LEGALITY OF LIVE-IN RELATIONSHIP IN INDIA

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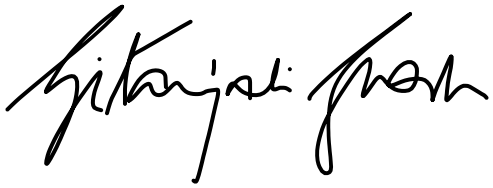
SUPERVISOR CERTIFICATE

It is to certify that Alekh Apurv is pursuing Masters of Laws (LL.M.) from National Law University and Judicial Academy, Assam and has completed his dissertation titled **"LEGALITY OF LIVE-IN RELATIONSHIP IN INDIA"** under my supervision. The research work is found to be original and suitable for submission.



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DECLARATION

I, ALEKH APURV, pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, do hereby declare that the dissertation titled **"LEGALITY OF LIVE-IN RELATIONSHIP IN INDIA"** is an original research work and has not been submitted either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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PREFACE

As a part of Constitutional Specialization, the paper is conducted on socio-legal aspects of live-in relationships preferably homosexual couples in present scenario of India. The purpose of the study is to analysis the rights and legal penal sanctions with regards to heterosexual couples as well as homosexual couples in modern live-in-relationship in India. Live-in-relationship is a term given to those man and woman who decides to live together in an intimate relationship without the recognition of marriage. The objective behind the study is to find out the legal position of homosexual live-in couples in our society due to the reason that modern societies recognize legal provisions only for heterosexual couples whereas homosexual couples are devoid of such legal recognition. The reason for this is that the society compares live-in relationship with marriage. Thus, the homosexual couples' rights are violated. Though, the decriminalization has made the homosexuality legal but this is not sufficient as still homosexuals are devoid of even Fundamental Rights.

The main problem resides in the presumptions in the Statutes that couples will be of different couples and most of the laws dealing with civil rights are personal laws will not apply to same sex couples. This is the reason a "eureka" moment is necessary in the law field.

Table of Cases

Somarupa Sathyanarayanan v. Shrimati Vijaya Lakshmi

Suresh Kumar Koushal & Anr v Naz Foundation & Others

Yamunabai v. Anantrao

Table of Statutes

1164- Constitution of Claredon

1751- Bavarian Code

1769- Austin Code

1791- France Constitution

1791- New Penal Code

1853- Buggery Act

1860- Indian Penal Code

1872- Indian Evidence Act

1950- The Constitution of India

1974- Code of Criminal Procedure

2005- Protection of Women from Domestic Violation ACT

2017- Adoption Regulation Act

Table of Abbreviations

1.	CARA	Central Adoption Resource Authority
2.	CrPc	Code of Criminal Procedure
3.	ed.	Edition
4.	Fig.	Figure
5.	GOI	Government of India
6.	HC	High Court
7.	IEA	Indian Evidence Act
8.	IPC	Indian Penal Code
9.	NALSA	National Legal Service Authority
10.	PAP	Prospective Adoptive Parents
11.	PWDVA	Protection of Women from Domestic Violence Act
12.	ROL	Rule of Law
13.	RINM	Relationship in Nature of Marriage
14.	SC	Supreme Court
15.	Sec.	Section

Contents

CHAPTER-3 IS LIVE-IN RELATIONSHIP IN INDIA LEGAL?

CHAPTER-4 WHY MARRIAGE IS A YARDSTICK?

CHAPTER-5 THE EFFECTS OF DECRIMINALIZATION OF HOMOSEXUALITY

CHAPTER-1

INTRODUCTION

1.1 BACKGROUND

"Art.15"[1]guarantees that "there should be no discrimination on the basis of caste, religion, sex etc." But, the laws of the nation prohibited any union between people of the same sex. Even though now the sexual union of people of same sex is de-criminalized still these couples lack the right to form a matrimonial bond and thus they are devoid of many of the rights that a heterosexual couple gets. This is because the court compares a heterosexual relationship with marriage and many a times the court has pronounced the partners to be "husband and wife" , "if the society perceives them as husband and wife"[2] but this comparison can't work in the case of homosexual couples because matrimony between them is not permitted by the law. Art.21[3]gives the right life and liberty and life means not just "mere animal existence". It encompasses the right to live your life as per your wish. Obviously, no right is absolute and hence there are restrictions to the enjoyment of the rights as well. The basic idea behind not making the rights absolute because the exercise of absolute rights will deprive others of their rights absolutely. It may be quoted here, 'power corrupts and absolute power corrupts absolutely'. The same is the case with rights. J.S. Mill in his book "On Liberty[4]" explained "the liberty of a person is limited to the extent it does not interfere with the liberty of others." The homosexual couples are not able to enjoy their lives to the fullest in absence of any provision or law as per which they can form matrimonial bonds. Since homosexuality is decriminalized thus marrying a person of the same sex will come outside the scope of limitations put on the fundamental rights. This research gives an in dept analysis of live in relationship of heterosexual couples and the rights that the partners have and compares it with homosexual couples and not recognizing a homosexual couple as live in partners takes away their rights and the right to live a dignified life. Live in relationship often

[1] The Constitution of India 1950 (India).
[2] D. Velusamy v. D. Patchaiammal (2010) 10 SCC 469 (India).
[3]The Constitution of India 1950 (India)
[4] JOHN STUART, ON LIBERTY 119-121 (Penguin Books 1974) (1998).

considered a western concept is not new to India. In the ancient Indian culture, there was the concept of live in relationship, although it was considered as a type of marriage. There were 8 types of marriages as per Manusmriti[5] of which "Gandharva-vivah" was a part. "Ganndharva-vivah" meant a marriage without the involvement of parents or any rituals. Thus, it resembles the concept of modern-day live in relationships where there is no ritual but the couple live together as husband and wife. This ancient culture started evading as India witnessed new cultures and they started influencing the original Indian culture. Islam came to India with the Islamic rulers and as per Islam any relationship before or outside wedlock is 'haram' and hence the cultural amalgamation impacted the view towards live-in -relationship. With the coming of the British, the legal sanctity of live-in relationship further faded away because it is a sin in Christianity to have a premarital relationship. This was reflected in the codification of law of our nation, there is no law governs live in relationship but the provisions are scattered in many legislations such as "Protection of Women from Domestic Violence Act", "Code of Criminal Procedure" etc. and some judgments which recognize live in relationship as proper marriage.

For the purpose of this thesis "Code of Criminal Procedure", "Prevention of Women from Domestic Violence Act", personal laws have been studied and analyzed with regards to the rights of homosexuals. There exist reasons that the researcher has chosen this topic

1. The researcher is close friend of a homosexual female and has witnessed her going through domestic abuse from her live-in partner
2. The decriminalizing of homosexuality is a very positive step but it has failed to serve its purpose due to lack of recognition of homosexual couples.

In order to get a better understanding of topic it is essential to have a rough idea of the legislation which recognizes live in relationship:

1. "The Protection of Women from Domestic Violence Act, 2005
   "Sec. 2(a)" defines an aggrieved person to be a person who has been subject of any domestic violence and is in a domestic relationship with respondent

[5]Manu, Manusmriti, Verse 3.24.

"Sec 2(f)" defines a domestic relationship to mean between two person who live or have, at any point of time lived together in a shared household through a RINM"

A relationship in nature of marriage includes live in relationship.

2. "Code of Criminal Procedure,1974"
   "Sec.125" "guarantees that a person has to maintain a child whether legitimate or illegitimate".

3. "Indian Evidence Act, 1872"
   "Sec.114(i)" says "there would be presumption of wedlock if the partners lived in together for long spells as husband and wife".

1.2. AIMS AND OBJECTIVES

The aim of the thesis is to make an analytical study of the legality of live-in relationship and analyze how the lack of recognition of live-in couples of homosexuals has deprived them of the rights that are otherwise available to heterosexual couples.

In order to attain the aim of this thesis, the researcher has tried to set out the following objectives:

1. To offer clear picture of the laws which recognize live-in relationship.
2. To make interviews with homosexual live in couples and know what problems they face living in together.
3. To analyze how far the decriminalization of homosexuality has served its purpose.
4. To propose legal reforms in order to correct the injustice done to the homosexual couples.

1.3 STATEMENT OF THE PROBLEM

Homosexuality has been decriminalized and this means that the right to choose a partner irrespective of his or her sex comes automatically under right to life but this right can't be realized to the fullest due to lack of any legislation which recognizes same sex marriage. The next best option is live-in relationship but here too the homosexual live in partners are devoid of the rights that a live in partner gets in case of a heterosexual live-in couple such as they can be recognized as husband and wife but this isn't the case with homosexual couples as the marriage of same sex couples isn't recognized by the law. In the absence of such provision the homosexual partners are rendered helpless when it comes to splitting up and getting a maintenance or share in the property. Moreover, the legislations which recognizes the rights of live in partners such as "Protection of Women from Domestic Violence Act" don't recognize same sex couples and hence in case of domestic violence the aggrieved is with less effective remedies than what the afore mention Act could have provided.

1.4 RESEARCH HYPOTHESES

1. Not providing the right to marry after decriminalization of homosexuality is violation of Article 21.
2. The Judgment decriminalizing homosexuality aiming to provide equality to homosexuals has failed to provide that.
3. Not recognizing homosexual couples in-live in relationship is violation of Article 15 as this is discrimination on the basis of sex.

1.5 RESEARCH QUESTIONS

1. What is the legal position of the nation with regard to live-in relationship?
2. What are the problems faced by homosexual couples due to lack of opportunity to marry?
3. What are the rights of live-in partners?
4. Why the same sex couple don't get same rights which the opposite sex couple get in a live-in relationship?

5. How not recognizing of live-in relationship of homosexual couples impacted their relationships?

1.6 RESEARCH METHODOLOGY

In the writing of this dissertation, the researcher has adopted "doctrinal method" of research to do a "analytical work" and compare the rights that the heterosexual couples get; homosexual couples are denied; the effect of the judgment of the Supreme Court decriminalization of homosexuality and has it been able to impart quality.

The researcher has adopted an "empirical method" to analyze the effect that the lack of any law recognizing homosexual union; what problems do the homosexual couples face when they are in a live-in relationship and how do they deal with this in absence of any law which considers such a union to be a valid one.

One of the main objectives of the dissertation is to conduct "empirical study" on the problems faced by the homosexual live-in couple that is resultant of homosexual couples not being recognized in the law due to which they cannot approach the court under legislations such as "Protection of Women from Domestic Violence Act". The researcher has aimed to talk to at least five such couples and few come from small towns areas where the acceptance of such unions is not

1.7 SCOPE AND LIMITATIONS

This dissertation essentially extends to the studying of the legal position of live-in relationship in India in respect of heterosexual couples and then comparing it to that of homosexual couples. In the light of above-mentioned research, the researcher studies the problems that the homosexual live-in couple faces.

A major limitation of this research is that the researcher wasn't able to take face to face interview of the interviewee due to budget restrain and thus had to settle for telephonic

interview. This turned out to be impediment as the interviewee would have had opened up to the interviewer more if it was a face to face conversation.

Due to this being a novelty work and very less material being available on homosexual live-in relationship the researcher has kept the work short but to the point.

1.8 SOURCES OF DATA

The researcher has utilized both primary and secondary sources in writing the dissertation. The primary sources include legislations, case laws in addition to the data collected in pursuance of the empirical study to be undertaken

The secondary sources comprise of a number of books, articles published in journals, magazines and newspaper, reports and internet sources.

1.9 LITERATURE REVIEW

Anisa Sheikh has explained in her article "Need of Special Legislation for live-in relationships" Live in relationship is very common in the Western countries and it is taking roots in India as well. In the case of the South Indian actress Khushboo the Supreme Court held that there is nothing wrong or illegal in living in a live-in relationship. Even though it is allowed by court but there is nothing to regulate this type of relation nor there is a definition to define it. There are many legislations which recognize directly or indirectly a live-in relationship but there isn't a uniform law for the very purpose of regulating it the way there is to regulate marriage. Prevention of domestic violence Act mentions relationships in the nature of marriage but doesn't specifically define which kinds of relationship are in the nature of marriage.

Anuja Agrawal in "Law and Live-in' Relationships in India" talks about the case of Khushboo vs Kannaimal[6]. In this case the Supreme Court said "live in relationship is permissible only in unmarried major heterogeneous sex." So, what impact does the decriminalization of homosexuality has on this judgment? Is live-in relationship legal in a

[6]Khushboo vs Kannaimal.2010 5 SCC 600.

homosexual couple or illegal? Even after decriminalizing homosexuality the motive hasn't been served, they can't marry and whether they can be in a live-in relationship is also doubtful.

V.N. Shukla has given a detailed understanding of the fundamental right to equality as guaranteed under the Constitution of India. He speaks about "Art.14, 15 and 16" of the constitution of India and states that "right to equality is not merely negative to not to be discriminated but also a positive one to be treated equally". It enforces a corresponding duty on the State to respect, protect and fulfil the right to equality.

PSA Pillai explains that under "Sec.377" "having carnal sex with a man, woman or animal may be imprisoned for life if the sex is against the order of nature." Anal sex is considered to be against the order of nature as it doesn't lead to procreation and same is with oral sex. So, any sexual activity between the homosexuals will be against the order of nature.

Of Mice, Men and Women explains that the concept of sex and gender differ. A person can be a male physically but a female mentally. This concept isn't to be mixed with transgender who are totally a different category and are often called as the third sex. The Sex of a Person can be Male but he might be a woman by gender. It is not necessary for a person to be of different se and gender to be a homosexual. A person being a male and a man can like other Male and man as well.

"Beyond Retroactivity to Realizing Justice: The Principle of Legality in International Criminal Law Sentencing by Shaharam Dana explains that in most of the modern democracy the legal maxim *"*Nullem Crimen Sine Lege*"* will be present because for a democracy the important ingredient is ROL and one of the most one ingredient of ROL is *"*Nullem Crimen Sine Lege*"* Thus if a country his a democracy it will follow the legal maxim.

Introduction to the Study of the Law of the Constitution by A.V. Dicey elaborates on what are the requirements for ROL. It says that the first requirement of ROL is "absence of arbitrariness and supremacy of law". Everything should function as per the law and the laws should be clear cut to avoid any confusion which gives rise to arbitrariness.

Supremacy of law will ensure this absence of arbitrariness. Second requirement is "equality before law". Everyone should be equal in the eyes of law irrespective of rank or post. Third Constitution is the resultant of ordinary law of the land.

Sexual Satisfaction and the Importance of Sexual Health to Quality of life throughout course of US adults, an article on the website of NCBI tells how important sexual gratification is for a healthy living and it does that by quantity researcher. It has followed the health of people and their sexual habits and came to conclusion that sexual gratification is very necessary for a healthy life.

Salmond on Jurisprudence explains that the function of law is to govern the behavior of society and law is a manifestation of the collective morals of the society and that's why law needs to be dynamic because the morals of the society are dynamic and keep on changing with time. What was illegal yesterday might not be today because society now accepts it.

1.10 MODE OF CITATION

A uniform system of citation has been adopted throughout the dissertation. The Bluebook edition (20th edition) has been adopted.

1.11 CHAPTERIZATION

Chapter 1 deals with the introduction. It is inclusive of research methodology, research questions, aims and objectives, scope and limitation of the study and various other aspects in relation to the introduction of the topic.

Chapter 2 deals with the background and history of both live-in-relationship and homosexuality in India ranging from ancient "Vedic period" to Medieval India to Medieval Mughal India to British India and in the present modern 21st Century of India. It also describes how the homosexuality has acquired various constitutional rights and the present gradual situation in terms of constitutional rights.

Chapter 3 describes about the conflicting legal issue in recognizing a live-in-relationship as legal in India. The chapter focuses on legal Maxim of *"*Nullum Crimen Sine Lege*"* i.e. no one can be punished for doing something that is not prohibited by law, Rule of Law and various legal provisions of Indian Legal Statute enabling various rights to the women in a "live-in-relationship". It also covers the dilemma of homosexual couples in live-in to acquire the same rights being enjoyed by the heterosexual couples in live-in-relationship due to the inadequate legal provisions.

Chapter 4 discusses marriages as a yardstick. This specific chapter deals with the concept of marriage as per "Hindu", "Islam" and Christian Marriage to clarify the basic differences and comparison between live-in-relationship and marriage.

Chapter 5 is an empirical study based on the data collected from both general public and homosexual couples in live-in-relationship. This particular chapter briefly describes the after effects of decriminalization of section 377 of IPC and the various landmark cases such as Naz Foundation that stood as the initial point of progressive in attributing rights to the homosexual couples. Last but not the least, the chapter gives a depth insight into the landmark case of *Navtej Singh Johar Vs Union of India* in achieving the highest benefits to the LGBT community till to this present day.

Chapter 6 deals with the various struggle and obstacles which are often faced by the homosexual couples in live-in-relationship. The reason is due to lack of any concrete provision in our Indian Legislation. The chapter showcases the diverse problems such as maintenance, domestic violence and adoption which are common among the homosexual live-in couples unlike heterosexual couples.

Chapter 7 deals with the conclusion and suggestion part. This particular chapter briefly gives the conclusion of the dissertation as well as some important suggestions being suggested by the researcher.

CHAPTER-2

HISTORY AND DEVELOPMENT OF HOMOSEXUALITY AND LIVE-IN-RELATIONSHIP IN INDIA

The concept of "live-in-relationship" where couples of their choice of partners agrees to share a bond of love and affection as spouses living together but outside the bond of recognized marriage, has often raised questions on the norms and morality of "live-in-relationship". To some people it is still seen as a taboo and whereas to some others, it is a progressive form of relationship for the current times where most of human lives and relationships remain entangled. In western countries "live-in" couples are not looked down and seen as taboo contrary to India; developing nation like India where religion plays a dominant role itself, a relationship without marriage is always accepted as taboo and immoral even though "live-in-relationship" has gained a valid legalized position today. To understand more deeply the historical background of "live-in-relationship" is of utmost importance.

The concept of live-in relationship in India is neither entirely the outcome of modern life nor it is of a recent origin. To deeply understand the validity of "live-in-relationship" the vital point is tracing its inception in India and how it has progressed with the changing times.

It is believed that traces of similar concept such "live-in-relationship" is found in "Bible" of Christianity where names of Adam and Eve are found and considered as the initial unmarried couple in human history[7]. This is solely because of the absence of any kind of concept of marriage then. They were unaware of present time's social institution but lived with each other together in a "live-in relationship" solely due to unawareness of existence of any such concept of marriage[8].

In India also, the context of "live-in-relationship is not a recent one. It is evident from the "Vedic" times that "live-in-relationship" was in existence in our society in one form or another. "Gandharva marriage" which is one such form of "Hindu" marriages according

[7]Anonymous, *Historical and contemporary aspects of live-in relationship,*Shodhganga@INFLIBNET(Jun, 6, 2020,10:15PM),https://shodhganga.inflibnet.ac.in/bitstream/10603/224850/8/08_chapter2.pdf.
[8] *Id.*

to Vedas itself gives a concrete evidence that even in ancient India "live-in" concept existed and thus it is not merely an outcome of western influencers as most Indians believe today. The gradual progress of this concept generation after generation has gained a prominent legal status in our society. To understand the insight root of live-in-relationship the far most vital thing is to trace the concept of various forms of live-in-relationship that practiced in ancient and medieval India and comparing them with the present concept which has now developed into a civilized and legalized characters.

2.1. CONCEPT OF LIVE-IN- RELATIONSHIP IN ANCIENT INDIA

It is evident in "Vedic times" that presence of "premarital relationships" was found from that era and this continued and in continuation popularly known as "live-in-relationship" in 20th century. Manu himself mentioned the reality of "premarital relationship" pointing out that it was though not common but somewhere its subsistence was observed infrequently during the "Vedic period" as well as afterwards. The perception of live-in-relationship without entering the wedlock is thus not a modern one in India instead it is of an aged old era. Moreover, demonstrations of "premarital relationships" are found in the "Hindu" scriptures in "Vedic period[9]". It is interesting to note down that even after the establishment of marriage institution, the scriptures of "Hindu" depicts the reality of premarital relationships as well. This conception of "premarital relationship" in ancient era was recognized and well known as "maitri-karar"[10]. In "maitri-karar" each opposite gender agrees to live together as friends and solemn to care for each other with love and honesty. Such oath was concluded in the form of a written agreement was made between the two consenting heterosexual partners[11].

During the "Vedic Period" most renowned form of marriages that were recognized were eight different patterns of marriages. This includes "Brahma Marriage, Daiva Marriage, Arsha Marriage, Prajapatya Marriage, Asura Marriage, Gandharva Marriage, Rakshasa

[9] Nitansh Rai, Sukant Singh Rawat, *Live in relationship among hindus: reincarnation of hindu marriage,* https://www.legalindia.com/live-in-relationship-among-hindus-reincarnation-of-marriage (Last visited Aug 14, 2020).
[10] *Id.*
[11] *Id.*

Marriage, and Paisacha Marriage[12]". Among all the eight forms of marriages "Gandharva marriage" is the core reason of discussion. This is simply due to the fact that "Gandharva marriage" are found to be similar when compared to modern "live-in-relationship". The major ingredients of "live-in-relationship" can be stated to be established and found from "Gandharva marriage". Thus, to prove the notion it is necessary to understand what is Gandharva marriage in reality. In the "Vedic Period', when a heterosexual couple consents and with mutual cooperation chooses to live together they can enter in this form of marriage even without the prior permission and involvement of their families or nor following a peculiar ritual to celebrate the marriage. It is just an oath or promise to live together[13]. Surprisingly, yet comes underneath the picture of marriage sacrament. If this feature is compared to modern times "live-in-relationship" then it can be absolutely fair to determine that "live-in-relationship" has somewhere similar status of "Gandharva marriage" However, couples in "Gandharva marriage" had to perform their marital obligations just like a married couple texts as per "Hindu" classical texts[14]. The "Gandharva" style of marriage construed in Vedas can be correlated to views of cohabitation in western world where a woman and a man jointly acknowledge living together in sexually intimate relationship without abiding marriage rituals[15].

An interesting point is that instances of "Gandharva marriages" are found in famous "Hindu" mythology of "Mahabharat". Mythology like "Mahabharata" gives an insight of new era notion of "live-in-relationship". In the "Mahabharata", Bheem and Hadimba Devi were believed to have had married under "Gandharva rituals[16]." The marriage of Dushyant and Shakuntala is an example from history of this class of marriage. In "Mahabharata", one of two major epics of "Hindus", "Rishi Kanva-the foster father of Shakuntala" recommends "Gandharva marriage" with the statement that the marriage of a desiring woman with a desiring man, without religious ceremonies is the best marriage[17].

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[12] *Supra note* 1.
[13] *Supra note* 1.
[14] *Id.*
[15] *Id*.
[16]Alakananda Bhattacharya, *Gandharva Marriage- Ancient, Modern or Both? Know All about the Unique Indian Marriage Tradition,* available at https://www.weddingwire.in/wedding-tips/gandharva-marriage--c2845. (last visited on 14 Aug, 2020).
[17] *Id.*

Even in "Vaishnav" community which is prevalent in some definite place of India, the couple enters in marriage in a like manner but in front of "Lord Krishna's" idol[18].

In a nutshell it can be aforementioned that old age era of India had very optimistic and broad positive views as regards to pre-marital forms of relationships besides marriage. However, with the passage of time the notion slowly ceased when it encountered dominant religion phase in our society. Many disregarded the perception of "Gandharva marriage" as illegal, immoral and opposed to morality. This resulted in cessation of "Gandharva marriage" by the 16th century, which was once included and approved as an ideal form of marriage turned down to illegal form of marriage. Another significant reason of the downfall of "Gandharva marriage" is that early marriages[19] and child marriages started to take place and hence the girl or boy was in no position to have consent.

2.2. CONCEPT OF LIVE-IN-RELATIONSHIP IN MEDIEVAL INDIA

The exercise of similar notions of live-in-relationship also existed in medieval period of India. From ancient stages an accepted norm was that whenever wives cannot become mother then concubines are taken into lives for the sole purpose of bearing child. This revealed a significance of concubines in ancient time[20]. This practice even followed in medieval phase when wife fails to give birth to an heir. However, in medieval times, "concubinage enjoyed legal tolerance between two unmarried people similar to the status of "common-law-marriage".[21] The idea of having concubines was not an odd old concept hence it's always been in practice globally as well as India. A unique change felt during medieval period is the changing variation of giving recognition to them from "sexual slavery to common-law-marriage".[22] These dissimilarities have resumed to Mughal Rule in India. During Mughal period, the custom of concubinage took place largely and somewhere it was observed that "concubinage of unmarried people or their cohabitation lost the valuation akin to common-law-marriage".[23]

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[18] *Supra note* 16.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Supra note* 1.

2.3. LIVE-IN-RELATIONSHIP IN MODERN INDIA

A noteworthy of advancement that perceived was glorious changes in numerous evil social customs and brought into picture many positive renovations. Many social reformers rose during British India and strongly participated in eradicating social evils which existed then. In addition, a good number of effective Acts and Legislations were also implemented to remove the discrepancies that were formed during that time. The impact of British Indian laws led to the outcome for annihilating the process of keeping concubinage and other evil customs in Indian society. Even it was accepted to be nullified the custom of concubinage in India still continued even post Independent India[24].

The elements of "live-in-relationship" in modern times or simply "live-in-relationship" are founded in Gujarat. "Maitri-Karaars"[25] a form of "live-in-relationship" but which is not exactly given the name of "live-in-relationship" for a long time then. This "Maitri-Karaars" is usually describe as a contract of friendship where both man and woman enter mutually with consent and on the terms and conditions that both will live a life of friendship and woman won't demand obligations and rights beyond friendship. In short woman and man will live together and specially woman without claiming any rights more than friendship during the time together and even after the end of friendship. So, "Maitri-Karaars" was a form of modern "live-in-together" conception where both man and woman do not enter into any ritual but decides to stay together. However, the only difference that makes "Maitri-Karaars" differ from "live-in-relationship" is the presence of written contract in which both man and woman clearly write down their desire not be bound by any relationship and rights besides mere friendship. With the changing times, many objected to it and declared such relationships as unacceptable and illegal though it had been in continuation for a long time. These relationships are seen as socially ambiguous and "sexually exploitative relationships." The aim was that male in such relationships was always wedded and the female was a single woman who was too accountable for the income of her parental family. Since she assumes that she could never

[24] *Id.*
[25] *Id.*

marry her family readily agrees to such an agreement because this was the lone way, she can relish a carnal relationship with a male and no questions asked. When the story of "maitri-karaar" blew up in the media many years ago, it was declared illegal and the contract became was of no value.[26]

Even in 21st century even though "live-in-relationship" has occupied a legal position in India still it is not socially acceptable by majorities. Couples yet struggle to find a place for themselves without being judged by the society. However, many changes were brought that helps woman living in such relationship to claim the legal rights of maintenance, protection from domestic violence and many more.

2.4. HISTORY OF HOMOSEXUALITY IN ANCIENT INDIA

By looking at the history of ancient it is concluded that as popularly believed homosexuality is not a western concept and it existed in India in the past as well. It is evident from the various facts that many examples of presence of homosexuality is found in "Hindu" Mythology, "Vedas" and various literature drawn from"Hindu","Buddhist", "Muslim", and modern fiction also testifies the presence of same-sex love in various forms[27]. Ancient texts "suchas" the "ManuSmriti", "Arthashastra", "Kamasutra", "Upanishads" and "Puranas" refer to homosexuality. Also, there are reports that same-sex activities are common among "sannyasins", who cannot marry[28]. Thus, instances of homosexuality are available in historical and mythological texts world over and India is not an exception to this. The Cultural residues of homosexuality can be seen even today in a small village Angaar in Gujarat where amongst the "Kutchi community" a ritualistic transgender marriage is performed during the time of "Holi festival". This wedding which is being celebrated every year, for the past 150 years is unusual because "Ishaak", the bride groom and "Ishakali" the bride is both men.[29]

2.5. ILLUSTRATIONS OF HOMOSEXUALITY IN ANCIENT INDIA

[26] *Supra note* 1.
[27] Anuradha Parasar*, Homosexuality in India – The Invisible Conflict,* Delhi High Court Library, available at http://www.delhihighcourt.nic.in/library/articles/legal%20education/Homosexuality%20in%20India%20-%20The%20invisible%20conflict.pdf. (last visited on 14 Aug, 2020, 1:41 pm).
[28] *Supra note* 21.
[29] *Supra note* 21.

If we open the history, instances of homosexuality is found in ancient India. The concept of "homosexuality" is not a new era trend concept, in fact it is old origin. To understand as a whole brief description of various occurrences of homosexuality and homosexuals mentioned in Ancient India as well as in Hindu epics like "Ramayana and Mahabharata" are shown in the following stepwise table:

1.	"In the temples of Khajuraho, there are images of women erotically embracing other women and men displaying their genitals to each other. Scholars have generally explained this as an acknowledgement that people engaged in homosexual acts. The sculptures embedded in the Khajuraho temple depict what seem to be sexual fluidity between man and man and woman and woman. There are even instances of all-female orgies".
2.	"In the Valmiki Ramayana, Lord Rama's devotee and companion Hanuman is said to have seen Rakshasa women kissing and embracing other women".
3.	"The Ramayana tells the tale of a king named Dilip, who had two wives. He died without leaving an heir. The story says that Lord Shiva appeared in the dreams of the widowed queens and told them that if they made love to each other, they would have a child. The queens did as ordain by Lord Shiva and one of them got pregnant. They gave birth to a child, who went on to become famous king Bhagirath, best known for having brought River Ganga from heaven to the earth."
4.	"The Mahabharata has an interesting story about Shikhandini, the feminine or transgender warrior of the time and responsible for the defeat and killing of Bhishma. Shikhandini was a daughter of King Drupada, who raised her as a prince to take revenge from the Kurus, the rulers of Hastinapur. Drupada even got Shikhandini married to a woman. After her wife discovered the reality, she revolted. The day was saved by divine intervention bestowing Shikhandini with manhood during night. Shikhandini henceforth lived like a hermaphrodite"

5.	"During the great churning of milky ocean, according to Mastya Purana, Lord Vishnu took the form of a beautiful woman, Mohini to trick the demons so that the gods could drink all the amrut (the immortal juice found from churning of ocean). Meanwhile, Lord Shiva saw Vishnu as Mohini and instantly fell for him. Their union led to the birth of a child -- Lord Ayyappa".
6.	"The famous law code, Manusmriti provides for punishment to homosexual men and women. Manusmriti says that if a girl has sex with another girl, she is liable for a fine of two hundred coins and ten whiplashes. But if lesbian sex is performed by a mature woman on a girl, her head should be shaved or two of her fingers cut off as punishment. The woman should also be made to ride on a donkey"
7.	"In the case of homosexual males, Manusmriti says that sexual union between with two men brings loss of caste. If a man has sex with non-human females or with another man or indulges in anal or oral sex with women, he is liable for punishment as per the -Painful Heating Vow".
8.	"Arthashastra of Kautilya -- a treatise on politics -- also mentions homosexuality. But the book makes it a duty of the king to punish those indulging in homosexuality and expects the ruler to fight against the social evil"

Source: Homosexuality in ancient India: 10 instances, by India Today.

2.6. EXISTENCE OF HOMOSEXUALITY IN MEDIEVAL MUGHAL PERIOD

During the medieval period, especially during the Mughal Dynasty, homosexuality was prevalent. One such prominent homosexual relationship is seen between Ala Uddin Khilji and his eunuch. During the Mughal Period many incidents of homosexual love stories of boys was common and commonly practiced at the court of Muslim Rulers and Urdu and Sufi poets celebrated it.[30] In many incidents it is found that Babar, the first Mughal emperor of India, had written romantically about his love affair with a boy, Baburi, at

[30] *Supra note* 24.

Andezan, in the work "Turuk-i-Babri". Relations rulers and slaves were common in that period. The best-known relationship was Sultan Alauddin Khilji and his eunuch slave MalikKafur.

2.7. HOMOSEXUALITY IN PRE AND POST INDEPENDENCE

When British invaded India, the notion of homosexuality was considered illegal and criminalized. It was during the British Rule when IPC was enacted where Sec. 377 also itself provided punishment for homosexuals and declared as an offence considering it as act against nature. However, in the present 21st era of India, many efforts were done to change the status of homosexuality as an offence to legalizing it. Since then, homosexuality was always in a negative position and everyone looked down upon it and declared as against nature rule and an immoral, evil process committed by those who involved in it.

2.8. LEGALITY OF HOMOSEXUALITY IN MODERN INDIA

The inception of legality of homosexuality in modern Independent India has been be traced back to the case of *Naz Foundation v Government of NCT of Delhi and Others in the year 2009*[31]. In this particular case, the Delhi HC declared a progressive judgment in favor of homosexual community. Earlier before announcement of these judgments, homosexuality itself was presumed to be illegal within Delhi. However, post Naz foundation judgment, the scenario changed and some parts of "Sec. 377" of IPC were stricken down along with giving these homosexuals and transgender the rights to "equality before law and equal protection of law, discrimination against sexual orientation and right to life and liberty" of the Constitution of India. A fair and equal treatment was seen to be implemented in case of LGBT community by the Delhi.

In short, Naz Foundation case is regarded as the first ever legal progress determining various constitutional rights to the LGBT community. Post after the judgment by Delhi HC in Naz Foundation case hopes arose among all the homosexuals and other gay, transgender communities in the society. Although the SC of India did not favor any rights

[31]Naz Foundation v Government of NCT of Delhi, (2009) 111 DRJ 1).

to the LGBT community then but the initial development of legalization of homosexuality can be said to be started from this particular judgment.

In later years, especially in *Suresh Kumar Koushal&Anr v Naz Foundation & Others*[32]a criticism arose against the LGBT community when SC of India and objected the LGBT community rights and totally rejected the judgment given in Naz Foundation. The SC laid its opinion against it and criminalized even consensual intimate relationship of LGBT community under "Sec. 377" of IPC. This dissenting judgment proclaimed by the SC created a negative impact not only on the LGBT community but also internationally.

The effects of SC judgments in Koushal Kumar case imparted a negative dictation of law in the society. However, positivity came to light in 2017, when 9 judge bench of the SC in *K.S. Puttaswamy v Union of India*[33] overruled the judgment proclaimed by two bench judge in Suresh Koushal Case. In this case, privacy extended even towards the LGBT community who were once deprived because of their difference in sexual orientation. The judgment highly regarded the privacy rights of the LGBT community.

A landmark judgment in the history of LGBT community is the *Navtej Singh Johar Case. and ors Vs. Union of India (UOI) and Ors.* In 2018. This case removed the constraints of homosexuals and transgender. In this case, the SC of India decriminalized the parts of "Sec. 377" of IPC and allowed them constitutional rights and legalization of LGBT relationship. This landmark judgment opened a new era in the lives of LGBT community. Presently every lesbian, gay, bisexuals or transgender have equal access to "constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination guaranteed under Articles 14, 15, 19 and 21 of the Constitution" just like any other citizens of India.

An important highlight of the judgment in Puttaswamy case is that LGBT communities were decriminalized from expressing their love and affection among each other.

The "Navtej Singh Case" is a great win for the homosexual community in that homosexual acts have now been decriminalize.

[32]Suresh Kumar Koushal&Anr v Naz Foundation & Others, *(*2014) 1 SCC 1.
[33]K.S. Puttaswamy v Union of India, (2017) 10 SCC 641.

CHAPTER-3

IS LIVE-IN RELATIONSHIP IN INDIA LEGAL?

Live in relationship has become common feature of the modern society but still it is considered to be taboo. Nowhere does any law outlaw live-in relationship neither there is any statute which permits live-in relationship. So, the question arises what is the status of live-in relationship in India. This questions specifically bothers for homosexual relationships. With the decriminalization of homosexuality what becomes the status of homosexual live-in relationships in India? For these questions to be answered we need to broaden our perspectives a little bit and look at what is the legal status of those acts for which there is no specific law permitting it nor any specific law prohibiting it.

It is well known fact that no one is guilty unless and until proven guilty beyond reasonable doubt. It has always been the function of law to dispense justice[34]. Aquinas and Salmond to have held justice in high regard and have not shied away from admitting that justice is the aim of law, even though they were positivist who deny to admit the relation between righteousness and law. This arguments tells about the need for explicit laws which clearly define what is a crime then only a person can be held guilty "beyond reasonable doubt" to stress more on this we refer to legal Maxim of "Nullum Crimen Sine Lege" which requires that no one no one can be punished for doing something that is not prohibited by law.

Art. 20(1) [35]too says that "no person can be convicted of any offence except for violation of law in force" these to the legal Maxim and Art.20 (1) make it very clear that nothing which is not prohibited is a crime.

3.1. ORIGIN OF "NULLUM CRIMEN SINE LEGE"

"Nullum Crimen Sine Lege" though has several meanings but in a narrower meaning it is that exact formulation which concerns the Action- Consequence element of punitive laws. The essence of that Action- Consequence component is that "no person shall be penalized but in pursuance of a statute which fixes punishment for criminal conduct."

[34] P.J. FITZGERALD, SALMOND ON JURISPRUDENCE 60 (12TH ED.2012).
[35] INDIA CONST. art. 20 cl. 1.

Exclusion employed in it is that no conduct shall be held criminal unless it is specifically described in the conduct circumstance component of a panel statute. Adding in understanding of *"*Nullum Crimen Sine Lege*"* is included the rule that Panel Statutes must be strictly interpreted and significant rule of it is that "Penal Laws shall not be given retroactive effect."

Now coming to the origins of this *"*Nullum Crimen Sine Lege*"* rule. Though characteristic of its Latinity, it is not of a Roman source but was born in Eightieth Century Liberalism. Although certain aspect of this rule has some irregular expression in Roman history though it blossomed mainly in Eighteenth Century. To limit the Roman jurisprudence of "Extraordinaria judicia" that is limitless discretion in the judiciary required pre-definition of offence and penalty. Under Roman law which touched it's most rigorous rank with Sulla, who insisted that "for certain wrongdoings both offence and penalty be exactly described in the statute under which the accusation was brought." Under Sulla the prohibition against "retroactivity" of Penal Laws was well known and followed.

In the Eighteenth century when mediaeval doctrine of the intensely engrained pre-eminence of law and its facet of Theological authoritarian aspect got challenged by the rise of modern state. Though many say origin of "Nullum Crimen Sine Lege" in Magna Carta may not be very true". Actually, both were more a limitation of both processes and substantiate Law upon the Royal Prerogative. Some traces it in English Principal of Law from "chart of Henry", the first which got reiterated in the "constitution of Clarendon" in 1164.Actually, "Magna Carta" is the great symbol of the Socio-Political forces that established the supremacy of the ROL in England. After that the rise of Parliament has an important part to be precise it is Parliamentary influence which actually changed the sense of the *"*Nullum Crimen Sine Lege*"* near to some real estimate to the rule as it is today. The "Bavarian code of 1751" and "Austin code of 1769" also paved the way for the ingredients of this law.

However, the real motivation to achieve the theme of *"*Nullum Crimen Sine Lege*"* came with the "French Revolution". Long before the French Revolution the movement for codification had advanced some of the idea underlying *"*Nullum Crimen Sine Lege*"* on

its technical side. It was in the "code of the Austrian Monarch Joseph II" that a specific exclusion of analogy, first entered the modern criminal law. The English tradition of rule of law translated by Eighteenth century French philosophers into terms expressive of Revolutionary ideology, joined with the continental movement for codification to provide *"*Nullum Crimen Sine Lege*"* with its particular current meanings.

During the Revolutionary French era by drafting "Declaration of the Rights of Man", Lafayette got inspiration for this from "Virginia Declaration". The declaration fixed the prevailing meanings of *"*Nullum Crimen Sine Lege*"* not only as a basic constitutional safeguard of individual against of oppressive government but also as a "Cardinal Tenet of Penal Law." The rule was restated in the "French constitution of September 3, 1791." It reappeared in the French code of 1810, there to remain practically unchanged. The rule incorporated in "Bavarian code" drafted by Feuerbach in1813.

Feuerbach is generally credited with the statement of "Nullum Crimen Sine lege" in its current form. He pronounced three principles and declared that they should be adopted without exception *"*nulla poena sine lege, nullapoena sine crimine, nullum crimen sine poena legali.*"* Feurbach's integration of prevailing political ideology with criminal law was simple enough- one who violates the liberty guaranteed by the social contract and safeguarded by penal law commits a crime. All future offenders cannot be known in advance and physically coerced. Hence, he argued that the essential purpose of punishment must be deterrence by threat it means it must be psychological. Incidental purposes were direct deterrence by witnessing the infliction of punishment, making the State secure through incapacitation of the offenders. He was tempering penalty with humanitarianism. To his theory of psychological constrain, Feurebach added those principals regarding the punishment of offenders which have generally been associated with English Utilitarianism and classical penology.

So, to conclude the origin of *"*Nullum Crimen Sine Lege*"* can be traced back to Eighteenth Century Liberalism. Though the phrase is in Latin, its formative can be traced to English Liberalism, French Revolution and in the rise of Modern States. Its final formation was outlined by the three principles of Feuerbach. He had tempered Penalty with Humanism by mixing Psychological Constrains with principal of English Utilitarian & classical Penology, the final form of *"*Nullum Crimen Sine Lege*"* got originated.

3.2. RULE OF LAW

"Nullum Crimen Sine Lege*"* Is considered best basic requirement of rule of law by modern democratic state does it means any modern democracy[36] which follows rule of law will adhere to this legal Maxim we examine whether India follows rule of law or not if it does then it should adhere to the legal Maxim. ROL in simple terms means that law lies above all and even the king is not above it. Dicey described the rule of law.[37]

1 "as absence of arbitrariness and Supremacy of law"

2 "equality before law"

3 "constitution to be result of ordinary law of land"

India possesses the first two ingredients. Firstly, there is no arbitrariness in law as India follows a written constitution which has explicitly written down rules assigning power to the government and has also put limitation on the very powers provided, this is called "constitutionalism"[38] and the government is Constitutional government. The powers of government are limited by the provider itself i.e. the constitution, hence there is very little scope of arbitrariness. Secondly, India have equality before the law[39] anyone and everyone is equal before the law. Moreover, the state just doesn't have the "negative responsibility" not to discriminate but also a "positive responsibility" to treat everyone equally and that's why there are other articles in the constitution such as Art. 15 16, 17 which explicitly provide for equal treatment. In this way the constitutional provisions ensure ROL in India. Judicial decisions to firmly confirm the presence of ROL in the country the SC has ruled that ROL is a part of "basic structure" and cannot be destroyed or abrogated by any act of parliament, in *A.K.Kraipak vs UOI*[40]. The SC specifically mentioned that our state by the virtue of being a welfare state is controlled by ROL in *Maneka Gandhi VS UOI*[41]SC affirmed that arbitrariness in exercise of power by the state would infringe the rights of people does it is well established that India has ROL and that the basic ingredients of rule of law *"*Nullum Crimen Sine Lege*"* has to be present.

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[36]Shaharam Dana, *Beyond Retroactivity to Realizing Justice: The Principle of Legality in International Law Sentencing*, Vol 99.JCLC, 857, 865-867 (2009)

[37] A.V. DICEY, INTRODUCTION OF STUDY OF LAW OF THE CONSTITUTION 90 (Macmillan, 10th ed 1959).

[38] M.P. JAIN, THE CONSTITUTION OF INDIA 57 (8th ed 2018).

[39] INDIA CONST. art. 14.

[40] A.K.Kraipak vs UOI, AIR 1970 SC 150 (India).

[41] Maneka Gandhi VS UOI, AIR 1978 SC 597 (India).

3.3. ARTICLE 20(1)

Our constitution has engrained in it the legal Maxim *"*Nullum Crimen Sine Lege*"*. Art 20(1)[42] makes explicitly clear that "no person shall be convicted of any offence except for other than the violation of law in force at that time it is" thus it is clear that without a specific law there can be no violation of it. Thus, it restrict "retroactivity" as well, if there was no law prohibiting the act at the time of the commission and there then no new law can outlaw it[43]is very clear that there must be clearly laid out law and then only its violation can be termed as an offence. Art. 20(1) use the word 'law in force'. The "law in force' must be the law which was actually an operation on the date of commission of offence and not the law which was made by legal fiction is made operative by virtue of the power of Legislature to pass retrospective law". In *Rao Shiva Bahadur Singh versus State of Vindhya Pradesh*[44] the court observed that the law in force means law of factually in operation. There is no such low in India which says that live-in relationship is a crime hence we can conclude that the contrary can't be true.

3.4.LEGAL VALIDITY OF LIVE-IN-RELATIONSHIP

The research has reached to the conclusion that nowhere in any law in India has live in relationship in outlawed and has further illustrated that for anything to be illegal it must violate a law in force which clearly prohibited this not being the case nothing can be illegal. But the problem is no law recognize is live-in relationship as well and does it create a confusion the researcher in this chapter shows that even though there is no law which clearly legalizes live in relationship but we find provisions here and there which recognize live in relationship.

3.5. RECOGNITION OF LIVE-IN IN INDIAN EVIDENCE ACT

Sec 124 of IEA[45] says that "the court may presume" some facts which are as per the knowledge of judge is within the course of normal happening. These presumptions are valid until they there is an evidence presented against the presumption is[46].The pre-

[42] INDIA CONST. art. 20. cl. 1.
[43] INDIA CONST. art. 20 cl. 1.
[44] Rao Shiva Bahadur Singh v. State of Vindhya Pradesh, A.I.R 1955 SC (India).
[45] Indian Evidence Act, 1992, Act No. 101 of 1992.
[46] Fateh Gunai v. sardar, AIR 1958 Punj 333 (India).

requisite of these assumptions is that the fact should have had happened in course of natural events as per general human conduct. These assumptions are clearly based on knowledge of the court and no whatsoever rule applies. For example, if a letter has been posted by "A" then the court may presume it has reached "B" if "B" couldn't disprove resumption irrespective of the fact whether "B" has received the letter or not.

The word "may" has its own significance it means the court is not bound by any rule and it can or cannot presume the fact.

This Sec. has been used by the court to presume marriage if there is long cohabitation of the parties then live in relationship can't be termed as "walk-in walk-out" relationship and there rise as the presumption of marriage[47] this presumption however like all other presumption is rebuttable[48].In *Lalsa vs Upper District Judge, Basti*[49].The parties were always treated as husband and wife. The deceased husband was a Railway employee. The deceased husband has acknowledged female as wife by making declaration in various forms and documents maintained by railways. The parties were living together for four years, the court presumed them husband and wife. When a man and a woman cohabit for long time the court presumes in favor of marriage against concubage[50].

3.6.PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

To protect women from violence PWDVA has a long list of women who are covered by it. This act has realized that women regardless of the kind of relationship she has with the abuser can face abuse in that relationship, for the very matter of the PWDVA includes such relationship as well as which are like marriage but not exactly marriage. This includes live-in relationship as well, the condition being that it is "like marriage." PWDVA a uses phrases 'RINM' thus, for a living relationship to be a "RINM" it has to be more than just "walk-in walk-out relationship". In *Shrimati Gurpreet Kaur Vs. Shri Rajiv Singh*[51] the court "RINM" means de-facto marriage in *Somarupa Sathyanarayanan Vs.Shrimati Vijayalakshmi*[52] the court held that for a relationship to be "RINM" both the parties must be qualified to enter legally into a marriage. Thus, a "Hindu" man and a

[47] Madan Mohan Singh v. Rajni Kant, AIR 1967 SC 1134 (India).
[48] Gokul Chand v. Pravin Kumari, AIR 1952 SC 23 (India).
[49] Lalsa v. Upper District Judge, Basti, AIR 1999 ALL. 342 (India).
[50] Mohabbat Ali v. Md. Ibrahim Khan, AIR 1929 SC 135 (India).
[51] Rajeev Singh vs Gurmeet Singh, AIR 1998 Del 384
[52]Somarupa Sathyanarayanan Vs. Shrimati Vijaya Lakshmi, AIR 1992 SC 604

woman who are already married can't be in a "RINM" as bigamy is not permitted in "Hindu" personal law. A live-in relationship can be RINM only if it resembles marriage otherwise it will be a walk-in workout relationship. This view was already held in the case of *Indra Sharma vs V.K.V. Sharma*[53] the respondent was already married and hence he was not qualified to be married to the appellant and as it could not be classified as marriage.

3.7.CODE OF CRIMINAL PROCEDURE, 1973

Sec. 125 of CrPc provides that a man has to maintain his wife and one who doesn't comply may be punished for one year[54].Wife means a "divorced wife[55]" who cannot maintain herself. This provision is a measure of Social justice and specially enacted to protect women and children and falls within the Ambit of Art.15 (3)[56] and Art.39[57]. For this section wife means only "legitimate wife[58]" or a "legally wedded wife[59]" prima facie it appears that a woman in live-in relationship would be included in the category wildly but in *D.VeluswamyVs. Patchaiammal*,[60] the Supreme Court held that two people who live together and if the society perceive them as husband and wife then she can claim maintenance.

3.8. HOMOSEXUAL LIVE-IN RELATIONSHIP

There is no such thing as marriage for the homosexual couples thus the next best option that they have is to be in a live-in relationship with their partner but the clouds of mystery surround the legal status of live-in relationship of homosexual couples as because homosexuality is a totally new concept India. New law evolves from the need of it and with changing society the law keeps on changing.

3.9. LEGAL STATUS OF HOMOSEXUAL IN LIVE-IN RELATIONSHIP

It has already been proved by the researcher that nothing is a crime unless there is clear-cut violation of any law. Thus, the pre-requisite becomes that there should be law. Before

[53]Indra Sharma vs V.K.V. Sharma, 2014(1) RCR (crl) 179 (sc).
[54]The Code of Criminal Procedure, 1973, Act No. 2 Of 1974.
[55]The Code of Criminal Procedure, 1973, Act No. 2 Of 1974.
[56] INDIA CONST. art. 15. Cl. 3.
[57] INDIA CONST. art. 39.
[58] Savitharamana v. Ramanarasimhaih, (1963) 1 CR LJ 13.
[59] Yamunabai v. Anantrao, 1988 Cr. LJ 793.
[60] D.Veluswamy vs. Patchaiammal, 2010 (9) RCR (crl) 746 SC.

the decriminalization of homosexuality there existed a law in form of Sec.377[61] in IPC which criminalized any form of homosexual conduct but now with the decriminalization what status does that leave to homosexual couples? Since there is no explicit law pronouncing homosexual live-in relationship illegal thus it becomes clear that homosexual live-in relationship is legal. As already explain Art 20(1)[62] and *"*Nullum Crimen Sine Lege*"* ensure this. Though the live-in of homosexuals isn't illegal as no law prohibits it but on the other hand there is no law as well which recognizes the homosexual live-in relationship. So much so there are no judgments as well by any court which have talked about homosexual live-in relationships. Homosexual relationships though not legal are not recognized by the society and law and they end up being "walk-in walk-out" relationships. The effect being that they are devoid of the rights that the heterosexual couples have.

3.10. CONFLICTING SITUATION IN RECOGNIZING HOMOSEXUAL RELATIONSHIP BY LAW

The recognition provided to the heterosexual couple give some benefit to the live-in couples which are available only to the married couple such as protection in PWDVA, maintenance but to gain the benefit which are available to the married couple the live-in relationship should be resembling a marriage. This phrase "resembles a marriage" has been used by statutes and used directly or indirectly in many places and many judgements the domestic violence act has defined "RINM" and the court has explained the meaning of relationship in nature of marriage. Further, as mentioned earlier the court has made it clear that what are the ingredients which make a "RINM" that it becomes clear that not all live-in relationship is alike some are "No Strings Attached" "walk-in, walk-out" whereas others are recognized by the society. It is very clear that the rationale behind providing marriage like benefits will even couple is that they resemble marriage. The standard measure of comparison is marriage, one reason behind such comparison can be that many communities no rituals of marriage is required and just for which cohabitation is enough to make it a marriage. Making marriage standard of comparison for recognizing live-in relationship has had the effect that homosexual couples are not devoid

[61] Indian Penal Code, 1860, Act no. 45 of 1860.
[62] INDIA CONST. art. 20. cl. 1.

of these benefits t heterosexual couple can't marry as no law recognizes the same sex marriage this has caused them double losses neither they can marry nor can their live-in relationship be recognized in the eyes of law. The next best option available to homosexuals in absence of marriage is live-in but live-in relationships too leave them hanging and devoid of rights. The reason that they live in relationship can't be recognized by law is because it can't be compared to marriage because homosexual marriages don't exist.

CHAPTER-4
WHY MARRIAGE IS A YARDSTICK?

India is a country where family relationship and kinship is held in high regard. This is very evident and need not much prove. This kinship has started the hereditary "caste system"[63] and has given rise to many modern problems such as nepotism. In her address to Oxford Maneka Guruswamy says that in India our identity starts from whom we are related to. Aristotle said that family is the basic unit of society[64] and this is more than true for India as a nation. If you the look closely then we find difference in the opinion from Western world. Here, in India marriage unlike West is not just an option but a compulsion. This many people would disagree with and give a hundred examples of single person but the reality is marriage is a must in Indian society the Western societies bent towards individualistic approach but India has more of a community approach and no doubt this is the reason that the divorce rate is low in India. That can be whole other debate whether it is good or it is bad but a matter of fact it is low, the next question arises is why is marriage so important to India to answer this question we have to look into one even more important aspect of Indian society religion. India is a kaleidoscope of religions and find many of them and many varieties in them but the most dominant over here are "Hinduism" "Islam" and Christianity making 18.5% 13.4% at 2.3 % respectively only 0.1%[65] people have not stated their religion. This figure is very low when compared to USA which has 26% atheists[66] and this percentage was even higher in Scandinavian countries. Religion has a lot to do with the Matrimony obsessed nation. In all the religions marriage has been held in high regard, may be at the time of inception of the religions increasing the population was an important thing. There are many religions in India and if the research covers each and every religion that this research would become a description of the religions, for the sake of simplicity that in such has committed himself to three major religions of India "Hinduism" and "Islam" and Christianity define what is the importance of marriage for religion.

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[63] 10th Mandal, Rig Ved.
[64] William Bennet, *Stronger Families Stronger Society*, NY Times, April 24, 2004.
[65] 2001 Census of Religion.
[66] Anonymous, *Non-existence of Faith*, American Atheists, https://www.atheists.org/ (last visited on 14 Aug).

4.1. MARRIAGE AS PER "HINDUISM"

"Hindu" marriage is considered to be a sacramental bond and that's why previously the "Hindu" society didn't recognize divorce. As per "Hindu" belief marriage is not for one but seven lives. It is also one of the "sanskar" out of the total sixteen. These "sanskar" can be understood at as rites of passage which are necessary to obtain "moksh" which is the state of "nirvana" in "Hinduism". Marriage being one of the "sanskaar" too is very important for the attainment of "moksh" the importance of marriage is not just in the afterlife but also in the living. Wife has been called the source of "purushartha" not only of "dharma","artha","kama" but also of "moksh".It is evident that to attain "moksha" to having a wife is important this is because wife is half of the husband. A wife called "patni" is also "dharampatni" that means a person who performs Dharma with her husband. Without a wife many of the "yajnas" are incomplete, to perform them there should wife with the man. Thus, it becomes clear that having a wife completes man and he can't attain "Moksha" which is the ultimate aim of "Hindu" nor can he perform all "yajnas" without her. This is the reason why "Hindus" hold marriage in high place and hence divorce was too was not an option but later on it was introduced.

4.2. MARRIAGE AS PER ISLAM

A person who follows "Islam" is called "Muslim". For a "Muslim" the highest award that he can I get is to go to "Jannat". The holy book of "Muslims", "Quran" and the"Hadiths" at many places describe the ways to attain "Jannat" and one of the ways to do that is to get married. It is considered that whoever gets married has completed half of his faith. In "Islam" marriages contractual unlike in "Hindus" but still is held in high regard and is considered to be the shield against immoral vices that a person might involve due to cravings of the flesh "And those who guard their chastity[67]" "The Holy Quran" directs everyone to marry and if they don't without any good reason or excuse then they have disobeyed the word of God. Marriage in Islam is considered "Sunnat Muwakkidah" meaning an act which when performed will get a person closer to "Jannat". Due to such a high regard for the marriage all the kinds of marriage that are considered to be experimental are forbidden in "Islam".

[67] Koran 23.5.

4.3. MARRIAGE AS PER CHRISTIANITY

Christianity too has the same view on marriage as that of "Islam" and "Hinduism". For the Christian marriage is a very special bond made by God himself. They believe that a divorce is disobeying the God's will. In the "Holy Bible" it has been said that the man will leave his mother and father and join his wife. The Christians go to the extent that they proclaim that husband and wife are one flesh[68] and hence can't be separated. Thus, to prevent divorces the Christians have an engagement period so that the couples get to know each other and find out if they are compatible if not then they can separate. "It is better to break engagement but not marriage".

[68] The Holy Bible, Genesis chapter 2 verse 25.

CHAPTER-5

THE EFFECTS OF DECRIMINALIZATION OF HOMOSEXUALITY

Homosexual relationship was made a crime by "Sec.377"[69] of IPC introduced in 1861 by British based on "Buggery Act of 1853" and this continued for a very long time. Homosexuality was seen as an offence because it was against natural course and it didn't lead to procreation. It was considered to be unnatural by British because of their Biblical beliefs. The Holy Bible prohibits same sex relationship in many places such as book of "Leviticus[70]" and many other places.

The west has long back started to accept LGBT community. France had accepted LGBT back in 1791 with the adoption of "New Penal Code" which no longer criminalized sodomy and then Prussia, Luxembourg and Belgium followed in 1794, 1794 and 1795 respectively. Finally, the most successful democracy the USA in 2003 ruled anti-sodomy laws to be unconstitutional[71]. Mostly after developments in USA India too started to see Pro LGBT movements. The resultant was in 2009 Delhi HC pronounces the anti LGBT law to be against FRs provided in the "Constitution of India". But, in 2013 Supreme Court reversed the decision of Delhi HC in *Naz Foundation Vs government of N.C.T. of Delhi*[72]. This led to outcry from different spheres there discontent on social media from movie industry International forum and political parties. Finally, in year 2019 Supreme Court finally decriminalize homosexuality in *Navtej Singh JoharVs Union of India*[73].

5.1. *NAVTEJ SINGH JOHAR V UNION OF INDIA*

This was the case which finally allowed who sexual relationship. It made consensual sexual relation between two adults legal. Thus, without striking out "Sec. 377[74]" it amended it.

5.1.1. Petitioner's Arguments

The petitioner has argued for legalization of homosexuality on the basis of right to privacy, equality, no discrimination on the basis of sex and right to freedom of speech.

[69] Indian Penal Code, 1860, Act no. 45, 1860.
[70] The Holy Bible, Levictus.
[71] Lawrence et al. v. Texas, 539, U.S. 558 (2003).
[72] Naz foundation v. Govt of NCT of Delhi, 160 Delhi Law Times 277.
[73] Navtej Singh Johar Vs Union of India, AIR 2018 SC 4321.
[74] Indian Penal Code, 1860, Act no. 45, 1860.

The petitioner has argued that sexual orientation is protected by "Art.21[75]" and any discrimination would run contrary to constitution. "Art.21" gives the "right to life and liberty" and this includes living a life which is more than "mere animal existence[76]". Sexual gratification is very important for a human. A good sexual life is very important for a quality life. In an article[77] published on "National Centre for Biotechnology Information" the researcher has found that sexual satisfaction was a highly important aspect of quality of life and this was supported by empirical data. The petitioner has argued that sexual orientation is an essential attribute to privacy. Privacy has been included under "Art.21" and the sexual orientation is protected by FRs. "Right to Equality" guarantees that there will be no discrimination everyone will be equal in the eyes of law and hence it will be violating "Art.14[78]" as well. The petitioner has argued that there is no "intelligential differentia[79]"The "reasonable classification" between "natural" and "unnatural sex "as order of nature has not been defined anywhere. The petitioner has further argued that "Sec 377" of IPC also violates "Art. 15[80]" as it discriminates on the sex of person's partner.

5.1.2. Respondent's arguments

The applicant has argued mainly on "reasonable restrictions" of FRs, morality and homosexuality being unnatural. The applicant has argued that all the fundamental rights are subject to "reasonable restrictions" and within this "reasonable restriction" falls homosexuality. Thus, the right to privacy is to limited by "reasonable restrictions" and hence cannot be abused. The applicant has argued that homosexual sexual relationships are carried by abusing organs and this abuse goes against the concept of dignity and hence it is against FRs as they provide "right to live with dignity". The law made in "Sec.377" is right and is made after looking at the system and principles which prevailed in ancient India. To illustrate that the intervenor has put forth the work of W.Friedman

[75] INDIA CONST. art. 21.
[76] Maneka Gandhi v. UOI, AIR 1978 SC 597.
[77] Flynn KE, Lin L, Bruner DW, et al. *Sexual Satisfaction and the Importance of Sexual Health to Quality of Life throughout the Life Course of U.S. Adults*. Vol 4. J Sex Med. 325, 342-356 (2016)
[78] INDIA CONST. art. 14
[79] V.N. Shukla, CONSTITUTION OF INDIA 52 (13th ed.2017)
[80] INDIA CONST. art. 15.

'Law in changing society[81]' in which the interview has observed that prohibiting a particular behavior that the society considers condemnable by criminal law is dependent on the values of the society and hence copying the ones isn't appropriate. It was stated by the intervening that people indulging in unnatural sexual activity are more susceptible to HIV / AIDS. The intervening argued that allowing homosexuality it would run in contravention to many religions practiced in India and would be violative of "Art.25"

5.1.3. Judgment

The five bench judge of Supreme Court came to the conclusion that "Sec.377" was unconstitutional insofar as it applies to consensual sexual conduct between adults in private was unconstitutional overruling the *Suresh Kaushal Vs.Naz Foundation*[82] judgement relying on *NALSAVs UOI*[83]. The court held that not recognizing gender identity of someone will be violative of their dignity as gender identity is "intrinsic" to personality of a person. the court held that "Sec.377" is an unreasonable restriction to the "right to freedom of expression" as because sexual intercourse in private "does not in any way harm public decency or morality" and letting "Sec.377" be on the books of statute would cause "chilling effect on Art.19(1) a". "It violates the privacy right under 19 1 a". The court confirm that "intimacy between consenting adults of the same sex is beyond legitimate interest of the state" and the right to equality is violated by anti sodomy laws as the anti -sodomy targets a part of society. Further, the court relying on its decision in *Shafin Jahan Vs. Ashokan K.M.*[84] and in *Shakti Vahini vs UOI*[85] affirmed to that adults right to "choose a life partner of his / her choice' is an important ingredient of individual Liberty".

[81] W. FRIEDMAN, LAW IN CHANGING SOCIETYS. (ed. 2nd) (1972).
[82] Suresh Kumar Koushal&Anr v Naz Foundation & Others, *(*2014) 1 SCC 1.
[83] NALSA v. UOI. AIR 2014 SC 1863.
[84] Shafin Jahan v. Ashokan K.M. AIR 2018 SC 357.
[85] Shakti Vahini v. UOI.AIR 2018 SC 1601.

5.2. EFFECT OF *NAVTEJ SINGH JOHAR vs UNION OF INDIA*

The judgement was a final nail in the coffin and finally homosexuality was allowed but did this change anything? They [the LGBT] don't have right to marry and adoption and etc. Is this judgement any good? Has it changed anything? We look at two aspects, first the legal and second the societal. The reason for looking into societal dimension is "a law fails if it doesn't change the society". The basic function of law is to guide behavior of society. In the words of Bentham "moral or legal laws prescribe how man should behave[86]". This behavior change can be achieved by two methods either by force or just by people abiding the law because its law. "In a less civilized society there will be great in need of sanction and in more civilized society, laws will be obeyed by Convection[87]". Thus, change in thinking and awareness is very important for the successful implementation of law without the desired behavior change law becomes dead letter.

5.3. LEGAL EFFECTS OF NAVTEJ SINGH JOHAR VS UOI CASE

The legal effects of *Navtej Singh Johar Vs UOI*[88] are more than just decriminalizing homosexuality, with the decriminalization of homosexuality many more things come attached to it. "Right to equality" ensures that like will be treated likely and unlike be treated unlikely but with this is also a condition that there can be "no equality in illegal act[89]". Someone can't ask for equal treatment if she or he is doing illegal act. Homosexuals were criminals in the eyes of the law as homosexuality was illegal but now since it has become legal and homosexuality is no longer at crime, then homosexual couple can now ask to be treated equally with the heterosexual couples. This should have had the effect of equal treatment as that of heterosexual couple. Thus, not providing the right to marry not recognizing homosexual live-in couples and not providing adoption rights is discriminating on the homosexual couples. They should be now provided equal rights with that of heterosexuals. The only argument against that this contention can be homosexual and heterosexual couple are not alike and hence there is an "intelligential differentia" here this argument fails on the reasonable classification test because the thing differentiating a homosexual couple and heterosexual couple is the sex of the partner.

[86] PJ FITZERALD, SALMOND ON JURISPRUDENCE, 18 (12th ed.).
[87] PJ FITZERALD, SALMOND ON JURISPRUDENCE, 50 (12th ed.).
[88] Navtej Singh Johar Vs UOI,AIR 2018 SC 4321.
[89] Chandigarh ADM v. Jagjit. AIR 1990 SC 2114.

"Art.16" prohibits discrimination "only on the basis of sex" Thus the object of classification is not lawful here. "The object of classification must be lawful[90]"

5.4. SOCIETAL CHANGE

The discrimination against homosexual couples would not end just by making it legal but also the society should accept it to only then homosexuality could be the new normal. The research in pursuance of the effects of decriminalization of homosexuality has conducted a survey on the awareness about homosexuals. One of the questions that was asked was "decriminalization of homosexuality more made you more tolerant words homosexuality?"81.4% of the people agreed that they have become more tolerant than what they were before the judgment towards homosexuality. Their response is represented in the form of a pie diagram in figure 1

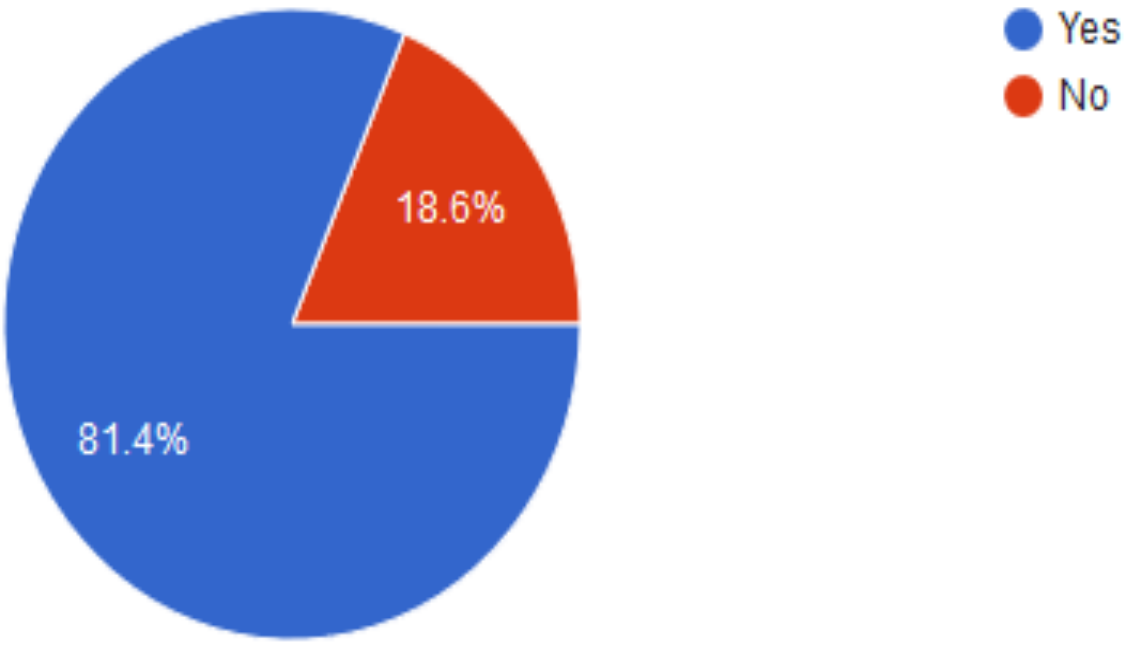

Fig.1

[90]V.N. SHUKLA. CONSTITUTION OF INDIA 53 (13th ed.).

Despite the growing tolerance towards homosexuality still 24% of the respondent feels that homosexuality is either sin wrong or unnatural.

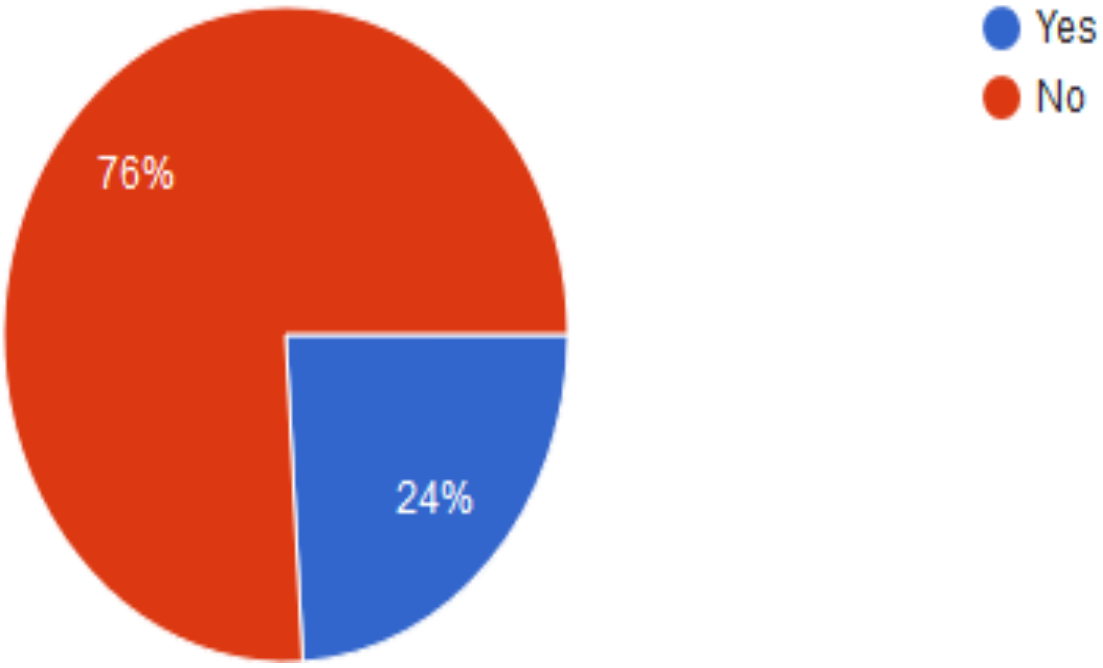

Fig 2

The above data signifies that there are still people who even though have become more tolerant than what they were before the judgement but still feel that it is wrong sin or unnatural out of the respondents who feel that they have turned more tolerance towards LGBT 12% still feel that it is still wrong unnatural or sin.

The rate of acceptance of LGBT is very high in the respondents but when asked if they would be comfortable with their family member being gay only 36.5% of the sample population was comfortable with that. The sample population was asked to rate on a scale of 0 to 5 on how comfortable they will be if the child of sibling admit he she is gay. Fig.3 records their responses.

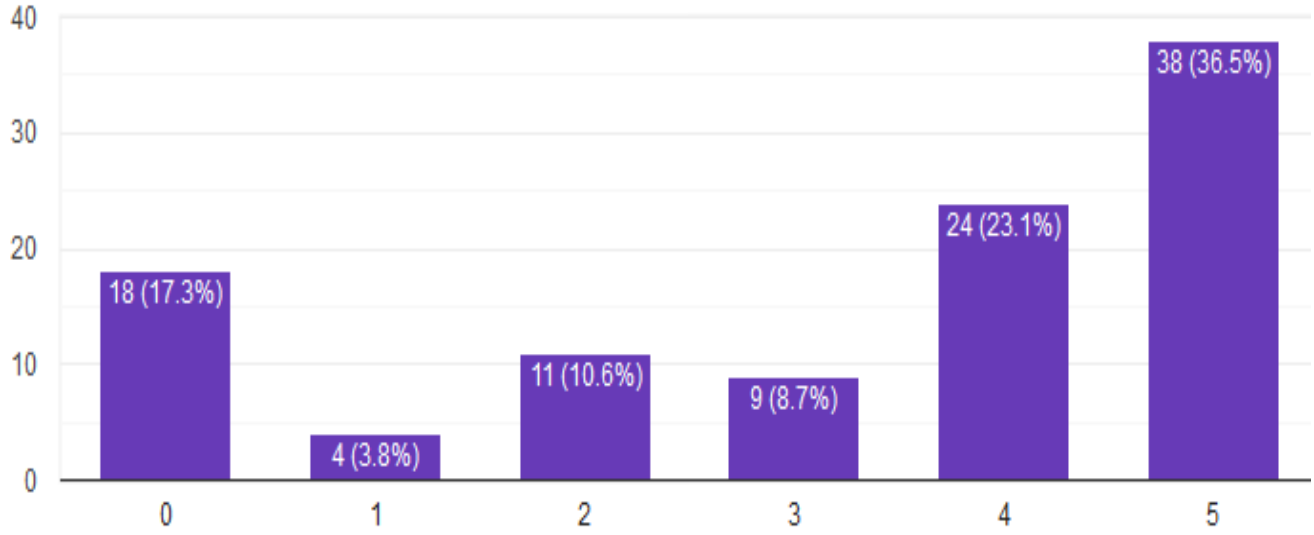

Fig.3

out of the respondents who feel that they are more tolerant about LGBT 8.43% would not be comfortable if there sibling or child turns out to be gay and of these newly turn more tolerant 36.5% will totally be comfortable with the kid or sibling being homosexual. In another set of interview the research I interviewed 15 homosexuals. The interviewer asked the question to the interviewees is “is decriminalization of homosexuality half-hearted measure by the Indian society?” Their responses are represented in fig.2

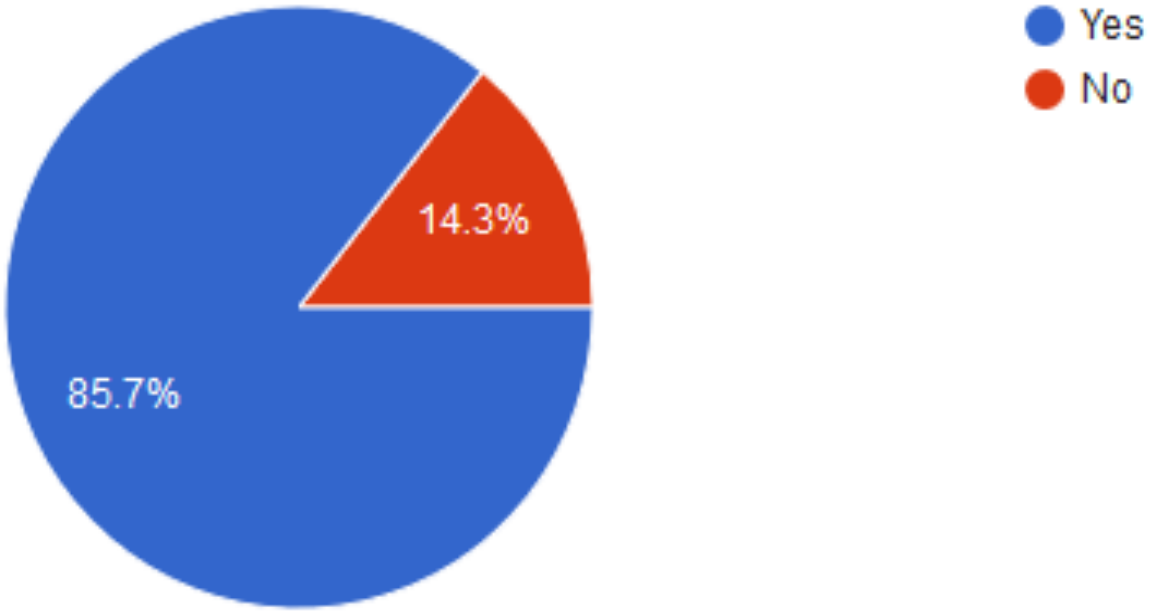

Fig.4

5.5. INFERENCE

The researcher found out from the survey conducted that the judgement has been able to make homosexuality more acceptable so much so that those who became more tolerant than what they were before decision 82.8% of them are ready to accept homosexuality in their home with varying degree of acceptance but there's still remains a minority in the respondents who even though have become more tolerant towards homosexuality but still feel it's wrong sin or a natural and won't be comfortable at all if their close one turned out to be homosexual. From the interview the interviewer came to know that homosexuals do feel happy about decriminalization but too feel that only decriminalization is a half-hearted measure as allowing only carnal satisfaction without being able to form couple equating homosexual couples with animals. Most of the animal part their ways after meeting but Human form bond for life and not providing them such opportunity is taking away the human dignity.

CHAPTER-6

PROBLEMS AND OBSTACLES IN HOMOSEXUAL LIVE-IN-RELATIONSHIP

"Prima Facia" it appears that the problem of homosexual couples not having the rights same as heterosexual couple has the roots in homosexual marriages not being recognized. So, one would say that the problem can be solved by just granting them the right to marry, then they too have the yardstick with which the court can measure their relationships and come to the conclusion whether they resemble marriage or not. While suggesting this simple answer the researcher would like to draw focus on the fact that marriages have always been between different sexes and thus the resultant is that all the laws are centered on heterosexual couples, not just in the matrimonial and personal laws but also at different places. Even after gay marriage being legal many of the laws won't recognize husband and husband relationship or wife-wife relationship and it will send all the work back to square one. Here, the researcher looks at few such laws which will still be a problem even after gay marriage is recognized.

6.1. MAINTENANCE

We have already seen that a live-in female partner too has, a right to maintenance if the society sees them as a married couple. But a homosexual couple can't be seen as a married couple because marriage for homosexual couple doesn't exists and thus anyone perceiving the couple as husband and wife would be termed their imagination gone wild. One of the interviewee named Pratyush Pani a student of zoology at OUAT, Bhubaneshwar when asked "how has not having the right to marry and non-recognition of homosexual live-in couple affected you" replied "there's always an insecurity about your relationship that might lead to mental health issue" another interviewee who doesn't wish to be named replied to the same question "might be broken in future". The lack of recognition and without any repercussion of walking away sure gives the homosexual liv-in relationship "no strings attached" status and thus there surrounds clouds of mystery over the future of the relationship. Having right to maintenance guarantees a string attached status and thus before walking away people still have a little hesitation as they law obviously changes the perception of people. People are less likely to do anything which is illegal even though no one is watching.

6.2. DOMESTIC VIOLENCE

One of the main reasons of evolution of State and law was that people wanted to feel safe. There are theories which explain that people surrendered some rights to State in order for being protection from external aggression. Having a sense of protection and feeling safe is a pre-requisite for a person to live life peaceful, be healthy and perform at his best. A person feels most safe when she is at home but sometimes the safest place on earth too can become the most dangerous place for a person because of presence of a person in home who is abusive. The most common form of abuse at home is from spouse or partner and thus as safeguard there is Protection the govt. has provided Prevention of Women from Domestic violence Act. "Sec 2(f)" of the Act says "RINM". Thus, here too the yardstick is marriage. If the live-in relationship resembles a marriage then only it is covered by the PWDVA otherwise not.

This leaves the homosexuals couples without specific resort unlike heterosexual couples. An interviewee named Olivia who works as language coach in Vadodara admits "yes, the idea of domestic violence scares me". Another interviewee Amar Das who doesn't wish to provide any further details admitted he feels afraid of live-in relationship of live-in relationships now because of his past abusive relationship.

6.3. ADOPTION

Having a child is considered by many to be essential part of family. But many people can't have their own biological child and hence they go for adoption.

Child adoption is regulated by CARA, a statutory body under "Ministry of Women and Child Development, GOI". It is the nodal for adoption of Indian children. "Adoption Regulation,2017" Sec.5 lays the criterions for PAP. As per this Sec. anyone irrespective of marital status can adopt a child. This provision makes adoptive parent a single parent. The Sec. provides for couple adoption as well, condition being that the couple has two years of stable marital relationship. Couple who are in live-in but fulfil the criteria for being in a de facto marriage are eligible. Thus, here too the yardstick is marriage and therefore the homosexual couples will be ineligible to adopt. They can however adopt child as an individual but that would mean the other person won't have any rights on the child and neither any legal liabilities. Olivia who works in Vadodara, GJ as language coach mentions "I want to see hope for a normal family life" when asked about adoption.

Sanket Sveronic too says “If we adopt a kid, he still can’t see us as a couple because legally there is nothing as that” Another interviewee who wishes not to be named and is a student from Pune, MH currently studying in Ireland too has this fear that she won’t be able to have a family life, her exact words were “The court talks about human dignity as you say but not providing thee right to live as normal family to a considerable portion of population isn’t it derogatory to human dignity”

There are many other places where the same kind of problems will be there as in maintenance, domestic violence and adoption but the researcher doesn’t want to go at length describing them all because that will be a futile toil as there are numerous laws which have the same problems. All the personal laws will fall in this category. Property laws too fall in this category.

CHAPTER- 7
CONCLUSION AND SUGGESTIONS

7.1. CONCLUSION

Live-in relationships are taboo still now and that's the reason people are still not aware whether it is legal or not. Due to the social condemnation people take it that its illegal or are not sure what is the legal status of live-in relationship. Live-in relationships are totally legal and there is no law prohibiting it. This is well established that live-in relationship isn't a crime but another question arises whether it is recognized by law or not? Live-in relationship is recognized by the law but there is a condition: they should resemble marriage. Hence, there are two kinds of live-in relationship one which is like marriage and the other which isn't like marriage. The SC has given a condition in Indira Sarma case which when satisfied make live-in relationship like marriage. Thus, marriage has become the yardstick for live-in relationships. The court has taken the view "marriage like relationships deserve marriage like rights" and the ones which don't resemble marriage are "walk-in, walk-out" relationship and are devoid of marriage like rights.

Making marriage the yardstick and reference has resulted in homosexual relationships being devoid of marriage like rights because marriage for them doesn't exist. Thus, they can never claim maintenance or inheritance etc. This is violative of fundamental rights of homosexuals as there is no intelligible differentia between homosexual couples and heterosexual couples. The only way in which they differ is sex of their partners and Art.15 prohibits discrimination only on the basis of sex. Further, Navtej Singh Judgment is an appreciable first step by Indian society but now we need to look beyond it. This judgment merely makes having sex legal but nothing beyond that. This takes away the essence of humanity from the homosexuals. The needs of animals are limited, mainly restricted to food, shelter and sex but humans are an advanced species and their needs are not limited to the three. This is very well illustrated by Moslow's "Hierarchy of Needs". He has depicted the needs in form of a pyramid. A human tries to go up the pyramid but for that s/he needs to go step by step and thus the more basic needs need to be fulfilled before advancing to higher needs. The court has done its part in enabling the homosexuals to fulfil their physiological needs but after that they will need to advance to

higher needs i.e. security and safety and not having legal recognition to their relationship is a big roadblock in that. Without feeling safe that they won't be abused in a relationship, without having the assurance that even if they split, there will be maintenance they can't even fulfill their basic needs of safety. Then they have physiological need of being loved. Not having a legal recognition is a roadblock here too.

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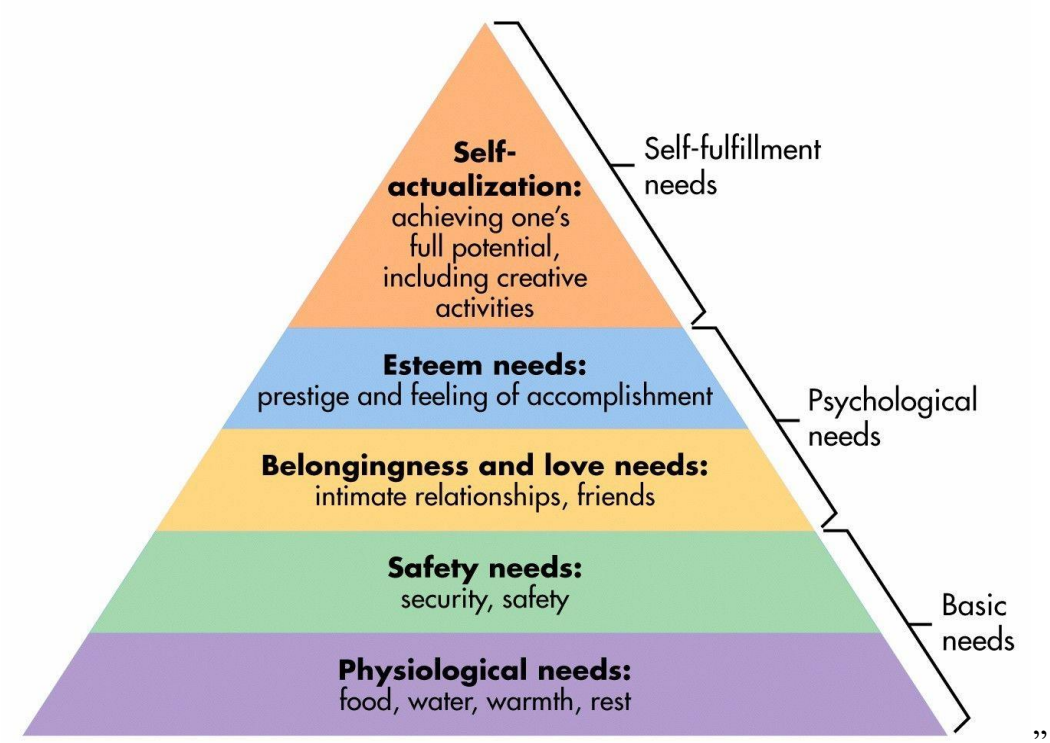

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Fig.4

Source: Simply Psychology.

In the above figure, a pyramid showing the basic rights of humans is demonstrated. In short not having these rights to form a human relationship is equating these homosexuals with animals. This takes away their right to live with "human dignity" and makes them live a life of "mere animal existence". Just as animals live for the next moment without any prospect of future, they too have to live the same life where nothing is sure of their future and two people are just together for carnal needs just as animals. Just as animals move away after mating the other person may move away without any repercussion.

It seems that making homosexual marriages a legal reality is the answer to all the problems of the homosexual couples. With bringing homosexual marriage into existence they too would have a yardstick with which their live-in relationship would be compared. The solution to the problem is not so simple. Heterosexual marriage was the only kind of marriage the world has known for a long time and for India homosexuality is a new concept. All the laws have evolved around heterosexual marriage and thus have always considered husband and wife. When the laws were made there was no "husband-husband" or "wife-wife" relations so no laws were made keeping such relationships in mind. Thus, even if gay marriages are recognized by the law then too there will be many laws which won't be recognizing such relationships, such as maintenance, Domestic violence laws, personal laws etc.

7.2. SUGGESTIONS

The live-in relationships though are recognized by the law but there is no consolidated law for live-in relationship thus every time to enforce their rights the couples will have to go to courts. Enforcement of right if made so difficult is actually violation of rights. When the rights are already mentioned explicitly the chances of their violation is less compared to when they are not mentioned explicitly. Therefore, there should be a law which recognizes live-in relationship and says that it is legal and mentions that what rights they have. There need not be any new for this purpose. An amendment in "The Special Marriage Provision Act" to recognize live-in relationship will be the best solution. Just penning down that what kind of live-in relationship will make a relationship "resembling marriage" will solve the problem. One may argue that already many judgments have been there on deciding what constitutes a live-in relationship "resembling marriage" but for a layman to know his/her rights through judicial decisions is beyond the legitimate expectation.

The problem with homosexual couples is more complex. Only by making laws which recognize homosexual unions or recognize homosexual marriage will not suffice as the whole concept of rights emancipating from marriage or likewise union is centered on wife and husband and thus this won't qualify them for many of the rights as maintenance or protection from domestic violence. The personal laws too won't recognize such a

relationship. Thus, there need to be a change at whole new level to accommodate the new change in society. The world is changing and equality between the two genders is one of the main aims of our constitution. It is no longer the world where men worked and women stayed back at home. When we talk about equality we already as a society assume that to bring equality between sexes, women must be empowered and protected and often forget about the other gender. There are men as well who suffer domestic violence, there are men as well who want to be house-husband, who are dependent on their wife. But the law refuses to admit that men too can be at the other end of exploitation. This is the resultant of toxic patriarchal mentality of the country. This toxic masculinity has not only harmed females but males as well and males don't have any resort as well. The need of the hour is for more and more gender-neutral laws and this only this can bring in more gender equality and moreover, it will benefit the homosexual couples as well. If the laws are made gender neutral then irrespective of what is the sex of the partner a person can seek remedy when their rights get violated or ascertain their rights. This will require to amend many laws such property, CrPc, PWDVA etc. With the changing society it is need of the hour and it serves dual purpose.

BIBLIOGRAPHY

Books

JOHN STUART, ON LIBERTY 1998, Penguin Books

P.J. FITZGERALD, SALMOND ON JURISPRUDENCE 12th ed.2012, Universal Law Publishing

A.V. DICEY, INTRODUCTION OF STUDY OF LAW OF THE CONSTITUTION 10th ed, Macmillan Publishers.

M.P. JAIN, THE CONSTITUTION OF INDIA 8th ed 2018, LexisNexis

V.N. SHUKLA, CONSTITUTION OF INDIA 13th ed.2017, Eastern Book Company

FRIEDMAN, LAW IN CHANGING SOCIETY 2nd ed. 1972, Penguin Books

Journals

Shaharam Dana, *Beyond Retroactivity to Realizing Justice: The Principle of Legality in International Law Sentencing*, Vol 99.JCLC, 857, 865-867 (2009)

Flynn KE, Lin L, Bruner DW, et al, *Satisfaction and the Importance of Sexual Health to Quality of Life Throughout the Life Course of U.S. Adults*. Vol 4. J Sex Med. 325, 342-356 (2016).

Internet Sources

Alakananda Bhattacharya, *Gandharva Marriage- Ancient, Modern or Both? Know All About the Unique Indian Marriage Tradition,* available at https://www.weddingwire.in/wedding-tips/gandharva-marriage--c2845.

Anuradha Parasar*, Homosexuality In India – The Invisible Conflict,* Delhi High Court Library,http://www.delhihighcourt.nic.in/library/articles/legal%20education/Homosexuality%20in%20India%20-%20The%20invisible%20conflict.pdf.

Anonymous, *Homosexuality in India Overview,* available at https://shodhganga.inflibnet.ac.in/bitstream/10603/245237/8/08%20chapter%202%20pdf.pdf.

Anonymous, *Nonexistence of Faith*, American Atheists, available at https://www.atheists.org/ (last visited on 14 Aug).

Newspaper Articles

William Bennet, *Stronger Families Stronger Society*, NY Times, April 24, 2004.

2001 Census of Religion.