

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH
(ISSN: 2583-7753)

Volume 2 | Issue 2

2024

© 2024 *LawFoyer International Journal of Doctrinal Legal Research*

Follow this and additional research works at: www.lijdlr.com
Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of **any suggestions or complaints**, kindly contact info.lijdlr@gmail.com

To submit your Manuscript for Publication in the **LawFoyer International Journal of Doctrinal Legal Research**, To submit your Manuscript [Click here](#)

EFFECT ON MARRIAGE IN THE ADVENT OF LEGAL RECOGNITION OF LIVE IN RELATIONSHIP

M. Yesaswini Sai Nikitha¹

I. ABSTRACT

Marriage is an ancient sacred institution which is followed by the Indians as part of their own traditions and cultural beliefs. It has utmost importance and in all almost all the religions in India it is performed according to their own culture. This matrimonial institution regulates the relationship between a man and a woman and specifies their rights and duties. The concept of live in relationship is not an ancient practice that is been in India for ages. It is the relation in which a male and a female who are unmarried live under the same roof. This concept is one of the modern cultures that have been adopted from the foreign countries, especially originated in the western nations. This bond of live in relation has slowly evolved and being practised by many Indians. But it's not completely accepted by the citizens of India as many of the families are with conservative attitude. It's mostly found in urban cities but not largely observed across rural towns. If they are discovered also, mostly these kinds of associations are maintained in secrecy. So, the issue arises, whether these live in relations are legal or not. And if they are considered lawful what is the effect of these unmarried associations on the matrimonial institution. How the children's rights and status, who are produced from the above said relation, can be determined and which law regulates the live in relation is the main query that arises.

II. KEYWORDS

Live in relationship, marriage, legal status, cohabitation, maintenance, spouse rights, property rights, legal recognition.

III. INTRODUCTION

In the present context, live in relationship is considered as a new concept in the Indian society, such that, the aforesaid concept was avoided by the Indians since

¹ Dr.B.R.Ambedkar College Of Law, Andhra University

long time. According to the Hindu dharma, the rule of one man and one wife is prominently followed by most of the Indians, thereby giving the monogamous marriage utmost importance. Also as per the personal laws of Muslims and Christians too, the matrimonial institution is having eminent significance. Taking the reasons like conservative attitude of most of the people and traditionalism into account, the present concept stands as social stigma and taboo in the Indian socio legal system. Even though it is allowed and practised in the major urban cities but still abstained by the persons in rural areas. So, most of the people try to hide these kind of relations.

On the other hand, marriage is an eminent social institution, recognised by law, involving the emotional and physical union of a male and a female under a same roof. But as the live in relation is developing, its effect on marriage is still unclear.

But the people changed their conservative attitudes and had started to welcome some Supreme Court judgements related to live in relationship and the decriminalisation of Sec.377 and 497 of Indian Penal Code. So from this, the way in which the Indian laws are developed in the recent years can be understood. The live in relationship is referred to the relation, which is entered into by persons, who are not previously married, usually as a couple, in aspects of emotional relations and cohabitation. Thereby in this present context the effect of this recognition of live in relationship on the sacred institution of marriage is a concern that should be addressed.

IV. RESEARCH OBJECTIVES

1. To know about the concept of live in relationship, its legal status and adaptability to Indian society.
2. To examine the effect of live in relationship on the matrimonial institution and on the customary practices of the people.
3. To elucidate the need of a separate legislation for regulating live in relationships as there is a high rise in the persons preferring it over the marriage.

V. RESEARCH QUESTIONS

1. What is the legal status of live in relationship in India?
2. How this concept of living in effect the institution of marriage in India?
3. Is there any legislation to regulate the live in relationship in India?
4. Are the partners in this association entitled to rights like maintenance?
5. Do the children born out of this bond have legal recognition and property privileges?

VI. RESEARCH HYPOTHESES

1. The live in relationships in India are recognised and regarded as lawful.
2. This concept have an indirect effect on the marriage as the people are preferring live in relation over marriage in order to know about their partner before entering into marriage. However it decreases the efficiency of the relations and it might result in more breakdowns.
3. There is no law enforcing and regulating this live in relationships in India yet. But the meaning and the privileges of the partners can be determined by the existing laws like Cr.P.C., Prevention of Women from Domestic Violence Act ,2005, etc.
4. The individuals involved in this live in relation are entitled to maintenance subjected to Sec.125 of Cr.P.C.
5. The children born out of this association are considered legitimate and conferred with property rights too.

VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal in nature. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a

systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

VIII. LITERATURE REVIEW

This research paper draws upon the provisions of the Indian legislations like Sec.2(f) of Protection of Women from Domestic Violence Act , 2005 and Sec.125 of Cr.P.C. and Sec.16 (3) of Hindu Marriage Act,1955. It also refer to the family law concepts of marriage, live in relationship, void and voidable marriage by famous author B.M. Gandhi in order to elucidate the aforesaid concepts and to study the effect of live in relationship on marriage.

This paper examines the landmark judgements extensively on the above concepts. The judicial precedents include **Lata Singh Vs. State of U.P. (2006)**, **D. Veluswamy Vs. D. Patchaimmal, (2010)**, **Indra Sarma Vs. V.K.V. Sarma, (2014)**, **S. Kushboo Vs. Kaniammal & Anr. (2010)**, **Malti Vs. State of U.P.(2008)**, **Tulsa & Ors. Vs. Durghatiya & Ors., (2008)**, **SPS. Balasubramanyam v. Suruttayan,(1992)**, and **Revanasiddappa Vs. Mallikarjun, (2011)**. These case laws explain about the essentials conditions to be satisfied while entering a live in relation, rights of the partner like maintenance, status and privileges to children born out of the above relation, etc. These literature resources can provide a comprehensive study of live in relationship, the rights to which the individuals are entitled to and duties as well.

IX. MEANING & DEFINITION OF LIVE IN RELATIONSHIPS

The marriage is renowned concept in the global view. It is not a new institution. Two different and unknown individuals are made as wife and husband through

ceremony of marriage. *"It is a matrimonial union."*² It can be defined as *"A marriage is a socially permitted, voluntary, stable and exclusive union between a male and a female. It is a civil and religious contract whereby a man is joined and united to a woman for the purpose of civilized society."*³

The concept of live in relationship is not expressly defined under any Indian legislation. This aforesaid relation is considered as a modern topic adopted from the western culture and with some applicability in the Indian scenario. This idea of live in relation is evolved from the dynamic mindsets of the people in the contemporary period who wanted to carve a pre-marital relationship with emotional contact. Generally they enter into the aforesaid relation without any further expectations, before marriage, in order to either know whether they can enter or continue into that relationship of marriage or not. The reasons to get into that relation is up to the parties and they are not having any determined duties as such in marriage. It might also be entered into by the persons who cannot marry due to other castes, other religions or same sex.

The meaning of live in relationship can be elucidated as *"an arrangement of living under which the unmarried individuals live together to lead a relationship persisting for long period of time, similarly as in marriage but without any fixed duties"*⁴.

So some individuals enter into live in relation, not to restrict them in a sacred wedlock for a long period of time, also the commitment to live together is placed above the determination to marriage, and the obligations are managed at the interest of the parties. These all reasons can be collectively grouped for the increase in practice of live in relationship in recent days. But some people while making the relationship more comfortable, started to get into this relation, and try to deceive the other person, where the actual problem of validity of relation, the children born out of the relation and inheritance to the property of the either party raised. So in order

² P. Ramanatha Aiyar, Concise Law Dictionary, p.no.725 (3rd ed.,2005)

³ P. Ramanatha Aiyar, Concise Law Dictionary, p.no.725(3rd ed.,2005)

⁴ Sandip bhosale, live in relationship, advocate khoj blog, (Mar.18,2024, 8:55 PM), <https://www.advocatekhoj.com/blogs/index.php?bid=4294fe94c613c9ad072931429&bcmd=VIEW#:~:text=The%20legal%20definition%20of%20live,in%20marriage%22%20%5B1%5D.>

to decide all the above concerns it is need of the hour to address the issue. Many people regard the aforesaid relationship as a convenient way to get into the relation and also get out of it whenever required with no strings attached.

X. EVOLUTION

The concept of marriage is not a new evolved topic but of an historical origin. *“Evidences indicate that the concept of marriage uniting a man and a woman traced back in 2350B.C., Mesopotamia. Later it undergone several changes and accepted by the Greeks and Romans.”*⁵ In India, the marriage is a sacred traditional social institution encouraging the association of a man and a woman and evidently mentioned in the historical epics like Ramayana, etc. It may be performed in different forms, as per distinct cultures and religions but the main aim remains same.

The Live in relation gained prominence and applicability at large scale in the contemporary period. The aforesaid alliance, often regarded as cohabitation, generally of a man and a woman, who are unmarried and decided to live under a single roof as a couple, for an extended period of time. The concept also grants the right, duties, status of couple in the society to the respective individuals involved in live in relation. Earlier this concept prevailed mostly in western countries, but later on it was found practising by the citizens of many countries. In India, also, slowly it was practised by persons, mostly in urban cities, but in rural areas it is still considered as a stigma. It is believed that the live in relation affects the sacred matrimonial institution which is considered as backbone to the Indian socio legal system.

XI. COMPARISON WITH OTHER COUNTRIES :

The concept of marriage is a revered one in the global perspective. It has such eminent importance. The individuals involving in the matrimonial relation enjoy special status, freedoms and obligations in the society irrespective of their religion. It is considered as a sacred institution having ancient origin. In most of the world

⁵ Editorial, “The origins of marriage”, The Week, Jan.9, 2015.

countries, marriage is legally recognised and governed by the personal laws in accordance with the respective religions.

Actually, the concept of live in relation is a modern idea that had its roots in the western countries. It is recently developed and practised by large number of people in the Indian society. However, there is no particular law that prohibits the aforesaid relation in India. *“But this notion is considered as one of the legal recognised relations in many foreign countries especially in the western countries. Some of them are:*

1. **Western countries :** In these countries, over the years, live in relations have gained prominence and people started to exercise this de facto relationship as a part of getting updated to a more sophisticated association. And the individuals involved in the aforesaid relation had been given the status and rights same as that of marriage in the countries like Denmark, Norway, Netherlands and Sweden.
2. **Middle East:** In these countries the persons who got into the aforesaid association are not given any legal status and freedoms as those countries due to some customary or religious reasons, does not consider the relation as legitimate.
3. **North America:** The live in relationship is considered as legal and the rights and duties of the involved people, such as status, child birth, custody are recognised by their domestic laws in the countries like USA and Canada. This association is quite common and found in many of the regions.
4. **Africa:** In this continent, on the basis of regional customary practices and beliefs, some countries does not regard the aforesaid relation as lawful. On the other hand, some regions shall accept this kind of concept through some specific laws.
5. **Asia:** In many of Asian countries, this kind of bond between individuals is considered as legitimate in urban cities, recognising their duties and freedoms, whereas the rural areas never tolerate this notion due to conservative attitudes, thereby this relation is unlawful in rural communities.

6. **Australia and New Zealand:** In these countries, the people are more dynamic and open minded such that most of them got into this bond and similarly their property and personal rights are safeguarded by those regional laws.”⁶

XII. EFFECT IN RELATION WITH THE CONCEPT OF MARRIAGE

Here the main subject matter is the effect on marriage in the advent of legal recognition of live in relationship in India. For that we have to understand about the merits and de merits of both the concepts and thereby analyse the effect of one concept on the other.

A. Merits of marriage are:

1. Being in a legally recognised relationship, and the individuals interests, freedoms and obligations are the identified and secured by law.
2. It existed for a long period of time in many cases mostly permanent relation.
3. There are some social benefits in marriage like social status, social groups and a feeling of unity in community.
4. This matrimonial institution, which is sacred, is more secured compared to other relations.
5. Some studies reveal that the persons who got married are having long and stable life.
6. The responsibilities and the income can be shared by the partners.

B. De-merits of marriage in India:

1. Many people getting divorced due to some reasons like violence, cruelty of one of the spouse and misunderstandings between them.
2. The partners adjust and compromise more for each other.
3. The self- reliance, financial independence and stability of women are affected.

⁶ Vakil Search, <https://vakilsearch.com/blog/live-in-relationship-law/> (last visited Mar.19, 2024).

4. More money being spent for the ceremonies of marriages and subsequent functions as mark of social reputation.
5. Some enter into the marriage unwillingly under family and societal pressures which brings down the stability of the relation existing between them.

C. Advantages of live in relationship in India are:

1. Treated as a test by individuals to know whether they can fit into marriage or not.
2. The duties and freedoms are shared among the persons involved in the de facto relation.
3. A progressive step by the young generation towards the society
4. The bond becomes more stronger in some cases.
5. They get to understand themselves in a better way and self-reliance can be developed.
6. Can be seen as a choice taken wisely by the young people to decide their life partners.

D. Disadvantages of live in relationship in India: However it is subjected to some de merits also

1. Treated as a social taboo due to reserved attitude of the people in many areas.
2. The status of the relation is not clearly recognised in the society which results in ambiguity in identification of children born, property rights, custody rights and maintenance rights etc.
3. The individuals are not entitled to legal rights and duties, as such granted in marriage.
4. There is a possibility for Breach of the duties in live in relationship as not safe guarded by any particular law.

5. Many women face several problems like no legal recognition of the relation, harassment, violence, curtailing her rights in the Indian society based on patriarchy.
6. May result in early pregnancies of girls leaving them behind physically and psychologically weak.
7. This might also lead to spread of HIV/AIDS as the people enter into the pre-marital sex relations with different people as per their choice.

After analysing all the above advantages and disadvantages of marriage and live in relation, we could understand that each concept has its own merits and demerits, so while considering the effect of living in on marriage, it is to be considered that an increase in live in relations among people could result in decline of the efficiency of the marital relations and many issues evolve out of that. So, a competent legislation must be enacted on the regulation of live in such upholding the importance of marriage too.

XIII. IS LIVE IN RELATIONSHIP REGARDED AS AN OFFENCE IN INDIA

In many instances, the presumption of marriage aroused, where a male and a female, who are unmarried, live together under the same roof for significant period. Even though live in relationship is regarded as a social taboo in the Indian society, it is recognised as legal by the Honourable Supreme Court of India in many cases. In the case of *S. Khushboo Vs. Kanniammal & Anr.*⁷, it was held that live in relationship entered into by the people, who are not lawfully married, is not considered as illegal. The Allahabad High Court also accepted that a man and a woman, even unmarried, can live together in *Payal Sharma Vs. Nari Niketan*⁸. There is no exact law prohibiting this relation of pre-marital sex till now. In the case⁹, court expressed its view that any two unmarried individuals can't be treated as criminals merely as they were living together.

⁷ 2010 (5) SCC 600

⁸ SCC OnLine All 332.

⁹ Ramdev Food Products Pvt. Ltd. Vs Arvindbhai Rambhai Patel & Ors..(2006) 8 SCC 726

XIV. PROTECTION OF RIGHTS OF FEMALE PARTNERS IN LIVE IN RELATIONSHIP

The process of cohabitation became quite common in many countries especially these days. This idea revolves around the test which is done by a man or a woman, to know each other better, and if they wanted entering into marriage. It is up to the individuals, they could either undergo marriage or continue in that relation for a period of time. In a bond like this there is possibility of violence, harassment and torture by one of the person upon another due to patriarchy form of society in India. This is observed mostly in cases where women are victims and they won't reveal these problems to anyone as their relation is not yet disclosed. Even when it is admitted there are no certain Indian legislations safeguarding their interests.

As the similar cases were increasing, the victim's rights are safeguarded and they are being provided relief by the apex court in many instances through the Protection of Women from Domestic Violence Act,2005 (herein after referred as PWDA). Even though it is not brought under marriage but the presumption of marriage is being raised in the aforesaid cases.

The live in relationship, under Sec.2(f) of the PWDA is described as a relationship in the nature of marriage. Among the rights enjoyed by the wife in marriage, the right to maintenance is also one major interest. But in live in relationship, earlier, the female person can't claim maintenance from the male person involved in the relation as there is no particular law regulating these relations in India. The woman in live in relationship, is not entitled to claim the alimony unless certain conditions are satisfied¹⁰.

Consequently, the scope of Sec.125 of Cr.P.C. is widened that provides for the maintenance to the women and the apex court held that the female partner in the live in relation is entitled to claim the maintenance from the male partner¹¹. In case of any abuse to a woman who is living with a man in this bond for a long period of

¹⁰ D.Veluswamy Vs. D.Patchaimmal, (2010) 10 SCC 469

¹¹ Abhijit Auti Vs. State of Maharashtra, 2009 CRI.L.J.889

time, even without undergoing any valid necessities of marriage, he is liable to pay the maintenance under the Sec.125 of Cr.P.C¹².

XV. PROTECTING THE INTEREST OF THE CHILDREN BORN OUT OF LIVE IN RELATIONSHIP

In the live in relationship, as the partners involve in cohabitation, the children born out of this bond face numerous difficulties. Some of them are status of the children, custody and maintenance issues. There is a need for addressing these issues because as live in relations are increasing the children born as result of this bond are also increasing.

There is no certain Indian law for live in relationship but the children's rights are secured through the existing legislations. They are also provided with maintenance as per Sec.125 of Cr.P.C. The Central Adoption Resource Authority issued guidelines such that no couple entered in live in relationship can adopt a child¹³. The above provision also states that the children who are minors, whether legitimate or illegitimate, the maintenance should be provided¹⁴.

In India, prior to 2010, the children born out of the aforesaid bond are considered as illegitimate. These children are entitled to inherit their parent's property both, ancestral or self-acquired¹⁵. But they are recognised as lawful children and they are eligible to inherit the property as held by the Supreme Court in the *Bharatamatha Vs. R.Vijaya Renganathan*¹⁶ case, and also further explained that Sec.16 of the Hindu Marriage Act, 1955 expressly doesn't recognise the above said relation but indirectly it grants them the right to property. The apex court held that the children born out of the de facto relation can inherit property and are regarded as "legal heirs" in *Sukhrana Bhai Vs. Vidhyadhari*¹⁷.

¹² Chanmuniya Vs. Virendra Kumar Singh Kushwaha, 2011 (1) SCC 141

¹³ Vakil Search, <https://vakilsearch.com/blog/live-in-relationship-law/>, (last visited 21 Mar.2024).

¹⁴ Dimple Gupta Vs. Rajiv Gupta, 2007 AIR SCW 6651

¹⁵ Revanasiddappa Vs. Mallikarjun, 2011 AIR SCW 2447

¹⁶ AIR 2010 SC 2685

¹⁷ (2008) 2 SCC 238

XVI. ESSENTIAL CONDITIONS THAT ARE TO BE FULFILLED WHILE ENTERING LIVE IN RELATION:

Certain requirements were prescribed by the Supreme Court in the *D. Patchaiammal Vs. D.Veluswamy*¹⁸ and *Indra Sarma Vs. V. K. V. Sarma*¹⁹, for entering into a live in relationship. Whenever these conditions were met it is considered as a relationship in nature of marriage as per Sec.2(f) of the PWDA and there by women get can protection against the violence and harassment through the provisions. The conditions are:

1. **The individuals need to be of legal marriageable age-** As per Indian laws, the age to enter into marriage is 21 years for men and 18 years for women. So this age criteria should be fulfilled when entered into live in relationship too. In the case²⁰, the Allahabad High Court ruled that a woman of 21 years have the liberty to enter into the aforesaid bond with any man, even if unmarried. But it is held that “the persons even not attaining the prescribed age limit, can enter into live in relation” by Kerala High Court in the case²¹.
2. **They should fulfil all other essentials as prescribed for marriage such as not being already married-** The cohabitants can enter into the live in relation by free consent, competency, sound mind, etc.
3. **They should have cohabited under no threat / coercion -** The cohabitation of persons should be as per their choice and freewill but not under undue influence, threat or coercion.
4. **The partners must be in that relation for considerable period of time-**They should maintain that bond for a significant period such that the assumption of marriage arises. This is expressly mentioned in the phrase at any point of time as per Sec.2(f) of PWDA. The apex court stated that this relation should be not like “walk in walk out” relationship in *Madan Mohan Singh Vs. Rajini*

¹⁸ (2010) 10 SCC 469

¹⁹ AIR 2014 SC 309

²⁰ Payal Katara Vs. Superintendent Nari Niketan Kandri Vihar Agra & Ors., 2001

²¹ Nanda Kumar Vs. The State of Kerala, Criminal Appeal No. 597 of 2018

*Kant*²². But there is no definite period of time prescribed, the Supreme Court recognised a fifty year live in relation in the case *Badri Prasad Vs. Deputy Director of Consolidation*²³ and *Tulsa & Ors. Vs. Durghatiya & Ors*²⁴. From this above case, we can understand that there must be seriousness and determination towards the relation.

XVII. STATUS OF LIVE IN RELATIONSHIP IN INDIA:

In India, the live in relationship is treated as a forbidden practice. In most of the cities, people started to accept this western originated association slowly after industrialisation and modernisation. However it is still treated as unlawful in towns and villages. It is explained that the above said relation, entered into by two unmarried individuals of opposite gender, for a considerable period of time, is recognised in the eyes of law in the case *Lata Singh Vs. State of Uttar Pradesh*²⁵.

This relationship should be entered into and maintained with seriousness and determination so that the presumption of marriage arises. It should not be merely as a comfortable relation. The court notified in the case of *Gokal Chand Vs. Parvin Kumari*²⁶, that the cohabitants in the above said bond, the validity of relation is questioned if there was a rebuttal proof that they are living together curtailing the presumption. The Supreme Court in the case, *SPS.Balasubramanyam Vs. Suruttayan*²⁷, ruled that in the long- term live in relationship of a man and a woman under the same roof as similar to the marriage, the children born out the said relation are considered as lawful, under Sec.114 of Indian Evidence Act.

From the above precedent, it can be understood that the live in relationships for a long period of time are considered legitimate as same as marriage. These all the judgements facilitates for the recognition of legitimacy of the live in relation. The court didn't expressly provide for the distinguishment of marriage and live in

²² 2010 (9) SCC 209

²³ 1978 3 SCC 527

²⁴ 2008 AIR SCW 1148

²⁵ (2006) 5 SCC 475

²⁶ AIR 1952 SC 231

²⁷ AIR 1992 SC 756

relationship. Indians will mostly support and favour to the marriage upon live in relation and tried for the strong differentiation to describe marriage.

In the case²⁸, it was laid down that a man cannot be in matrimonial relation with more than one woman. It was held by the court that a female, cannot be described as the wife of a male, with whom she is having a live in relation and also observed that the maintenance under Sec.125 can't be claimed by that woman in such circumstances in the case of *Malti Vs. State of Uttar Pradesh*²⁹. The Indian Law Commission and Justice Malimath Committee suggested for the reshaping of the definition of "wife" in Sec.125 of Cr.P.C. The committee also stated that a woman who has been is live in relationship for a significant extended time period, has to be entitled to spouse rights under Sec.125 of Cr.P.C.

From all the above Judicial Precedents, it can be understood that initially the concept of live in relationship is not accepted and similarly they were not entitled to the property and maintenance rights as the lawfully wedded wife. Later on, from the subsequent cases it can be observed that slowly the above said relation is being recognised as lawful and that woman cohabitant is being granted with proprietary and maintenance rights.

XVIII. INTERPRETATION OF LEGAL PROVISIONS INVOLVED:

The institution of marriage is governed by the personal laws of the people. For Hindus it is the Hindu Marriage Act, 1955 and for Christians it is the Christian Marriage Act, 1872 that governs the rights and duties of the married couple. Similarly, the maintenance to the wife is discussed under Sec.125 of Cr.P.C. and property rights are determined under Hindu Succession Act, 1956.

There is no particular legislation that governs the live in relationship in India neither making it legitimate nor prohibiting it. But the rights and duties of the man, woman and children born in the aforesaid relation, are determined and protected by some specific provisions of different legislations. They are

A. Sec. 2(f) of the PWDA, 2005-

²⁸ Yamunabhai Anantrao Adhav Vs. Anantrao Shivram Adhav, (1988) 1 SCC 530

²⁹ AIR 2008 Del.7

*“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”.*³⁰

The above provision of the Protection of Women from Domestic violence Act, 2005 provides the definition of domestic relationship in which the live in relation is impliedly described as a relationship in nature of marriage. This is the only definition from which the aforesaid association is interpreted as per Indian laws. This section of the PWDA is appreciated as it not only defined the married relation between two individuals but also interpreted the unmarried relationships between the cohabitants which is one of the most ongoing practices in the society.

B. Sec.16(3) of the Hindu Marriage Act,1955-

*“Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”*³¹

This section explains about the property rights of the children born out of void or voidable marriages, and it further impliedly states that the aforesaid children can be granted with legitimacy, but they are entitled to inherit their parents property only.

C. Sec.125 of Cr.P.C.,1973 – “Order for maintenance of wives, children and parents.

(1)If any person having sufficient means neglects or refuses to maintain –

(a)his wife, unable to maintain herself, or

(b)his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

³⁰ Protection of Women from Domestic Violence Act, 2005, Sec.2(f) , <https://indiankanoon.org/doc/1316495/>

³¹ Hindu Marriage Act,1955, Sec.16(3), <https://indiankanoon.org/doc/1801778/>

(c)his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d)his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate”³².

This provision in Code of Criminal Procedure, 1973 explains about the financial assistance that is to be given by an individual to his wife, his children who are minors, whether legitimate or illegitimate, his parents and his children who are majors with any physical or mental injury, in order to afford their basic necessities.

XIX. RELEVANT CASE LAWS

The Precedents relating to the status of live in relations, rights of the women in the above said bond and children born out of this relation in India are:

1. In *Lata Singh Vs. State of U.P.*³³, the Apex Court held that the live in relation which is entered into by two unmarried persons, is recognised in the eyes of law and constitute no offence. This is a landmark case where the above said relation is considered as legitimate in India.
2. In *D. Veluswamy Vs. D. Patchaimmal*³⁴, certain conditions were prescribed by the Honourable Supreme Court such as competent age, considerable time, etc. that shall be fulfilled by individuals in live in relation, and these specified criteria should be followed in order to claim maintenance from the partner.
3. Some essential elements and types of the aforesaid relation are described in *Indra Sarma Vs. V.K.V. Sarma*³⁵. This case is considered as a milestone which changed the way of interpretation of live in relation.

³² Code of criminal procedure, 1973, sec.125, <https://indiankanoon.org/doc/1056396/>

³³ (2006) 5 SCC 475

³⁴ (2010) 10 SCC 469

³⁵ AIR 2014 SC 309

4. The Court recognised a fifty year live in relation of two persons and explained the importance of determination and seriousness in the bond in *Tulsa & Ors. Vs. Durghatiya & Ors.*³⁶
5. In *Abhijit Auti Vs. State of Maharashtra*³⁷, the Court upheld the woman's right to maintenance in live in relationship, and held that she is entitled to claim alimony from the other cohabitant.
6. It was held that the children born out of the aforesaid relation are having the right to inherit his / her parents property immaterial whether self-acquired or ancestral, in *Revanasiddappa Vs. Mallikarjun*³⁸.
7. It was recognised that the live in relation entered into by two unmarried individuals is not considered as illegal in *S. Kushboo Vs. Kanniammal & Anrs.*³⁹
8. In the case of *Payal Sarma Vs. Nari Niketan*⁴⁰, Allahabad High Court accepted that an unmarried man and woman can live together.

XX. CHALLENGES FACED WHILE IN LIVE IN RELATIONSHIP:

1. Even this concept of live in relation is being practised by many persons in India, and many judicial precedents have been given on the status and issues related to this relation, still people consider this unmarried association as a social taboo, as the Indian society recognises the matrimonial institution as a sacred one and treats it as the basic pillar. So the individuals in the above relation might face the problem of non-acceptance from their family and society, etc. This is the result of conservative attitude and strong beliefs of most the people.
2. Coming to recognition aspect, many despite being in a live in relation, try to maintain in secrecy as this bond disturbs their social reputation.

³⁶ 2008 AIR SCW 1148

³⁷ 2009 CRI.L.J.889

³⁸ 2011 AIR SCW 2447

³⁹ 2010 (5) SCC 600

⁴⁰ SCC OnLine All. 332

3. Other issues like cultural problems comes into picture as in some of the religions like Hindus and Muslims will not accept this concept as it is against their own customary practices and beliefs. Remaining religions accept it but not completely. So many don't try to practice this relation in spite of some advantages.
4. Though the live in relation considered as lawful in India, many still regard it as immoral and unethical practice, thus this status option was not given in any of the essential documents like bank accounts, etc.
5. The question whether this live in relation can be entered into by same sex persons, still exists, because the homosexual marriages and relations are not yet legally recognised in India. But it is not offence though, as Sec.377 of IPC, 1860 is decriminalised, which actually penalises the unnatural offences including same sex relations. The words, man and woman were repealed from the provision such that homo sexual relations are considered as no offence.
6. Another challenge of live in relation revolves around the freedoms and obligations of the individuals in case of same sex relations.

XXI. STATISTICAL ANALYSIS

"A recent statistical study revealed that one in two persons in Indian country choose the live in relationship over the matrimonial institution"⁴¹. The reason is that they wanted to know their partners better before being entering to a dedicated matrimonial relationship. "It was also stated that 37% of the Indian citizen feel that they can live with their partners under the same roof in the aforesaid relation. It is also discovered that 34% of the Indians believe that their parents will disclose their live in relation to them if any. The report also reveals that 72% of the Indians have the notion that the individuals should be financially independent while entering into the above said relation. One in two Indian women prefer this sharing of their financial expenses between the partners"⁴². From this data it can be understood that Indians accepting this change of live in relationships

⁴¹ Editorial, "1 in 2 Indians prefer living in before they get married", Times of India, Feb.20, 2023.

⁴² Editorial, "1 in 2 Indians prefer living in before they get married", Times of India, Feb.20, 2023.

in India. Majority of the people are getting adopted to this practice of live in, in order to understand one another and test their trust and capacity to enter into marriage.

XXII. CONCLUSION

Actually the concept of marriage and live in relationship are similar but not exactly the same. The former is a revered universal institution which is considered to be as the backbone of the family institution. Thereby it indirectly contributes to the evolution of the society. Whereas the latter one is a relation which is practised by the people in many western countries but it is not recognised by all the nations. However, it holds its individual importance, such that many people in India started to accept it and apply it.

In India, the marriage and the rights and duties of the partners involved in it are regulated by several laws as per different religions in India. Like for Hindus, there are Hindu Marriage Act,1955, Hindu Succession Act,1956 and Hindu Adoption and Maintenance Act, 1956 for enforcement of Hindu marriages, partners and property rights. Coming to Muslims and Christians, there are Muslim Marriages Registration Act, 1981, Dissolution of Muslim Marriages Act,1939 and Indian Christian Marriage Act, 1872 respectively.

But there is no Indian legislation for enforcing the live in relationships yet. Fortunately, there were some landmark judicial precedents describing the live in relationships as lawful, children born out of the afore said relation are legitimate and entitled to property rights too. It is also held by the court that live in relation does not constitute an offence⁴³. Certain essential conditions for entering into the aforesaid bond were prescribed by the court⁴⁴. It was defined and some of the rights were recognised and brought under the existing personal and criminal laws.

In my opinion, live in relationship, which was being followed by many Indian citizens should be regulated and enforced through a separate Indian law so that the chance for misusing it can be avoided. *A recent study reveals that a one in two persons*

⁴³ Lata Singh Vs. State of U.P., (2006) 5 SCC 475

⁴⁴ D.Veluswamy Vs. D.Patchaimmal , (2010) 10 SCC 469

*in India prefer this relation*⁴⁵. And as it is pre-marital association the legislation must be very strict in this aspect as the partners in this bond can anytime enter and exit from the relation. In the jurisprudential purview, even though there are some judicial precedents on this matter, there should be a competent legislation to regulate it properly. So in order to mitigate the issues and disputes arising out of this relation legislation must be enacted accordingly. So that people will get a clarity on this relation, whether to enter or not, how to enter and what are the further consequences. Coming to the impact of this live in relation on marriage it shows very tremendous effect, because people will prefer getting into living in, as it is having easy entry and simple exit, if this continues the marriage concept would lose its prominence in Indian society. So a different law should be formulated to regulate the conduct of these live in relations in India, without disturbing the main objective of marriage.

XXIII. REFERENCES

A. Books / Commentaries / Journals Referred

- a. Book - B.M.Gandhi , FAMILY LAW, Volume-1, EBC, Second Edition.
- b. Journal - Anupama Yadav , Dr. Anand Kumar , "Live In Relationship: A Study On Legal Actions", 9 IJCRT (2021)

B. Online Articles / Sources Referred

- a. <https://vakilsearch.com/blog/live-in-relationship-law/>
- b. <https://www.legalservicesindia.com/article/211/Live-in-Relationships.html>
- c. <https://www.advocatekhoj.com/blogs/index.php?bid=4294fe94c613c9ad072931429&bcmd=VIEW#:~:text=The%20legal%20definition%20of%20live,in%20marriage%22%20%5B1%5D.>
- d. <https://www.linkedin.com/pulse/live-in-relationships-legal-implications-india-harshad-shah-md78f/>

⁴⁵ Editorial , 1 in 2 Indians prefer living in before they get married , Times Of India , Feb.20,2023.

- e. <https://www.legalserviceindia.com/legal/article-2021-maintenance-in-live-in-relationships.html>
- f. <https://ijcrt.org/papers/IJCRT2108495.pdf>

2. Cases Referred

- a. Lata Singh Vs. State of U.P., (2006) 5 SCC 475
- b. Malti Vs. State of U.P., AIR 2008 Del.7
- c. Revanasiddappa Vs. Mallikarjun, 2011 AIR SCW 2447
- d. D.Veluswamy Vs. D.Patchaimmal, (2010) 10 SCC 469
- e. Indra Sarma Vs. V.K.V.Sarma, AIR 2014 SC 309
- f. Tulsa & Ors. Vs. Durghatiya & Ors., 2008 AIR SCW 1148
- g. S.Kushboo Vs. Kanniammal & Ors., 2010 (5) SCC 600
- h. Payal Sharma Vs. Nari Niketan, SCC OnLine All.332
- i. Ramdev Food Products Pvt.Ltd. Vs. Arvindbhai Rambhai Patel & Ors., (2006) 8 SCC 726
- j. Abhijit Auti Vs. State of Maharashtra, 2009 CRI.L.J.889.
- k. Chanmuniya Vs. Virendra Kumar Singh Kushwaha, 2011 (1) SCC 141
- l. Bharatamatha Vs. R.Vijaya Renganathan AIR 2010 SC 2685
- m. Sukhrana Bhai Vs. Vidhyadhari , (2008) 2 SCC 238
- n. Nanda Kumar Vs. The State of Kerala, Criminal Appeal No. 597 of 2018
- o. Dimple Gupta Vs. Rajiv Gupta , 2007 AIR SCW 6651
- p. Payal Katara Vs. Superintendent Nari Niketan Kandri Vihar Agra & Ors.,2001
- q. Gokal Chand Vs. Parvin Kumari , AIR 1952 SC 231
- r. Madan Mohan Singh Vs. Rajini Kant, 2010 (9) SCC 209
- s. Badri Prasad Vs. Deputy Director of Consolidation, 1978 3 SCC 527
- t. Yamunabhai Anantrao Adhav Vs. Anantrao Shivram Adhav, (1988) 1 SCC 530

- u. SPS Balasubramanyam Vs. Suruttayan AIR 1992 SC 756

C. Statutes Referred

- a. Protection of Women from Domestic Violence Act , 2005
- b. Hindu Marriage Act , 1955
- c. Code of Criminal Procedure, 1973