

## THE CONUNDRUM OF LIVE-IN RELATIONSHIP

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*(Abstract: The paper deals with the idea of live-in relationship in marriage centric Indian society which is reluctant to go against customary norms and conventions governing them from ages. The approach of Indian judiciary in recognizing such relationship in the absence of any legislation takes the paper forward. This is followed by the current legal status of such relationship. The paper highlights the status of child born out of such relationship whose rights have been accorded by the courts though such child suffers from social stigma. Focus has been made on how rights granted to the partner and child born out of such relationship also face discrimination when the Constitution of our country prohibits discrimination. Unequal treatment of male and female who are into such relationship also aggravates the problem of gender inequality persisting in our patriarchal society. The paper then deals with the issues which are of high concern in context of live-in-relationship. The authors conclude the paper by making few suggestions which might be helpful in achieving the objective sought.)*

**Keywords:** live-in-relationship, marriage, cohabit, rights, legitimate.

### INTRODUCTION

St. Thomas Aquinas in his 'Summa Theologica' states, "A human law, in so far as it deviates from reason, is called an unjust law, and has the nature, not of law but of violence".<sup>39</sup> The words of wisdom reiterated by the

<sup>39</sup> Justice Markandey Katju, *Ancient Indian Jurisprudence*, BHU.AC.IN (November 5, 2016), available at: [http://www.bhu.ac.in/mmak/resent\\_article/JusticeKatjusLec.pdf](http://www.bhu.ac.in/mmak/resent_article/JusticeKatjusLec.pdf)

great philosopher Thomas Aquinas, insinuate a complex narrative which negates any arbitrary notion of norms which do not provide a comprehensive justification for their existence. A live-in relationship is a relationship in which an unmarried couple cohabits together for a long term which resembles marriage.<sup>40</sup>

There are two types of live-in relationship, by choice or by circumstance.<sup>41</sup> Relationship by choice are those where the partners agree to cohabit together voluntarily whereas relationship by circumstances are those where the couple reside together under the assumption that they are married to each other or cannot afford to be married.<sup>42</sup> It is also presumed that the rationale behind a live-in relationship is that a man and a woman would want to test their compatibility before committing to each other.<sup>43</sup> The concept has not been recognized under the Hindu Marriage Act 1955 and the Code of Criminal Procedure 1973.<sup>44</sup> The perplexities persisting in our society with regard to western ideologies and the overarching desire to conform to ancient customs validates Aquinas 'unjust law' theory with regard to the concept of 'live-in' relationship. In India, there exists only one kind of relationship between an unrelated man and a woman. The social union is called 'Marriage'.<sup>45</sup> The concept of marriage is based on an anthropological truth that men and women are complementary to each other, the biological fact that reproduction depends on man and woman, and the social reality that children need both, a

<sup>40</sup> NNLRJ INDIA, "Commitment" to live together, *INDIANLAWYERS* (November 7, 2016), available at:

<https://indialawyers.wordpress.com/category/live-in-relationship/>

<sup>41</sup> Vijender Kumar, *Live-in Relationship: Impact on marriage and family institution*, *ACADEMIA* (November 10, 2016), available at:

[https://www.academia.edu/1881774/Live\\_In\\_Relationship\\_Impact\\_on\\_Marriage\\_and\\_Family\\_Institutions](https://www.academia.edu/1881774/Live_In_Relationship_Impact_on_Marriage_and_Family_Institutions)

<sup>42</sup> *Ibid.*

<sup>43</sup> Prof. Vijender Kumar, *Live-In Relationship : Impact on Marriage and Family Institutions*, (2012) 4 SCC J-19 at p.J-19

<sup>44</sup> *Ibid.*

<sup>45</sup> Dr. Swarupa N. Dholam, *Socio-legal dimensions of 'live-In relationship in India*, *MJA.GOV.IN* (November 20, 2016), available at: [http://mja.gov.in/Site/Upload/GR/final%20article%20in%20both%20lanuage%20\(1\).pdf](http://mja.gov.in/Site/Upload/GR/final%20article%20in%20both%20lanuage%20(1).pdf)

mother and father.<sup>46</sup> Therefore, marriage is considered as sacrosanct in the socio-legal realm. Through the advent of time, the status with regard to the concept of live-in relationship has changed drastically. The authors, in the paper, decipher the concept of live in relationship by critiquing and analyzing it from the perspective of its creation, acceptance, and implementation. The paper delves into judicial activism in relation to live-in-relationship and the regressive outlook adopted by the society.

### LIVE-IN RELATIONSHIP

The custom of man and woman residing together without being in a relationship is not oblivious to the Indian society. Men in live-in relationship with women outside their marriage were not considered immoral in the past.<sup>47</sup> Surprisingly, concubines (avarudh stries) were kept for the entertainment and relaxation of the male community.<sup>48</sup> The narrative changed with the advent of the feudal society where a relationship between a man and a woman was tabooed. Post-independence, laws pertaining to bigamy were introduced and women became more aware of their rights. The concept of live-in-relationship is not alien to the Indian society. Earlier they were known as 'maitri karar' in which opposite sexes would enter into a written agreement to be friends, live together and look after each other.<sup>49</sup> This was a legitimate friendship or companionship contract, defining the terms and conditions of relationship, entered into between heterogeneous sexes which had social and legal recognition.<sup>50</sup> Later, this practice was converted into service agreement wherein a man would employ

woman as a helper or a maid servant. Mostly practiced in Gujarat, this practice was demolished by the Government as the practice circumvented the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the "HMA") which clearly prohibits another marriage during the lifetime of one's spouse. Further, the Government of Maharashtra issued a notification imposing a seal of censure on such practice by examining the ill-treatment faced by the offspring born out of such relationship. In other words, said practice promoted bigamy, which is considered illegal. The practice was held to be void-ab-initio by the court in the case of *Minaxi Zaverbhai Jethva vs State Of Gujarat*.<sup>51</sup> Gradually, the society saw mushrooming of live-in-relationship. The existence of such a relationship bears testimony to the openness in the outlook of the society, even though not by majority. The traditional Indian society disapproved of the concept due to several reasons.<sup>52</sup> Firstly, marriage was considered to be a sacred institution. Secondly, the financial dependency of a woman on a man created a subservient status for the woman.

### CURRENT LEGAL STATUS

At present, there is no specific legislation pertaining to live-in relationship in India. Absence of any legal regime has alleviated the problem in context of rights and obligations of those entering into such relationship. The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "PWDVA") is labeled to be the first legal legislation recognizing non-marital relationship between heterogeneous sexes. The said Act has defined 'aggrieved person' as "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of

<sup>46</sup> Ryan T. Anderson, *Marriage: What It Is, Why It Matters, and the Consequences of Redefining It*, HERITAGE (November 19, 2016), available at: <http://www.heritage.org/research/reports/2013/03/marriage-what-it-is-why-it-matters-and-the-consequences-of-redefining-it>

<sup>47</sup> *Supra* at 5.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Rights in Intimate Relationships: Towards an Inclusive and Just Framework of Women's Rights and the Family*, PLDINDIA (December 6, 2016), available at: <http://feministlawarchives.pldindia.org/wp-content/uploads/RIR-Report.pdf>

<sup>50</sup> *Ibid.*

<sup>51</sup> (2000) 2 GLR 1336.

<sup>52</sup> *Ibid.*

*domestic violence by the respondent;*<sup>53</sup> Further, the Act defined the term ‘domestic relationship’ as “*a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.*”<sup>54</sup>

By using the term ‘a relationship in the nature of marriage’, the Act is expected to cover live-in relationship and accord rights to the aggrieved person. It is to be noted that the use of such expression in the Act by legislature does not in any way promote bigamy. The objective of the Act is to provide safeguards and relief to the woman who has been subjected to domestic violence. The Act merely acknowledges the existence of relationship which is in the nature of marriage and to protect female community from domestic violence. In no way, the Act confers any legal status or recognition to live-in relationship. The HMA and Code of Criminal Procedure (hereinafter referred to as the “Code”) do not recognize such relationship.

### **JUDICIAL PRONOUNCEMENTS**

The concept of live-in relationship got legal recognition because of Indian judiciary. In the absence of any legal regime, coupled with the fact that law of any country should be flexible, dynamic and accommodative enough to be changed according to the need of the time, the Indian judiciary showcased judicial activism in context of live-in relationship. Law and society are the ones which are considered to be the regulator of an individual.<sup>55</sup> The idea of live-in

relationship may not be acceptable to the society but by recognizing the same and legitimizing it, the Supreme Court has developed the law of the land. Various cases faced by the courts over number of years have evolved this concept and is furnished below:

In the case of *Gokal Chand v. Parvin Kumari*<sup>56</sup>, the court of highest appeal stated that continuous co-habitation of man and woman as husband and wife and such a treatment for number of years may raise presumption of marriage. The same, however, is rebuttable. The court, in this case, held that the judiciary cannot afford to ignore the rebuttals if the same has the potency to weaken the presumption of marriage. In the same line, dismissing the special leave petition, the Hon’ble Supreme Court, in the case of *Badri Prasad v. Dy. Director of Consolidation and Ors.*<sup>57</sup>, stated that a strong presumption in favor of wedlock arises where the partners have lived together as husband and wife for a long time. The court further stated that the said presumption can be challenged. However, heavy burden lies on the shoulders of the one who rebuts the presumption or questions the legality of such a relationship. The said principles also find expression in the case of *Tulsa & Ors. v. Durghatiya & Ors.*<sup>58</sup>.

The Allahabad High Court, in the case of *Payal Katara v. Superintendent*<sup>59</sup>, Nari Niketan Agra, held that if a man and woman wish to live together without entering into matrimonial bond then they can do so. Pointing out that there exists a difference between the law and morality, the court was of the opinion that such a relationship may suffer from the infirmities of immorality but the same is legal.

<sup>53</sup> Section 2(a) of *The Protection of Women from Domestic Violence Act, 2005*.

<sup>54</sup> Section 2(f) of *The Protection of Women from Domestic Violence Act, 2005*.

<sup>55</sup> Rajesh Hittanagi, *Live-in-relationship and Indian Judiciary*, LEGALSERVICESINDIA (December 18, 2016), available at: <http://www.legalservicesindia.com/article/article/live-in-relationship-and-indian-judiciary-1408-1.html>

<sup>56</sup> AIR 1952 SC 231.

<sup>57</sup> AIR 1978 SC 1557.

<sup>58</sup> (2008) 4 SCC 520.

<sup>59</sup> AIR 2001 All 254.

In the case of *D. Velusamy v. D. Patchaiammal*<sup>60</sup>, the Apex Court considered a common law marriage to be same as live-in-relationship in order to bring it under the banner of a 'relationship in the nature of marriage'. The rights and protection under live-in-relationship given to the aggrieved person can only be availed once the court is satisfied that the couple is living in a valid live-in-relationship which resembles marriage. The prerequisites for a valid live-in-relationship are furnished below:

The couple must come forward to the society as the one akin to spouses.

The couple must have attained the legal age of marriage.

The couple must be qualified to enter into a legal marriage, although being unmarried.

They must have co-habited and held themselves to be akin to spouses to the outside world for a significant period of time.

This takes us to the view that the courts are being protective and try to give recognition to such a relationship confining themselves to legal boundaries. The very fact that the judiciary has not given recognition to all types of live-in-relationships bears testimony that the concept of live-in-relationship would encompass a large number of relationships than the ones which are a 'relationship in the nature of marriage'. In addition to the above conditions, to prove a 'relationship in the nature of marriage', the parties must have lived together in a shared household as defined in Section 2(s) of the Domestic Violence Act, 2005. Further, the court states that fulfillment of all the aforementioned conditions needs to be proved by giving evidence. Emphasizing on the expression 'relationship in the nature of marriage', the court

categorically states that merely spending weekend together or one night stand will not constitute domestic relationship.

The court, in the above case, states that if a man keeps a woman whom he provides financial assistance and uses her mainly for the sexual purpose and/or as a servant would fall outside the scope of relationship in the nature of marriage. The court went on to agree with the fact that the opinion adopted by the court will exclude many from coming under the domestic violence act, 2005 but then the court states that it is not for the courts to legislate or amend the law. This is based on the settled principle of law that one shouldn't encroach upon the field assigned exclusively to others i.e. legislature in the present case. The expression used in the section is 'relationship in the nature of marriage' and not 'live-in-relationship' per say. The court is barred from changing the language of the statute merely for the grab of interpretation.

The case of *Aruna Parmod Shah v. Union of India*<sup>61</sup> dealt with some important issues. The petitioner, in the said case, raised a strong objection of placing those in relationship in the nature of marriage at par with the married person as defined under the head 'domestic relationship' contained in section 2(f) of the Domestic Violence Act, 2005. Rejecting the objection, the court opined that there are no logical and sound reasons which call for unequal treatment to be given to both such relationships. The court articulated that like treatment to both does not diminish the sanctity of marriage in any way. Further, an assumption can fairly and validly be drawn that a 'live-in-relationship' is invariably initiated and perpetuated by male. The court, however, expressly stated that they are not ruling out an exception but such cases would be rare to find where the male is a victim. However, this calls for the Parliament to protect male victims. The court

<sup>60</sup> (2010) 10 SCC 469.

<sup>61</sup> WP. Cr. 425/2008, Del. Judgment dated 7<sup>th</sup> April, 2008.

highlighted on the fact that it cannot ignore the social reality i.e. stigma which only women has to face and not man, though the act is done unanimously by both. One of the other contentions of the petitioner was that the Domestic Violence Act, 2005 jeopardize the rights which legally wedded women are entitled to while accommodating the rights to the women in a relationship in the nature of marriage. The court said that diminish in the complete maintenance of legally wedded wife and legitimate children shall not render the Act unconstitutional. Further, the court stated that there can be a case where the bread-earner or the man, as the case may be, may suffer from ill-health or insolvency which too may reduce the maintenance of legally wedded wife and legitimate children. The court stated that these are marriage vicissitudes against which no legal insurance or insulation is possible.

In the case of *Lata Singh v. State of U.P. & Anr.*<sup>62</sup>, the court stated that relationship between two consenting adults of heterogenic sexes does not amount to any offence, exception being adultery as defined under section 497 of the Indian Penal Code. Further, in the case of *S. Khushboo v. Kanniammal & Anr.*<sup>63</sup>, the Apex Court stated that though the mainstream notion of our society is that sexual contact should be only between marital partners and not otherwise but there is no legislation which would label sexual contact between two adults giving consent to such a contact as an offence.

The Indian judiciary has laid down guidelines which should be taken into consideration while dealing with the question of determination of any relationship as live-in-relationship. Though the list is merely illustrative and not exhaustive, it is of immense help in recognizing live-in-relationships which can be brought under the scope of a 'relationship in the nature of

marriage'. The said guidelines, which find expression in the case of *Indra Sarma*<sup>64</sup>, are discussed below:

#### (1) Duration of Relationship

The first point which this judgment takes into consideration is the duration of the said relationship. The court read the expression 'at any point of time', used in Section 2(f) of the Domestic Violence Act, as the reasonable time needed to maintain and continue a relationship which is case specific. It can, therefore, be said that court has made a purposive interpretation of the said expression in order to achieve the objective sought.

#### (2) Shared household

The expression has been defined Under Section 2(s) of the DV Act and, hence, need no further elaboration.

#### (3) Pooling of Resources and Financial Arrangements

Unanimously supporting each other, or any of them, financially, or by acquiring immovable properties in the joint name, or making long term investments in business or shares, jointly or severally, or sharing of bank accounts may endorse the view that the couple is living in a live-in-relationship.

#### (4) Domestic Arrangements

Another factor which may guide whether the relationship is in the nature of marriage or not is by seeing the domestic arrangement between the couple. If the domestic responsibility is shared between the couple especially woman being entrusted with the task to maintain the house and look after it –

<sup>62</sup> *Writ Petition (crl.) 208 of 2004.*

<sup>63</sup> *AIR 2010 SC 3196.*

<sup>64</sup> *Indra Sarma v. V.K.V. Sarma, 2013 (14) SCALE 448.*

cleaning, cooking, maintenance of household etc. , would bring such relationship under the purview of live-in-relationship.

#### (5) Sexual Relationship

Marriage includes sexual relationship between couple as the same is not only done for pleasure but also for companionship, procreation, emotional support and intimate relationship. If live-in relationship includes sexual ties between the partners, would therefore be a strong indication of a relationship in the nature of marriage.

#### Children

Children of a couple living together strongly render the view that the couple is staying in a relationship in the nature of marriage. Sharing the responsibility of bringing up and supporting them is also a strong indication.

#### (6) Socialization in Public

If the couple socializes with friends, relatives and others in a way that they are husband and wife then there shall be a strong indication that the couple is living in a relationship in the nature of marriage.

#### (7) 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.

In the said case law, the court listed down five categories of live-in relationship which are mentioned below:

1. Domestic relationship between an adult male and an adult female, both unmarried.
2. Domestic relationship between a married man and an adult unmarried woman, entered knowingly.
3. Domestic relationship between an adult unmarried man and a married woman, entered knowingly. This would amount to the offence of adultery under the Indian Penal Code.
4. Domestic relationship between an unmarried adult female and a married male, entered unknowingly
5. Domestic relationship between same sex partners. This is illegal in India.

The concept of live-in-relationship, as stated earlier, is not alien to India. The Apex Court, in all above cases, reiterated the basic principle laid down by its predecessor i.e. the Privy Council which held in the case of *A Dinohamy and W L Blahamy* in 1927 that "*Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.*" Two years later, the council revisited the legal issue in the *Mohabhat Ali v. Mohammad Ibrahim Khan*<sup>65</sup> case. It made a significant addition to the conditions laid down in the 1927 ruling. It said: "*The law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years.*"

#### ISSUE OF MAINTENANCE

The judiciary has made the literal interpretation of the terms used in Section 125 of the Code. In the case of *Yamunabai Anantrao Adhav v. Anantrao Shivram*

<sup>65</sup> AIR 1929 PC 135.

*Adhav*<sup>66</sup>, the Apex Court stated that where man enters into a live-in relationship by circumstance with other woman despite being married, then that ‘other woman’ is not entitled to maintenance rights granted under Section 125 of the Code. Ignorance of man’s marriage is no excuse. The Allahabad High Court, in the case of *Malti v. State of U.P.*<sup>67</sup>, held that a woman living in a relationship with a man cannot be equated as his “wife”.

In *Savitaben Somabhai Bhatiya v. State of Gujarat*<sup>68</sup>, the Supreme Court clearly stated that the attitude of parties entering into such relationship is immaterial. The court opined that what matters is the intention of the legislature. The court further stated that ignorance of one’s marriage will also be fruitless as the principle of estoppel cannot be used as a valid defense to defeat the provisions of Section 125 of the Code.

The case of *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*<sup>69</sup> stated that the second wife can claim maintenance under Hindu Adoptions and Maintenance Act, 1956. In this case, the appellant was not informed about the first marriage of the respondent. Moreover, the relationship of appellant continued for 14 years with the respondent. The court while granting maintenance stated that if the same is not granted then that would mean that premium is given to the respondent to defraud the appellant.

The court stated that bigamous marriage may not permit grant of maintenance under section 125 of the Code as it would be illegal but the right to alimony cannot be denied merely because such relationship is immoral. The said contention finds expression in the case of the Supreme Court in *Rameshchandra*

*Rampratapji Daga v. Rameshwari Rameshchandra Daga*<sup>70</sup>.

The Malimath Committee Report on “Reforms in the Criminal Justice System” made a suggestion which stated that the word “wife” in Section 125 of the Code be amended to include a woman who is “living in” with a man for a “reasonable period”. Strangely, in 1985, the Hon’ble Supreme Court in *Sumitra Devi v. Bhikan Choudhary*<sup>71</sup> had held that if a man and woman cohabits for a long time and they are treated as husband and wife by the society then presumption of marriage will arise for awarding maintenance. However, the judiciary has not extended its scope to include purported live-in partners.

In the case of *M. Palani v. Meenakshi*<sup>72</sup>, one of the contentions of the petitioner was that mere proximity at some time for mutual pleasure could not be labeled to be as a “domestic relationship”. The Madras High Court examined the definition of “domestic relationship” as given in Section 2(f) of the PWDVA which do not state any time period to establish domestic relationship between a man and a woman. The Court held that “at least at the time of having sex by them, they shared household and lived together”. Applying the provisions of the Act in such a case, the court upheld maintenance claim. This may be said that this might be used by women as a weapon against the men community but at the same time the issues pertaining to other wife has been addressed by it.<sup>73</sup>

The Hindu Succession Act, 1956 does not give any inheritance rights to the partner’s property. The said Act does not specify succession rights to even a mistress living with a male Hindu. However, the Supreme Court in *Vidhyadhari v. Sukhrana Bai*<sup>74</sup> created a hope for persons living in such relationship

<sup>66</sup> 1988 SCR (2) 809.

<sup>67</sup> 2000 CriLJ 4170.

<sup>68</sup> (2005) 3 SCC 636.

<sup>69</sup> I (2008) DMC 529.

<sup>70</sup> AIR 2005 SC 422.

<sup>71</sup> (1985) 1 SCC 637.

<sup>72</sup> AIR 2008 Mad 162.

<sup>73</sup> *Pyla Mutyalamma v. Pyla Suri Demudu*, (2011) 12 SCC 189

<sup>74</sup> (2008) 2 SCC 238.

together resembling husband and wife by stating that those into such relationship from a substantial long period of time can receive property inheritance from a live-in partner.<sup>75</sup>

## **RIGHTS OF CHILD BORN OUT OF LIVE-IN-RELATIONSHIP**

Since the concept of live-in-relationship is not administered by any legal regime, issues cropped up with respect to child born out of such relationship, become ambiguous. Not only had it raised the concern in context of legitimacy of such child but also dilutes the comprehensive and over-all development and upbringing of the child when one of the partners walks out of such a relationship. This, in turn, affects the child mentally and emotionally. Further, the issues related to maintenance of such child and the rights in the property were an area of major concern. The problem of custody of such child also aggravated the problem.

The steps taken by Indian judiciary in relation to the aforementioned issues are welcoming changes when compared to the regressive outlook adopted by the society. However, even though the judiciary, through various case laws, has determined the right of a child born out of live-in-relationship, such child suffers from the odd-reactions of society. This raises an important question that would challenge the conscience of the society i.e. why such child should be blamed and has to suffer the social stigma for no fault of his/hers?

The response of the courts in affirmative while addressing the above issues by using the purpose interpretation of law is discussed below using various case laws which became the law of the land.

The issue of legitimacy is important as this would decide the further rights of the child born out of such relationship. It is to be noted that section 5(1) of the

Hindu Marriage Act, 1955 (hereinafter referred to as the HMA) lays conditions for a Hindu marriage. It elucidates that marriage can be solemnized between any two Hindus if none of them have spouse living at the time of the marriage. Further, section 11 of the HMA states that violation of Section 5(1) would render the marriage null and void. It is to be noted that post amendment brought in by Amendment Act of 1976, section 16 of HMA states that children born out of null and void marriages as enunciated in section 11 will also be regarded as legitimate child. Thus, the intention of the legislature to bring in social reform by conferring the status of legitimacy to child who would otherwise have been labelled illegitimate is clearly reflected in the section.

In the case of *S.P.S Balasubramanyam v. Suruttayan alias Andali Padayachi & Ors.*<sup>76</sup>, the court, besides stating that presumption of husband and wife will arise if the couple is found to co-habit under the same roof for many years, held that child out of such relationship is not illegitimate.

In *Smt. P. E. K. Kalliani Amma & Ors. v. K. Devi & Ors.*<sup>77</sup>, the Hon'ble Supreme Court stated that section 16 of the HMA is not constitutionally void. The court further opined that in view of the legal fiction contained in section 16 of the HMA, an illegitimate child needs to be treated as legitimate child for all practical purposes, including succession to his/her parents' properties. It is to be noted here that such child has limited rights i.e. rights limited only to his/her parents' properties. Based on this rule, such child cannot succeed to the properties of any other relation.

The case of *Rameshwari Devi v. State of Bihar & Ors.*<sup>78</sup>, raised an issue as to whether after the demise of a government employee, his child born out of live-in-relationship can claim share in pension/gratuity and

<sup>75</sup> Harpreet Kaur, *Live-in Relationships: Socio-Legal Analysis*, WORDPRESS (January 11, 2016), available at: <https://lawschoolnotes.wordpress.com/tag/malimath-committee-report-on-reforms-in-the-criminal-justice-system/>

<sup>76</sup> AIR 1992 SC 756.

<sup>77</sup> AIR 1996 SC 1963.

<sup>78</sup> AIR 2000 SC 375.



other death-cum-retiral benefits along with the children of deceased who were born out of wedlock. Answering the issue in affirmative, the court held that under section 16 of HMA, children born out of void marriage, who should be treated illegitimate, will be considered legitimate.

The court of highest appeal, in the case of *Jinia Keotin & Ors. v. Kumar Sitaram Manjhi & Ors.*<sup>79</sup>, stated that while engrafting section 16 of the HMA, the illegitimate children have become entitled to get share only in the self-acquired properties of their parents. The court further went on to state that Section 16 of the HMA has been drafted with the intention to do justice in context of a child who is born out of live-in-relationship. The court stated that the legitimate status of children is dependent upon the marriage of their parents being valid or void. Thus, it depends on the acts of parents on which the innocent child has no say or control. However, for no fault of child, he/she has to suffer the permanent set back in life and in society by being treated as illegitimate. Enactment of Section 16 of the HMA treating such children to be legitimate is a laudable step taken by the legislature to overcome this great social evil prevalent in our society.

In the case of *Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.*<sup>80</sup>, the court stated that child born out of void or voidable marriage is not entitled to claim any inheritance right in ancestral property. Such child enjoys that right only with respect to self-acquired properties of the parents, if any.

A contention can be made at this juncture that when the child who is born out of live-in-relationship has not committed any fault then why should he be treated differently than those who are born out of wedlock. Doesn't it seem that even the parliament and legislature are reluctant to broaden their mental horizon and meet the need of the society? To this one

could argue, that accommodating the rights of child born out of void/voidable marriage would affect the rights of children born out of wedlock. This argument would stand baseless as the share or the rights of legitimate children born out of wedlock can get affected by other things also like for instance one making a will or a gift or to meet family obligation or uncertainties such as insolvency, bankruptcy etc. to name a few. Children born out of live-in-relationship should also be given full rights as enjoyed by legitimate child born out of wedlock. Even the judiciary found its hands tied as they cannot make or amend the.

The court in *Jinia Keotin*<sup>81</sup> case stated that section 16(3) of HMA needs to be read carefully. It starts with a non-obstante clause specifically stating that nothing contained in other sub sections of the said section would confer any right on to the legitimate child who would otherwise have been illegitimate, with respect to property of any other person except the properties of parents. Express mandate in section 16(3) of HMA prohibits resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting section 16 of the Act. Attempt to do so would be against the Act and would also amount to judiciary encroaching the field of legislature against something which is expressly mentioned in the Act.

With regard to maintenance of child born out of such relationship, section 21 of the Hindu Adoptions and Maintenance Act, 1956, a legitimate son, son of predeceased son or the son of predeceased son of predeceased son, so long he is minor and a legitimate unmarried daughter or unmarried daughter of son or the unmarried daughter of a pre-deceased son of predeceased son, so long as she remains unmarried shall be maintained as dependents by his/her father or the estate of his/her deceased father. However, child born

<sup>79</sup>(2003) 1 SCC 730.

<sup>80</sup>AIR 2010 SC 2685.

<sup>81</sup> *Jinia Keotin & Ors. v. Kumar Sitaram Manjhi & Ors.*, (2003) 1 SCC 730.  
Volume I, Issue I

out of live-in relationship is not covered under the Act and as a consequence such child is denied maintenance rights.

In order to meet the ends of justice, the Indian judiciary in the case of *Dimple Gupta v. Rajiv Gupta*<sup>82</sup> held that even an illegitimate child born out of an illicit relationship can claim maintenance under Section 125 of the Code. The Code provides for maintenance rights to child, irrespective of his/her legitimacy status. In the case of *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal*<sup>83</sup>, recognizing the said piece of legislation as social legislation to protect child, the court held that “*the right to maintenance is condition to the fatherhood of the child being established.*”

The denial of such right under the legislation to child born out of such relationship can also be challenged under Article 32 of the Constitution of India as this would amount to violation of fundamental right i.e. Article 21 of the Constitution of India which provides the right to life and personal liberty and the such denial can deprive such individuals of their right to lead their lives with dignity and this upheld by the *Kerala High Court in PV Susheela v. Komalavally*<sup>84</sup>.

### **REASONS OF GIVING PREFERENCE TO LIVE-IN RELATIONSHIP**

The preference to the idea of live-in relationship is given because of several factors. One of the major factors is the existence of the concept of divorce in the institution of marriage. The patriarchal society makes the divorced women suffer social stigma. This is however, not there in a live-in relationship. Further, the institution of marriage is founded on the grounds of commitment and many obligations flow from it onto the couple entering into a matrimonial bond. To avoid any such commitments and obligations, people prefer

live-in relationship more than marriage. The personal laws do not allow for inter-caste marriage. Moreover, people who marry inter-caste are not fully accepted by the society. As such, to avoid these, the idea of live-in relationship gains preference over marriage. Since this relationship doesn't impose any legal obligations on the couple, the couple finds comfortable to enter into such hassle-free relationship. In the concept of arrange marriage, the couple doesn't know each other in a true sense of the term before entering into a matrimonial relationship. They know each other only superficially as mostly the marriage gets fixed by the adults taking consent of the to-be married partners. As such, to know the compatibility between each other, couples are seen giving more preference to the concept of live-in relationship over marriage. There is an economical reason too behind this. In order to reduce the burden of household expenses, expenses to stay etc., people prefer partners to share the cost with.

### **ISSUES PERTAINING TO LIVE-IN RELATIONSHIPS**

Our country is an amalgamation of culture, religion and traditions which are respected, adored and preached. The basic structure of India is stuck in an unusual dichotomy, the principles which are enshrined in the deepest contours of our society versus the overarching urge to reform our thinking in a manner which aligns with a more liberal and modern perspective.<sup>85</sup> This differentiation in ideologies has created myriads of conflicts, one of which is the threat live-in relationship has upon marriage and traditions. An increasing number of couples choose a live-in relationship over marriage. In such situations, various

<sup>82</sup> AIR 2010 SC 239.

<sup>83</sup> AIR 1978 SC 1807.

<sup>84</sup> (2000)DMC376.

<sup>85</sup> Rashmi Shukla, *Legal aspects of live-in relationship in India*, Livelaw (January 1, 2016), available at: <http://www.livelaw.in/legal-aspects-live-relationship-india/>

economic, social and legal issues have arisen and continue to do so.<sup>86</sup> Some of them are as follows<sup>87</sup>:-

- (a) The issue with the order laid down by the court is that a live-in relationship can be misconstrued for high tech adultery. The parameters for establishing this narrative are simple; it lies in the regressive outlook of the society and popular perspective.
- (b) Another problem which arose was regarding women and their safety. The degree of commitment in a live in relationship is comparatively lower than marriage; therefore a possibility of vulnerable future of the woman arises.
- (c) A child is a docile and unaware entity. The concept of live-in relationship is tabooed; therefore a child of such a relationship will suffer social stigma, especially when the father refuses to marry the mother.
- (d) Rights, obligations and responsibilities of both the parties are not clearly defined.
- (e) There is minimum clarity as to the duration a couple must cohabit together in order to be considered as husband and wife.
- (f) These relationships are considered as an unreliable platform to build a relationship with such heinous ramifications.

The Supreme Court held in a judgment that a man and a woman cohabiting under the same roof for a substantial amount of time shall be deemed to be presumed married under Section 114 of the Indian Evidence Act.<sup>88</sup> The rationale conclusion of the Supreme Court statement is that, long term cohabitation will be presumed to be a marriage.

<sup>86</sup> *Ibid.*

<sup>87</sup> S.Chopra, *Live In Relationship in India – A Closer Look*, VAKILNOI (January 7, 2016), available at: <http://www.vakilno1.com/legalviews/live-relationship-india-closer-look.html>

<sup>88</sup> *S.P.S Balasubramanyam v. Suruttayan @ Andali Padayachi & Ors.*, AIR 1992 SC 756

Therefore, a fundamental paradox persists between the judgment and the concept of live-in relationship which is that the motive of going through such an exercise is to avoid the presence of marital rights.

### **CONCLUSION**

The social fabric of our society calls for a change in its outlook with respect to live-in relationship. Article 21 of the Constitution of India guarantees Right to life. This right encompasses the right to live the way one wants. This endorses the view that if two adults want to live together then they can do the same. Living together and spending time of one's life with another is a personal choice and right. As such, one should be given full liberty to do so. However, seeing the current societal norms, the loophole in such relationship is its foundation, absence of any commitment, vulnerable position of women etc. There is a dire need to bring in a legislation governing such relationship.

The interpretation of judiciary of such relationship in line of PWDVA fails to bring in all kinds of relationship under the banner of 'relationship in the nature of marriage' as used in the said Act. Further, grant of mere acknowledgement of such relationship in PWDVA, is only subject to protection from domestic violence. It does not grant any maintenance rights as such.

Section 125 of the Code, being a beneficial piece of legislation, should also grant maintenance rights to the woman who is into a live-in relationship. Woman in this relationship, being akin to marriage, should also be protected and maintained in case if they are unable to do so. The negative response of the law-makers in relation to this issue, even raised by Malimath Committee and Law Commission of India, needs reconsideration. The said section should be amended so as to include women in live-in relationship also under the ambit of wife.

The research also brings us to the conclusion that non-grant of maintenance gives opportunity to males to take advantage of such a loophole in the legal regime. It permits them to do wrong without being penalized for the same.

More awareness regarding such relationship should be spread so that people understand the true purpose behind the existence of such relationship. The ones entering into such relationship need to cooperate with each other and shouldn't enter into such relationship with any ulterior motive. 'Walk-in and walk-out' shouldn't be the case wherein one even violates basic human rights of the other.