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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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JUDICIAL AND SOCIAL RESPONSE TO LIVE-IN RELATIONSDHIP IN INDIA : A CRITICAL ANALYSIS

AUTHORED BY -RAJ KUMAR GARG

(PH.D RESEARCH SCHOLAR, HIMACHAL PRADESH UNIVERSITY)

&

CO-AUTHORED BY- NITU

(STUDENT BALLB 10TH SEMESTER, INDIAN INSTITUTE OF LEGAL STUDIES, SHIMLA)

1. Abstract

India is a country that is welcoming western ideas and lifestyles. It is up to the person to choose whether it is good or terrible. One of them is the idea of live-in partnerships. However, a sizable proportion of the Indian populace feels that live-in relationships are against Indian culture. Because the Hindu faith, in particular, considers 'One man, one wife' to be the most holy type of matrimony. Indians think that individuals should get to know one other through traditional means such as arrange marriage, dating, messaging, and regular meetings. But not to break the societal boundary in terms of marriage and sex. In India, the legality of live-in relationships is unpredictable. Law regarding live-in relationship is still uncertain. Few rights have been provided by interpreting and altering existing laws in order to prevent partners from misusing such relationship. There is no direct law regulating live-in relationship in the country, but analysis of the judiciary's past decisions shows that judiciary is not against live-in relationship in India .. The legal position of women in live-in relationships, the legal status of children born from these relationships, court responses, and the perception of live-in relationship in Indian society are all discussed in this study. **KEY WORDS**-Meaning of live-in, evolution of live-in, legal status of women, judicial response, social response

2. Introduction

India is a multi-religious and multi-cultural country. Different cultures exist in different parts of the nation. Indians are conservative people who follow the rules of their Gods, which vary according on religion. Marriage is seen as a sacred tie between two individuals in India, particularly among Hindus. In many areas around the country, the notion of husband, wife, and family remains paramount. Since British administration, cohabitation has been forbidden. In certain countries, a live-in relationship, also known as cohabitation, is an arrangement in which two individuals who are in a love and sexual relationship as partners for a long time or permanently opt to live together without marriage. Since there is no legislation on live-in relationships in India, it is critical to understand the expectations and responsibilities that come with them. Moreover Indian society is still against live-in relationship, even males in India do not want to marry a female who is pregnant before marriage because this will almost always result in abortion, which is prohibited. Indians strive to act like Westerners, yet 90% of males are preoccupied with "virginity," and they fail to see beyond that. They will readily label a non-virgin female as wicked because she went and lived with someone who wasn't her spouse. Marriage is socially and ethically binding on couples, so they consider divorce carefully, but live-in relationships may or may not succeed.

3. Meaning Of Live In Relationship

Live-in A relationship is one that does not give rise to the same rights and obligations that a fully lawful marriage does. The male is not obligated to support the woman, and the woman is not obligated to support the man.¹

In basic words, a "live-in relationship" is a partnership in which both partners enjoy their own independence and live in the same house together without being married. It entails two people cohabiting in a secure and tranquil manner without any duties or accountability to one another. In such a situation, no legislation binds the two persons who are living together, and they are free to leave at any moment.

Indian Evidence Act, 1872, Section 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 case²

¹Information available at ; <https://triumphias.com/blog/live-in-relationship-in-indian-society/>

²Information available at ; <https://blog.ipleaders.in/rights-child-born-live-relationship/>

4. Evolution Of Live In Relationship In India

The notion of a live-in relationship is not new in India; it was known as maitri-karar in ancient times, when two opposite sex formed a formal pact to live together as friends and look after one other. In addition, Gandharva marriage, which is one of the eight Hindu weddings, has situations that are quite similar to those seen in a live-in relationship. The term "live-in relationship" is not defined in the lexicon or the law. A woman who lives with a guy as husband and wife for a fair amount of time without marrying him is said to be in a live-in relationship. These kinds of interactions are labelled as "socially ambiguous" and "sexually exploitative."

Although the phrase "live-in relationship" is new, the concept is not. The Vedas describe eight different sorts of weddings, one of which is the Gandharva type, in which a man and a woman agree to marry each other. This does not include the couple's relatives or a specific rite to solemnise the marriage. It's basically a commitment based on word of mouth. However, it still falls within the umbrella of marriage. Although a Gandharva vivaaha joined a couple, the commitment and obligation were the same as any of the other sorts of weddings prescribed in ancient literature.³

5. Difference Between Live In Relationship And Marriage

The major distinction between a live-in relationship and a marriage is matrimony or wedlock, which is a recognised activity in which both parties form a union or sign contracts establishing specific rights and duties. In contrast, a live-in relationship is a type of marriage in which both spouses have individual independence and share a household without being married to each other. It entails the parties living together indefinitely with no responsibilities or commitments to one another. There is no legislation binding them together, thus any partner can walk away from the partnership whenever they choose.⁴

³ Information available at ; <https://www.legalindia.com/live-in-relationship-among-hindus-reincarnation-of-marriage/>

⁴Information available at ; <https://legalformatsindia.com/is-live-in-relationship-still-against-indian-culture/>

6. Causes Of Live In Relationship In India

i) Lifestyle : In the past, a typical Indian's lifestyle was such that a boy and a girl did not have much chance to communicate with one another. As a result, the chances of them getting into a live-in relationship were little to none. Today, however, a girl and a guy have enough opportunities to meet and spend time with each other, whether at an educational institution, a business, a pub, or elsewhere. This increases their chances of forming a live-in relationship.⁵

ii) Age of Marriage : The average age of marriage among Indians once was quite young. Because a person got married at a young age, there was no way for him or her to get into a live-in relationship. However, as the average age of marriage increased, there are more opportunities for people to live-in.⁶

iii) Economic Independence: – Young people are becoming more economically self-sufficient, particularly in metropolitan areas. As a result, their reliance on their individual families has decreased significantly, allowing them to ignore their families' personal orders.⁷

iv) Away from home: – Many people live away from home for various reasons, including education, employment, and so on. As a result, they are not under the direct supervision of their family. In addition, rent and other expenditures in a city are rather expensive, which may be made affordable by sharing them with someone.⁸ These situations encourage the young people to start living together.

v) Urbanization: – Every person in rural areas is subject to tight social supervision; his actions are constantly scrutinized by his fellow villagers. However, there is no such regulation in cities since no one is interested in a person's personal life. As a result, a person has enough of freedom to live his or her life as he or she wishes⁹.

<https://www.legalindia.com/live-in-relationship-among-hindus-reincarnation-of-marriage/>

Position of live in relationship in various countries

⁵ [Ibid](#)

⁶ [Ibid](#)

⁷ [Ibid](#)

⁸ Many couples struggle to share their finances after marriage. Is the male meant to be the only owner of the house, or will they split the costs? This issue does not arise in live-in situations. You owe each other nothing, so you split your money evenly and create financial limitations. Information available at <https://legalformatsindia.com/is-live-in-relationship-still-against-indian-culture/>

⁹ [Ibid](#)

7. Live In Relationship (Indian Scenario)

i) Nature of relationship and bigamy

There is a strong argument that a live-in relationship between a married person and an unmarried person does not constitute bigamy (Section 494 Indian Penal Code). Only a second 'marriage' within the lifespan of the husband or wife can result in crime, according to the rule. The provision makes no mention of a live-in relationship that has the 'nature of marriage' being deemed an implicit marriage under personal law. The primary goal of the Domestic Violence Act was to protect the wife or female live-in spouse from violence perpetrated by the husband or male live-in partner.

When a woman is in a domestic relationship with a male, whether married or not, the focus of the DV Act violation investigation is on the tangible harm inflicted to the woman and the woman's subsequent protection. Any refusal to provide protection would be a great disservice to the women who are in danger. Unfortunately, the Bombay, Allahabad, Rajasthan, and Punjab High Courts have refused to protect such victims on moral grounds that such partnerships violate marriage sacredness and promote bigamy.¹⁰

ii) No direct law on live in relationship

As of present, there are no explicit regulations governing living conditions in India. The upper echelons of Indian culture are becoming more accepting of live-in relationships, but the middle class is still bound by cultural expectations, and the same cannot be observed in this social stratum. While some nations have acknowledged and legitimised the notion of a live-in relationship by establishing the concept of "registration," which is nothing more than a cohabitation contract, others have not. This method is used in countries like Canada and China.¹¹

iii) Conflicting views

The High Courts of Bombay, Allahabad, and Rajasthan have all declined to protect such live-in couples, citing the fact that a live-in relationship between a married and unmarried individual is prohibited. The Punjab and Haryana High Court went even farther, declaring these connections to be unacceptably harmful to the country's "social fabric." The Delhi High Court, on the other hand,

¹⁰ Acceptance of the aforementioned category of live-in partnerships as analogous to a domestic connection for the purposes of Section 2(f) of the DV Act does not imply that bigamy is encouraged or that the institution of marriage is under threat. The married woman/wife is not deprived of her marriage rights of support, legitimacy, and custody of children by simply deeming the live-in couple to be in a domestic relationship. It just accepts the current factual condition of our society while proactively promoting the DV Act's key aims of women's safety. <https://www.theweek.in/news/india/2021/07/07/live-in-relationships-at-cross-roads-with-morality.html>

¹¹For more information visit <https://blog.ipleaders.in/rights-child-born-live-relationship/>

took a different approach, maintaining the rights of a female live-in partner regardless of the marital status of both parties.¹²

iv) **Live- in relationship is not unlawful**

The Supreme Court held in *Payal Sharma v. Nari Niketan*¹³, that a man and woman can live together without marrying if they so desire. Although society considers this to be absolutely immoral, it is not illegal. As British jurists Bentham and Austin pointed out that there is a distinction between law and morality. As a result, because there was no marriage, the petitioner's voluntary cohabitation with a lady for seven months, who was not his wife did not constitute bigamy. In today's world, values have altered, and earlier beliefs are no longer valid.¹⁴

The Allahabad High Court in *Kamini Devi v. State of Uttar Pradesh*¹⁵, reaffirmed that two consenting adults are at liberty to live together and that no one would be permitted to interfere in their peaceful existence, despite the fact that live-in relationships are not socially recognised.

v) **Approval of live –in relationship by judiciary**

The Supreme Court affirmed a 50-year-old couple's relationship in ***Badri Prasad v. Director of Consolidation***¹⁶. The bench observed that few men and women who live as husband and wife in society will succeed if they are compelled to demonstrate by eyewitness testimony that they were lawfully married fifty years ago after half a century of marital life. There is a significant presumption in favour of marriage when two individuals have lived together as husband and wife for a long period.¹⁷

vi) **No Protection is given to already married person under Domestic Violence Act (Sec.2f)**

In ***Indra Sharma v. V.K.V. Sharma***¹⁸, the Supreme Court stated that the petitioners engaged into a relationship fully aware of each other's marital status and woman's marriage had not yet been dissolved by a competent court as of this date, such a relationship could not be awarded any

¹² For more information visit <https://www.theweek.in/news/india/2021/07/07/live-in-relationships-at-cross-roads-with-morality.html>

¹³ AIR 2001 All 254

¹⁴ <https://indiankanoon.org/docfragment/226340/?formInput=%20payal%20sharma%20v%20nari%20niketan>

¹⁵ WRIT - C No. - 11108 of 2020

¹⁶ AIR. 1978 SC 1557

¹⁷ <https://indiankanoon.org/doc/215649/>. There is no live-in relationship if he spends a night out with a lady and engages in sexual acts, or if he stays with someone for a few days while on vacation. In addition, if a man has a 'keep/mistress/rakhail whom he financially supports and use her simply for sexual purposes (or as a servant or both), the Supreme Court believes that such a relationship is not marriage.

¹⁸ (2013) 15 SCC 755

protection under Section 2(f) of the Domestic Violence Act, which defines a relationship "in the nature of marriage".¹⁹

In *Velusamy vs. D. Patchaiammal*²⁰, the Supreme Court determined that the applicant and respondent No.2 were not qualified to enter into a lawful marriage because they were previously married and their marriages were in sustenance. Section 2 [f] of the D.V. Act did not apply to the relationship. She was not eligible to use the D.V. Act's Section 12 provision.

In another case ***Kusum v. State of UP***²¹ where a married lady who had eloped with another person and continued to live with him for five years filed a petition to seek protection from the court. In this case the court stated that the lady could not seek protection under the pretext of a live-in relationship since her marriage was not officially dissolved. As a result, her new relationship could not be described as "in the nature of marriage and was not covered by Section 2(f) of the Act.

vii) Relationship in nature of marriage

The Bombay High Court held in *Reshma Begum v. the State of Maharashtra*²² that the prospect of a legal marriage is a sine qua non for a domestic relationship' under Section 2(f) of the DV Act. The Court ruled that the challenged provision could not be read too broadly to encourage adulterous relationships. As a result, the Court determined that the parties' relationship was not in the character of marriage. As a result, the Act did not provide any relief to the applicant.

viii) Transgender man and women (same sex relationship)

In ***Chinmayee Jena v. State of Odisha***²³, Justice Ratho observed that love knows no limits and has been extended to encompass same-sex relationships. The Orissa High Court upheld the right of a transgender man and woman to live together in a live-in relationship. When it comes to the topic of whether a one-night stand or spending weekends together counts as a live-in relationship, the answer is yes".

ix) Right to visa extension akin married couples

*Svetlana Kazankina v. Union of India*²⁴ dealt with the problem of extending a visa to an Uzbek lady who had been in a live-in relationship with an Indian guy. The Respondents claimed that the refusal

¹⁹For more information visit <https://www.theweek.in/news/india/2021/07/07/live-in-relationships-at-cross-roads-with-morality.html> scconline.com/blog/post/2016/12/22/live-in-partners-not-entitled-to-protection-if-one-of-the-partner-has-a-subsisting-marriage/

²⁰ 2010 (3) Bom. C.R. (Cri.) 764 (S.C.)

²¹ CRIMINAL MISC. WRIT PETITION No. - 13700 of 2020

²² Criminal Revision Application No. 82 of 2017

²³ 2020 SCC OnLine Ori 602.

²⁴ W.P.(C) No. 635 of 2013 & CM No. 1204 of 2013

of a visa extension was due to the fact that the relevant Rules only allow such extensions upon proof of marriage, not live-in relationships.

The Court stated that the rules allowing foreigners married to Indian residents to extend their visas allowed such couples to enjoy friendship, love, and devotion. The Court decided that while live-in relationships are now a common occurrence, marriage and live-in relationships should not be handled differently when granting a visa extension.²⁵In addition, the Court advised the Parliament to make suitable legislation for live-in relationships, keeping in view Indra Sharma judgment.

8. Legal Status Of Woman Under Live-In Relationship

i) Presumption of marriage and live –in relationships

The courts in India have time and again observed that a long continued live in relationship can raise a presumption of marriage. Such a presumption is often raised by the courts to safeguard the interests of the parties (generally women) to such arrangement and the children born out of such arrangement.

In **Tulsa & Ors vs Durghatiya & Ors**²⁶ the Supreme Court gave legal validity to a 50 year live in relationship of a couple. It was held that the court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of **Sec. 50 and 114 of the Evidence Act** together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case. It was further held that a strong presumption arises in favour of wedlock where the partners have lived together for a long term as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy.

Madan Mohan Singh v. Rajni Kant²⁷ the Supreme Court held that the live-in relationship if continued for long time, cannot be termed as a “walk-in and walk-out” relationship and that there is a presumption of marriage between the parties.

By this approach of the Court it can be clearly inferred that the Court is in favour of treating long-term living relationships as marriage rather than giving making it a new concept like live-in relationship.

ii) Live-in relationship comes under right to life

²⁵ Ibid

²⁶ (2008) 4 SCC 520

²⁷ (2010) 9 SCC 209

In landmark case of **S. Khushboo vs. Kanniammal**²⁸, the Supreme Court held that a living relationship comes within the ambit of right to life under Article 21 of the Constitution of India. The Court further held that live-in relationships are permissible and the act of two major living together cannot be considered illegal or unlawful.

iii) Live-in relationship between two consenting adults of heterogenic sex does not amount to any offence

In **Lata Singh Vs. State of U.P. & Anr.**²⁹ the supreme court of India observed that live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of 'adultery'), even though it may be perceived as immoral. It is to be noted that the Supreme Court has decriminalized adultery by its judgment in Joseph Shrine's case.

In **Indra Sarma vs V.K.V.Sarma**³⁰ the Supreme Court observed that Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

iv) Right of Women to Inherit Property

The Hindu Succession Act, 1956, protects women's entitlement to ancestral property after an amendment in 2005. Regardless of her marital status, she has rights to ancestral and self-acquired property, such as her son. Whether a woman is married or in a live-in relationship, she will inherit the right to parental property at birth, while property obtained by oneself will be split according to the will.³¹

v) Right to get Maintenance

The term 'palimony' is commonly used to refer to maintenance vis-a-vis live-in relationships. In India, Sec.125 of the Cr.P.C. pertains to the right to maintenance. This provision that got enacted to achieve social justice by aiding 'destitute' wives, hapless minor children and infirm parents is now applicable to the indigent partner of live-in relationships.

Acting upon the recommendations of the Malimath Committee on Reforms of Criminal Justice System to amend Section 125 of the Cr.P.C. and alter the meaning of 'wife' therein, a revision was

²⁸ (2010) 5SCC 600

²⁹ AIR 2006 SC 2522

³⁰ (2013) 15 SCC 755

³¹ In Dhannulal v. Ganeshram, to resolve a property dispute, the Court upheld a woman's ability to inherit property when her live-in partner died. Family members said in the court that their grandpa had been cohabiting with a lady for the previous 20 years. They also argued that she was not eligible to receive the land when their grandfather died because she was not married to him.

The Court disagreed, ruling that "where the man and woman lived together as husband and wife, the law will infer that they were living together in a lawful marriage."

made. As per the current legal position, women who were in a live-in relationship, and have subsequently been abandoned by their partner, enjoy the status of a wife.

In *Chanmuniya v. Virendra Kushwaha*³² The Supreme Court overturned the lower court's decision, upholding a woman in a live-in relationship's entitlement to maintenance under Section 125 of the Cr.P.C. The argument for granting such a privilege to a woman in a live-in relationship is to guarantee that a male does not take advantage of legal loopholes by enjoying the advantages of a de facto marriage without performing the marriage's duties.

In *Kamala v. Mohan Kumar*³³ To promote the principles of social justice and safeguard the right to dignity of persons contained in the Constitution, the Hon'ble Supreme Court said that the term 'wife' should be given a purposive construction. Long cohabitation between the woman and the man led to the assumption of marriage, and the Court decided that the woman was entitled to support for herself and their children.

As a result, the legal position is that a woman in a live-in relationship has the same claim to maintenance as lawfully married women.

In *Lalita Toppo vs The State of Jharkhand and Anr*³⁴ the supreme court stated that under the DV Act, 2005, the victim, i.e., estranged wife or live-in partner, would be entitled to more remedy than what is envisioned under Section 125 of the Code of Criminal Procedure, 1973, namely, a shared home. The Supreme Court stated that the Protection of Women from Domestic Violence Act of 2005 allows a live-in spouse to seek maintenance.³⁵

9. Various Laws Applied To Live-In Relationship

There is no legal definition of a live-in relationship in the country. In various decisions, the Indian Supreme Court has established and recognised this concept. Though the legitimacy of such relationships is still debatable, a few rights have been provided by interpreting and amending existing laws to prevent partners from misusing such relationships.

³² (2011) 1 SCC 141

³³ CRIMINAL APPEAL NOS. 2368-2369 OF 2009

³⁴ Criminal Appeal NO(S). 1656/2015

³⁵ An order of the Jharkhand High Court, which stated that Section 125 CrPC does not allow for the grant of maintenance to a woman who is not lawfully married to the person for whom maintenance is sought, was challenged before the Supreme Court. It was admitted that there was a live-in relationship in this case. Referring to the Domestic Violence Act, the court stated that even though the petitioner is not the lawfully wedded wife and hence not entitled to support under Section 125 of the Code of Criminal Procedure, 1973, she would have an effective remedy to seek maintenance under the Act. According to the Act's requirements, economic abuse is also considered domestic violence.

i) Constitutional Law- Under Article 21 of the India constitution where the Supreme Court of India in *s. Khushboo vs. Kanniamma*³⁶ had interpreted that live in relation is considered within the ambit of article 21 that is right of life and court further stated that the live in relation cannot be considered as illegal. In *Kamini Devi & Anr. Vs. State of U.P. & Ors*³⁷, the court held that right to remain in a live-in relationship is guaranteed under Article 21 of the Constitution's Right to Life and Personal Liberty. The court ruled that a couple in a relationship has the right to peaceful living, which no one can restrict. If there is an issue, the police should be called right away for safety concerns. Article 21 of the Indian Constitution establishes the legal framework for live-in relationship. This inalienable basic right gives rise to the right and freedom of choice to marry or have a live-in relationship with someone of one's own free will.

ii) Domestic Violence Act (2005) -- The Domestic Violence Act of 2005³⁸ was enacted to protect women from violent relationships and family members. The Act, according to Section 2 (f), applies not only to married couples, but also to "relationships in the form of marriage." In the instance of physical, emotional, verbal, or economic abuse, a woman has the right to seek redress under the Domestic Violence Act. In addition, remedies for transfer of a woman's property and denial of access to facilities to which the abused is entitled are provided. This Act provides various rights and safeguards to the abused.

In *Varsha Kapoor v. Union of India*³⁹, the Delhi High Court held that domestic violence is a human right issue and a female living in a relationship in the nature of marriage has right to file complaint even against the relatives of husband or male partner, not only against husband or male partner. The Supreme Court in *D. Velusamy v. D. Patchaiammal*⁴⁰ has observed that a distinction has been drawn between the 'relationship of marriage' and the 'relationship in the nature of marriage' by the Parliament and has provided benefits under the Protection of Women from Domestic Violence Act, 2005. It appears that the social phenomenon which has emerged in urban areas of our country has been taken in notice by the Parliament

³⁶S. Khushboo v. Kanniamma, (2010) 5 SCC 600

³⁷ WRIT - C No. - 11108 of 2020, <https://indiankanoon.org/doc/73339714/>

³⁸ The Protection of Women from Domestic Violence Act of 2005 appears to have included live-in relationships as part of the definition of a domestic relationship. The Protection of Women from Domestic Violence Act of 2005 appears to have included live-in relationships as part of the definition of a domestic relationship. Any woman who is or has been in a domestic relationship with the respondent and alleges to have been subjected to any act of domestic violence by the respondent is a 'Aggrieved Person.' 'Domestic Relationship' refers to a relationship between two people who reside or have lived in a common household at any point in time, and who are connected by consanguinity, marriage, or a relationship in the nature of marriage, adoption, or are family members living together as a joint family.

³⁹ W.P. (Cri.) No. 638 of 2010

⁴⁰ AIR 2011 SC 479,

In Velusamy vs. D. Patchaiammal⁴¹ certain pre-requisites for a live-in relationship to be recognised valid were determined by court. Court states that the pair must present themselves to society as spouses and must be of legal marriage age or qualified to enter into a legal marriage, even if they are unmarried. The couple must have freely cohabited and presented themselves to the world as spouses for a long period of time. The court determined that not all relationships are in the nature of marriage and hence qualify for the Act's protection. It went on to say that if a man keeps a woman as a servant and supports her financially, but just uses her for sexual purposes, the relationship will not be recognised marriage in court. To get such a benefit, the Court's criteria must be met, and this must be proven by proof.

iii) Criminal Procedure Code (Section 125) -- Under Section 125 CrPC a wife can claim maintenance from her husband if he refuses to maintain her. If a woman is able to establish a relationship in nature of marriage then she is entitled to claim maintenance from such a partner as a presumption can be raised by the court that such a relationship is a marriage and the woman can be presumed to be a wife.

The Supreme Court held in *Chanmuniya vs Virendra Kumar Singh Kushwaha*⁴² that a man who has lived with a woman for a long time and even though they may not have met the legal requirements for a legitimate marriage could be held accountable for her maintenance if he leaves her. The male should not be able to take advantage of legal loopholes by taking use of the benefits of a de facto marriage while avoiding the duties and obligations. Any other reading would lead to the woman's vagrancy and poverty, which is precisely what Section 125 guarantee of maintenance is intended to prevent.

However, there may be issues if we consider/presume that any long-term live-in relationship is in the form of a marriage, because such marriages may be barred by personal laws or other legislation. A presumption of marriage cannot be formed if a Hindu male who is already married begins living in a long-term relationship with someone since it would authorise a second marriage, which is prohibited by the Hindu Marriage Act. Can a live-in partner also seek relief under other laws such as the 125 CrPC and the DV Act?⁴³

⁴¹ **2010 (10) SCC 469**

⁴² 2011 1 SCC 141

⁴³ Therefore in **Chanmuniya vs Virendra Kumar Singh Kushwaha 2011 1 SCC 141** the division bench of supreme Court referred certain questions to be decided by the larger bench which are yet to be decided. They were:

a) Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C?

b) Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C. having regard to the provisions of DV Act, 2005?

Guidelines given by court for the expression “in the nature of marriage”

Supreme Court to some extent tried to clarify the expression “in the nature of marriage” in the Landmark Judgment of *Indra Sharma v. V.K.V. Sharma*⁴⁴. *The court* held that “when the woman is aware of the fact that the man with whom she is in a live-in relationship and who already has a legally wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife and such kind of relationship does not fall in a relationship “in the nature of marriage” as per provisions of PWDVA 2005. But in this case, the Supreme Court felt that denial of any protection would amount to a great injustice to victims of illegal relationships.⁴⁵

The court gave certain guidelines to determine the relationships which will fall within the expression ‘in the nature of marriage’, which are as follows :-

a) Duration of relationship

The expression "at any point in time" is used in Section 2 (f) of the DV Act to signify a reasonable amount of time to establish and continue a relationship, which may vary from case to case depending on the facts.⁴⁶

b) Pooling of Resources and Financial Arrangements

Supporting each other financially, or any one of them, by sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long-term business investments, shares in separate and joint names, and so on, in order to maintain a long-term relationship, could be a guiding factor.⁴⁷

c) Domestic Arrangements

Entrusting the responsibility of running the home, doing household tasks like cleaning, cooking, maintaining or maintenance the house, etc. by woman is an evidence of a marriage-like relationship.⁴⁸

c) Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C.?

⁴⁴ (2013) 15 SCC 755

⁴⁵ As a result, the Supreme Court stressed the importance of expanding Section 2(f) of the PWDVA 2005, which defines "domestic relationships," to include victims of illegal relationships who are poor and illiterate, as well as their children who are born out of such relationships and have no source of income. Furthermore, the Supreme Court urged that Parliament create new legislation based on specific criteria provided by it in order to safeguard victims from any social harm caused by such interactions.

⁴⁶ For more information visit <https://www.theweek.in/news/india/2021/07/07/live-in-relationships-at-cross-roads-with-morality.html><https://tripakshalitigation.com/legality-of-live-in-relationship-in-india/>

⁴⁷ Ibid

⁴⁸ Ibid

d) Sexual Relationship

Marriage-like relationships refer to sexual relationships that are not merely for pleasure, but also for emotional and intimate reasons, such as propagation of children, in order to provide emotional support, companionship, and material affection, caring, and so on.

e) Having Children

Having children is a major indicator of a marriage-like relationship. As a result, the parties plan to enjoy a long-term relationship. Sharing burden of raising and supporting children is another significant factor.⁴⁹

f) Public Socialization

Holding out in public and interacting with friends, relatives, and others as if they are husband and wife is a powerful circumstance to maintain the relationship is in the nature of marriage. (8) Intention and conduct of the parties Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.⁵⁰

iv) Indian Evidence Act (Sec. 50⁵¹ and 114)

In **Tulsa & Ors vs Durghatiya & Ors**⁵² the Supreme Court gave legal validity to a 50 year live in relationship of a couple. It was held that the court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of **Sec. 50 and 114 of the Evidence Act** together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case.⁵³

⁴⁹ Ibid

⁵⁰.Ibid. The court went on to say that, while socially unacceptable in this country, a live-in or marriage-like relationship is neither a crime nor a sin, and it is an extremely personal decision to marry or not to marry, or to have a heterosexual relationship, and thus the court felt there was a need for legislation because it was the woman who invariably suffered as a result of the breakdown of such a relationship. The Supreme Court bench also provided examples of several countries that have begun to recognise such relationships. It said that Parliament should take this problem seriously and pass appropriate laws or make appropriate amendments to the Act to safeguard women and children born from such partnerships, even if such a relationship is not in the type of a marriage..

⁵¹Section 50 of Evidence Act says that opinion on relationship, where applicable.—When the Court must develop a view as to the existence of one person's relationship with another, the opinion stated by behaviour, or any person who, as a member of the family or otherwise, has specific information on the topic, is a relevant fact: However, such an opinion will not suffice to show a marriage in proceedings under the Indian Divorce Act of 1869. The Supreme Court held in *D Patchaiammal versus D Velusamy* that if a man and a woman have a live-in relationship for a long period of time, they would be seen as a married couple in society, and the child born from this relationship will be considered legitimate. The question is, whether A and B were married. ? The fact that they were usually received and treated by their friends as husband and wife, is relevant.

⁵² (2008) 4 SCC 520

⁵³ Ibid

10. Legal Status Of Children Born Out Of Live-In Relationship

i) Children born from live-in relationships would not be treated as illegitimate

While granting right of property to a child in *Tulsa vs Durghatiya*⁵⁴ the Supreme Court stated that children born from live-in relationships would not be treated as illegitimate if their parents had lived under one roof and cohabited for a significant period of time in order to be recognised as husband and wife, and it could not be a "walk in and walk out" relationship.⁵⁵ In *Balasubramanyam v. Suruttayan*⁵⁶ Children born out of live-in partnerships were granted legal validity by the Supreme Court. According to the Supreme Court, if a man and woman live together and cohabit for a long time, there is a presumption of marriage under Section 114 of the Evidence Act. As a result, their offspring will be recognised legitimate and will be entitled to a share of the ancestral property.

ii) Inheritance right of children out of live in relationship

In *Bharatha Matha v. Vijeya Renganathan*⁵⁷ The Supreme Court permitted children born from live-in relationships a portion of their parents' property. The Court decided that children born to live-in relationships could not be considered illegitimate if the relationship lasted long enough.⁵⁸

However, such children's inheritance rights are restricted to the property of their parents, according to Subsection (3) of the same provisions of the Act. As a result, if their parents were not legally married, such children do not enjoy coparcenary rights in the Hindu undivided family's (HUF) property. As a result, the provisions of these parts of the Act have been used to offer an inheritance right to children born out of a live-in relationship in the parents' self-acquired property.⁵⁹ In the case of *Bharata Matha & Ors. vs. R. Vijaya Renganathan & Ors.*⁶⁰, the Supreme Court also

⁵⁴ *Tulsa & others vs Durghatiya and others* (4) SCC 520

⁵⁵ Children born out of void and voidable marriages have legitimacy under Section 16 of the Hindu Marriage Act, 1955, and Section 26 of the Special Marriage Act, which provide that children born out of void and voidable marriages are legitimate or regarded to be legitimate.

⁵⁶ [\(1994\) 1 SCC 460](#) : AIR 1994 SC 133.

⁵⁷ AIR 2010 SC 2685

⁵⁸ Ibid

⁵⁹ However, if their parents are not legally married, they will be unable to claim coparcenary rights in their father's HUF property. Because the law specifically states "both legitimate and illegitimate child," claiming maintenance under Section 125 of the Cr. P.C. is entirely within the rights of dependent children born out of live-in relationships. When it comes to guardianship, the mother is considered the natural guardian for such children. Even according to Section 16 of the Hindu Marriage Act, such children have the right to their parents' self-acquired properties. <https://journals.sagepub.com/doi/full/10.1177/2631831820974585>

⁶⁰ AIR 2010 SC 2685

declared that a child born out of a live-in relationship may inherit his or her parents' property, but has no right to make a claim against Hindu Ancestral Coparcenary Property.

iii) Right to maintenance

CrPC Section 125 provides children with the right to demand maintenance even if their personal laws do not allow for it. Even if the live-in couples are estranged, they are still required to support their children.

Maintenance is often explained as the obligation to provide for another person. It forms a very important aspect in the case of a child born out of a live-in relationship. Under the *Hindu Adoptions and Maintenance Act, 1956, Section 21*, a legitimate son, son of a predeceased son or the son of a predeceased son of a predeceased son, so long he is a minor or/and a legitimate unmarried daughter or unmarried daughter of a son or the unmarried daughter of a pre-deceased son of a pre-deceased son shall be maintained as dependants by his/her father or the estate of his/her deceased father. A child born out of live-in relationships had not been covered under this Section of the given Act and consequently had been denied the right to be maintained under this statute.

The Indian judiciary used its power to achieve the ends of social justice in the landmark case of *Dimple Gupta v Rajiv Gupta*⁶¹ wherein the Supreme Court held that even an illegitimate child who is born out of an illicit relationship is entitled to maintenance under *Section 125* of the *CrPC (Code of Criminal Procedure, 1973)* which provides maintenance to children whether they are legitimate or illegitimate while they are minors and even after such a child has attained majority if he/she is unable to maintain himself/herself. Even though there have been quite some cases that have upheld the maintenance rights of live-in partners where the statutes were interpreted in a very broad manner to include female live- in partners as “legally wedded wives”, however, in the case of

⁶¹ Criminal Appeal No.1139 of 2002. Dimple Gupta sued the respondent Rajiv Gupta for maintenance under section 125 of the Code of Criminal Procedure through her mother Narain Dassi, saying that he was her father and that she was born out of a relationship between him and her mother. The application claimed that she was living with her mother in village Nogali, Tehsil Rampur, Himachal Pradesh, at the time the petition was filed, and that she was conceived out of wedlock when her mother was a student in the Government High Court School in village Nogal. It was further claimed that when the respondent learned that Narain Dassi had pregnant, he took her to Chandigarh to have the foetus aborted, but the doctor advised that because the pregnancy was advanced, the surgery could not be performed. The respondent was also accused of abandoning her mother, after which she was born on 8.7.1991 in village Kalpa. The Supreme Court ruled that a child born out of a live-in relationship might sue his biological father for maintenance. The Supreme Court overturned a decision of the Himachal Pradesh High Court dismissing Dimple Gupta's (minor) claim for maintenance from her father Rajiv Gupta on the grounds that she was born out of a relationship between her mother Narain Dassi and Rajiv Gupta when they were living together.

*Savitaben Somabhai Bhatiya v State of Gujarat*⁶² made an exception where the live-in partner had assumed the role of a second wife and was not granted any maintenance, whereas the child born out of the said relationship was granted maintenance.

iv) Custodial rights of children

When partners in a live-in relationship break up, child custody issues arise. Because there are no explicit statutes governing the custody rights of children born from a live-in relationship, courts consider them similarly to marriage proceedings. The wellbeing of the youngster is vital, therefore the courts will take that into account and grant custody appropriately.

v) Denial of maintenance to children can be challenged under article 32 of Indian Constitution

The denial of maintenance to a child born out of a live-in relationship can also be challenged under Article 32 of the Indian Constitution, as a breach of the fundamental rights guaranteed under Article 21 of the Constitution, which protects the Right to Life and Personal Liberty. The Kerala High Court concluded in *PV Susheela v Komalavally*⁶³ that such a refusal might deprive an individual of his or her right to live a dignified life. Unequal treatment of a child born out of a live-in relationship and a child born out of a married relationship, even though both are legal, might be considered a breach of Article 14, which guarantees equality before the law.

11. Social Response To Live-In Relationship In India

People in India believe that live-in relationships are incompatible with Indian culture. The greatest approach to find out if a person truly wants to marry his or her spouse and live forever is to maintain a regular, healthy relationship (which includes going on dates, hanging out, chatting on social-networking site etc). However, in terms of marriage and sex, one should not cross the limit imposed by society. Marriage is special links between two people who have taken marriage vows to be together no matter what occurs and seek the blessings of their elders. live-in relationship has several issues. For example If a guy is unhappy with his girl, he will simply drift off, leaving her alone, and a female may do the same if she decides to end the relationship. In any situation, finding the appropriate bride/groom for oneself would be extremely tough. And it's especially tough for the girl, who will face a lot of embarrassment and problems if she becomes pregnant. In most cases, unmarried males would never accept a female along with her baby. The only alternative left to her would be an abortion, which is both legally and ethically wrong. Indians strive to imitate Westerners, yet 90% of males are concerned with "virginity," and they are unable to look beyond

⁶² [\(2005\) 3 SCC 636](#)

⁶³ 1(2000)DMC376

that. They'll quickly characterize a non-virgin female as wicked since she went out of her way to live with a man who wasn't her spouse. Marriage binds partners socially and ethically, so they think twice before divorcing; yet, live-in relationships may or may not work, and a woman cannot just have sex with guys to see whether he is the appropriate spouse for her. There are some delicate issues to consider regarding the importance of live-in partnerships in Indian public life. When it comes to Indian culture, it is generally known that the vast majority of Indians follow a traditional lifestyle. Encouragement of an uncommon notion such as live-in relationships will undoubtedly cause a stir in society, resulting in many disruptions. It also undermines long-held beliefs of institutions such as marriage and family. It might develop to a scenario where such behaviours endanger the position and rights of women, who have already been marginalised for ages.. Most significantly, young girls are at risk of being exploited by dishonest males, who exploit them for desire and ruin their lives based on erroneous notions. In recent Supreme Court decisions, the court ruled that all live-in relationships do not qualify as marriages for the purposes of the Prevention of Women from Domestic Violence Act 2005. Women in such situations are 'not' entitled to any financial support. The lady is at a disadvantage in this situation. She is the one who gets judged when a relationship fails. If there is violence between spouses in a live-in situation, no one steps in. Here, too, the woman bears the burden of proof, and others make judgement on her character. Our culture will not change unless we alter the way we raise our daughters. How many middle-class parents can honestly claim that their daughter has the freedom to choose whether or not she wants to marry or just live with a man? Our society is quite patriarchal. Couples are murdered here for falling in love.

Caste panchayats in certain areas decide the fate of young couples who defy the norm. A girl was hung from a tree by her own family in Muzaffarnagar, Uttar Pradesh, for having an affair with a male her family did not approve of. How do people support live-in relationships in a culture that is so rigid about arranged marriages and against inter-caste relationships?

12. Conclusion

By all accounts, the notion and legal status of a live-in relationship in India have only grown through time, with successive judgments by the Honourable Supreme Court and the Apex courts playing the most important role. However, there is no validity to the matter because there is no specific statute in India for live-in arrangements. Although the notion of a live-in relationship is a moral issue in India, it is not unlawful under the law. The Supreme Court ruled that two significant persons living together are exercising their right to life and hence cannot be considered criminal. India is a country where morals is vitally important. Keeping this in mind, the legislature cannot encourage pre-marital sex as part of a live-in relationship. It is because a live-in relationship is a very personal affair, and individuals may express their feelings about it. As a result, the parliament must pay attention to this issue and enact appropriate legislation in the form of an act. This will allow the partners to feel comfortable and live their lives as it is their right.

