

THE NEW FAD OF LIVE-IN RELATIONSHIPS IN INDIA

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ABSTRACT

This paper talks about the evolution of the concept of ‘**live-in relationship**’ (also known as ‘**cohabitation**’) in India. It focusses on the very idea as to how live-in relationships got imbibed into the Indian society and became a part of its culture. It moves on to describe and explain the concept of live-in relationship and how it is distinct from the sacred institution of marriage. There are no laws in our country as such to regulate live-in relationships. However, this paper will throw light on various legislations and enactments that safeguard the interests of the partners in a live-in relationship. Some of the rights discussed are the maintenance and the inheritance rights of the woman in a live-in relationship and those of the child or children born out of such relationships. The Supreme Court has dealt with a plethora of cases, wherein it has discussed whether cohabitation or live-in relationship is valid or lawful. The research deals with some of the important and landmark judgements that have contributed significantly to determine the legality and constitutionality of cohabitation as well as the rights of the children born out of a live-in relationship. Finally, an attempt is made to assess the situation of the couples in a live-in relationship during the time of this ongoing pandemic. The research was carried out with the objective of finding out the current legal position and the status of live-in relationships in India, the laws enacted for its protection, and the rights of the parties arising out of such relationship. The research strictly confines itself to the relationship between heterosexual couples. This paper has neither been published, nor has been sent for publication elsewhere.

Keywords: Live-in relationship, inheritance rights of children born out of live-in relationship, survey of millennials supporting live-in relationship, transition from marriage to live-in relationship.

INTRODUCTION

In India, marriages have been considered to be a sacred bond since the Vedic period. Marriage constitutes a contract between a man and a woman to live together and support each other. It has legal significance and envisages several obligations and responsibilities, in the matter of inheritance of property, succession, and so on. ⁱ Marriage and family are the two aspects of the same social reality that were recognised by the traditional world. Marriage is a legal and a social institution engineered within a context of heterosexuality, which many a times exists to benefit men and control women. Whenever the institution of marriage is celebrated, it is this institution and its history. Today, many couples prefer not to marry but rather choose to live together and cohabit. There are many findings that reflect that people in a secular society are happy to spend their life with a partner without feeling any need to formalise the relationship either religiously or in law. Thus, the issue remains whether the law should recognise this new form of non-marital heterosexual relationship. ⁱⁱ

The Indian society has always resisted the very idea of live-in relationships. Shared cohabitation, without being subjected to marital nuptials, has consistently been a piece of debate. Live-in relationship has never been given a direct legal recognition. ⁱⁱⁱ Our orthodox society prohibits the culture of live-in relationship as it believes it to be as immoral and improper, and also, the majority of the country's population resents to having these relationships existing within the society. ^{iv}

However, the practice of living together in the form of a live-in relationship is not new. It has been going on since ages. Earlier, the nawabs, the princes, and the wealthy men in India not only had several wives, but also several live-in relationships in their zenanas. At that time, it was perfectly normal and not considered immoral. Concubines were kept for the entertainment and relaxation of the kings. ^v The only difference is that now, people have become more open about it. Formally, the live-in relationships were known as 'Maitri Karars', in which people of two opposite sex would enter into a written agreement to be friends, live together, and look after each other. Ancient Indian laws contained the concept of the 'Gandharva Vivah' (consensual marriage). A change is visible in our society from arranged marriages to love marriages and now to '**live-in-relationships**'. All these were the same live in relationships but less explicitly expressed. When live-in relationships first came out into the open in India, it created an uproar, with accusations of it being against the Indian morality and culture. With

the passage of time, the number of couples opting for cohabitation with no strings attached, has increased significantly. This is a new trend that has become much more evident in the last decade. The Indian government, in a new law on domestic violence, has recently recognised live-in relationships to be at par with the institution of marriage. ^{vi}

The US follows the concept of ‘**palimony**’, which is a court ordered financial settlement for parties in a live-in relationship. In 2011, the Supreme Court of India in the case of ‘*D Veluswamy Vs D Patchaiammal*’, prescribed the need of developing the concept of palimony in India. ^{vii}

RESOURCES USED

The research has made use of both primary and secondary resources for the purpose of giving the readers a broad and an overall understanding on the concept of live-in relationships in India. The primary resources used are the Constitution of India, the Indian Evidence Act (1872), the ‘Protection of Women against Domestic Violence Act’(2005), the Code of Criminal Procedure (CrPC), etc. The secondary resources consist of journal articles, news blogs, Indian Kanoon, etc.

HYPOTHESIS

Although live-in relationships have acquired legal recognition and validity in India, they are yet to receive the approval of the society.

LIVE-IN RELATIONSHIP AS A NOVEL CONCEPT TO INDIA

Live-in relationship is more of a westernised concept with very little relevance to the Indian society. The Supreme Court has, on several occasions, taken the liberty to talk about live-in relationship and decide upon its validity. A live-in relationship is distinct from the relationship or bond of marriage. While marriage is a socially and ritually acknowledgeable union of a couple, live-in relationship does not have any recognition in the eyes of the society. ^{viii}

Most of India’s population adheres to the traditional way of living. ^{ix} In our society, live-in relationships are frowned upon as a sin and taboo. ^x This is because of the holy idea that the girl should remain a virgin until her marriage and due to the social stigma attached to such

relationships. The traditional ritual of marriage being practiced since ages is losing its sacred sanctity.^{xi} The Indian society opines that couples live together without marriage merely to satisfy their sexual desires and lust. However, the reality is that the couples opt for a live-in relationship in order to test their compatibility with each other before marriage, since marriage is a lifelong relationship and everyone has the right to choose the perfect partner for oneself.^{xii} This right to freedom has been recognised and upheld by the Supreme Court in several judgements.

Looking at it from a legal perspective, live-in relationship can be defined as, “A living arrangement whereby a couple lives together in a long and an ongoing relationship similar to that of a marriage.” It is a form of relationship where a male and a female live or stay together as a friend before and without getting married.^{xiii} It is simply the cohabitation that takes place outside the institution of marriage.^{xiv} The idea behind this is that the couple may want to find whether they both are compatible with each other, they may want to establish financial security, to avoid divorce, and to see the differences between the commitment to stay together as a couple before and without marriage, and the commitment to actually live together as a couple under the same roof after marriage. It is mostly the youngsters who possess the tendency to indulge in live-in relationships, instead of tying the knot of marriage.^{xv} Live-in relationship seems to be unstable, as it provides the parties with an open option and the flexibility to walk in or walk out of the relationship as per their own whims and fancies, without even giving a proper justification for the same. It can be considered to be as an alternative to marriage having no stability.^{xvi}

Live-in relationship is not uncommon in the West.^{xvii} In India, it has now become prominent and acts as a substitute to the sacred institution of marriage, especially in the metropolitan cities of the country. In such developed and urbanised pockets, individual freedom is given extreme importance due to which, the people get involved in a live-in relationship, rather than in the formal tradition of marriage. Today, India has an enormous count of live-in relationships, having no effect on the institution of marriage.^{xviii}

Although new and novel, the trend of live-in relationship has become quite prominent across India. In contemporary times, people are not willing to bear the responsibility of committing themselves to a full-time devoted relationship. For the youth, voluntary relationship based on

the broader understanding of domestic cohabitation, recognition of pre-nuptial agreements, the overall tolerance towards sexual preferences, etc., is the new way ahead. Live-in relationship seems to be better to them, as it allows them to live in a marriage without a marriage. The change that can be seen is that now, even the society and other organisations have joined the judiciary in legalizing live-in relationships, as the country becomes more open and receptive towards the western culture, ideas, and lifestyle. ^{xix}

LEGAL POSITION OF LIVE-IN RELATIONSHIPS IN INDIA

The Supreme Court has time and again said that, if a man and a woman are living together as husband and wife in a long-term relationship and even have children, the judiciary will presume that the two are married and the laws similar to those of marriage will be applicable to them and their relationship. In *'Payal Sharma Vs Nari Niketan'*, the Allahabad High Court with the Bench consisting of Justice M. Katju and Justice R.B. Misra held that, "In our opinion, a man and a woman can live together if they wish to, even without getting married. This may be regarded as immoral by the society, but is not illegal. There is a difference between law and morality." Afterwards, in the case of *'S Khushboo Vs Kannaiamal And Another'*, the Supreme Court observed that, "A live-in relationship between two adults without a formal marriage cannot constitute an offence. Further, it is added that there was no law prohibiting live-in relationships or pre-marital sex. Article '21' of the Constitution guarantees to each person the right to life and personal liberty as a fundamental right." ^{xx}

A proposal was approved by the Maharashtra government in the year 2008, which suggested that if a female is into a live-in relationship for a long duration, she should get the status of a wife. A committee called the '**Malimath**' committee suggested that, the word '**wife**' used in the Code of Criminal Procedure (CrPC) should be altered with the words '**woman living with the man like his wife**'. This shows that the female partner will be entitled to alimony. The Supreme Court has held that to live with a partner of one's own choice falls under the ambit of one's right to life. It is lawful, though regarded as immoral in the Indian traditional society. ^{xxi}

The Malimath Committee and the Law commission of India came up with a proposal that suggested, if a woman has been in a live in relationship for a considerably long time, she ought

to enjoy the legal status as that of a wife. However, recently it was observed that it is the divorced wife who is treated as a wife under Section 125 of the Cr.P.C, but in the case of live-in partners, they cannot be divorced and hence, cannot claim maintenance under Section 125 of the Cr.P.C. ^{xxii}

The Supreme Court has held that live-in relationship is neither a crime nor a sin, while asking the Parliament to frame laws for the protection of women in such relationships and the children born out of it. ^{xxiii} In the case of ‘**LATA SINGH VS STATE OF UP**’, the court held that, “A live-in relationship between two consenting heterosexual adults does not amount to any offence under the law, even though it may be immoral.” ^{xxiv}

If a live-in relationship continues for a long duration, and the society believes the couple to be a husband and wife, the couple is considered to be legally married. ^{xxv}

LEGAL PROVISIONS GOVERNING LIVE-IN RELATIONSHIPS IN INDIA

The Indian Legislature does not provide for any law or provision on live-in relationships. The concept of live-in relationship has been given a judicial interpretation from the already existing statutes. This was to bring these relationships under the umbrella of the prevalent laws so that the aggrieved party could count on someone for justice. The statutes are namely, Section ‘125’ of the ‘Code of Criminal Procedure’(CrPC), the ‘Protection of Women from Domestic Violence Act’ (PWDVA) (2005), Section ‘114’ of the ‘Indian Evidence Act’ (1872), and Article 21 of the Constitution. ^{xxvi}

Criminal Procedure Code - Section 125

The issue of live-in relationship was raised by the Malimath Committee for the prevention of atrocities against women. This committee recommended several changes under the head ‘offences against woman’. The first and the foremost recommendation was the amendment of section 125 of the CrPC to include live-in relationships within its ambit. Section 125 of the CrPC talks about the right of the wife and the children to maintenance, if the man denies or refuses to provide the same. ^{xxvii}

Following the recommendations of the Malimath committee, the Maharashtra government in the year 2008, tried to amend section 125 of the CrPC that brought the issue of live-in relationships into the limelight. In '*Chanmuniya Vs Virendra Kumar Singh Kushwaha*', the court held that, "The fact that a man and a woman have been living together for a long period of time is a sufficient proof for assuming that they are married."^{xxviii}

An essential pre-requisite for claiming the benefit of maintenance under this provision is that the wife should not be involved in an adulterous relationship without giving a valid justification to abandon her husband. Also, the provision needs to be amended as it does not include live-in relationship within its domain.^{xxix}

Protection of Women from Domestic Violence Act, 2005

The first legislation to recognize the existence of live-in relationship is the 'Protection of Women from Domestic Violence Act' (PWDVA), 2005. The act describes as to who is an 'aggrieved person'. According to this act, an 'aggrieved person' is a woman who is or 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. The act defines domestic relationship as a relation between people who live or have lived in a shared household when they are bound by consanguinity, marriage, relationship in the nature of marriage, adoption, or togetherness as members of a joint family. The act has widened the scope by adding the phrase 'relation in the nature of marriage' for legally recognizing the domestic relationship between an unmarried man and woman.^{xxx}

In the case of '*Aruna Pramod Shah Vs Union Of India*', the Delhi High Court rejected the petitioner's contention and said, "There is no reason why equal treatment should not be meted out 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." In this case, the judges interpreted '**relationship in the nature of marriage**' as covering both a '**common law marriage**' as well as a relation with a '**mistress**'.

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Section 114 of the Indian Evidence Act, 1872

Section ‘114’ of the ‘**Indian Evidence Act**’ (1872), talks about the ‘**presumption**’ of existence by the court of any fact that 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. ^{xxxii}

The Indian legal system does not always seek strict evidence regarding the validity of a marriage in the face of other circumstantial evidence which indicates the existence of a ‘**relationship in the nature of marriage**’. This position is evident from the case of ‘*S Khushboo Vs Kannaiammal And Another On 28 April, 2010*’. In this case, the Supreme Court arrived at the conclusion that a live-in relationship cannot be called as a criminal or an illegal activity. This is due to the presumption of marriage between the parties when they are unmarried. ^{xxxiii}

Article 21 of the Constitution

The Supreme Court in several judgements, has said that one has the right to choose one’s own partner and stay with him or her in the nature of a marriage without actually getting married. This is a matter of choice and falls under the ambit of the fundamental right to ‘**life and personal liberty**’ that is guaranteed under Article ‘21’. ^{xxxiv}

CASE LAWS ON THE LEGALITY OF LIVE-IN RELATIONSHIPS

Dinohamy Vs Balahamy

In this case, the Privy Council laid down the basis for a live-in relationship, that is, when a man and a woman are living together, the law will presume that unless the contrary is proved, they were in a live-in relationship, rather than the woman being the concubine of the man. ^{xxxv}

Badri Prasad Vs Dy. Director of Consolidation and Others On 1 August, 1978 (1978 Air 1557, 1979 Scr (1) 1)

The order of the court was delivered by Krishna Iyer, J.-“A strong presumption in favour of marriage arises where the partners have lived together for a long duration as husband and wife. Although the presumption is rebuttable, a heavy burden lies on the one who seeks to deprive the relationship of its legality. Law leans in favour of legitimacy and frowns upon bastardy. After over 50 years, it is quite unlikely that the marriage between the parties can be proved by the eye-witnesses to be as legally valid.”^{xxxvi}

D Veluswamy Vs D Patchaiammal on 21 October, 2010

This decision of the Supreme Court was delivered by Markandey Katju, J.- “In our opinion, a **`relationship in the nature of marriage'** is akin to a **'common law marriage'**. Common law marriages require that although no formal marriage may be in existence, certain pre-conditions need to be met by the couple in such relationship :

- (a) The couple must hold themselves out to the society as being akin to spouses.
- (b) They must be of a legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

“In our opinion, a **`relationship in the nature of marriage'** under the **'Protection of Women from Domestic Violence Act', 2005**, must fulfil the above conditions and in addition to that, the parties must have lived together in a **'shared household'**, as defined under Section 2(s) of the PWDV Act. Merely spending weekends together or a one night stand would not make it a **'domestic relationship'**. Thus, not all live-in relationships amount to a relationship in the nature of marriage to get the benefit of the PWDV Act (2005). To claim these benefits, the conditions mentioned above must be satisfied and they need to be proved through evidence. If a man has a **'keep'** whom he maintains financially and uses mainly for sexual purposes and/or as a servant, it would not be a relationship in the nature of marriage.”^{xxxvii}

Madan Mohan Singh And Others Vs Rajni Kant And Another On 13 August, 2010

This is a Supreme Court judgement pronounced by Dr. B.S. Chauhan, J : “If a live-in relationship is continued for a long time, it cannot be termed as a ‘**walk in and walk out**’ relationship. In such a case, there is a presumption of marriage between the parties. This presumption is rebuttable by showing full-proof evidence against the marriage.”^{xxxviii}

S. Khushboo Vs Kanniamal And Another On 28 April, 2010

This is a Supreme Court judgement pronounced by Dr. B.S. Chauhan, J : “For the sake of argument, even if it were to be assumed that the appellant's statements could encourage some people to engage in premarital sex, no legal injury has been shown since the latter is not an offence. While the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside marriage, with the ‘**exception**’ of ‘**adultery**’ defined under Section ‘497’ of the ‘Indian Penal Code’ (IPC).”^{xxxix}

Indira Sarma Vs V.K.V. Sarma on 26 November, 2013

This Supreme Court judgement was delivered by K.S. Radhakrishnan, J : “Being in a live-in relationship is neither a crime nor a sin, however, it is socially unacceptable in our country. It is one’s personal choice or decision whether to marry or not to marry or to have a heterosexual relationship. A live-in relationship permits the parties to ‘**walk out**’ of the relationship at any point of time without the consent of the other partner. It is based solely on the ‘**will**’ of the party walking out. When any partner walks out, the relationship comes to an end. The party asserting the existence of a ‘**live-in relationship**’ must positively prove the existence of the same.”

Further, the court said that a ‘**live-in relationship**’ is similar to a ‘**relationship in the nature of marriage**’ or a ‘**domestic relationship**’, and it amounts to a ‘**de facto**’ relationship. However, not all ‘live-in relationships’ fall within the definition of ‘domestic relationship’ defined under Section 2(f) of the ‘**Protection of Women from Domestic Violence**’ Act, 2005. Also, where there is no domestic relationship, there arises no question of ‘**domestic violence**’ defined under Section 3 of the PWDV Act.

The court laid down a few **guidelines** for making a ‘**live-in relationship**’ fall within the definition of ‘**relationship in the nature of marriage**’ under Section 2(f) of the PWDV Act. These guidelines are not exhaustive :

(1) **Duration of period of relationship-** Section 2(f) of the PWDV Act has used the expression ‘**at any point of time**’, which means a reasonable period of time to maintain and continue a relationship which may vary from case to case depending upon the facts and circumstances.

(2) **Shared household-** This expression has been defined under Section 2(s) of the PWDV Act, and may result into a ‘relationship in the nature of marriage’.

(3) **Pooling of Resources and Financial Arrangements-** Supporting each other or any one of them financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be an important factor.

(4) **Domestic Arrangements-** Entrusting the responsibility, especially on the woman to run the home, do the household chores like cleaning, cooking, maintaining or upkeeping the house, etc., indicates a ‘relationship in the nature of marriage’.

(5) **Sexual Relationship-** Marriage like relationship refers to a sexual relationship not just for pleasure, but also for emotional support, companionship, care, etc.

(6) **Children-** Having children shows that the parties intend to have a long standing relationship. This shows that they want to share the responsibility of bringing up and supporting the children.

(7) **Socialization in Public-** Holding out to the public and socialising with friends, relatives, etc, as husband and wife.

(8) **Intention and conduct of the parties-** Common intention of the 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. ^{x1}

Tulsa And Others Vs Durghatiya And Others On 15 January, 2008

This decision of the Supreme Court was given by **Dr. Arijit Pasayat, J.** The court was of the view that reference may be made to Section **114** of the **Evidence Act, 1872**. This provision talks about the common course of natural events, human conduct, and private business. The court may **presume** the existence of any fact that it thinks likely to have occurred. Reading Sections **50** and **114** of the **Evidence Act** together, it becomes clear that a **presumption of marriage** can arise from the common course of natural events and conduct of the parties, depending on the facts of a case.

Where it is proved that a man and a woman have been living together as husband and wife, the law will presume, until the contrary gets clearly proved, that the act of living together was in consequence of a valid marriage and not in a state of concubinage.

The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years. This presumption could be drawn under **Section 114** of the **Evidence Act**.

Where the partners have lived together as husband and wife for a long duration, there would be presumption in favour of wedlock. The presumption is **rebuttable**, but the burden to prove the non-existence of the relationship lies on the person challenging the existence of such relationship. Law leans in favour of legitimacy and frowns upon bastardy. ^{xii}

Thakur Gokalchand Vs Parvin Kumari On 16 May, 1952 (1952 Air 231, 1952 Scr 825)

The Judgment of the court was delivered by Fazl Ali, J : “Evidence of certain witnesses on which the lower court relied, did not strictly comply with the requirements of Section 50 of the Evidence Act. This is because the witnesses did not have any special means of knowledge about the relationship between the plaintiff and the aggrieved woman. Also, Section 50 makes relevant not mere opinion, but opinion ‘**expressed by the conduct**’ of persons who as members of the family or otherwise, have special means of knowledge.” ^{xliii}

S.P.S. Balasubramanyam Vs Suruttayan On 13 October, 1993 (1994 Air 133, 1994 Scc (I) 460)

The Judgment of the court was delivered by R.M Sahai, J. “It has been settled by this court that if a man and a woman live together for many long years as husband and wife, a presumption in law arises as to the existence of a legal marriage between them. But the presumption can be rebutted. The question is whether any of the circumstances taken individually or together are sufficient to conclude that the presumption stands rebutted.

No law recognizes an adulterous relationship as valid. The presumption, if any, in favour of a legal marriage as a consequence to an adulterous relationship, stands rebutted.”^{xliii}

Challama Vs Tilaga and Others On 31 July, 2009

The judgement of the court was delivered by **S.B. SINHA, J.** It was held that when a man and a woman have cohabited continuously for a number of years, the law will presume that they both are lawfully married. The presumption is made against concubinage. This presumption could be drawn through Section 114 of the Evidence Act.

Such a presumption is rebuttable and can be validly raised having regard to Section 50 of the Evidence Act. The burden to rebut the presumption lies on the person who seeks to prove that no marriage has taken place.^{xliv}

Uday Gupta Vs Aysha and Another On 21 April, 2014

The judgement was delivered by a 2-judge bench comprising of J. B.S. Chauhan And J. CHELAMESHWAR. It was held that if a man and a woman have been living together for a long period of time as husband and wife without marrying each other, there would be a presumption in favour of a legal marriage between them, and children born out of such marriage will be legitimate.^{xlv}

Pardeep Singh And Another Vs State Of Haryana And Others On 18 May, 2021

This is the recent order of the Punjab and Haryana High Court where it was held that an individual has the right either to formalize the relationship with his/her partner, or to go for an informal relationship in the nature of a ‘live-in’ relationship.

The Bench of Justice Sudhir Mittal observed this in a matter pertaining to a couple, who were both adults and had decided to enter into 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 relatives, who are against the relationship. A similar situation exists when the couple enters into a live in relationship. There is no difference between the two types of relationships, as the couples fear for their safety from relatives in both the situations, and not from the society. They are thus, entitled to the same relief. The only difference is that a live-in relationship is not universally accepted."

The court also observed that the right to life and personal liberty is a fundamental right enshrined under Article 21 of the Constitution, and that the said right includes the right of an individual to choose a partner of his or her choice.

The court said that live-in relationship is the concept given to the Indian society by the West, and it has gained acceptance in the metropolitan cities of India as people have realised that formalization of a relationship through marriage is not necessary to make it a binding relationship.

Saying that education has played a key role in the development of this concept, the court commented that it has now seeped into the small towns and villages of the country. This is an indication of an increasing social acceptance for live-in-relationships in the country.

The court in its final remarks said, "In law, a live-in relationship is not prohibited nor does it amount to commission of any offence and thus, people in a live-in relationship are entitled to equal protection of the laws as any other citizen of the country. The law advocates that the life and liberty of each individual is sacrosanct and must be protected regardless of any individual views.^{xlvi}

RIGHTS OF PARTNERS IN A LIVE-IN RELATIONSHIP

The parties in a live-in relationship are entitled to certain rights, similar to those granted and enjoyed in case of a marital relationship. The woman can claim maintenance under section 125 of the CrPC, and she need not prove the existence of marriage for the said purpose. The man is held liable to pay maintenance to the woman if he deserts her. The existing loopholes in the

current legal system cannot be used for an undue advantage by any partner to refuse and avoid his/her obligations and duties towards the other partner. Further, a woman is entitled to claim any relief under the PWDV Act when she is in a live-in relationship.

The current legal framework provides that a person may nominate any person to be included in his/her will. The will can only be made for the self-acquired property of a person. In the case of '*Vidyadhari Vs Sukharna Bai*', the Supreme Court granted a succession certificate to a live-in partner since the deceased partner nominated the other partner. The law states that a person may create a will in favour of one or more persons to transfer the property on the death of the testator. The will can be revoked at any time during the lifetime of a testator. Any person who is competent to contract under the Indian Contract Act, 1872, can make a will and subsequently, any person who is capable of holding property can become a legatee under a will. Another way by which a person may inherit property in a live-in relationship is through gifts. As opposed to a will, a gift is a voluntary transfer of property made during the lifetime of a person. Both moveable and immovable property can be transferred in a live-in relationship. However, for an immovable property to be transferred through a gift, the gift deed must be registered.

There is no provision in the Indian laws that can grant inheritance rights to the couple in a live-in relationship. The courts in India have discussed the legality of live-in relationships, but have not paid heed to the other rights and obligations flowing out of these relationships. A majority of the courts have tried to interpret live-in relationship as a marriage having no rights. Inheritance by means of a will or a gift is the most suitable way to transfer a property in a live-in relationship.^{xlvii}

Maintenance of Women Under Section 125 of the CrPC

Since there is no relief available to women in a live-in relationship, the courts have expanded the relief available in such relationships in order to include the unprotected women within the ambit of the Criminal Procedure Code (CrPC).

Section 125 of the CrPC grants the legal right of maintenance to wives. The Malimath Committee Report and the 8th Law Commission had suggested the inclusion of women living in a live-in relationship, within the purview of this section. Supreme Court accepted this

principle in '*Abhijit Bhikaseth Auti Vs State Of Maharashtra And Others*', and asserted that marriage in a strict form need not be shown for claiming maintenance under Section 125 of the CrPC. ^{xlviii}

In '*Chanmuniya Vs Virendra Kumar Singh Kushwaha And Others On 7 October, 2010*', there existed a strong presumption of marriage between a man and a woman who had been living together for a long time without a legally valid marriage. The decision of the Supreme Court was pronounced by Ganguly, J. It was held that, "The cases where a man living with a woman for a long time without a legally valid marriage deserts the woman, he is liable to pay a sufficient amount as maintenance to the woman. The man cannot gain advantage out of the legal loopholes by enjoying the benefits of a de facto marriage, without undertaking any of the duties and obligations. The very object of Section 125 of the CrPC is to prevent the woman from falling prey to vagrancy and destitution. If women in a live-in relationship can claim monetary relief and compensation under the PWDV Act of 2005, they should be entitled to claim the same under Section 125 of the CrPC as well. This is provided by Section 26 of the said Act of 2005. The term 'wife' should be given a broad interpretation to include within its ambit even those cases where a man and a woman have been living together as husband and wife for quite a long period of time. Section 125 of the CrPC does not call for a strict proof of marriage as a requirement to claim maintenance under Section 125 of the CrPC.

The decision was in accordance to the '**2003**' report of the '**Committee on Reforms of Criminal Justice System**' headed by Dr. Justice '**V.S. Malimath**'. The report submitted that an evidence showing a man and a woman living together for a reasonably long period of time is sufficient enough to presume that they both are lawfully married and the marriage has been celebrated according to the customary rites of the parties. Further, the report suggested that the word '**wife**' as used under Section 125 of the CrPC should be amended to include a woman who was living with the man like his wife for a reasonably long period. ^{xlix}

In '*K Vimal Vs K Veeraswamy On 20 March, 1991*' (1991 Scr (1) 904, 1991 Scc (2) 375), the court in its decision given by Fatima Beevi, J held that that, "Section 125 of the CrPC intends to achieve a social purpose. The provision intends to provide sufficient maintenance in order to make the woman fulfil her basic needs and wants and sustain herself, preventing her from becoming a destitute. The term '**wife**' used under Section '**125**' of the CrPC includes even

those women who do not have the legal status of a wife due to the non-existence of a legally valid marriage. In case the man deserts the woman or his wife, Section 125 of the CrPC ensures a speedy remedy for the supply of food, clothing, and shelter. Where the husband denies the claim of keeping his deserted wife as his mistress by claiming that he is already married, he is required to produce strong and concrete evidence of his first marriage. In cases where there already exists a marriage, the second wife is not entitled to receive maintenance under Section 125 of the CrPC, since the marriage becomes void due to the existence of the first marriage. However, the wife will be denied maintenance only if the husband satisfactorily proves the existence of a legally valid first marriage, especially when the provision aims to secure social justice to protect women and children.”¹

In ‘*Mohammad Ahmad Khan Vs Shah Bano Begum And Others*’ On 23 April, 1985 Air 945, 1985 Scr (3) 844, the judgement of the court was delivered by Chandrachud, C.J. - Dealing with an issue of maintenance to a Muslim woman under Section ‘125’ of the CrPC, the court held that, “Section ‘125’ of the CrPC is a secular provision and is different from the personal laws of the parties. It is an unbiased provision and has similar applicability to all the religions. Also, the liability imposed by the said provision is established by the individual's obligation to society to prevent vagrancy and destitution.”^{li}

Maintenance of Women Under the PWDV Act

‘Live-in’ relationships are included within the definition of ‘domestic relationship’ under Section 2(f) of the ‘Prevention of Women from Domestic Violence Act’, 2005. This change made ‘relationships in the nature of marriage’ where the couple lives together and presents itself as husband and wife over a long span of time, come within the ambit of the PWDV Act, 2005. Thus, women in a live-in relationship can seek protection of the PWDV Act and can also claim maintenance, as held in the case of ‘*D Veluswamy Vs D Patchaiammal*’.

In the case of ‘*Lalita Toppo Vs State Of Jharkhand*’, the Supreme Court considered the application of the PWDV Act to live-in relationships. It was held that the wife or the live-in partner would be entitled to relief under the Act in a shared household. But it is only the woman who can claim maintenance under the PWDV Act, 2005.”^{lii}

Maintenance and Custodial Rights of Children

Section '125' of the CrPC provides remedy to those children who cannot claim maintenance under the personal laws.

The absence of live-in relationship laws is hard to grapple with, especially while dealing with the issue of custodial rights of children. These rights come into play when a couple decides to part ways with each other. Due to the lack of any specific law, the courts may decide the custodial rights in the manner followed for marriage cases. The personal laws grant the first right to the father in case of a legitimate child. The mother is given the first preference in case of an illegitimate child. However, this has now been overruled by the Supreme Court. In the current legal system, both mother and father have been vested with equal rights over the child. Custody will be decided on the basis of facts and circumstances of each case, as held in the case of '*GITA HARIHARAN VS RBI*'.^{liii}

INHERITANCE RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS

In the absence of laws governing live-in relationships, the legal position with respect to right to inheritance of property remains ambiguous and unresolved. Yet, the children born out of such relationships have the right to inherit property from their parents. The children born out of relationships other than a lawful marriage, are to be considered as legitimate. However, there are some essential conditions that need to be met before a child is deemed to be as legitimate. Firstly, the child's parents must have shared a common household for a considerable period of time. Secondly, the society must recognise the couple as husband and wife, and their relationship should not amount to a 'walk-in' and 'walk-out' relationship. In the case of '*Ramkali Vs Mahakali Shyamwati*', the court defined a live-in relationship or a de facto marriage as a situation where a couple lives together for a long spell of time as husband and wife with habit and repute. However, proof of this relationship would be required to grant legitimacy to the children born out of the relationship. Therefore, a live-in relationship can be termed as a de facto marriage.^{liv}

The law forbids couples living in a live-in relationship to adopt a child as per the terms laid down by the ‘**Central Adoption Resource Authority**’, 2011. The denial of maintenance to the children born out of such relationships can be challenged under the law as a blatant violation of fundamental rights. The children born out of live-in relationships have always been meted out with an unequal and a partial treatment, as against the children born out of a legally valid marriage or wedlock. The courts in various judgements have ruled that, these children should be treated with absolute equality and impartiality, without subjecting them to any kind of discrimination. These children should be seen on par with the children born out of a lawful marriage. The failure to do so amounts to an infringement of Article 14^{lv} of the Constitution, which talks about the ‘**Right to Equality**’ as being one of the Fundamental Rights.^{lvi}

CASE LAWS ON THE RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS

Parayankandial Eravath Kanaprvan Kalliani Amma Vs K Devi On 26 April, 1996 (1996 Air 1963, 1996 Scc (4) 76)

The judgement of the court was delivered by Saghir Ahmad, J. It was held that, “The children born out of a void or a voidable marriage under sections ‘11’ and ‘12’ respectively of the ‘Hindu Marriage Act’ (HMA) (1955), shall be deemed to be legitimate for the purposes of inheritance of property of their parents. The benefit of this legitimacy is provided by section ‘16’ of the HMA. Children whether born before or after the amendment of section 16(1), shall be deemed to be legitimate for the said purpose. This is the ‘legal fiction’ created by section 16, by which the illegitimate children have to be considered as legitimate for all practical purposes, including succession to the properties of their parents. However, these children cannot succeed to the properties of any other persons based on this rule, as the rule restricts their right to their parents’ property only.^{lvii}

Bharatha Matha And Another Vs R Vijaya Renganathan And Others On 17 May, 2010

The decision of the court was delivered by Dr. B. S. Chauhan, J. It was held that, “The presumption of a child being legitimate can only be made on the basis of a strong and concrete

evidence, and not merely by mulling over the possibilities. This is because the law has to prevent the innocent child from getting bastardised. The presumption is rebuttable, however, the only way to rebut it is through the proof of non-access between the parties to marriage during the relevant period, as provided under Section ‘112’ of the **Evidence Act**.

Further, the court concluded by saying that the children born out of a void or a voidable marriage or relationship, are entitled to claim rights only in the ‘**self-acquired**’ property of their parents, and not in the ‘ancestral’ or ‘coparcenary’ property. This change was introduced through section ‘16’ sub-section ‘3’ that was added later.”^{lviii}

Revanisidappa And Another Vs Mallikarjuna And Others On 31 March, 2011

The decision of the court was delivered by Ganguly, J. This is a landmark judgement on the rights of the children born out of an invalid relationship. . This case overturned the decision given by the court in the cases of ‘**BHARATH MATA**’ and ‘**JEOTIN MANJHI**’, where it was held that the illegitimate children can claim a right only in the self-acquired property of their parents and not in the ancestral property.

In the present case, the court arrived at the conclusion that illegitimate children can claim a share both in the ‘**self-acquired**’ property of their parents as well as the ‘**ancestral**’ property. However, the rights of these children are restricted only to the property of their parents.

The case has broadened the ambit of section **16(3)** of the **HMA** by holding that all kinds of properties are covered under the section. This is because the section remains silent on the nature of the property being talked about, that is, it neither mentions a self-acquired property, nor an ancestral property.^{lix}

LIVE-IN RELATIONSHIPS FROM THE SOCIETAL POINT OF VIEW

Live-in relationships are looked down upon by the society even to this day. Some people in our society even isolate those indulging in live-in relationships. These relationships can be accepted by only those families that are highly advanced, progressive, and open-minded.

There was a survey done in the year 2018, and it is the latest survey carried out for knowing the opinion of the Indian society on live-in relationships. An app called '**In Shorts**', conducted a poll to know the reaction of Generation '**Y**' on this concept where a man and a woman from different family backgrounds live together without having any formal relationship as that of marriage. The survey received 1.4 lakh views from the netizens. Around 80% of them belonged to the age group of '**18-35**' years.

The survey revealed that **80%** of the millennials believed that live-in relationship is still seen as a huge taboo in India, while only **47%** of them considered marriage to be better than a live-in relationship.

Some of the other revelations made out of the survey were that over **80%** of the Indians supported the concept of live-in relationships and among those, there were **26%** of them who would prefer making lifelong live-in relationship as a way of life over and above marriage, if they can. Further, **86%** of the participants felt that lust is not the only factor driving live-in relationships, and **45%** of them believed that live-in relationships enable the couples to test their compatibility and understanding with each other, before taking the final call on marriage.

The survey also disclosed the fact that **45%** of the participants opined that the society looks down upon the couples who move in together before marriage, and any order or judgement of the court in favour of these couples and for their protection, would not have any bearing or effect on the mentality of the society.^{ix}

CONCLUSION

By now, it must be clear that '**live-in**' relationship is comparatively a novel and a unique concept to India, so far as the other countries are concerned. Earlier restricted to only the Western countries, it has now begun its journey from the West to the East, and is gradually evolving in our country, where the notion of a man and a woman living together before and without marriage is a sin or a taboo. The emergence of this concept in India can be attributed to various factors such as globalisation, realisation of the obligations and duties associated with marriage, checking compatibility before marriage, so on and so forth. Indulging in such a relationship is considered to be an act of deviance from the general norms of the society. Notwithstanding the fact that live-in relationships are considered to be immoral by the society,

they are not illegal. The Supreme Court in its judgements has held, that the right to choose a partner of one's own choice and to decide whether or not to marry, falls under the ambit of Article '21' of the Constitution which guarantees the right to 'life' and 'personal liberty'. Live-in relationships have thus, been bestowed upon with legal recognition and constitutionality. It has acquired the status of a '**relationship in the nature of marriage**', since it calls for a man and a woman to live together and cohabit for a reasonably long time, giving rise to a '**presumption in favour of marriage**'.

Despite gaining legal recognition, there is no law or any other provision in India for governing live-in relationships. The concept has been given a '**judicial interpretation**' out of the already existing laws such as, Section 125 of the CrPC, the PWDV ACT of 2005, etc. These laws have provided and extended the benefits of a woman's right to maintenance in a live-in relationship and the right of children born out of such relationship to inherit the property of their parents. Even though it is not a formally solemnised marriage, the partners in a live-in relationship are as much duty bound to each other as in the case of a legally valid marriage. However, the partners are free from the hassle or the responsibility of preserving the sacred bond of marriage and the obligations that come along with it. They enjoy complete freedom and liberty, since they can walk-in and walk-out of the relationship at any point of time they want, without seeking the consent or approval of the other partner. Hence, the couple in a live-in relationship can be deemed to be both married and non-married at the same time.

Apparently, live-in relationships are becoming popular and common mostly among the millennials, who support and prefer live-in relationship, rather than marriage, as a way of life. Live-in relationships have brought a shift away from the formal and the traditional institution of marriage to a much more modern and a liberal form of relationship that can exist between a man and a woman. Also, the society is gradually getting to terms with the new trend. It is now to be seen whether live-in relationships become as prominent in India as it is in most of the foreign nations.

ENDNOTES

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- ^{xi} Kaur, *supra* note 5.
- ^{xii} Pandey, *supra* note 4.
- ^{xiii} *Id.* at 261-262.
- ^{xiv} Sepaha, *supra* note 1, at 2.
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- ^{xvi} *Id.*
- ^{xvii} *Id.* at 263.
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- ^{xxii} Dr. Pradeep Kumar, *Live in Relationship Neither a Crime nor a Sin: A Study with Reference to Right to Marriage*, 2 J.Leg.Stud. 46, 48 (2014).
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- ^{xxxii} *Id.*
- ^{xxxiii} *Id.*
- ^{xxxiv} INDIA CONST. art 21, cl.1.
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