

THE LAW RELATING TO LIVE-IN-RELATIONSHIPS IN INDIA AND THE BREACH OF PROMISE TO MARRY

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ABSTRACT

The Supreme Court of India has already granted a legal status to live-in-relationships in India. It has specifically mentioned that couples who are living together in a marriage-like-relationship will be presumed to be married. The social views relating to the morality or immorality of live-in-relationships are a very different set of arguments which might reach some settlements in near future. But complications arise when questions are raised regarding the legality of children born out of a live-in-relationship, inheritance of property, right to maintenance, alimony etc. Questions are raised regarding the fact that if the man or woman decides to live separately after a span of time together; can any of them be driven out of the existing shelter even if that person is homeless. Can questions relating to breach of promise to marry arise in a live-in-relationship? Thus, it is seen that the whole notion of live-in-relationships are not as simple as it appears. It is multi-dimensional and brings along a series of complications and issues with it. In the present paper, the author tries to analyze the present law relating to live-in-relationships in India. The author compares the Indian law with those of some other countries and throws some light on the recent judicial pronouncements relating to live-in-relationships in India. Special emphasis is given on the breach of promise to marry.

Key words: live-in-relationships, legality, promise to marry, inheritance, domestic violence, maintenance.

INTRODUCTION

In the very general sense, live-in-relationships are understood as living together of a couple under the same roof for a considerable period of time in such a way that it resembles marriage. In a live-in-relationship, the couple decides to live together for a long term and share an emotional and sexual bond amongst them.¹ Couples in a live-in-relationship present themselves as spouses. Thus, in such a relationship, there is no marriage between the parties in the sense of solemnization of marriage under the law, but the couples live together and represent to the world that there is a relationship amongst them which is as good as marriage and there exists stability and continuity in the relationship. Such a marriage may be known as a common law marriage.²

A couple may want to avoid marriage for various reasons. They might want to test their compatibility before getting married. They might not want to enter into a legal tie or the partners may feel that marriage, as an institution has failed and thus marriage is unnecessary.

The position of live-in-relationship in India is not clear; so is the status of the couples. This is because there is no specific law relating to live-in-relationships in India. In marriage, the husband and wife is considered as one in the eyes of law. There exists only one kind of legal relationship between unrelated couple i.e. marriage. However, the benefits of marriage come with a lot of responsibilities. Youths today may want to avoid these responsibilities. Thus, they choose live-in-relationships over marriage. There may be other reasons for which people choose to live together. People may choose a live-in-relationship before marriage in order to avoid divorce. There may be philosophical grounds like commitment to live together and commitment to marry are not very different from each other. Couples may have opinions such as their relationship is a personal one and it cannot be controlled by the society and its patriarchal institutions. Also, if a couple is of same sex, they cannot legally marry each other. Thus they choose to cohabit. Whatever may be the reason of cohabitation, it cannot be denied that the number of couples choosing live-in-relationships over marriage have increased greatly in a very short span of time. Now, these couples may face a lot of legal issues like that of marriage. Questions may arise regarding the legal name

¹ Cohabitation: re-directed from live-in-relationships, The free dictionary by Farlex, <http://legal-dictionary.thefreedictionary.com/Live-in+relationship>, last visited: 11th October, 2016.

² Socio-legal Dimensions of live-in-relationships in India, Dr. Swarupa N. Dholam, [mja.gov.in/Site/Upload/GR/final%20article%20in%20both%20lanuage%20\(1\).pdf](http://mja.gov.in/Site/Upload/GR/final%20article%20in%20both%20lanuage%20(1).pdf), last visited: 16th October, 2016

of a child born out of a live-in-relationship, inheritance of property, claim of maintenance etc. Questions may arise that if any one of the spouses leave the other while sharing a live-in-relationship, can it be said to be a breach of marriage? If the male partner indulges in physical violence, can the female partner file a case against him?

Live-in-relationships are not recognized by the Hindu Marriage Act, 1955 or any other statutory law.³ It cannot be denied that the society is bias towards marriage and all the public policies are directed towards it. A number of Rights are reserved for the married couples which are not given to unmarried couples living in a marriage like relationship. The society views marriage as the basic societal unit. There is no law talking about the rights of these couples in areas such as property ownership, responsibility of debt, custody of children, healthcare, maintenance, inheritance of property etc. In the Western world, live-in-relationships are very common phenomenon and in many countries there have been some amount of progress regarding the legal responsibilities of the couples indulging in live-in-relationships. But, in India, the scenario is quite different. In India, the Supreme Court though mentioned that live-in-relationships are not illegal, it stated that they might be immoral to the society at large.⁴ The first case in which the Supreme Court of India recognized the validity and legality of live-in-relationships was in the case of *Badri Prasad vs Dy. Director of Consolidation and Others*⁵. In this case, the court gave legal validity to a 50 year long live-in-relationship of a couple. Nowadays, live-in-relationships are having its own stand in the society. Thus, two persons living together cannot be said to be illegal or criminal in the eyes of law. However, in India there are no legal or financial impediments attached with live-in-relationships. Splitting up in case of marriage is far more difficult. Through a series of judicial pronouncements, the various High Courts of the country and the Supreme Court of India has tried to evaluate the position of live-in-relationships in India. This is because, when the concept of live-in-relationships has emerged in the Indian society, it definitely needs a meaning in the eyes of law. There is an intrinsic relationship between law and social transformation. At times, law influences the society and brings in a social transformation. At other times, society influences the law.

³ Status of Live-in-relationships in India, Helpline Law, Legal Solutions Online, <http://www.helplineLaw.com/family-law/SLRI/status-of-live-in-relationships-in-india.html>, last visited: 16th October, 2016

⁴ *Payal Katara vs. Superintendent, Nari Niketan and others*, AIR 2001 All 254

⁵ 1978 AIR 1557

Changes in the existing beliefs and norms in the society do instigate a change in the existing legal structure of the country.

A live-in-relationship is very different from that of marriage because marriage is governed by a separate set of laws in all countries across the world. The existing laws safeguard the interest of both the parties who enter into the wedlock of marriage. Despite the fact that more and more couples are opting for a live in relationship the society still attaches a taboo to such relationship. This is because society looks upon live-in-relationships as a dilution of morals and traditions. Many experts in family law advice that the partners to a live-in-relationship must enter into an agreement like that of a pre-marital agreement which will outline issues as to how a couple would divide their expenses, talk about property rights, distribution of assets, mention whether the bank accounts will be jointly owned or not etc. The experts formulate such opinion because the properties acquired during a live-in-relationship usually leads to disputes when a partner dies or decides to live separately. In a dispute, there may be contests pertaining to the ownership of property and this may lead to immense chaos.⁶

LIVE-IN-RELATIONSHIPS ACROSS THE WORLD

Different countries have different stands on live-in-relationships; it varies from one country to another. In Bangladesh, cohabitation after divorce is punishable by the Salishi System of the informal courts. In Indonesia, through an Islamic Penal Code proposed in 2005, cohabitation is punishable by 2 years imprisonment. In UK, live-in-relationships are covered by the Civil Partnership Act 2004. In England, a man and woman living together is referred to as common law spouses.⁷ Here, both the parents are financially responsible for their children regardless of the fact whether they are married, co-habiting or separated. However, the partners do not have inheritance right over each other's property, unless there exists a will. If the co-habiting couples separate, courts do not have the power to override the strict principle of ownership of property. According

⁶ Live in relationships-National and International perspective, Dr Meena Ketan Sahu, https://www.academia.edu/7813351/LIVE_IN_RELATIONSHIP_PROBLEMS_AND_PERSPECTIVES_2, last visited: 12th Sept, 2016.

⁷ Live-in-relationships, Advocate Khoj, <http://www.advocatekhoj.com/blogs/index.php?bid=4294fe94c613c9ad072931429&bcmd=VIEW>, last visited: 12th Sept, 2016

to a note from the Home Affairs Section to the House of Commons in 2010, unmarried couples do not have the right to own each other's property if the relationship breaks down.⁸ Also, the partners are not liable to maintain each other, like those of married couples.⁹ In 2011, 40% of all births in almost 27 countries of Europe were extramarital. In Finland, the number of live-in-couples is more common within the age group of 30.¹⁰

United States institutionalized cohabitation by giving cohabiters essentially the same rights and obligations as married couples. Before 1970 it was considered as illegal, but then it was gradually accepted as a subject of common law which is subjected to certain basic requirements. However, partners cannot inherit each other property, if such is not willed. Couples can agree to a cohabitation agreement which specifically outlines the financial and other responsibilities as well as remedies after a breakup. According to the recent federal data, the birth outside marriage in US has raised to 40%.¹¹ In USA, in 2007 it was seen that 16.4 million households were maintained by two opposite sex partners who claimed that they were not married. According to a survey conducted by the Census Board, it was seen that live-in-partners aging between 30 to 44 years has doubled from 4% to 7%.¹² In USA, the term palimony was coined. This means grant of maintenance to a woman who has lived with a man without marrying him for a very long period of time and who was left by the man. The word palimony may be broken into pal and alimony. In the case of *Marvin v Marvin*¹³ the first decision on palimony was given. In this case the lady was living with a famous film actor for several years and he deserted her. Thus, she claimed palimony. However, there is no decision as to whether the right to palimony is a legal right or not. The courts do not have any uniform view regarding the right to palimony.¹⁴

In China, no legal procedure is required to end a live-in-relationship. However, couples may sign a contract for a live-in-relationship. A child born out of a live-in-relationship in China enjoys similar rights relating to succession and inheritance as that of a child born from a married couple.

⁸ Supra Note 2

⁹ Verma O. Live-in Relationship. *Journal of Extension Systems*. 2015 Oct 29;26(2)

¹⁰ Supra Note 6

¹¹ Supra Note 8

¹² Supra Note 6

¹³ 18 Cal.3d 660. [L.A. No. 30520. Supreme Court of California. December 27, 1976.

¹⁴ Supra Note 2

In France the concept of live-in-relationship is well established and has specific guidelines. In France, two persons of same sex as well as opposite sex can enter into a live-in-relationship through an agreement. Such an agreement shall mention the rights of each of the couples and through such agreement the couple can organize their life in a similar manner as that of a married couple. The agreement can be revoked by both or either of the parties, provided a prior notice of three months is given. In France such agreements are known as civil solidarity pacts or civil de solidarite. In the year 1999, the French National Assembly recognized the legal status of these agreements and allowed couples to enter into such kind of civil unions.¹⁵

The Family Law (Scotland) Act, 2006 talks about cohabitation. Under Sec-25 of the Act, cohabitant means either member of a couple (man or woman) who is living together as husband or wife and in case of same sex partners a cohabitant is one who lives with the other person as a civil partner. The section also mentions that in case the court has to identify whether a person is a cohabitant of another, then it will consider the nature of the relationship, the length of the time period together and the nature and extent of financial arrangements between them. Also, under sec-28 of the Act, if the relationship breaks down, then a cohabitant has the right to apply in the court of law for financial support. The Act specifically mentions the Rights of the cohabitants in certain household goods, money and property.¹⁶ Thus, in Scotland, the law relating to live-in-relationships is well articulated.

In Australia, the Family Law Act of 1957 defines a de-facto relationship. The relationship between a couple living together but not legally married is understood as a de-facto relationship and same sex couples are included under this definition. Here, couples can use the family court to resolve the dispute arising from a de-facto relationship after its breakdown. A person is considered to be in a de-facto relationship with another person if having regard to all the circumstances of the relationship, they live together as a couple in a de-facto relationship; the persons are not legally married to each other and the persons are not related by family.¹⁷ According to the Act, a de-facto

¹⁵ Supra Note 2

¹⁶ Family Law (Scotland) Act, 2006, Legislation.govt.uk, <http://www.legislation.gov.uk/asp/2006/2/section/27>, last visited: 16th Oct, 2016

¹⁷ Supra Note 7

relationship can exist even if one of the persons is married to someone else or is in a registered relationship.¹⁸

Live-in-relationships are legally recognized in Canada. The Family Law Act (R.S.O 1990) is a statute which regulates the rights of the spouses and dependents. The Act talks about cohabitation agreements under domestic contracts. Sec-53 of the Act says that two persons who are cohabiting or have agreed to cohabit may enter into a contract where they would agree upon their respective obligations during cohabitation or after separation or death. The rights and obligations would include the rights relating to ownership and division of property, support obligations, education and moral training of children etc. The section also mentions that if the cohabiting partners agree to marry each other, the agreement will turn into a marriage agreement. Sec-54 of the Act talks about separation agreement and says that such agreement must specifically mention the rights and obligations of the cohabiters relating to ownership and division of property, support obligations, right to direct education and moral training of children, their custody etc. in case the cohabiters decide to live separately.¹⁹

CHANGING SCENARIO IN INDIA

In India, as mentioned previously, the law and society are still bias in favor of marriage. Cohabitation and live-in-relationships carry none of the rights and privileges that a marriage offers. In the recent years in India there has been a significant increase in the number of couples opting for live-in-relationships. Even though people argue that the concept of live-in-relationship is a Western one, but it is worthy to mention here that in ancient India, the concept existed. Our Vedas permitted live-in-relationships. In Hinduism, the concept of pre-marital sex and sexual morality existed from a very ancient period. Hindu Law approached the institution of marriage from a very broad perspective and in Manusmriti, eight types of marriages are mentioned. Manu made it clear that which types of marriages are lawful.²⁰ Gandharva is a type of marriage which is a voluntary

¹⁸ Interpretation Act, 1987 - SECT 21C, New South Wales Consolidated Acts,

http://www.austlii.edu.au/au/legis/nsw/consol_act/ia1987191/s21c.html, last visited: 17th Sept, 2016

¹⁹ Family Law Act, R.S.O 1990, C-F3, <https://www.ontario.ca/laws/statute/90f03/v3>, last visited: 21st September, 2016

²⁰ Hinduism and Pre-marital relationships, Jayaram V, http://www.hinduwebsite.com/hinduism/h_premarital.asp, last visited: 22nd September, 2016

union of two partners from arises from desire. Such was a valid marriage according to the Hindu texts where the consent of the father is not required.²¹

We have seen that the trend of live-in-relationships is well accepted in the Western world. As regards to India, the concept is gearing up. However, as mentioned earlier, the concept is not a new one and was prevalent in ancient India. The partners who enter into live-in-relationships are aware of what they are doing. The main reason behind live-in-relationships being the mere fact that spitting up is not as difficult as it is in case of marriage. Partners may want to test their compatibility before marriage, maintain their single status for financial reasons; they may want to avoid the legal and social difficulties which arise if a couple wants to divorce after marriage, they may want to avoid marital responsibilities etc. Even, elder citizens have started preferring live-in-relationships to curb their loneliness. A group of senior citizens under the banner of 'Jyeshtha Nagrik Live-In Relationship Mandal' Nagpur, led by a former banker Arvind Godbole has formed an organisation for helping those seeking a partner at the dead end of their lives. Vina Mulya Amulya Seva (VMAS) Ahemedabad, the charitable trust which had organized this “Senior Citizen Livein Relationship Samellan”, seven couples who met at this alliance meet have decided to enter into a live-in relationship.²²

Nowadays, live-in-relationships are not merely a substitute to marriage. It is more than that. It is an extra-legal concept which needs to be addressed by the legislators of the country. No legislation lies which define the rights and obligations of the partners in a live-in-relationship. In a live-in-relationship, the partners do not have statutory obligations towards each other. Hence, issues like awarding maintenance or recognizing rights of the cohabitants have cropped up. On one hand, granting these rights to the partners in a live-in-relationship would equate the status of a live-in-relationship with marriage; while on the other hand, the legislation cannot deny that since the society and social relations are taking complicated forms and law has an obligation to regulate the behavior of one person towards another; some rights of the live-in-partners must be articulated. It is true that if the rights of a wife and a live-in-partner are equivalent, it would lead to severe breakdown of the institution of marriage; it would promote bigamy and polygamy and society will

²¹ Traditional forms of Hindu Marriage in India, Puja Mondal, <http://www.yourarticlelibrary.com/hindu/traditional-forms-of-hindu-marriage-in-india/4377/>, last visited: 22nd September, 2016

²² Supra Note 2

walk backwards. It would take the early shape from where it started. Questions are raised that how can the position of a wife and a live-in-partner be similar in the eyes of law? If similar rights are given, then, rights of a legally wedded wife remain at stake. Also, right of a female live-in-partner does not become secure because there is no social recognition to a live-in-relationship and a person can easily deny its existence to escape liability. Thus, there is existing ambiguity regarding the subject and the rights of a woman remain unpredictable and risky. Questions are raised whether from the conduct of the partners of a live-in-relationship can it be presumed that there exists a promise to marry? Questions are also raised regarding the legality of a child born out of a live-in-relationship. The Hindu Marriage Act, 1955 recognizes children born out of a live-in-relationship. The Supreme Court of India and various High Courts have tried to explain the concept of live-in-relationships and have addressed many of these issues.

LEGAL STATUS OF A LIVE-IN-RELATIONSHIP IN INDIA

The concept of live-in-relationship has secured its stand in the eyes of law. In the landmark judgment of *Payal Sharma v. Superintendent, Nari Niketan, and others*²³ it was stated that a man and a woman even without getting married can stay together if they wish to. The society may view such act as immoral, but it is definitely not illegal and there is a clear distinction between law and morality. In the case of *S. Khushboo v. Kanniammal*²⁴ the Supreme Court held that no law in the country prohibits live-in-relationships or pre-marital sex. However, the Supreme Court clarified that live-in-relationship is permitted between a couple who has attained the age of marriage and are unmarried. The sexual orientation of the couple must be of heterogeneous nature. Even before independence, the Privy Council of India laid down a broad rule relating to live-in-relationships. In the case of *A Dinohamy v WL Blahamy*²⁵ it was said that if a man and a woman lives together as husband and wife, the law will automatically presume that they are living together as a consequence of valid marriage, until and unless something contrary is proved. The same principle was laid down in the case of *Mohabbat Ali Khan v Muhammad Ibrahim Khan*.²⁶ After independence, in the case of *Badri Prasad v. Dy. Director of Consolidation*²⁷ the Supreme Court

²³ AIR 2001 All 254

²⁴ AIR 2010 SC 3196

²⁵ (1928) 1 MLJ 388 (PC)

²⁶ (1929) 31 BOMLR 846

²⁷ AIR 1978 SC 1557

of India gave legal validity to a 50 year old live-in-relationship. Also, in the case of *Radhika v State of MP*²⁸ the Supreme Court observed that if a man and a woman are involved in a live-in-relationship for a very long period, they will be treated as a married couple and the child born out of a live-in-relationship will have the status of a legitimate child.

However, in the case of *Alok Kumar v State*²⁹ the Delhi High Court mentioned that live-in-relationships are also known to be between a married man and an unmarried woman and vice-versa. In the same case it was held that live-in-relationship is walk-in and walk-out relationship and no strings are attached to it. This kind of relationship does not create any legal bond between the partners.

In India, the Supreme Court has come to a summary judgment which talks about four important grounds for a live-in-relationship to be recognized as a relationship in the nature of marriage.³⁰ The Supreme Court has specifically mentioned that relationships in the nature of marriage and relationships in live-ins are different from each other. If a partner satisfies 4 conditions in addition to the fact that they lived under the same roof, then the female partner who is deserted after a long span of live-together can claim maintenance from her male counterpart. The concept is very similar to that of Palimony which is prevalent in USA. The 4 conditions given were: the live-in-couple must hold out to the society as being akin to spouses, they must voluntarily cohabit for a very long period of time, they must be of legal age to marry and must be unmarried or otherwise qualified to enter into a legal marriage.³¹

In the case of *Indra Sarma v V.K Sarma*³² the Supreme Court gave 5 categories where a live-in-relationship can be proved in the court of law. The categories mentioned are domestic relationship between an adult male and a female, where both of them are unmarried; domestic relationship between a married man and an adult unmarried woman and such relationship is entered into knowingly; domestic relationship between an adult unmarried man and a married woman (provided such is entered into knowingly and such relationship can attract the section of adultery under Indian Penal Code); domestic relationship between an unmarried adult female and a married

²⁸ AIR 1966 MP 134

²⁹ MANU/DE/1538/2015

³⁰ D.Velusamy vs D.Patchaiammal on 21 October, 2010, 10 SCC 469

³¹ Ibid

³² Decided on 26-11-2013 (SC): 2013 (14) SCALE 448

male which is entered into unknowingly and domestic relationship between same sex partners. The Court stated that a live-in relationship will fall within the expression “relationship in the nature of marriage” under Section 2(f) of the Protection of women Against Domestic Violence Act, 2005 and provided certain guidelines to get an insight of such relationships.³³ However, in the present case, the court said that the relationship between the married man and the woman is not a relationship in the nature of marriage and it is not a domestic relationship which can be covered under sec-2(f) of the Domestic Violence Act, 2005.

RIGHTS OF A FEMALE PARTNER IN A LIVE-IN-RELATIONSHIP

Live-in-relationships are a living arrangement which is in between the least restrictive and the most complex; it is in between going around with someone and entering into marital bond. There exists a nature of closeness between the couples who live together and this allows them to decide upon marriage. However, under the present social arrangement, live-in-relationships have gained quite a complex structure and thus the rights of a female partner in a live-in-relationship needs to be secured. There are many legal ambits of a live-in-relationship which includes the right to maintenance; inheritance of property and rights of a child born out of such relationship. Some changes must be brought about in the laws of succession, adoption and marriage for that purpose.

The Protection of Women from Domestic Violence Act, 2005 provides protection to a woman if the relationship is in the nature of marriage. A female who is not formally married but lives with a male person in a marriage like relationship, also akin to wife, but not equivalent to wife can be brought under the ambit of this Act. The provisions of Domestic Violence Act are extended to those who are in a live-in-relationship and the amendment to the Act protects victims who face domestic abuse within a live-in-relationship.³⁴ In the case of *Varsha Kapoor vs UOI & Ors.*³⁵, the Delhi High Court has held that female living in a relationship in the nature of marriage has right to file complaint not only against husband or male partner, but also against his relatives.

³³ Right of Maintenance to women in live-in-relationships, Abhay Nevagi Associates, <http://www.legallyindia.com/blogs/right-of-maintenance-to-women-in-live-in-relationships#edn5>, last visited: 2nd September, 2016.

³⁴ Live-In Relationship—An Analysis Through Cases Dr. SangitaLaha, International Journal of Arts, Humanities and Management Studies, Volume 02, No.06, June 2016, pg-47 to 57.

³⁵ WP (Crl.) No. 638 of 2010, <https://indiankanoon.org/doc/126595064/>, last visited: 21st September, 2016.

There are a number of cases pending in the court where the aggrieved person is the female counterpart in a live-in-relationship. The Supreme Court through its judgment in *D Veluswamy Vs D Patchaiammal*³⁶ has cleared all the confusions relating to the fact as to whether the female counterpart can be brought under the provisions of the Domestic Violence Act of 2005 in case she faces harassment from the male counterpart within a live-in-relationship. The Apex Court referred to Sec-2(f), 2(s) and 2(a) of the Act. Sec-2(a) of the Act talks about aggrieved persons under which a woman who alleges an act of violence against her is included and who has been living in a domestic relationship. Sec-2(f) of the Act talks about domestic relationship which includes not only marriage but any relationship in the nature of marriage. Sec-2(s) of the Act talks about shared households which means a household where the aggrieved person is living or has lived in a domestic relationship either singly or with the respondent and where both the persons have a right, title or interest in such household. The Supreme Court after analyzing all these provisions came to a conclusion that the expression domestic relationship includes not only the relationship of marriage but also a relationship in the nature of marriage. The court has further interpreted the term “relationship in the nature of marriage” and said that it is similar to common law marriage. A marriage in order to be common law marriage 4 requirements must be fulfilled: couple must be of legal age to marry; they must not have been married or are qualified to enter into a legal marriage; they must have willingly cohabited and they must have hold themselves to the society as akin to spouses. If all these requirements are fulfilled then a live-in-relationship is a relationship in the nature of marriage. Thus, the relationship between a man and his keep who he maintains financially cannot be said to be a relationship in the nature of marriage.

The Supreme Court has even dealt with the protection of a female partner in a live-in-relationship where she was harassed for dowry. In the case of *Koppiseti Subbharao Subramaniam v State of AP*³⁷, the court held that the demand for dowry is related to nay demand of money in relation to a marital relationship and the defendant’s contention that the question of dowry does not arise because they were not married at all is totally baseless. It was furthermore added that, if a marriage is not a valid one, the defendant cannot say that the question of dowry does not arise because it was a void marriage.

³⁶ In CRIMINAL APPEAL NOS. 2028-2029 Of 2010 decided on 21.10.2010 by Supreme Court of India

³⁷ CRIMINAL APPEAL NO. 867 OF 2009, <https://indiankanoon.org/doc/389094/>, last visited: 22nd September, 2016.

While talking about the right to maintenance in live-in-relationships, the National Commission of Women recommended to the Ministry of Women and Child Development that live-in-female partners must have the right of maintenance under Sec-125 of the Criminal Procedure Code. The recommendation was given in June, 2008. This view was supported by the judgment in the case of *Abhijit Bhikaseth Auti v. State Of Maharashtra and Others*.³⁸ Justice Malimath Committee as well as the Law Commission of India stated that if a woman is in a live-in-relationship for a reasonable period she must be given the status of a wife. On October, 2008, this recommendation was accepted by the Maharashtra Government.³⁹ Sec-125 of CrPC provides for the maintenance of wife, children and parents who cannot maintain themselves. Maintenance can be claimed by a wife who is divorced or is legally separated and has not re-married. Recently, it was said that in case a person is not married i.e. in case of live-in-partners, they cannot be divorced and hence they cannot claim maintenance under Sec-125 of CrPC. Thus, it was recommended that the word “wife” in CrPC should be amended in such a manner so as to include a woman who was living with a man for a reasonably long period in such a manner as if she is his wife.⁴⁰ In the case of *D.Velusamy vs D.Patchaiammal*⁴¹ 4 pre-requisites were given which if satisfied would allow the female partner to claim palimony from her male counterpart in a live-in-relationship. Also, in the case of *Chanmuniya vs Virendra Kumar Singh Kushwaha*⁴² it was held that a broad interpretation should be given to the term `wife' under Sec-125 of CrPC so as to include those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition in such case.

It may be argued that such a step will break down the institution of marriage in near future and thus must not be entertained. But, on the other way round, the commitment factor in a live-in-relationship will increase if such a gross step is taken.

RIGHTS OF A CHILD BORN OUT OF A LIVE-IN-RELATIONSHIP

³⁸ Mr.Abhijit Bhikaseth Auti vs State Of Maharashtra & Anr on 16 September, 2008, CRIMINAL WRIT PETITION NO.2218 OF 2007, <https://indiankanoon.org/doc/1945115/>, last visited: 23rd September, 2016.

³⁹ Supra Note 32

⁴⁰ Supra Note 2

⁴¹ Supra Note 30

⁴² (2011) 1 SCC 141

There is a need for a legal provision so as to secure the rights of a child who is born out of a relationship which did not take the shape of marriage. Under the Hindu Marriage Act, 1955 every child who is born out of a void, voidable or valid marriage is considered to be a legitimate child. Thus, questions do not arise regarding the legitimacy of a child born out of a live-in-relationship. But, question arises regarding the maintenance of the child and his/her right to inherit property. Also, if the parents decide to end the live-in-relationship, who will take the custody of the child? Thus, there must be a provision which mentions the duty of the parent(s) regarding the responsibility of the child, the child's right to get a share in the property of the father/mother or both.⁴³

In the case of *Tulsa & Ors vs. Durghatiya & Ors*⁴⁴, the Supreme Court provided legal status to the children born out of a live-in-relationship. The court mentioned that the children born out of a live-in-relationship shall not be treated as illegitimate if the parents have lived together under the same roof for a considerable period of time. It must not be a walk-in and walk-out relationship and the time span spend together must be such that the society starts recognizing them as husband and wife. Then only the court will grant the Right to property to a child who is born out of a live-in-relationship.

LIVE-IN-RELATIONSHIP AND BREACH OF PROMISE TO MARRY

Marriage is a legally and socially recognized union between a man and a woman. A breach of promise to marry cannot take place unless and until a contract to that effect has been made. It is a well settled principle that a promise to marry and a reciprocal promise to marry is a valid consideration under the law of contract. Now, in case there is breach of such promise to marry, it is absolutely necessary to prove that there is a valid existing contract to marry. The nature and form of action in case of breach of promise to marry is a contractual one and it includes compensatory damages for the injury to the health and feelings of the plaintiff.⁴⁵

⁴³ Live-in-relationships: The Indian perspective, Bhumika Sharma, Indian Law Journal, 2007, http://www.indialawjournal.org/archives/volume2/issue_2/article_by_saakshi.html, last visited: 22nd September, 2016

⁴⁴ (2008) 4 SCC 520

⁴⁵ Breach of Marriage Promise, the free dictionary by Farlex, <http://legaldictionary.thefreedictionary.com/Breach+of+Marriage+Promise>, last visited: 25th September, 2016.

In live-in-relationships there is no marriage between the parties in the sense of solemnization of marriage under law. However, the parties live as couple and there exists stability and continuity in the relationship. Breach of promise to marry in such a relationship is in vogue these days. Many cases have come up where the petitioner women have claimed that they were sexually exploited on promise of marriage. Having sexual relationship with a girl and developing a live-in-relationship with her on the false promise of marriage have attracted ample amount of legal attention these days. Questions are raised whether sexual intercourse with a female on false promise of marriage is consent or not? Even if it is not rape, will it attract the provision of cheating? The Judiciary has tried to answer these questions through a series of pronouncements.

Question arises as to whether breach of marriage in a live-in-relationship be made punishable or not. A number of cases have also come up where the plaintiff claims that she has been subjected to sexual intercourse under false promise of marriage and has been continuously raped. In the case of *Alok Kumar vs. State*⁴⁶ the petitioner was in a live-in-relationship with the complainant while he was married with another woman. The motive of the petition was a writ large in her two complaints. The complainant had alleged that the petitioner was raping her continuously while he was already married with another woman. She also complained that she was induced into physical relationship based on the assurance of marriage. However, the court held that complainant could not have been induced into a physical relationship based on assurance of marriage because she herself was not divorced at that time. Also complainant was major at that time and thus consensual physical relationship would not constitute offence under Section 376 or 420 of IPC. The court in this case further added that people who choose to have live-in-relationship cannot complain about morality or infidelity because live-in-relationship is also found to happen between a married man and an unmarried woman and vice-versa.

As we know that consent obtained through misconception of fact is not a valid consent and sexual intercourse without the consent of the female leads to the commission of the offence of rape. Thus, sex under false promise of marriage at times leads to controversies. After breaking out from a live-in-relationship many times it is claimed by the female that she has been raped.

⁴⁶ Supra Note 29

In the case of *Mahesh Balkrishna Dandane v State of Maharashtra*⁴⁷ the complainant said that the accused had promised to marry the complainant and kept sexual relationship with her. Since there was a promise to marry the complainant did not object to having sexual relationship with the accused at different places. When the accused went to marry another girl, the complainant submitted that she has been cheated and her consent had been obtained fraudulently, she was induced to keep sexual relation with the accused and was deceived. The court in this case held that every breach of promise to marry cannot be either cheating or rape. A couple may decide to experience sex before marriage. In this case, the complainant is an educated girl and it was her conscious decision while keeping sexual relation with the accused.

Very recently, in a path breaking judgment by the Gujarat High Court where the bench was comprised of Justice J B Pardiwala, it was held that breach of promise to marry in a live-in-relationship cannot substantiate rape. In this case the petitioner sought to set aside the court proceedings against him which was initiated because his live-in-partner had filed a case against him alleging that she was raped by the petitioner on false promise of marriage. The Gujarat High Court held that the relationship between the petitioner and his partner was a consensual one and it cannot be said to be rape.⁴⁸

CONCLUSION

It cannot be denied that India needs a law to regulate relationships which are growing in number due to a change in the ideology of the people. It is of utmost necessity to create a law having clear provisions which enshrine the rights and obligations of the partners who choose to live-in. If not a separate legislation, there must be a cohabitation agreement before the parties decide to enter into a live-in-relationship. As suggested by the family law experts, the partners to a live-in-relationship can enter into an agreement like that of a pre-marital agreement which will outline issues as to how a couple would divide their expenses, talk about property rights, distribution of assets, mention whether the bank accounts will be jointly owned or not, mention about the rights of a child born out of a live-in-relationship, define the responsibilities of the partners with regard to the custody of the child. Such agreement must also articulate the rights and responsibilities of the parties

⁴⁷ 2014(4)Crimes37(Bom)

⁴⁸ Breach of promise to marry by partner is not rape: Gujarat High Court, Daily News and Analysis, Fri, 27 Mar 2015, New Delhi

relating to ownership and division of property, support obligations, education and moral training of children, their custody etc. in case the cohabiters decide to live separately. In the Western world, the concept of live-in-relationship is far more structured and definite. In India too, live-in-relationships are gearing up very fast and if it remains unaddressed by the legislators, it will complicate the situation even more.

