

With the advent of modernization, elements of foreign culture have been familiarized with the traditional Indian culture. Amongst these is the live-in relationship. It means a man living with a woman under same roof but without being married to each other in a legal manner. Legally, there is no proper definition of live-in relationship. Most of the families in India don't approve live-in relationship as most of them are traditional and want to preserve their cultural and moral values. In other words, it is still considered a taboo in India. However, these relationships are more prevalent these days due to a lot of reasons. One of the main reasons being, it allows the couple to explore and have better understanding of each other before any legal obligation. But it has its disadvantages as well. It is attached to the social stigma as that couple faces several social problems in their daily living.

Without any specific law, act, rules, or customs on this particular issue, the Supreme Court has from time to time delivered such judgements in the form of guidelines which regulates and validates these relationships. If two adults are in a live-in relationship consensually, then it won't be considered illegal and, in the process, if the couple present themselves to the society as husband and wife and live together for a substantial period of time, the relationship is considered to be a relationship "in the nature of marriage" under the Prevention of Domestic Violence Act, 2005. Subsequently, the female partner can legally claim alimony, if such circumstances arise, under its provisions. Children born out of such relationships are considered legitimate and are also entitled to get share in the of their parents' property but the property should be self-acquired. Also, they won't be considered coparceners for Hindu undivided family property.

The Hindu Marriage Act, 1955 or The Criminal Procedure Code, 1973, or The Indian Succession Act 1925 does not recognize live-in relationship. However, the expression "relationship in the nature of marriage" is used under the definition of "domestic relationship" as provided under section 2 (f) Protection of Women from Domestic Violence Act, 2005 (PWDVA)[1].

MORAL AND SOCIAL ISSUES INVOLVED:

In India marriage is considered as a sacramental union and the very foundation of marriage is based on responsibilities and acceptance. It is almost impossible to trace the beginning of Hindu marriage in

accordance with Vedic rites and culture as it is a notion that began as early as existence of man. The idea of marriage is so deeply enrooted in the Indian society that if any two persons of opposite sex either involve in sexual relationship or have a child without getting married it is considered as something forbidden and as a result that couple have to face the wrath and taunts of the society. Marriages in India is considered as union of just not only two persons but also the union of two families and hence a greater degree of care is to be taken when two people get married. But the situation is not same when two individuals, usually, of opposite sex live together without marriage, i.e., they live in live-in relationship. The society questions their character, upbringing, values and what not. Due to this social stigma parents sometimes are also not supportive of their children's decision. However, things are changing in some advanced cities like Delhi, Mumbai as more and more people are seeing live-in relationship as legal, valid and accepted form of relationship. But in rural areas, the situation is still the same as they continue to follow their old-school styled values and customs regarding the concept of marriage. This is because the rural people still perceive marriage as a decision of the family rather than the individual's own choice and will and as a result, they are not optimistic about live-in relationships.

Many people in India still perceive live-in relationship as one of the ways for fulfilment of sexual desires. But this perception needs to be updated. People need to understand that one of the major reasons a couple opt for live-in relationship is that they want to check their compatibility and understanding with each before entering into any sacred relationship. It is helpful in a way that marriage is a commitment for lifetime and every person has a right to decide beforehand whether the other partner is suitable to marry or not. Many people, usually conservatives, are of a view that live-in relationship is a result of westernisation. They believe that people choose live-in relationship because they don't want to take any responsibilities and commitments. This kind of mentality needs an urgent reconsideration. The current generation is comparatively broad-minded regarding their views about the live-in relationship. It must be solely the person's choice to decide if a practice is harmful or not. Personal liberty and freedom are the basics of the Indian Constitution democracy and hence it should be prioritized and respected in any democratic set-up.

LEGAL ISSUES INVOLVED:

There is no specific law related to sanction of live-in relationship in India and as a result there are no obligations to the parties of live-in relationship. There is no particular act that provides for the rights and remedies for the couple in a live-in relationship, in case of any unforeseeable circumstances, and for the status of children born out of such relationship. And also, the term live-in relationship has not been legally defined in any of the enactments. However, the courts through various judgment have clarified their stance on the concept of live-in relationship and have tried to grant few rights to the affected party by interpreting and amending various statutes so as to prevent the abuse of such relationship by the other party. The legal issues arising due to lack of any explicit law regarding the same are as under:

1. **Grant of alimony:** The need for granting maintenance/alimony to the women who is living with his partner as husband and wife but are not legally married was felt in India. As a result, Malimath Committee on Criminal Justice was formed and it recommended amendment in the definition of the word “wife” as provided under section 125 of the Cr. P.C. so that it would include women living in live-in relationship.^[2] Section 125 of the Cr. P.C. provides for claiming maintenance by wives, children, and parents from a person on which they are dependent and are unable to maintain themselves.

Although the amendment was just a recommendation and was not incorporated in the Cr. P.C., such relationships were brought under the definition of “domestic relationship”^[3]. According to definition of “domestic relationship”, relationships which are in a nature of marriage, i.e., the couple who is living together for a long period of time and presenting themselves as husband and wife come under the purview of the Prevention of Domestic Violence Act, 2005. In other words, the woman in live-in relationship can seek protection under Protection of Women from Domestic Violence Act, 2005 and can also claim for maintenance as was held by the Supreme Court of India in the case of **D. Velusamy vs D. Patchaiammal**^[4]. Whether live-in relationships come under the scope of PDVA, 2005 came to the consideration of the hon’ble Supreme Court for the first time in the case of **Lalita Toppo vs State of Jharkhand**^[5]. It was held that the victim, i.e., the estranged wife or the live-in partner would be entitled to relief under the Act in a “shared household”^[6]. Similarly, in the case of **Ajay Bhardwaj vs Jyotsna**^[7], the Punjab and Haryana High Court awarded alimony to a woman in a live-in relationship under PDV Act,2005. But only the woman can claim maintenance under the PDV

Act, 2005. No maintenance or relief is available to men in live-in relationships. In this context, the Supreme Court of India in the case of **Khushboo vs Kanniamal**[8] observed that “a live-in relationship is invariably initiated and perpetuated by men.”

- **Inheritance:** In the case of **Tulsa vs Durghatiya**,[9] the Supreme Court, while granting right of property to a child, observed that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage and hence the children born from live-in relationship would not be treated as illegitimate because the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a long period of time.

Section 16 of the Hindu Marriage Act, 1955 and Section 26 of the Special Marriage Act 1954, legitimizes the birth of children born from voidable or void marriages. It provides that any child born out of marriage, which is null and void or where a decree of nullity is granted in respect of voidable marriage, shall be legitimate or deemed to be legitimate, respectively. But according to section 16(3) and section 26(3) of the respective acts, such children can inherit only the self-acquired property of the parents. Hence, they won't be considered coparceners for the purpose of HUF property unless their parents are not legally married to each other. These provisions have been extended to provide inheritance rights to the children born out of live-in relationship in the self-acquired property of the parents. Such children can also claim maintenance under section 125 of the Cr. P.C as the section explicitly refers to “both legitimate and illegitimate child.” In the matters concerning guardianship, mother is regarded as the natural guardian for such children.

LEGALITY OF LIVE-IN RELATIONSHIPS:

Live-in Relationship neither creates any rights nor any responsibilities that is otherwise present in legally valid marriage. Neither the man is concerned to maintain the women nor the women is having any sense of obligation towards the man. In other words, it can be defined as “a walk-in and walk-out relationship” without any legal complexities. Both the individuals live together because they want to live together and not just because they are married. So now the question arises is live-in relationship legally recognised or legally valid. The answer is yes.

Although there is no specific statute or any legislation that validates the same but the Supreme court of India from time to time through various judgement has given live in relationship a legal backing.

The question of legality of live-in relationship came before the Supreme Court for the first time in the case of ***Badri Prasad v. Dy. Director of Consolidation***[\[10\]](#). In facts of the case were that the parties were living in a live-in relationship for almost 50 years and the question before the court was whether their relationship is equivalent to the status of married couple. The court decided in the favour of the couple and granted legal status to their 50-year-old relationship

In the landmark case of ***S. Khushboo v. Kanniammal***[\[11\]](#), the Supreme Court held that a live-in 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. Although the concept of living together without being married may be immoral in the eyes of conservative society but it is absolutely valid in the eyes of law.

In the case of ***Payal Katra v. Superintendent, Nari Niketan and others***[\[12\]](#), the Supreme Court held that there is no law that prohibits live in relationship and hence if two people live together without marriage it can't be considered as illegal and something which is not illegal won't be considered as an offence.

In ***Indra Sarma vs VKV Sarma***[\[13\]](#), the Supreme Court opined that all live-in relationships are not relationships in the nature of marriage. The appellant, in this case, was fully aware that respondent was already married and could not enter in a live-in relationship in the nature of marriage because it had no characteristic of a marriage, but a relationship other than in the nature of marriage. Hence, she was not entitled to various reliefs available to a legally wedded wife and also to those who enter into "a relationship in the nature of marriage" as per provisions of PWDVA, 2005

Recently in the case of ***Gurwinder Singh Vs State of Punjab***, the Supreme Court ordered police to grant protection to a couple in live-in relationship who were denied relief by the Punjab & Haryana High Court. The court held that since the issue is one affecting life and liberty,

police should act expeditiously in view of the threats faced by the couple.^[14] The Punjab and Haryana High Court had earlier dismissed their petition by observing that the petitioners in the garb of filing the present petition are seeking seal of approval on their live-in-relationship, which is morally and socially not acceptable.

CONCLUSION:

In the words of honourable Justice A.K. Ganguly, *with changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. From time immemorial, one thing has remained constant in the Indian society that is valuing their traditions, culture and norms and the same applies to marriage also.* Having marriage by following the age-old traditions is of great importance in India and hence any deviation whatsoever is considered to be immoral in the Indian society. But with the new generation, the social values and norms are gradually changing as they are comparatively more broad-minded and open-minded regarding their views about the live-in relationship. What may be sin for their parents, is perfectly ok for them. Howsoever, the society may develop traditionally or culturally, the importance of marriage in the social institution can't be ignored.

The degree of security which is present in the marital ties is not present in the live-in relationship. It is the concept which totally opposite to that of marriage. In India people are naturally inclined to value their traditions and therefore it won't be right to judge the people who oppose this westernized concept of live-in relationship. In a society where divorce cases are constantly rising nowadays, the live-in relationships should be seen as beneficial as the couple is taking its own time to know each other better before getting legally married. In a democratic setup like India, the society should realize that if a couple wants to live together wilfully, they should be given that much liberty to do so without victimizing or traumatizing them. Social change is a gradual process and should not be expected to be a sudden progress. However, it is significant and welcoming that the judiciary through its various judgements is trying to give a legal validity to the live-in relationship and the fact that the youth is thinking logically and reasonably in such matters is a positive step.

SUGGESTIONS:

The researcher suggests following points:

1. As there is no specific law that deals with the live-in relationship, the Parliament should pass a new legislation which will comprehensively deal with such relationships and the subsequent issues like that of inheritance, guardianship, alimony etc.
2. As per the recommendation of the Malimath Committee, the CrPC should be amended and the words “woman having relationship in the nature of marriage for a reasonably long period of time” should be included in the definition of “wife” as provided under section 125 of CrPC for the purpose of granting maintenance to the women who is living with his partner as husband and wife but are not legally married.
3. The child born out of live-in relationship or in other words “relationship in the nature of marriage” are only entitled to the self-acquired property of its parents. They should also be entitled to claim its share in ancestral property of its parents and shall also have coparcenary rights. A child born out of such relationship is innocent and its rights and privileges should be equivalent to the child born out of a valid marriage. Moreover, the intention behind section 16 of the Hindu Marriage Act is to bring about social reforms, confer legitimate status to children who are otherwise considered as illegitimate.

[1] “Domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family

[2] Dr. Justice V.S. Malimath Report. Committee on Reforms of Criminal Justice System. Government of India, Ministry of Home Affairs. Report Vol I; March 2003 available at https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf. (Last visited at 11-06-2021)

[3] *Section 2(f) of Prevention of Domestic Violence Act, 2005 (PDV Act, 2005)*: Domestic relationship means “a relationship between two persons who live or have lived together, at any point of time, in a shared household, when they are related by consanguinity, marriage,

or through a relationship in the nature of marriage, adoption or are family members living together as a joint family

[4] 10 SCC 469

[5] 30th October, 2018

[6] Section 2(s) “*shared household*” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.