

# INDIA DEMANDS STATUTORY PROTECTION FOR LIVE – IN RELATIONSHIPS

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## **Abstract**

The worldwide concept of the family includes a husband, a wife and their children. The law will protect that family if it is built on any kind of legal foundation, known as a marital contract. At the same time, other concepts of family should also be recognised. One among the so-called new forms of the family is a live-in relationship. It is a union between a man and a woman when persons live together on a permanent basis without having a registered legal marriage. Thus, this concept raises a question: for qualifying a legally protected marital status, whether an expressed marital contract is necessary or an implied contract based on the intention of parties itself constitute a marital relationship. Even though the live-in relationship is unacceptable to traditional Indian society, some people opt this relationship due to several reasons and some people mistakenly hang on to this relationship. It is not fair to exclude such families from the preview of legal rights. However, now there is an urgent necessity to enact a new legislation that deals with the rights of the live-in relationship partners and creates their obligations with duties thereby confining the realm of such relationship along with some major amendment on existing law. Though it is challenging many existing societal setup, the law so enacted should keep in mind the basic structure of traditional law that persists in the Indian society. Thus, this paper deals about the necessity of protecting the live-in relationships in the nature of marriage.

## **Introduction**

The live-in relationship is a union between a man and a woman, as husband and wife without having a registered legal marriage. Within the last two decades, live-in-relationships of heterosexual couples have also emerged as a strong substitute to civil and religious marriages. One of the main ideas of a live-in-relationship is that the intended couple sought to assess their

compatibility with each other before going for some commitment. Moreover, a long-term relationship or a permanent arrangement as husband and wife without any legal formality is common. It is the responsibility of the Government to enact an effective law to recognise live-in relationship and thereby protecting their citizens entering into such serious long-term live-in relationships. Due to wider recognition of a live-in relationship, some international documents dealt with it.<sup>1</sup> A few number of countries legalize the live-in relationship through statutes<sup>2</sup>, some are expressly banned<sup>3</sup> it, and some of them are silent about these arrangements. In India, even in the absence of a specific legislation, judiciary through its wisdom has immensely contributed in understanding the problems relating to live-in-relationships and has maintained a balanced position. The idea of live-in-relationships may seem to be unique and appealing; but in reality, the problems likely to arise are many and challenging.

### **Challenges faced by women in the live-in relationship**

Even though the courts have shown willingness in recognizing the rights of women in a live-in relationship<sup>4</sup>, they are still vague. The chances of exploitation of women in such relationships will be on a rise in the absence of law. The functions and duties of a female partner in a live-in relationship and a legally wedded wife are the same, but our current legislations treated them in a different manner. Statutes are not ready to elevate the status of a long-term female live-in partner as a legal wife. But at the same time, encouraging live-in-relationships in the existing circumstances will invite problems like bigamy, multiple partner relationships, etc. and may destroy the social fabric of our country. Hence, an appropriate modification in the

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<sup>1</sup> International Covenant on Civil and Political Rights, Art 23, *General Comment 19: Protection of the family, the right to marriage and equality of the spouses*, HRI/GEN/1/Rev.2 (1990) at paragraph 2. <http://www.refworld.org/docid/45139bd74.html> (accessed on 20-07-2016); Committee on the Elimination of Discrimination Against Women, *General Recommendation No 21: Equality in marriage and family relations*, HRI/GEN/1/Rev.7 (1994) at paragraph 18 and 33, <http://www.refworld.org/docid/48abd52c0.html> (accessed on 20-07-2016)

<sup>2</sup> Civil Partnership Act, 2004 in United Kingdom; Civil Solidarity Pact of '*pacte civil de solidarite*', 1999 in France; Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 in Ireland. Section 4AA of the *Family Law Act, 1975 in Australia*; 12 American jurisdictions namely, Alabama, Colorado, Iowa, Kansas, Montana, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah allow common law marriages by their statutes.

<sup>3</sup> States of Illinois, Georgia, and Louisiana in America expressly stated in their statutes that there is no rights for cohabitants.

<sup>4</sup> *D. Velusamy v. D. Patchaiahmmal* (2010) 10 SCC 469; *Indra Sarma v. V.K.V. Sarma* 2013 (14) SCALE 448

law of marriage, succession, etc. is necessary for ensuring full protection of woman in a live-in relationship in tune with the fundamental basis of law.

The vital challenges that should be faced by women in a live-in relationship can be classified into following broad categories:

### **Status of wife:**

Generally a “wife” is defined as a married woman, specifically when considered in relation to her spouse. But the status of women in a live-in relationship is not that of a wife, and also lacks social approval or sanctity. The statutory definition given in Criminal Procedure Code, 1973 (hereinafter CrPC, 1973), in relation to maintenance has also supported this argument.<sup>5</sup> But in order to secure the rights of a female partner in the live-in relationship, judiciary interpret the term “wife” in an indirect way to include women in ‘relationships in the nature of marriage’, or live-in relationships, who satisfy certain conditions.<sup>6</sup> Since 1927 itself, such interpretations came into existence.<sup>7</sup> Thus, where a man and a woman live together for long years as husband and wife, then there is a presumption of marriage existed between them, though this presumption is rebuttable.<sup>8</sup>

On the other hand, the law does have a concept called “*presumption of marriage*” which could be used to recognise live-in relationships as a marital arrangement and the female live-in

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<sup>5</sup> Sec.125 (1) Explanation (b): “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

<sup>6</sup> *Ibid.*, 5

<sup>7</sup> *A Dinohamy v. WL Blahamy* A.I.R.1927 PC 185, has laid down a general principle: “Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.” *Mohabhat Ali v. Mohammad Ibrahim Khan* (1929) 31 BOMLR 846 “The law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years.” *Badri Prasad v. Dy. Director Of Consolidation And others*, 1978 AIR 1557; *Pyla Muthialamma v. Pyla Suri Demudu* (2011) 12 SCC 189; *Sumitra Devi v. Bhikan Choudhary* (1985) 1 SCC 637

<sup>8</sup> *Rameswari Devi v. State of Bihar* AIR 2000 SC 735

partner as a wife. This is in accordance with sec.50<sup>9</sup> and sec.114<sup>10</sup> of the Indian Evidence Act, 1872. Courts apply this presumption if a man and a woman are living under the same roof and cohabit for a number of years.<sup>11</sup> Continuous and elongated cohabitation uphold a presumption in favour of marriage. Even though there is a long-term cohabitation, there are some contrasts in courts decisions due to the absence of a precise law. In *Madan Mohan Singh and Ors. v. Rajni Kant and Anr*<sup>12</sup>, “the live-in-relationship if continued for such a long time, cannot be termed in as ‘walk-in’ and ‘walk-out’ relationship and there is a presumption of marriage between them which the appellants failed to rebut. But in contrast to *Madan Mohan Singh*<sup>13</sup> decision Delhi High Court in *Alok Kumar v. State*<sup>14</sup>, held “‘Live-in relationship’ is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time.”

### **Maintenance:**

Presently, there is no statutory provision providing maintenance to a woman, who was in a live-in relationship with a man and then deserted by him. The existing aid in this regard is a monetary relief dealt under Sec.20 of Protection of Women from Domestic Violence Act, 2005 (hereinafter PWDV Act, 2005). But the increasing incidents of live-in relationships, especially those continued for a long period, necessitating wide reforms on this aspect. In 2003, the Malimath Committee report on ‘Reforms in the Criminal Justice System’, recommended an amendment of the word ‘wife’ in Sec.125, of the CrPC, 1973 to include “a woman who is living

<sup>9</sup> Sec. 50. *Opinion on relationship, when relevant.*—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)

<sup>10</sup> Sec. 114 *Court may presume existence of certain facts.* —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

<sup>11</sup> *Gokal chand v. Parvin Kumari*, AIR 1952 SC 231; *Tulsa v. Durghatiya*, 2008 (1) SCR 709; *S.P.S.Balasubramanyam v. Suruttayan Andalli Padayachi & Ors* AIR 1992 SC 756

<sup>12</sup> AIR 2010 SC 2933

<sup>13</sup> *id*

<sup>14</sup> Decided by Delhi High Court in CrI.M.C. No. 4181/2015 on 9 August, 2015

with a man for a reasonable time period.”<sup>15</sup> The objective of this recommendation is to protect the second wife, who has been cheated by believing that she is marrying an unmarried man. Supreme Court also interpreted this recommendation in such a fashion to protect women<sup>16</sup>. But no further steps were taken to implement these recommendations by the concerned authorities.

On the matter of maintenance, the stand of the judiciary is different. The Indian Supreme Court has made a precedent on granting maintenance to women from her male partner who was in a long-term non-marital relationship<sup>17</sup>. At the same time, the court also denied this right to women, who is not a legally wedded wife, on the subsistence of his first marriage.<sup>18</sup> A remarkable observation of Supreme Court in *Savitaben Somabhai Bhatiya v. State of Gujarat*,<sup>19</sup> that the respondent was treating the appellant as his wife “*is really inconsequential because it is the intention of the legislature which is relevant and not the attitude of the party*”. By rejecting the maintenance plea court observed that “*this is an inadequacy of the law and operates harshly against a woman who gets into a relationship with a man who suppresses the fact of an earlier marriage*”. But the court said, “*this lacuna could only be cured by the legislature.*”<sup>20</sup>

In *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*,<sup>21</sup> the Court took a liberal view and stated that the second wife has a right to claim maintenance under Sec.18 of Hindu Adoptions and Maintenance Act, 1956 and Sec. 20 of PWDV Act, 2005, and held that if we do not give maintenance to the second wife it would amount to giving premium to the respondent for cheating the appellant.<sup>22</sup> As well as in *Vidhyadhari v. Sukhrana Bai*,<sup>23</sup> Supreme Court held that “*A bigamous<sup>24</sup> marriage may be declared illegal because it contravenes the provisions of the*

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<sup>15</sup> ‘Reforms in the Criminal Justice System’ 2003, Recommendation: 115 (299)

[http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf) (assessed on : 29.07.2016)

<sup>16</sup> *Chanmuniya v. Virendra Kumar Singh Kushwaha and Another* (2011) 1 SCC 141

<sup>17</sup> *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty* 1996 SCC (1) 490

<sup>18</sup> *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav* (1988) 1 SCC 530 (even she is unaware of his earlier marriage); *Vimala v. Veeraswamy*, (1991) 2 SCC 375

<sup>19</sup> (2005) 3 SCC 636;

<sup>20</sup> *ibid*

<sup>21</sup> AIR 2008 Del 7

<sup>22</sup> *Suresh Khullar v. Vijay Kumar Khullar* AIR 2008 Del 1

<sup>23</sup> (2008) 2 SCC 238

<sup>24</sup> Section 494, Section 495, Indian Penal Code, 1860; Section 17 of the Hindu Marriage Act, 1955

*Hindu Marriage Act, 1955* (hereinafter HM Act, 1955); *but it cannot be called immoral so as to deny the right of alimony or maintenance to the spouse.*

In the landmark case of *D. Veluswami v. D. Patchaimmal*<sup>25</sup>, it was held that “*a woman in a live-in relationship is not entitled to maintenance unless she fulfils certain parameters like,*

- *The couple must hold themselves out to society as being akin to spouses;*
- *They must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried;*
- *They must have voluntarily cohabited for a significant period of time.”*

In *Indra Sarma v. V.K.V. Sarma*<sup>26</sup> also, Supreme Court enlists a set of criteria to decide whether a live-in relationship comes under the purview of PWDV Act, 2005. These criteria are based on the duration of the period of the relationship, shared household, pooling of resources & financial arrangements, domestic arrangements, sexual relationship, children, socialization in public, intention and conduct of the parties.<sup>27</sup> Thus, not all women in live-in relationships are entitled to seek maintenance under PWDV Act, 2005. That relationship must be “*in nature of marriage*” and should fulfil the above conditions.

### **Property and succession rights:**

Our personal property laws are not recognized the succession rights in the live-in relationship. In the current legal scenario, a person through his ‘Will’ can appoint any other person as his/her successor. The best way to inherit property in case of live-in relationships is through a Will. But in the absence of a Will, a live-in partner cannot inherit the property of deceased partner. However, the Supreme Court in *Vidhyadhari v. Sukhrana Bai*<sup>28</sup> created a hope for live-in partners. In this dictum, the court ruled that live-in partner can inherit the property of the deceased partner if they are in a long-term live-in relationship. Without recognising the inheritance right of such partners, it would be disrespect to persons who dedicated their life for

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<sup>25</sup> AIR 2011 SC 479

<sup>26</sup> 2013 (14) SCALE 448

<sup>27</sup> *id*

<sup>28</sup> *Ibid.*, 24

the de-facto family. However, the State should make an appropriate law for live-in couples and ensure their social benefits like inheritance rights.

### **Protection under PWDV Act, 2005:**

PWDV Act, 2005 is the only statute refer the term “*relationship in nature of marriage*” in the definition of “*domestic relationship*”<sup>29</sup>, which has been invoked by the courts to provide relief to the women victims in live-in relationships. As per Sec.2(f), the Act not only applies to a married couple, but also to a ‘*relationship in nature of marriage*’. A woman in “*domestic relationship*” can claim remedies in the occurrence of physical, mental, verbal or economic abuse.<sup>30</sup> The abused women have been granted several rights and protections under this statute. If the Magistrate is convinced of any domestic violence, he can pass orders prohibiting the accused from indulging in activities which are a detriment to the victim.<sup>31</sup> In addition, Magistrate can pass restraining orders<sup>32</sup>, order accused to provide monetary reliefs<sup>33</sup> to the abused, which includes medical expenses, reimbursement for loss of earnings or property and maintenance. The woman, in such cases, is also allowed temporary custody of her kids<sup>34</sup>, and a right to claim compensation for any harm caused.<sup>35</sup> Since “*relationship in nature of marriage*” exist as an undefined statutory term courts may feel ambiguity while deciding live-in relationship cases. It may cause a discrepancy in judgements and denial of justice to a well-deserved female partner.

### **Challenges faced by children born out of live-in relationship**

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<sup>29</sup> Sec. 2(f)- “*domestic relationship which 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.*”

<sup>30</sup> Sec.3 PWDV Act, 2005

<sup>31</sup> Sec.18 PWDV Act, 2005

<sup>32</sup> Sec.19 PWDV Act, 2005

<sup>33</sup> Sec.20 PWDV Act, 2005

<sup>34</sup> Sec.21 PWDV Act, 2005

<sup>35</sup> Sec.22 PWDV Act, 2005

As far as the rights of the children are concerned, the dignity and respect that a child born out of a live-in relationship are lacking, compared to the child of marital couples. A child born out of a live-in relationship is also facing different kinds of discrimination in the matters of parental responsibility, legitimacy, inheritance etc., due to the absence of proper legislations for live-in relationships.

### **The legitimacy of the child:**

The rule of legitimacy is dependent upon marriage. A child born out of a legal wedlock is named as a legitimate child; otherwise, the child labelled as an illegitimate child. Here the innocent children confronting this distinction due to the act of their parents. To reduce the harshness of this distinction, Sec.16<sup>36</sup> of the HM Act, 1955, bestow certain rights on them. It confers legitimacy on those children, who are born out of null and void marriages stated in Sec.11 or Sec.12 of the HM Act, 1955, by a *fictio juris* (legal fiction). But their legitimacy is not absolute. It is obvious that Sec.16 of the HM Act, 1955 does not include children born to parents who were in a live-in relationship. It is an injustice towards that child. Thus necessary changes have to be made in the HM Act, 1955, to declare that each and every child born is a legitimate child and will have equal rights irrespective of the status of the marriage of their parents. According to Muslim law, a child is neither related to the father nor to the mother if he born outside the lawful wedlock.<sup>37</sup> Even though the father of the child admits that he is the

<sup>36</sup> *Legitimacy of children of void and voidable marriages.*

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)\*, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

<sup>37</sup> Paras Diwan and Peeyushi Diwan, *Muslim Law in Modern India*, p.123 (1<sup>st</sup> ed. 2004).



biological father, if a child is illegitimate, then there is no provision to recognise him as legitimate.<sup>38</sup>

At present in our society, a large number of illegal relationships prevail. The number of illegitimate children is increasing in alarming proportions because of relationships outside marriage. Several men and women live together in live-in relationships without incurring marital obligations. Innocent children born of these kinds of relationship should not be penalised for the wrong committed by their parents. Recently the Supreme Court of India in *Revanasiddappa v. Mallikarjun*<sup>39</sup> held:

*“... the constitutional values enshrined in the Preamble of our Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity. The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage.”*

No child is born into this world without a father and a mother. As said earlier the child has no role to play in his/her birth. Hence, the law should recognise the fact that there can be ‘illegitimate parents’ but no ‘illegitimate children’.

### **Parental responsibility:**

*“Parental responsibility means all the rights, duties, power, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”*<sup>40</sup> The family is primarily responsible for providing care and protection to children.<sup>41</sup> In India, Hindu<sup>42</sup> as well as Muslim<sup>43</sup> laws describes the father as the natural guardian of the legitimate children. Then

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<sup>38</sup> *Sadik Husain Khan v. Hashim AliKhan* ILR (1916) 38 All 627, 661; *Habibur Rehman Chowdhury v. Altaf Ali Chowdhury* ILR (1921) 48 Cal 856.

<sup>39</sup> (2011) 11 SCC 1, 11, para 39

<sup>40</sup> Sec. 3 (1) of Children Act of UK, 1989

<sup>41</sup> Section 41(1) of Juvenile Justice Act, 2000

<sup>42</sup> Sec.6 Hindu Minority and Guardianship Act, 1956

<sup>43</sup> *Imambandi v. Mutsaddi*, (1918) 45 Cal 887; *the mother is entitled to the custody of her daughter till she attains puberty (Enamul Haque v. Bibi Taimunnisa* AIR 1967 Pat 344) *thereafter if the daughter is unmarried, her custody passes to her father. In the case of son till he attain 7 years of age, it is the mother who has the right to keep him in his custody; Mother is not a natural guardian even of her minor illegitimate children, but she is entitled to their custody (Gohar Begum v. Suggi, (1960) 1 SCR 597)*

after his death, the mother is the natural guardian most of the time. But the mother in all schools of Muslim law is not recognized as a guardian, natural or otherwise, even after the death of the father. According to the Guardians and Wards Act, 1890, any matter concerning a minor, has to be considered and decided only from the viewpoint of the welfare and interest of the minor.<sup>44</sup> However, the parental responsibility of a child born out of a live-in relationship is an unresolved matter. As far as those children were considered as illegitimate, at the time of partners split up, who is responsible for taking care of the child is a great concern. When a relationship fails, either partner male or female may hesitate to take the responsibility of the children. The Sec.6 (b) of the Hindu Minority and Guardianship Act, 1956 is dealing with live-in relationships in an indirect manner. This grants the custodial rights to the mother (natural guardian) in the case of children born out of illegitimate relations. On the other hand, even a Muslim father is not entitled to guardianship or to the custody of his minor illegitimate children. The Muslim mother is not a natural guardian even of her minor illegitimate children, but she is entitled to their custody.<sup>45</sup> This has increased the significance of legislative and judicial action to ensure the welfare of children by proper statutory provisions.

#### **Maintenance of Children born out of live-in relationship:**

Indian personal laws ensure maintenance to children born in a marital wedlock. But children from live-in relationships do not enjoy this right, whereas Sec. 125 of the CrPC, 1973, provides maintenance to minor children irrespective of their legitimacy. Indian judiciary also ensures children's maintenance under any circumstances.<sup>46</sup> Kerala High Court decided that the denial of maintenance to children born out of live-in relations amounting to a violation of Art. 21, and such denial can deprive the right of such children to lead their lives with dignity.<sup>47</sup> The unequal treatment of children born in live-in relationships and marital relationships even though both are legitimate in the eyes of law can amount to a violation of Art.14 which promises equality before the law.<sup>48</sup>

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<sup>44</sup> Sec. 17 Guardians and Wards Act, 1890; *Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka*, AIR 1982 SC 1276

<sup>45</sup> *Gohar Begum v. Suggi*, (1960) 1 SCR 597

<sup>46</sup> *Savitaben Somabhai Bhatiya v. State of Gujarat* AIR 2005 SC 1809. *Dimple Gupta v. Rajiv Gupta* (2007) 10 SCC 30: (2008) 1 SCC (Cri) 567

<sup>47</sup> *P.V. Susheela v. Komalavally* (2000) DMC 376

<sup>48</sup> *Bharata Matha & Ors. v. R. Vijaya Renganathan & Ors*, AIR 2010 SC 2685

### Property and Succession Rights:

Art. 300A of Constitution of India contains a guarantee against deprivation of a property right save by authority of law. However, our personal laws explicitly depriving the property rights of children born in live-in relationship. Muslim law does not confer the right to an illegitimate child to inherit the property of either parent under Shia law and is entitled to inherit only from his/her mother under Hanafi law.<sup>49</sup> Sec.100 of Indian Succession Act, 1925, also explicitly discriminates illegitimate children in case of testamentary succession. It states that if the intention of the testator, to give the property to the illegitimate children is not clearly cited in the Will, then the term child only means legitimate child.<sup>50</sup>

The right of succession of illegitimate children born to Christian parents was considered in *Jane Antony v. M. Siyath* and others<sup>51</sup> The High Court relied on Supreme Court decisions<sup>52</sup> and held that all illegitimate children born out of wedlock are children born to man and woman cohabited for some time, and are in substance husband and wife for all purposes. Thus the court held that the two children born to live-in parents are legitimate children entitled to succeed to the estate of the deceased, even in the subsistence of first marriage and legitimate children.

According to sec.16 of HM Act, 1955, all children born of null and void marriage only inherits the rights over the separate property of their either parents, along with the children born in the wedlock, but not the ancestral property. But sec.16 does not include children born out of the live-in relationship. However, in *Bharata Matha & Ors. v. R. Vijaya Renganathan & Ors.*<sup>53</sup>, the Supreme Court of India held that child born in a live-in relationship may be allowed to inherit his/her parent's property if any, but doesn't have any right over Hindu ancestral coparcenary property. Using the ratio of *Jinia Keotin & Ors. v. Kumar Sitaram Manjhi & Ors.*<sup>54</sup>, the Court hesitate to grant any further rights under this section, stating it would amount to court re-legislating under the guise of interpretation.<sup>55</sup> Live-in relations suffered a setback

<sup>49</sup> *Pavitri v. Katheesumma* A.I.R. 1959 Ker. 319

<sup>50</sup> *In Re: Sarah Ezra v. Unknown* AIR 1931 Cal 560

<sup>51</sup> 2008 (4) KLT 1002.

<sup>52</sup> *Rameswari Devi v. State of Bihar* AIR 2000 SC 735 ; *Badri Prasad v. Dy. Director of Consolidation* 1978 AIR 1557; *Vidhyadhari and others v. Sukhrana Bai* (2008) 2 SCC 238

<sup>53</sup> *ibid.*,49

<sup>54</sup> (2003) 1 SCC 730

<sup>55</sup> *Parayan Kandiyal Eravath Kanapraavan Kalliani Amma (Smt.) & Ors. v. K. Devi and Ors* AIR 1996 SC 1963

with the bar imposed by the Supreme Court in its judgment in *Bharatha Matha v. R. Vijeya Renganathan & Ors.*<sup>56</sup>

However Supreme Court in *Revanasiddappa v. Mallikarjun*<sup>57</sup>, held that ‘Child born in illegitimate relationship/Void marriage is innocent and is entitled to all rights to property to which his parents are entitled whether ancestral or self-acquired property.’ A Bench of G.S. Singhvi J. and A.K. Ganguly J., depart from earlier judgments in interpreting Sec.16(3) of the HM Act, 1955 and underlined the need for a liberal interpretation of Sec.16(3). The Bench said: “with changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role.” Referring an earlier judgment<sup>58</sup>, the Bench said: “the HM Act, 1955 intends to bring about social reforms, and conferment of social status of legitimacy on innocent children is the obvious purpose of Sec.16. This is a law to advance the socially beneficial purpose of removing the stigma of illegitimacy on such children who are as innocent as any other children.” In para 41, the Bench conclude that “since there was no restriction imposed in Sec.16(3), such children would have a right to whatever becomes the property of their parents whether self-acquired or ancestral.”<sup>59</sup> The dictum of *Revanasiddappa v. Mallikarjun*<sup>60</sup> indicating the changing attitude towards the illegitimate child with regard to the property rights.

## Suggestions

In order to protect the rights of these vulnerable groups, Indian legal system has to recognize such relationships through legislations, which would specify the rights of both the parties, and create their obligations with duties. At the same time, the legal fraternity cannot wink at the social and moral recognition in relationship of a valid marriage. It is true that society needs to change with changing times, but it should not compromise with the very basic nature of our family setup, marriage, and the fundamental social norms in the name of modernisation.

A live-in relationship either for assessing the harmony between the couples, for fulfilling sexual desires, or for a single night stand is not considered as a live-in relationship protected

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<sup>56</sup> AIR 2010 SC 2685

<sup>57</sup> *Ibid.*, 40

<sup>58</sup> *Ibid.*, 49

<sup>59</sup> *Ibid.*, 40

<sup>60</sup> *id*

by the law. But at the same time, it is necessary to protect live-in relationships, where one or both partners mistakenly assume that a valid marriage exists between them, or living together for several years as husband and wife without a marital agreement. In the light of this supporting argument, the following suggestions can be made for the protection and a fair dealing of a “*marriage-like*” live-in relationships in India.

**The definition of “*relationship in nature of marriage*”:**

The word “*relationship in nature of marriage*” used in the definition of “*domestic relationship*” under Sec.2 (f) of PWDV Act, 2005 is an ambiguous concept. The absence of a clear definition leads to greater chances of misuse. Recent Supreme Court, as well as High Court judgements, equalize live-in relationship as a “*relationship in nature of marriage*”. But different judges have a different opinion on this.<sup>61</sup> So these contrasting circumstances demanding a clear definition for “*relationship in nature of marriage*”. Even in the absence of a precise definition, the term “*relationship in nature of marriage*” explains the intention of the parties. Giving a marital status to a live-in relationship based on the intention of the parties is essential, to distinct a “*relationship in nature of marriage*” from a relationship with a ‘servant’ or a ‘keep’ or a ‘one night stand’. The judgment of *Velusamy*’s<sup>62</sup> and *Indra Sarma*’s<sup>63</sup> cases give certain conditions to understand the intention of parties. These conditions could be followed as criteria for judging the intention of the parties.

In the milestone case of *D. Veluswami v. D. Patchaimmal*<sup>64</sup>, it was held that a woman in a live-in relationship is not entitled to maintenance unless the couples fulfil certain parameters. The Supreme Court then observed that, “*if a man has a `keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage*”<sup>65</sup> While concluding this decision court express their limitation in clarifying this concept. Because “*Parliament has used the expression `relationship in the nature of marriage' and not `live-in relationship'. The Court in the grab of interpretation cannot change the language of the statute.*”<sup>66</sup>

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<sup>61</sup> *Ibid.*, 13 & 15

<sup>62</sup> *Ibid.*, 26

<sup>63</sup> *Ibid.*, 27

<sup>64</sup> *Ibid.*, 26

<sup>65</sup> *Id* Para 34

<sup>66</sup> *Id* Para 35

In *Indra Sarma v. V.K.V. Sarma*<sup>67</sup> case, after referring some foreign decisions<sup>68</sup>, the court enlists a number of criteria that should be undertaken by the Court in order to determine whether the relationship constitutes a live-in relationship under the purview of PWDV Act, 2005 Act. Such as, duration of the period of the relationship, shared household, pooling of resources & financial arrangements, domestic arrangements, sexual relationship, children, socialization in public, intention and conduct of the parties. These criteria must be followed by all the courts while considering live-in relationship related cases. The court should not refuse the rights of women and children in a live-in relationship just because it is not equal to a marital relation. More than judicial recognition, live-in relationship need a legislative acceptance, by getting a clear definition of the term 'relationship in nature of marriage'.

#### **Enforcement of Cohabitation Agreement:**

Giving validity to cohabitation agreement or *prenuptial* agreement, entered prior to marriage or civil union, is one of the best methods to solve certain problems arising in a live-in relationship. This kind of agreement is widely accepted in America.<sup>69</sup> Property acquired during cohabitation, such as real estate, home furnishings, movable valuables etc. may be contested if partners separate or if one of them dies. To avoid this, the agreement should clearly outline who is entitled to what. Cohabiting parents may face legal difficulties about children born out of such wedlock. An unmarried father must acknowledge paternity by making a necessary agreement for legitimating his child and establishing his parental relationship.

#### **Amend the Definition of “Wife” in Section 125 of CrPC, 1973:**

The present definition of the wife in sec.125 includes “*a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried*”. It doesn't include a live-in partner who lives with the man like a wife for many years. It is an injustice to women, who were in a live-in relationship for a long-term and in some way favouring the activities of fraudulent live-in man. The Malimath Committee Report on Reforms in the Criminal Justice

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<sup>67</sup> *Ibid* 27

<sup>68</sup> *Re Marriage of Lindsay* 101 Wn.2d 299 (1984); *Litham v. Hennessey* 87 Wn.2d 550 (1976); *Thompson v. Department of Social Welfare* <sup>68</sup> (1994) 2 SZLR 369 (HC)

<sup>69</sup> Uniform Premarital Agreement Act (UPAA), 1983

System, 2003 also suggested the amendment of the definition of “wife” in Sec.125, CrPC,1973 to include a woman who is living with a man for a “reasonable long period during the subsistence of the first marriage”.

Report says that:

*“A woman in a second marriage [of a man] is not entitled to claim maintenance as in law a second marriage during the subsistence of the first marriage is not legal and valid. Such a woman though she is de facto the wife of the man in law she is not his wife. Quite often the man marries the second wife suppressing the earlier marriage. In such a situation the second wife can’t claim the benefit of Section 125 for no fault of hers. The husband is absolved of his responsibility of maintaining his second wife. This is manifestly unfair and unreasonable. The man should not be allowed to take advantage of his own illegal acts. Law should not be insensitive to the suffering of such women”*

So by amending the word “wife”, it does not include all non-marital adult heterosexual relationships, but only that between a married man and his second wife, mainly the one who has been cheated into believing that she is marrying an unmarried man.

### **The legitimacy of Child and His Property Rights:**

As per the Sec. 112 of the Indian Evidence Act, 1872, the “legitimacy of a child is proved only if any person was born during the endurance of a valid marriage in between his mother and any man.” Muslim law recognizes only those children as legitimate, who are the progeny of a man and his wife. Thus a child born out of the live-in relationship are illegitimate in the eye of the then existing law. Illegitimacy carried a strong social stigma among all religions practised in the world. Stigmatising children as illegitimate for no fault of theirs and clothing them with legal disabilities is unreasonable and unfair. However the Supreme Court in *Revanasiddappa & Anr. v. Mallikarjun & Ors.*<sup>70</sup> observed that regardless of the relationship between parents, the birth of a child out of such relationship has to be seen independent of the relationship of their parents.

Then in *Bharatha Matha & Anr v. R. Vijaya Renganathan & Ors*<sup>71</sup> held that;

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<sup>70</sup> *Ibid.*, 40

<sup>71</sup> *Ibid.*, 49

“20. Thus, it is evident that Section 16 of the (Hindu Marriage) Act intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object.”

It is definite that a child born out of such relationship is innocent and is entitled to all the rights and privileges accessible to children born out of legal marriages. A child born in ‘relationship in the nature of marriages’ should also be authorised to claim their portion in the coparcenaries property of their parents in addition to the self-acquired property. This is the crux of sec.16 of the amended Hindu Marriage Act, 1955. The concept of illegitimacy of child itself is a matter of abolishment. None of the child born in this world without parents. Countries like America<sup>72</sup>, England<sup>73</sup> etc. already enacted laws for treating all children equally irrespective of their parents’ marital status.

### **Removal of confusion regarding bigamy and protection of legally wedded wife:**

Main challenge while making a law for a live-in relationship is to balance the rights of the legally wedded wife and innocent partner in a live-in relationship (who is unknown to the legally wedded wife). If the law protects the rights of an innocent live-in partner, then it will encourage the practice of bigamy. In consequence, the position of the wife become detrimental in such situation as a court, on the one hand, is giving all the rights of the wife to female live-in partner, while on the other hand it is bound to prohibit bigamy. Thus the law is equivocal and prejudicial for the weaker sex and is not being advantageous to both legally wedded wife and innocent live-in female partner. Therefore the law should remove all confusion regarding bigamy as well as protection of the rights of the legally wedded wife.

### **Blending Morality and Legality:**

Even though conservative society considers the live-in relationship as immoral, it is not as such illegal in the eyes of the law. Subjective interest is more important than moral attitudes and beliefs. The science of morals lacks objective validity. Kelsen’s “*Pure theory of law*” states that a law should be kept free from morality.<sup>74</sup> So, the application of the law must be separated from the sphere of conventional moral influences or political influences. The judiciary has

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<sup>72</sup> Sec. 2 of Uniform Parentage Act, 2002 “The parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parent.”

<sup>73</sup> Sec.1 of Family Law Reform Act, 1987

<sup>74</sup> W. Friedmann, *Legal Theory*, 2nd ed., London: Stevens & Sons, Ltd. 1949.



rendered legality to the concept of live-in relationship and has protected the rights of the parties and the children of live-in couples without uniformity.

The Allahabad High Court, in *Payal Sharma v. Superintendent, Nari Niketan*<sup>75</sup>, and others, stated that a live-in relationship is not illegal. M. Katju J. and R.B. Mishra J. stated, “*In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality.*”

The Supreme Court in *Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga*<sup>76</sup> tried to distinguish between the “*legality*” and “*morality*” of relationships. Where the Supreme Court observed that keeping the present state of statutory law into consideration, a bigamous marriage may be declared illegal, since it contravenes the provisions of the HM Act, 1955, but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to the spouse.

## Conclusion

The courageous initiative taken by the Supreme Court in its judgment namely *Velusamy’s* case<sup>77</sup> and *Indra Sarma’s* case<sup>78</sup> is recommended to the Indian legislature for broadening the definition of “*domestic relationship*” contained in Sec.2(f) of PWDV Act, 2005. The dictum given in those judgements are acceptable. Along with the above recommendations, the Parliament should pass a new legislation as suggested by the Supreme Court in its guidelines given in the course of its above mentioned two judgments. The current need is not to bring live-in relationships under the domain of any existing laws, but to implement a new different law which would look into the matter of live-in relationships specifically, and would grant rights and obligations to the couples. As a result, it will reduce the cases of misuse of existing laws and outrages faced by the female partners under such relationships.

Although law concerning the traditional marriage is well settled, the law concerning cohabitation is less clearly defined. Parties who enter into a live-in relationship are beginning the same general pattern as a traditional marriage. They will accumulate, buy, sell, alter,

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<sup>75</sup> 2001 (3) AWC 1778

<sup>76</sup> (2005) 2 SCC 33

<sup>77</sup> *Ibid.*, 26

<sup>78</sup> *Ibid.*, 27

improve, trade, and dispose of all manner of real and personal property. They procreate as in an ordinary marital bond; they look after children and take care of the aged. The law has been playing an important role in changing the normative meaning of such informal unions. The people actually involved in a live-in relationship may be relatively few in number, but they are having a significant impact on the law and society. So we need an effective legislation and legal reform to handle these issues.

