet of the right to life."

In a significant judgment, the single-judge bench of Punjab & Haryana High Court in the case of **Paramjit Kaur and Another v. State of Punjab and Others**⁵⁶ have granted police protection to a homosexual live-in partner.

The Court went on to remark that "the appellants are entitled to protection of their lives and Personal liberty as enshrined under Article 21 of the Constitution of India, irrespective of the nature of relationship between them. Assuming, they were living simply as friends together, even then they are constitutionally entitled to live in peace. Legality of their relationship with each other, therefore, is of no consequence viz-a-viz their right to life and liberty.

⁵⁴ [CRWP-2148-2021]

⁵⁵ [CRWP-10828-2020(O&M)],

⁵⁶ [CRWP-5024-2020(O&M)]

4.4 JUDGMENTS OF OTHER HIGH COURTS RECOGNIZING LIVE-IN RELATIONSHIP:

There are several instances when apart from the Apex court, High courts of different state in the country have given recognition to the concept of live-in relationships and have expanded a garb of protection upon them. The author shall discuss few significant ones in this section.

High Court of Allahabad

In the case of **Kamini Devi and Another v. State of U.P. and Others**⁵⁷ the two-judge bench of Allahabad High Court has observed that the live-in relationship between consenting adults is not an offence.

The High Court while relying on the case of **Lata Singh v. State of U.P.**⁵⁸ further went on to examine that the petitioners have the right to live-in with each other.

"Live-in relationship is a relationship which has not been socially accepted in India, unlike many other countries. It was observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral," the division bench stated while allowing protection to the couple.

High Court of Kerala

In one of the significant verdicts very recently, the Kerala High Court has granted recognition to the concept of live-in relationship. The High Court went on to acknowledge that a child born out of such relationships would have to be treated as a child born to a married couple for the purposes of surrendering a child for adoption.

The High Court observed that:

"Marriage as a social institution depends upon personal law or secular law like Special Marriage Act. It has no bearing on the concept of Juvenile Justice. Parental right of biological parents is a natural right not preconditioned by institutionalization of legal marriage. In a live-in relationship, a couple acknowledges mutual rights and obligations. It is more of a

⁵⁷ [WRIT-C No. 11108 of 2020]

⁵⁸ [(2006) 5 SCC 475]

contract. Offspring in such a relationship is acknowledging biological parental rights of both. Thus, in the light of scheme of law as above there is no difficulty in holding that a child born in a live-in relationship also has to be construed as a child born to a married couple."

Orissa High Court

In one of the significant verdicts, the Orissa High Court in the case of **Chinmayee Jena @ Sonu Krishna Jena v. the State of Odisha and Others**⁵⁹ has allowed a homosexual couple to Live-in together.

The two-judge Bench of the High Court ruled that:

"There is hardly any scope to take a view other than holding that the petitioner has the right of self-determination of sex/gender and also he has the right to have a live-in relationship with a person of his choice even though such person may belong to the same gender as the petitioner."

The Orissa High Court further declared that "the woman shall have all the rights of a woman as guaranteed under the Protection of Women from Domestic Violence Act, 2005."

4.5 THE NEED FOR RECONSIDERATION -AN ANALYSIS

The recent judgments ordered by the High Court of Punjab & Haryana seem to be more inclined on social concerns and fail to appreciate the law and the constitutional freedoms laid down under Part-III of the Indian Constitution. The Constitutional Courts must never be pushed by the popular morality portrayed by the society and must always act like a warrior safeguarding the individual liberty and choice permitting constitutional morality. No individual however miniscule and odd may be barred from enjoying the personal liberty and freedoms granted by the Constitution of India.

The Court must recognize the rights of two persons living together with their consent in a humanist approach without being influenced by their gender or orientation. The Court's decision must never be affected because of the identity of an individual or the gender or orientation of an individual with whom that person chooses to live, reside, or love.

⁵⁹ [(2020) 214 AIC 751]

Although in none of the cases the Constitutional Courts had explicitly dealt with the legal status of live-in relationships, implications follow that it is not an offence but that it is a concept gaining acceptance in society. Even as I write these statements, it is worth stating that the High Court of Punjab & Haryana after the two controversial judgments, on 18th May 2021 went on to grant protection to two live-in couples in two of its further judgments.

Firstly, The Court in the case of **Pardeep Singh and Another v. State of Haryana and Others**⁶⁰ went on to observe that:

"... right to life and liberty is enshrined therein and is treated as a basic feature. The said right includes the right of an individual to full development of his/her potential in accordance with his/her choice and wish and for such purpose, he/she is entitled to choose a partner of his/her choice."

Secondly, The Court in case of **Soniya and Another v. State of Haryana and Others**⁶¹ went on to rule that a live-in relationship may not be acceptable to all persons in a society, but it cannot be said that such relationships are illegal.

"It would be a mockery of justice in case protection is denied to individuals who have opted to reside together without any formal marriage, and such individuals have to face dire consequences from the hands of persons from whom protection is sought. In case such a course of action is adopted, and protection is denied, the courts will also be failing in their obligation to provide its citizens a right to life and personal liberty as guaranteed under Article 21 of the Constitution of India and to uphold to the Rule of law".

As per the latest development from the High Court of Punjab & Haryana, the single judge bench of Court on 21st May, 2021, in the case of **Yash Pal and Another v. State of Haryana And Others**⁶² has referred the matter to a larger bench, on the following questions as to -

1. Whether the Court is required to allow protection of personal liberty and life to two persons residing together, without considering their marital status and the other circumstances of the case?

⁶⁰ [CRWP-4521-2021(O&M)]

⁶¹ [CRWP-4533-2021]

⁶² [CRWP-4660-2021(O&M)]

2. If the answer to the above question is in negative, what are the circumstances in which the Court cannot allow the protection to the said couple?

Analytical reading of these conflicting judgment(s) given by the same court leaves the author no choice but to question whether these rulings are owing their underlying principle to social morality or constitutional morality? This contrasting ruling has raised a concern among law scholars whether the interpretation of existing law is being affected by notions of social morality.

Even as I mention these statements, The Supreme Court very recently in **Gurwinder Singh and Another v. State of Punjab and Others**⁶³ has allowed an appeal against one of the orders (discussed above) of Punjab & Haryana High Court and has granted Police protection to a live-in couple who had been denied protection from the subordinate court on social and moral grounds. The Apex court in a short order, has observed that:

"Needless to state that because it concerns personal life and liberty, a Superintendent of Police is required to act promptly in accordance with the law, including the grant of any protection to the petitioners in view of the apprehensions or threats, uninfluenced by the observations of the High Court."

The author is of the view that recent verdict of the Supreme Court granting protection to the live-in couple after being refused by Punjab & Haryana High Court is applaudable. The decisions of Punjab & Haryana High Court were required to be reviewed as they prima-facie appeared to be erroneous and curtailing individuals' rights and liberties. The Supreme Court has once again intervened and upheld the abuse of rule of law, and this recent decision is the latest development in such relationships. Recognition and awareness have been acknowledged and spread through this remarkable verdict.

4.6 CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS – ISSUES/CHALLENGES

Law has always been construed as a dynamic i.e., it changes depending on the needs and demands of the time where it operates. When the Hindu Marriage Act (HMA) was first enacted in 1955, relationships such as non-marital relationships and homosexual unions were

⁶³ [SLP (Crl.) No. 4028 of 2021]

not recognized. Today, relationships which are not in the nature of marriage are more prevalent in the society, which has led to the emergence of grey areas in marriage laws.

While Indian courts started grappling with these issues only recently, countries such as the United States had started dealing with these issues much earlier. In 1977, the California Supreme Court dealt with palimony in the landmark case, *Marvin vs Marvin*⁶⁴ which led to many similar actions being filed in the US.

Similarly, In UK, under the Civil Partnership Act 2004, homosexual couples can enter a contract 'civil partnership' and enjoy almost all the rights and obligations as heterogenous couples have in marital relationship.

There is a need to bring changes to the existing law in India to grant legal status to live-in relationships. A possible drawback of not treating certain types of relationships as marriage is that couples in live-in relationships (who are unwilling to commit themselves to marriage) may be compelled to marry to give validity to their relationship and secure rights under the HMA, 1955.

Further, the legitimacy of children born out of live-in relationships also continues to be questionable. While Indian courts have upheld rights of the partners and children in a live-in relationship, the meaning of such a relationship is ambiguous. The Supreme Court had provided certain guidelines on the meaning of live-in relationship and about the claim of maintenance under the Protection of Domestic Violence Act 2005; the Legislature could incorporate these guidelines under the Hindi Marriage Act, 1955.

The provision under Hindu Marriage Act, 1955 could be made gender-neutral wherein a female partner in a live-in relationship could be ordered by the court to pay maintenance to her male partner depending on their individual financial status. Indian courts have held that a financially unstable husband is entitled to maintenance from his wife. It is also possible that a case of false promise would occur wherein a woman enters a live-in a relationship with a man on a fake promise that he would marry her in the future but fails to do so. Cases of false promises of marriage are usually witnessed in a live-in relationship to establish sexual relations with a woman. These cases are taken cognizance in India; Therefore, it is desirable that the Hindu Marriage Act, 1955 is made applicable to live-in relationships.

⁶⁴ (18 Cal 3d 660)

In India, the issue of treating homosexual unions as marriage or relations in nature of marriage has not yet been declared in by courts. The Supreme Court in the case of *Suresh Kumar Koushal vs Naz Foundation*⁶⁵ upheld Section 377 of the IPC which criminalizes homosexuality. With more people of the LGBTQ community openly expressing their right of self-determination, sexuality, and identity. Live-in relationships involving same-sex couples are probable and the issue of protection to homosexual couples in such relationship could arise in the future.

It would be difficult to include homosexual unions under the Hindu Marriage Act due to disputed religious beliefs in our country. The appropriate way forward in such a scenario could be to recognize homosexual live-in relationships as a 'civil partnership' like that of United Kingdom law.

An issue which was raised by the petitioner in the case of *Uday Gupta vs Aysha*⁶⁶ was that treating marriages or relationships which are not solemnized according to Hindu rites and customs would undermine the holy union of marriage. However, if we compel live-in couples to marry, it will restrict their freedom of choice. Therefore, the scope of marriage under the Hindu Marriage Act must be expanded to accommodate the changes in society and provide legal protection to the rights of partners and children born out of non-marriages.

CHAPTER - 5: CONCLUSION

After analyzing various judgments, pros and cons of live-in relationships in India, it is quite evident that such relationships not only affect only one party but also directly or indirectly affects other parties involved in it. We have often come across news which talks about abuse and violence and women being losers in such relationships, but the modern day problem is not confined only to women abuse. There are instances where existing laws are abused by both the partners involved or a third party in such relationships. A look at the medley of cases before the Supreme Court tells us about an emerging trend of women slapping rape charges against men in failed live-in relationships.

⁶⁵ Civil Appeal No. 10972 of 2013

⁶⁶ CrI M.P. No.6817 of 2014

In a live-in relationship, it would be naive to assume that the man and woman consent to and indulge in sex believing themselves to be husband and wife. When a woman consents for sexual intercourse, her consent has to be in sync with Section 90 of the IPC, which states that the consent has to be without any fear or misconception.

Further, if a woman is falsely made to believe promise to marriage and indulge in sexual relationship in a live-in relationship she can file a rape case despite her consent to the live-in relationship, when the man has made no promise of marriage. But the present laws are loaded against men since it is very difficult to prove if the man did make a promise of marriage prior to the live-in relationship. It has found that in 70% of the cases the accused is found not guilty, and other associated family members of the accused face humiliation in the society. But, it may also be not denied that there are genuine cases of abuse and violence as well to women in such relationships. The modern day problem does not lie wherein, only one party is the victim. In such relationships, there are a lot of parties who might be directly or indirectly affected and our present laws are not adequate enough to serve justice to all the parties at this moment.

The following are few recommendation to the extent of which legal recognition be granted to the live-in relationships in India :-

5.1 RECOMMENDATIONS

There is a dire need to recognize live-in relationships through legislation that would empower all the affected parties with rights and create obligations with duties, thereby confining the ambit of such relationship. Therefore, the following are few recommendations:

- The law enacted on live-in relationships should keep in mind the basic structure of tradition that prevails in Indian conventional society.
- Family law experts recommend cohabiting couples to address these and other issues in a written cohabitation agreement, like a pre-marital agreement or a legally binding

contract. The Agreement should outline how the couple will divide expenses and own property, maintain separate or joint bank accounts, and specifically lay down distribution of assets, if one partner dies or leaves the relationship. Property acquired during cohabitation, such as house, home furnishings, movable valuables, etc., can be challenged if couples decide to separate or in case one of them dies. To prevent legal consequences, the agreement must clearly outline who is entitled to what.

- Cohabiting parents may face legal difficulties if there are any children born out of such relationships. An unmarried couple must acknowledge paternity or maternity by making necessary legal documents such as a declaration for legitimating his/her child and establishing his parental relationship. Likewise, both parents must actively raise the child to have a legitimate claim to custody or access (visits). Legitimation is also necessary for inheritance purposes. Best way to ensure the distribution of assets to children is through a written will.
- Live-in relationships should be granted legal status after a specific period of time has elapsed, providing the couple as well as the children born out of such relationship with all the legal rights of maintenance, custody, inheritance, succession as available to a married couple and their legitimate children, also safeguarding their rights after the dissolution of such relationship due to breaking up or death of one of the partners.
- The need of the current time is to enact a new legislation which would investigate the issues and challenges of live-in relationships separately and would grant rights and obligations on the part of the couples, thus reducing the cases of misuse of existing laws and to reduce cases of violence faced by the female partners under such relationship.

- Legal status should be granted to live-in relationships, but all the benefits of marriage should not be given.
- A married man/woman moving in with another man/woman without divorcing her spouse claiming to be in a live-in relationship should not be given legal sanctity. There should be some reasonable restrictions in the enactment which protect the rights of the affected party.

BIBLIOGRAPHY

Sl. No.	REFERENCES
1.	Code of Criminal Procedure Code, 1973
2.	Constitution of India Bare Act with Short Notes (Handbook in English) 2021
3.	The Protection of Women from Domestic Violence Bare Act, 2005
4.	Socio-legal dimensions of ‘live-in relationship’ in India By Swaroopa Dholam Bombay High Court

5.	Socio-Legal Dimensions of Live-In-Relationships in India by Dr. Rabbiraj. C
6.	Socio legal status of live in relationship a comparative study of France Philippines Scotland and India by Shashi Bhushan
7.	Women and the law in India with special reference to live in relationships (http://hdl.handle.net/10603/214286) by Gupta Shweta
8.	Live in relationship in India problems and perspective by Saini, Savi
9.	https://www.livelaw.in/tags/live-in-relationship
10.	https://www.barandbench.com/topic/live-in-relationships
11.	Test Driving Marriage: How to Tell If Your Live-In Relationship Is Headed to the Altar by Beliza Ann Furman
12.	http://www.legalservicesindia.com/article/811/Socio-Legal-Aspect-of-live-in-relationships.html
13.	https://tripakshalitigation.com/legality-of-live-in-relationship-in-india/
14.	https://www.lawctopus.com/academike/live-in-relationships-in-india/
15.	https://blog.ipleaders.in/recent-developments-live-relationships/
16.	https://blog.ipleaders.in/live-in-relationships-2/
17.	en.wikipedia.org > wiki >