STATUS OF WOMEN IN LIVE-IN RELATIONSHIP IN INDIA IN THE LIGHT OF LEGAL AND JUDICIAL RESPONSES

A thesis submitted in part fulfillment of the requirements for the degree of Doctor of Philosophy

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ABSTRACT

Live-in relationship means, two persons of opposite sex live together with each other and perform marital activities without any religious sanctity means without proper marriage. The generally accepted definition of live-in relationship is "an arrangement of living under which the unmarried couples live together to conduct a long term relationship similarly as in marriage." Simply, live-in relationship is the arrangement in which a man and woman live together without getting married. "Live-in relationships" is a relatively new term in the Indian domain, but its context can be traced back to ancient times. The Vedas mention eight types of *vivaahs* or marriages, one of which is the *Gandharva Vivaah*; in which the man and woman mutually consent to marriage. Such a marriage involved neither the families of the couple nor a particular ritual or any practice to solemnize the marriage. It was a mere word of mouth commitment. Although the couple was united using *Gandharva Vivaah,* their responsibility and commitment were seen to be identical to any of the other types of marriages as ordained in the traditional texts. There is also the concept of *"Maitry karars"* in Gujarat and Maharashtra, where two people of the opposite sex would enter into a written agreement as 'friendship agreement' to live together and look after each other. "*Nata Pratha*", the customary practice for centuries is still practicing among *Bhil* tribe who are residing in the regions of Rajasthan, Gujrat and Madhya Pradesh. This custom is a non-marital cohabitation and also promotes polygamy of both genders. A tribal girl from *Oraon, Munda* and *Ho* tribes of Jharkhand can choose a non-marital relationship called as '*Dhuku*' with her male partner without getting married to each other. The living arrangement without a legal marriage among *Garasia* tribes in Rajasthan is called as '*Dapa*' and it is practised from very ancient time. It was not considered as immoral for men to have live-in relationship with women outside the marriage. Concubines (or *Avarudh Stris*) were kept for men's entertainment and relaxation. After independence, society has learned its social values with individual rights, bigamy became outlawed and women became more aware of their rights, this practice is now illegal on the basis of moral values and legal concern. But still practice of live-in relationship is going forward day by day. The new style of non-marital cohabitation as inspired by western culture is going famous in recent India. Though Indian society does not allow such relation wholly but judiciary is somehow recognizing it by interpreting the existing law. The Personal

laws however do not countenance live-in relation on the same footing of marriage, but under section 2(f) of Protection of Women from Domestic Violation act 2005 it is allowed as "marriage like relation". The Personal laws are mainly against of this concept. In *Hindu law*, it condemns the relations outside marriage and declares marriage as a socio-religious institution, which is connected with so many religious obligations. And it is not permitted to make such relations which are immoral or against the social norms and there is no doubt that a Hindu marriage is a religious ceremony and the one prescribed to purification of the soul. However the judicial response to the live-in-relationship is somehow makes it cloudy. It gives the presumption of marriage for the long durational live-in-relation unless and until it is proved contrary. In *Musim law* it forbids sexual relation before or outside marriage. *Sharia* considers consensual premarital sex as *hudud* crime and requires public punishment. Islam explicitly forbids all sex outside of marriage, both premarital sex and sex outside marriage (*zina*). Beyond being a crime requiring punishment in worldly life, fornication is a sin leading to chastisement in after-life in Islam. According to *Christian Law* which is based on the Bible it is very clear that living together before marriage is sexual immorality. Marriage between a man and a woman is the only form of partnership that God accepts and blesses. All sexual relationships outside marriage are considered fornication. Consequently, this also includes cohabitation, i.e. people living together before marriage as a couple. Such conditions are clearly described as fornication and adultery. To secure the sexual morality, it says "let each man have his own wife, and let each woman have her own husband". The *Parsi Law* according to *Zoroastrian* faith, live-in relationship in not recognised as a habitual practice as an alternative to marriage. Marriage is a very important institution of *Zoroastrianism* and the only sanctioned and praiseworthy space for the sexual intercourse of two *Zoroastrians*. At the same time, however, the consensual premarital intimacy of two single *Zoroastrians*, which unlike adultery as a betrayal of the rightful spouse, is not a grave sin, although it is certainly not the path of holiness. On the other hand, there is no legal barrier to prevent a man and a woman cohabiting together without entering into formal marriage in the form of "live-in relationship". The traditional society of India however does not approve such living arrangements. Even courts are also trying to take the live-in-relation under the presumption of marriage. Since there is no specific law that recognizes the status of the couples in live-in relationship, hence the law as to the status of children born to couples in live-

in relationship is also not very clear. The need to ascertain the status of such children catches greater importance in the protection of child rights parameter and that should be the primary agenda of legislation. With respect to this, legal precedents have gone on to hold tremendous value in tackling the issues faced by children of live-in relations in identifying their position in the socio-legal setup. The Protection of Women from Domestic Violence Act 2005 was passed with an object to provide more effective protection of the right of woman guaranteed under the constitutions who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Again Supreme court in ***D. Velusamy v. D. Patchaiammal*** (AIR 2011 SC 479) held that under the 2005 Act a 'relationship in the nature of marriage' must also fulfil the some criteria for example, the couple must hold themselves out to society as being akin to spouses, they must be of legal age to marry, they must be otherwise qualified to enter into a legal marriage, including being unmarried. The Supreme Court in the judgement of ***Indira Sarma v. VKV Sarma*** (AIR 2014 SC 304) came into a definition of live-in relationship and makes it in no doubt that live-in relationship is not a sin or crime but socially unaccepted. Amidst the lack of specific legislation on the subject, the apex court made an important decision to include live-in relationships under the pretext of the Domestic Violence Act 2005 as "marriage like relation". The Legal status and laws governing the live-in relationships is not the same in all the countries. It varies from country to country. Different countries have different stand on live-in-relationships. For example Bangladesh cohabitation after divorce is frequently punished by the ***Salishi*** system of informal courts, especially in rural areas. In Indonesia, an Islamic penal code proposed in 2005 would have made cohabitation punishable by up to two years in prison. Also Cohabitation is illegal according to ***Sharia law*** in countries where it has been practiced. On the other side in many developed countries like USA, UK, Canada, France, Ireland, Denmark, Norway, Sweden and Australia, where live-in relationship are very commonly practiced, accepted and are not considered to be illegal. When the researcher analyses the research survey of one hundred and twenty two samples, certain issues are ascertained and some new issues are observance up. According to the survey analysis, total 31 percent people supporting live-in relationship where as 65 percent supporting marriage as a preference in intimate relationship. Interestingly there are 94 percent population who supported for a proper law to be enacted independently for live-in relationship issue, only 5 percent

population are against of such law. It is observed carefully after studying the case studies that maximum couples are opting live-in relationship as a precursor to marriage. They have the ultimate goal to get married and to be settled and recognised as a married couple in the society. The live-in relation is a practice of choice between two adult and heterosexual persons. They have intended to test their compatibilities before marriage. The concept of live-in relationships have come out of the closet and even found partial recognition in law. Though the debate rages on in public forum with recommendations and opinions yet coming in from various authorities and Commissions to amend the existing laws, however, there have been no amendments to the existing personal laws. It is thus, necessary to examine whether or not, live-in relationships can find their place in personal laws in the country. The harm caused to a "legally wedded wife" and her children and promotion of bigamy are two main arguments opposed to legalization of live-in relationships in India. Therefore it is submitted that any attempt to protect live-ins in personal laws must therefore address these two issues carefully.

KEYWORDS: Women, Live-in relationship, Cohabitation, Personal Laws, wife, socio-legal etc.

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TABLE OF CONTENT

ABBREVIATIONS…… i-ii

TABLE OF CASES…… i-v

CHAPTER I …… 1

INTRODUCTION…. …… 1

1.1 INTRODUCTION…….. …… 1

1.2 HYPOTHESIS…. …… 10

1.4 RESEARCH METHODOLOGY …… 11

1.4.1 METHODOLOGY….. …… 11

1.4.2 LIMITATION OF THE RESEARCH …… 12

1.4.3 PROBLEMS FACED DURING THE RESEARCH WORK...…… 13

1.5 RESEARCH QUESTIONS……. …… 13

1.6 REVIEW OF LITERATURE: … …… 14

1.6.1 BOOK... …… 14

1.6.2 ARTICLE……. ……. 16

1.7 SCHEME OF THE RESEARCH …….. 18

CHAPTER II …….. 20

A CONTEMPORARY STUDY OF LIVE-IN RELATIONSHIP AND STATUS

OF WOMEN IN INDIA…… ……. 20

2.1 INTRODUCTION……... …… 20

2.2 EVOLUTION AND PRACTICE OF LIVE-IN RELATIONSHIP IN INDIA…21

2.2.1 MAITRI KARAR (GUJRAT, MAHARASHTRA)…. …….. 21

2.2.2 NATA PRATHA (RAJASTHAN)….. …… 23

2.2.3 COHABITATION AMONG KHASI TRIBES …… 24

2.2.4 NON-MARITAL COHABITATION AMONG ORAON, MUNDA AND HO TRIBES OF JHARKHAND…... …….. 25

2.2.5 NON-MARITAL COHABITATION AMONG GARASIA COMMUNITY OF RAJASTHAN…….. 27

2.3 LIVE-IN RELATIONSHIP AND ITS NEW DYNAMICAL ASPECTS IN INDIA……. 27

2.4 JUDICIAL TREND TO DETERMINE LIVE-IN RELATIONSHIP IN INDIA SPECIAL REFERENCE TO OBSERVATIONS AND GUIDELINES OF SUPREME COURT OF INDIA... ……..... .. 39

2.5 JUDICIAL RESPONSES TO VALIDATE THE LIVE-IN RELATIONSHIPS IN INDIA…..…….. 40

2.6 SOCIO-LEGAL STATUS OF THE CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP….. …….. 42

2.6.1 CONCEPTUAL ANALYSIS... …….. 42

2.6.2 LIVE-IN RELATIONSHIP AND LEGITIMACY OF CHILDREN... ……... 45

2.6.3 LIVE-IN RELATIONSHIP AND MAINTENANCE RIGHTS OF CHILDREN……. 49

2.6.5 INHERITANCE RIGHT TO THE OFFSPRING BORN OUT OF LIVE-IN RELATIONSHIP…...…… 51

2.6.5 LIVE-IN PARTNERS'S GUARDIANSHIP AND CUSTODIAL RIGHTS OF CHILDREN……. …….. 53

2.6.6 STATUS OF CHILDREN BORN OUT OF NON-MARITAL COHABITATION IN OTHER COUNTRIES……. 56

2.7 LIVE-IN RELATIONSHIP AMONG ELDERLY CITIZENS OF INDIA…… 61

2.8 RIGHT OF LIVE-IN COUPLES TO ADOPT CHILDREN IN INDIA …….. 66

SUMMATION OF THE CHAPTER …….. 67

CHAPTER III …… 69

LEGAL STATUS OF WOMEN LIVING IN LIVE-IN RELATIONSHIP IN INDIA, MARRIAGE UNDER PERSONAL LAWS IN INDIA AND ANALYSIS OF

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005…….. 69

3.1 MARRIAGE UNDER PERSONAL LAWS AND LEGAL STATUS OF

WOMEN IN LIVE-IN RELATIONSHIP IN INDIA…….. 69

3.1.1 HINDU LAW…… 69

3.1.1.1 INRODUCTION……. 69

3.1.1.2 PRESUMPTION OF MARRIAGE UNDER HINDU LAW …… 72

3.1.1.3 MAINTENANCE RIGHT UNDER HINDU LAW.. …… 73

3.1.2 MUSLIM LAW …… 73

3.1.2.1 INTRODUCTION…. ……. 73

3.1.2.2 PRESUMPTION OF MARRIAGE UNDER MUSLIM LAW……..…….. 75

3.1.2.3 MAINTENANCE RIGHTS UNDER MUSLIM LAW…… 77

3.1.3 CHRISTIAN LAW…... ……. 78

3.1.3.1 INTRODUCTION…. ……. 78

3.1.3.2 PRESUMPTION OF MARRIAGE UNDER CHRISTIAN LAW… ……. 81

3.1.3.3 MAINTENANCE RIGHTS UNDER CHRISTIAN LAW…….. 82

3.1.4 PARSI LAW…. ……. 83

3.1.4.1 INTRODUCTION…. …….. 83

3.1.4.2 PRESUMPTION OF MARRIAGE UNDER PARSI LAW.. …….. 83

3.1.4.3 MAINTENANCE RIGHTS UNDER PARSI LAW..…… 84

DIAGRAM 3.1…….. …… 85

STATUS OF MARRIAGE UNDER PERSONAL LAWS IN INDIA……..……. 85

3.1.5 LEGAL STATUS OF WOMEN LIVING IN LIVE-IN RELATIONSHIP IN INDIA…… 85

3.1.5.1 INTRODUCTION ……. 85

3.1.5.2 PRESUMPTION OF MARRIAGE IN LIVE-IN RELATIONSHIP …….. 88

3.1.5.3 RIGHT TO CLAIM MAINTENANCE AND LIVE-IN RELATIONSHIP..90

3.1.5.4 RIGHT TO DIVORCE AND LIVE-IN RELATIONSHIP…. 94

3.1.5.5 RIGHT OF INHERITANCE AND LIVE-IN RELATIONSHIP…… 95

3.2 STATUS OF WOMEN IN LIVE-IN RELATIONSHIP UNDER PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005: A CRITICAL ANALYSIS…… 96

3.2.1 INTRODUCTION …….. 96

3.2.2 CERTAIN IMPORTANT FEATURES OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 …… 98

3.2.3 INTERPRETATION OF 'RELATIONSHIP IN THE NATURE OF MARRIAGE' UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 AND CONCEPT OF 'COMMON-LAW-MARRIAGES'. 102

3.2.3.1 INTERPRETATION OF 'RELATIONSHIP IN THE NATURE OF MARRIAGE' UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005……..…….. 102

3.2.3.2 CONCEPT OF COMMON-LAW MARRIAGE….. …… 111

3.2.4 INTERPRETATION OF 'RELATIONSHIP IN THE NATURE OF MARRIAGE' THROUGH JUDGMENTS……. 116

SUMMATION OF THE CHAPTER ……. 122

CHAPTER IV……... ……. 124

LEGAL STATUS OF LIVE-IN RELATIONSHIP IN OTHER COUNTRIES….. 124

5.1 INTRODUCTION……... …….. 124

5.2 UNITED STATES OF AMERICA……. …….. 126

5.3 CANADA …….. 130

5.4 PHILIPPINES…..…… 136

5.5 FRANCE..…….. 138

5.6 UNITED KINGDOM….. …… 140

5.7 CHINA…… 146

5.8 SCOTLAND…… …… 148

5.9 SWITZERLAND …… 150

5.10 AUSTRALIA…… 152

5.11 IRELAND……. …… 156

5.12 ITALY…… 158

5.13 SWEDEN……...……. 160

5.14 NORWAY……. …… 163

5.15 GERMANY…... …… 163

5.16 RUSSIA …… 164

SUMMATION OF THE CHAPTER …… 166

CHAPTER V. …… 167

SOCIO-LEGAL OUTLOOK OF LIVE-IN RELATIONSHIP IN NEOTERIC INDIA……... 167

5.1 INTRODUCTION……... …….. 167

5.2. PREFERENCE IN INTIMATE RELATIONSHIPS…..…….. 168

5.3 LIVE-IN RELATIONSHIP IS AN EASIER AND LIBERAL INSTITUTION THAN MARRIAGE..…… 180

5.4 LIVE-IN RELATIONSHIP IS AN EASY WALK IN WALK OUT RELATION WITHOUT ANY RESPONSIBILITY …… 183

5.5 LIVE-IN RELATIONSHIP DESTROYING OR HAMPERING THE TRADITIONAL MARRIAGE INSTITUTION IN INDIA…… 184

5.6 THE STATUS OF THE WIFE IN MARRIAGE AND WOMEN IN LIVE-IN RELATIONSHIP ARE THE SAME IN SOCIETY..…….. 185

5.7 THE SUPREME COURT'S DECISION TO TERM MARRIAGE IN LONG TERM LIVE-IN RELATIONSHIP IS JUSTIFIABLE…….…….. 186

5.8 LIVE-IN RELATIONSHIP IS LEGAL IN INDIA…….…….. 187

5.9 WITHOUT ANY PROPER LEGAL ARRANGEMENT WOMEN ARE THE VICTIMS OF A LIVE-IN RELATIONSHIP……..……. 188

5.10 NOW LIVE-IN RELATIONSHIP IS ACCEPTABLE IN INDIAN SOCIETY……. 189

5.11 LIVE-IN RELATIONSHIP IS BETTER THAN MARRIAGE…… 190

5.12 THE STATUS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP IS NOT TREATED EQUALLY TO THAT OF CHILDREN BORN OUT OF A VALID MARRIAGE ……... 191

5.13 LIVE-IN RELATIONSHIPS SHOULD BE LIMITED WITHIN THE UNMARRIED COUPLES …….. 192

5.14 THE LIVE-IN RELATIONSHIPS SHOULD BE REGISTERED …….. 193

5.15 LIVE-IN RELATIONSHIPS SHOULD BE BANNED IN INDIA ……. 196

5.16 THERE SHOULD BE A PROPER LAW FOR LIVE-IN RELATIONSHIP... 199

5.17 CASE STUDY …….……. 202

CASE STUDY NO 1 …… 202

CASE STUDY NO 2 …… 202

CASE STUDY NO 3 ……. 203

CASE STUDY NO 4 ……. 203

CASE STUDY NO 5 ……. 204

CASE STUDY NO 6 ……. 204

CASE STUDY NO 7 ……. 205

CASE STUDY NO 8 ……. 205

CASE STUDY NO 9 ……. 206

SUMMATION OF THE CHAPTER ……. 208

CHAPTER VI…….. 209

CONCLUSION AND SUGGESTIONS……. 209

6.1 CONCLUSION ……. 209

6.2 SUGGESTION ……. 216

6.3 CONCLUDING REMARKS:…..……. 220

BIBLIOGRAPHY…….**.....** 1-20

ABBREVIATIONS

AIR - All India Reporters

All - Allahabad

AILR - American Indian Law Review

Bom. - Bombay

Cr.LJ - Criminal Law Journal

Cr.P.C. - Criminal Procedure Code

CSP - Canadian Studies in Population

DR - Demographic Research

DMC - Divorce & Matrimonial Cases

Del. - Delhi

EPW - Economic & Political Weekly

FR - Family Relations

FLQ - Family Law Quarterly

IJAHMS - International Journal of Arts, Humanities and Management Studies

IJHSR - International Journal of Health Sciences and Research

IJRA - International Journal of Research and Analysis

IJARS - International Journal of Applied Research and Studies

IJLPF - International Journal of Law, Policy and the Family,

ILJ - India law journal

IOSR-JHSS - IOSR Journal of Humanities and Social Science

IPC - Indian Penal Code

JFI - Journal of Family Issues

JHS - Journal of Happiness Studies

LGBT - Lesbian Gay Bisexual Transgender

JLSS - Journal of the Law Society of Scotland

JSH - Journal of Social History

L&P - Law & Policy

Mad. - Madras

NGO - Non-Governmental Organization

N.Y.Sup.Ct. - New York Supreme Court Reports

PACS - *Pacte Civil de Solidarite* (Civil Solidarity Pacts)

PS - Population Studies

P&H - Punjab and Haryana

PC - Privy Council

PTI - Press Trust of India

PWDV- Protection of Women from Domestic Violence

SC - Supreme Court

SCC - Supreme Court Cases

SCR - Supreme Court Reports

US - United States Reports

USA - United States of America

UK - United Kingdom

WLR - Westminster Law Review

W.P.(C) - Writ Petition (Civil)

YLJ - Yale Law Journal

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S. Khushboo v. Kanniammal & Anr, (2010) 5 SCC 600.

S.P.S. Balasubramanyama v. Sruttayana, 1994 AIR 133, 1994 SCC (1) 460.

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Shyam Rao Maruti Karwate v. Dipak Kishan Rao Tekam, 2010 (10) SCC 314.

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Stak v. Doewden, (2007) 2 AC 432.

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Varshaa Kapoor vs UOI & Ors., WP (Crl.) No. 638 of 2010; Del.

Vidhyadhari v. Shukharana Bai, (2008) 2 SCC 238.

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CHAPTER 1

INTRODUCTION

"*For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all...*"

Aristotle,

Politics (Part II, 350 BCE)

1.1 INTRODUCTION

The word live-in relationship can be understood with certain other synonymous words, e.g., cohabitation or living together or de-facto-relationship or marriage like relationship etc. It might be in the mind of a legal researcher that what is the 'legal definition of live-in relationship' and what is the 'accepted definition of live-in relationship', however it is found in the research that there is no any legal definition of live-in relationship in India, but according to accepted definition of live-in relationship, it is a relationship with an informal arrangement between two heterosexual persons to live together without entering into the formal institution like marriage.

Live-in relationship is a new social phenomenon which tagged with as a relationship of de facto marriage or informal marriage and recognized in some countries as a marriage though there is no legally recognized marriage ceremony is performed. Unlike India, it is very common in North America and Europe. It is not similar in meaning and nature and perhaps there are many differences between the concept of "non-marital relations (cohabitation)" and "marital relations". However, marital relations may continue despite marital unrest, where the parties may have stopped sharing a household, whereas in a live-in relationship it is primarily a mutual arrangement either in express or in implied terms between the parties to the relations which is very contrary to the concept of a legal marriage. Unlike a legal marriage, in a live-in relationship; once a party determines not to cohabit together, the relationship comes to an end.

Another definition is given by the *Cambridge dictionary* as; "two people cohabit in the same house and have sexual relationship, but are not married. They often referred as live-in partners."

"Cohabitation means having the same habitation, not a sojourn, a habit of visiting or remaining for a time; there must be something more than mere meretricious intercourse."[1]

However, the term cohabitation is originated from the mid 16th century. It comes from the Latin word *cohabitare*, where *co* means *'together'* and *habitare* means *'dwell'*.[2]

Another way the ancient Roman family recognised *Stuprum*. A sexual union outside marriage between free persons was termed *Stuprum*. The term comprised relations between unmarried persons, and adulterous unions. In the Republic there were occasional trials (but no regularized procedure) in which *Stuprum* was alleged usually against adulteress. Condemnation normally involved exile or fines. However, there were instances where a father put his daughter to death for her *Stuprum*. Her 'misbehaviour' was seen as ruining the chances of a respectable marriage. A child born in *Stuprum* was regarded as illegitimate. Roman Family also recognised concubines. In some ways, concubinage resembled marriage. It was regarded as a monogamous union a man could not have two concubines (at the same time) or a wife and a concubine. It seems that a partner could prosecute an unfaithful concubine but such proceedings were infrequent. Concubinage usually involved a union between a man and woman inferior to him in status, e.g. a patron and his freedwoman. Emperors were occasionally known to take concubines, e.g. Vespasian and Marcus Aurelius. The children of concubines were regarded as illegitimate until the Christian Empire, when legitimating by subsequent marriage was introduced. Gifts between a concubine and her partner were valid since the ban on gifts applied only to married couples. The spread of concubinage, particularly following Augustus's ban on marriage by soldiers, helped to make the institution more acceptable. However, the Christian Emperors made various attempts to discourage but failed to eradicate it.[3]

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1 Henry Campbell Black, Black's Law Dictionary, (4th ed. 1968).

2 Lexico UK Dictionary, (Nov. 15, 2019, 11.54), https://www.lexico.com/definition/cohabit#cohabit__.

3 Andrew M. Riggsby, Roman Law and the Legal world of the Romans 56-58 (1st ed., 2010).

There is, as yet, no universally accepted term to describe a situation where two people of the opposite sex cohabit in a union outside marriage. Nor is there any agreement on the term used to describe a partner in such a union. The terms in current usage include "de facto spouse", "domestic associate" and "special friend" etc. Perhaps the term most commonly encountered, is "living common law". However, it should be pointed out that the term "common law marriage" is an ambiguous one, having both a technical and a popular meaning and is best to be avoided. In the absence of any better alternative it is proposed to use the terms "live-in relationship", "cohabitation" and "cohabitee". There are many possible domestic situations involving couples, who are not married, including situations where friends or relatives share accommodation. Some of these arrangements may be temporary while others involve more long-term relationships. The primary focus of this study will be on The situation where a couple of the opposite sex are cohabiting in what may be described as a conjugal, marriage-like relationship as contrasted with a situation involving a casual short-term relationship.[4] This will usually involve some sharing of responsibilities, including financial responsibility, the carrying out of household tasks and will usually, but not necessarily involve a sexual relationship. The exact structure of the relationship will vary from couple to couple in just the same way that marriage involves a myriad number of possibilities.

Cohabitation is a mutual understanding or it can be said to be an arrangement between the contracting partners to live together in the same dwelling without being married either in the eyes of law or in the eyes of personal laws of the parties' concern. It is a romantic or sexually intimate relationship either on a long-term or permanent durability. Since the late 20th century with the change in social views, especially relating to marriage, gender justice and religion these arrangements have become progressively more common in Western countries.

Live-in relationship is in general, a kind of living set up. In this living arrangement unmarried heterosexual couples live together under the same roof to establish a long durable intimate relationship as similar as a marriage. However, the difference is the couples are not married legally. Live-in relationship doesn't create the typical kind of married life responsibilities on the partners towards each other and their family.

[4] Cynthia G. Bowman, Unmarried Couples, Law and public policy 151-152 (Oxford University Press, 2010).

Live-in relationship is a relationship, where an informal living arrangement is created between two heterosexual unmarried persons to live together in a non-marital status.[5]

Live-in relationship doesn't depend on any religious sanctity; as it's an intimate relationship between a man and a woman and they observe all marital activities without the tag of marriage. Though there is no definition as given in any statutes the live-in relationship may be defined as such, "it is an arrangement either in express or in implied terms to live together under the same roof followed by cohabitation without being legally wedded couples". In other words, live-in relationship is process of living together in which the agreed partners lives under the same roof followed by cohabitation as like legally wedded couple but in reality they are neither legally married nor married as per their respective personal laws. One of the many reasons of the emerging tendency of live-in relationship is individual freedom and modernization of thinking of the new generation. The newly developed concept of live-in relationship is a western concept and getting popular in the whole world.

In India, neither a specific law is there to recognize a live-in relationship nor has any legislation been enacted to provide a legal definition of live-in relationship. There is no law in India till date to regulate and govern the laws related to the rights, duties, procedural norms and obligations of the live-in partners as well as to regulate and define the status of children born out of such relationship. In many developed countries because of the development of pre-marital and non-marital cohabitations the major changes take place in union formation prototype. Especially the non-marital heterosexual cohabitation has gained the attention of media and researchers globally.[6] It is important to mention that non-marital heterosexual cohabitation is recognized widely as an accepted family form; however its continuity may be reflecting different ways on the basis of social, economic or cultural forces.

On the basis of different educational backgrounds different reasons may be evaluated for choosing the non-marital cohabitation, which reflect the background of the

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[5] Sonali Abhang, *Judicial Approach to 'Live- In-Relationship' In India- Its Impact on Other Related Statutes*, 19(12) *IOSR-JHSS* 34 (2014).

[6] Ernestina Coast, *Currently Cohabiting: Relationship Attitudes, Expectations and Outcomes*, (Jan. 07, 2017, 05:09 PM), http://eprints.lse.ac.uk/23986/1/Currently_cohabiting_%28LSERO%29.pdf.

specific values, norms, or constraints contradicting by different echelon of the society.[7]

The domain name "live-in relationship" is heard openly in recent times but the concept of live-in relationship is not a new-fangled concept in India. The term Live-in relationship is new migration from western culture, but similar concepts with such intimate relationships are practicing in different forms in India from very ancient times. The concept of *Avarudh stris*, can be taking from *Sanskrtit* word *Avarudham* i.e. something banned, (meaning thereby banned woman or illegal woman) which was prevailing in Ancient Indian History.

In India, especially in metro cities, live-in relationship is a normal consideration that mostly young people and elderly persons are choosing as an alternative to marriage. There is no any exclusive law relating to live-in relationship, so currently the law is not clear about the status of such cohabitations though there is a few rights which has been granted through the judicial pronouncements by the courts in India to prevent wholesome misuse and injustice of such relationship by the live-in partners. Suppose if live-in relationship is legalizing then a totally new set of laws are required to govern and regulate the relationship which including protection in case of desertion, cheating, maintenance, inheritance etc in such relationships. Litigation would drastically increase in this case. In traditional culture of India, social recognition to live-in relationship is also a very fragile issue to inculcate. There are many situations where these kinds of non-marital living arrangements are encouraged to form and got increased as well. It may not be justified if only positive or negative side of the research on the topic will be explained. So researcher has analysed in both perspectives of live-in relationship. As a non-marital intimate relationship, how live-in relationship impacts on Indian Society, Indian Culture, the institution of marriage and family, status of women, children and senior citizens in India are trying to analyse. To understand the impacts of live-in relationship in Indian society the researcher has relied upon on the societal responses towards the emerging non-marital relationships i.e. live-in relationships and that is very important to inspire the social status of live-in relationships in India. On the basis of various decisions of the

[7] Bernice Kuang & Brienna Perelli-Harris, *The Unexpected Rise of Cohabitation in the Philippines: Evidence for a Negative Educational Gradient*, (Jan. 07, 2017, 07:29 PM), https://paa.confex.com/paa/2016/mediafile/ExtendedAbstract/Paper3783/B%20Kuang%20PAA%202016%20Educational%20Gradient%20of%20Cohabitation%20in%20the%20Philippines.pdf.

Supreme Court as well as High Courts of different States the whole research is influenced. Study of these judgments makes it clear that live-in relationship is no more a strange topic in the society and its impacts on society is partially accepted, though with certain limitations. However, the legal position is still chaos and it's really emerged as a conflicting situation with existing Personal Laws of the country. Whenever we talk about relationship of any kind we must accept that it is purely depends upon emotions. It is obvious that human beings are the sufferers of emotional victimization. On the other hand, it is also true that "Man is a social animal by nature; an individual who is generally unsocial by nature and not by mere accident; is either beneath our notice or more than human. Society is something that precedes the individual"[8] It is true that human being cannot live alone. For this he must satisfy certain natural basic needs in order to survive and to continue its human nature, for example he has to enter into relationships with his fellow human being for living a life. No man can break this chain of mutual dependency till last breath.[9]

The conjunctive word 'socio-legal' is a representation of a very strong and practical bond. Both cannot stand alone so when one part emerges as a modern another one cannot represent as a traditional. Law must be changed with the change in the society. As a growing trend in the society, live-in relationship becomes more popular among young generation and it is now demanding the recognition in the society as well as in the eyes of law.

When it is about relationships, intimate relationship is one of the very essential and most prioritised relationships for human. India is basically worldwide known for its strong morality, its well-recognized culture, rich ethos and traditional values. Here in India the union between a man and woman is widely considered as one of the very sacred and pious acts among many others. In India 'marriage' is the only intimate relationship between an unmarried male and female which is recognised legally and socially.[10]

The concept of divine origin and sacramental through rituals, are practiced in marriage since ages in India; however, this concept could not be fixed from

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8 Aristotle, *Politics* (Part II, 350 BCE), (Aug. 20, 2018, 09:20 AM), http://classics.mit.edu/Aristotle/politics.mb.txt.

9 *Man as a social animal*, The Hindu, 12th March 2012, (Nov. 20, 2019, 10:45 AM). https://www.thehindu.com/features/education/research/man-as-a-social-animal/article2988145.ece.

10 Gaur Sanjay, *Live-in relationship* 20 (Yking Books, Jaipur, 2011).

divineness for number of reasons. As a practical approach sometimes, marriages are forced on couples in many situations where love and affairs concept are lacking or cannot be the first reason to get married. "As a result, the concept of live-in relationship is introduced in society as one of the alternative to marriage; however, presently no more it remains as an alternative but it has acquired its own stand in society."[11] Despite the fact of rich culture and heritage of India the new era has drastically changed within the country. In India the concept and importance of intimate relationship among young generation has been changed and western countries concepts are most acceptable for them. The liberal thinking regarding all aspects including non-marital cohabitation is emerged very strongly. The prima facie idea the interested couple is to adopt live-in relationship as to test their compatibility for each other before submitting in to some permanent commitments. The couples in live-in relationships may not find any value or benefits in the institution of marriage or may be their financial conditions not encouraging them from being married regarding the 'marriage expenditure' and the 'responsibilities after marriage'.[12]

The younger generation in today's India fascinated about the liberal life style of celebrities of Hollywood and Bollywood, however the traditional minded parents are against of this idea and encourage them to get married, and younger generation literally deprecate the marriage institution and adopt non-marital intimacy or live-in relationship. The secured privacy with independency live-in relationship might be an ideal move. For instance, in Indian urban areas; living culture has been changed enormously. In today's more open and liberal society if we take the examples of celebrity couples, they without a second thought choose non-marital cohabitation, e.g., live-in relationship and also have children. Various updated examples can make it understandable the increasing tendency of live-in couples as a recent trend in the celebrity's world, e.g., actor Aamir Khan- Kiran Rao, tennis player Leander Paes-Rhea Pillai, Neena Gupta- West Indies cricketer Vivian Richard and many others who were in living in live-in relationship for a long time before they got married. Even Leander Paes and Rhea Pillai, Neena Gupta and Vivian Richard have their

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11 Dr. Swarupa N. Dholam, *Socio-legal dimensions of 'live-In relationship' in India*, (Feb. 25, 2017, 11:23 PM), http://mja.gov.in/Site/Upload/GR/final%20article%20in%20both%20lanuage%20%281%29.pdf.

12 Anjali Agarwal, *Live-in relationships and its Impact on the Institution of Marriage in India*, 3(1) WLR (2013), (Dec. 22, 2016, 10:23 PM), http://www.westminsterlawreview.org/Volume3/Issue1/wlr19.php.

child from live-in relationship. It is very important to mention that increasing tendency of adopting this trend by celebrities, the many heterosexual young and middle-economic class preferring live-in relationship as their preference in intimate relationship.

The practice of living together without being in a formal marriage has been in practice for a long time. It is not at all immoral for man to have live-in relationship outside their marriage. As society has become mature enough than earlier, as bigamy is an offence according to the law of the land, as women become more conscious of their rights and liberties, the practice of live-in relationship though not legal but fails to prevent people to practice it. From last few decades the new forms of live-in relationships are emerged, where men and women cohabit together without entering into marriage even though there is no legal hurdle preventing them to marry. However traditional Indian society disapproved this arrangement for various reasons. But practise is increasing openly day by day in urban society set ups and secretively in small town and cities.

Another way most importantly, women are the victims in most of the cases. In the patriarchal society in general, women are most of the sufferer, because of their decision to choose live-in relationship and when it fails they are blamed, their liberty is always limited, and if by circumstances they involved in this relationship and then they will become victims of this unrecognised relationship. So this is very important issue to find out what is the status of women in live-in relationship in India?

Large numbers of cases are also decided by the Supreme Court of India as well as by the High Courts of different states on this issue. Not in a single case the court stands independently in favour of live-in relationship. Because of lack of proper legislation, it is always tagged live-in relationship with marriage. So a complex conflict has been arisen in this matter.

In a number of cases the Supreme Court of India and number of High Courts through judicial pronouncements have tried to conceptualize the live-in relationship as of ‘relationship in the nature of marriage’. Therefore, the impression of live-in relationship in India as described and outlined in the line of court verdicts and the same varies from case to case depending upon the facts and circumstances of the case.

'Live-in Relationship' as explained in ***Alok Kumar* v. *State & Another***,[13] that "*Live-in relationship is a walk-in and walk-out relationship in which neither any strings are attached, nor it creates any legal bond between the parties to the live-in relationship. It is a mutual contract to live together which is renewed every day by the acts of the parties and the relationship can be ended by either of the parties without the consent of the other party and one party can walk out at his/her will at any time."*

The concept of 'live-in relationship' can be understood as a living arrangement in which two heterosexual persons have chosen to live together to continue as a long-term relationship without marriage. However, to the society the couple represent as husband and wife to themselves. The term there is no marriage between the live-in couples means there is no solemnization of marriage with religious rites and rituals and therefore; there is no any legal blindness of the relationship. Unlike the other countries in the globe, Indian society does not recognise non-marital cohabitation, like; live-in relationship as a whole. However the law partially recognise the heterosexual couples when they voluntarily live together and it does not create any sin or offence though it may be count as immoral. The social debate on the growing trend of 'live-in relationship' is going on.

In India, the status of live-in relationship has neither been conceptualized nor been approved by any Personal Laws or any statutes. As there is no legal definition of live-in relationships, the Courts in India have actively adopted the view that when two partners mutually agreed to live together as husband and wife for a long term without being actually married; the law will presume that they were legally married unless the contrary intention is proved. However in any case it is not seen that the court is actually recognising live-in relationship independently. The view of the court is clear that if the conflict in live-in relationship has been arisen and the marriage is the best possible way to resolve the issue without any confusing state it includes live-in relationship under the perusal of marriage institution. The leading judicial pronouncements tried by some means to find out a resolvable way to eliminate the chaos of status. The chaos of a person's status leads to uncertainty in proprietary right also.

[13] Alok Kumar v. State & Another, Cr. M.C. No. DL 299/2009 (India).

However it may be critically worth mentioning that after the recommendation of Malimath Committee report in 2003 which suggests to consider the women live-in partners as 'wife' under Section 125 of Criminal Procedure Code 1973. The enactment of the Protection of Women from Domestic Violence Act in 2005 which provides; protection from physical, mental, sexual and economical abuse, maintenance rights and right of palimony to any aggrieved women under domestic relationship which also includes a female live-in partner under the category of 'relationship in the nature of marriage' are very important steps.[14]

However under section 125 of Criminal Procedure Code the children born out of live-in relationship are entitled for maintenance irrespective of the fact that they are 'legitimate in law'. In ***Dhaannulaal v. Ganeshraam***[15], Supreme Court of India on April 08, 2015, declared that "A woman living with a man for a long and considerable period, law will presume that they are husband and wife unless and until contrary proved and also entitle to claim inheritance rights."

1.2 HYPOTHESIS

The concept of live-in-relationship has been partially recognised in law by declaring not as a crime or sin but socially unacceptable in India. However, due to lack of exclusive legislation or any amendment to the existing personal laws to recognise live-in relationship it is the need of the hour to settle the issue with meaningful solution.

1.3 RESEARCH OBJECTIVE

The primary objective of this research is to analyse the live- in relationship among heterosexual couples along with the status of women in live-in relationships by comparing with the status of legally wedded wife through judicial pronouncements by different courts in India and through case studies on live-in couples through personal interview and also on the basis of data collected by providing structured questionnaires.

The researcher also seeks to examine live-in relationship in early as well as present Indian society and its overall bearing upon the legitimacy of children born out of such live-in relationship. This research also aims to study the status of live-in

[14] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

[15] Dhaannulaal vs. Ganeshraam, (2015) 12 SCC 301 (India).

relationship in other nations. Finally the researcher attempts to discuss and suggest remedial measures to reduce the chaos and to ease the sufferings of women in live-in relationship in India.

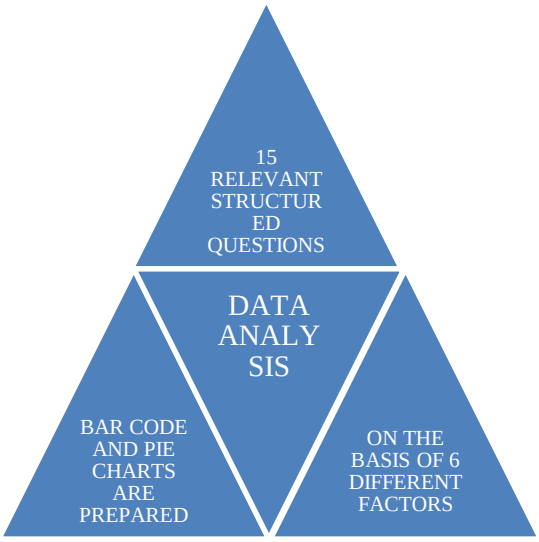
1.4 RESEARCH METHODOLOGY

1.4.1 METHODOLOGY

- The researcher has basically adopted the doctrinaire, analytical and descriptive method in major parts of the research.
- The present research is on the basis of combine of doctrinal and empirical method.
- This research has approached a pure legal as well as socio-legal study.
- Both quantitative and qualitative research techniques are adopted.
- The researcher has relied on primary sources of research like Acts, Statutes and Amendments of different laws in India as well as foreign countries and decided case laws of the Supreme Court of India and High Courts of different states of India, and from foreign countries the leading judgements, authoritative reports of committees and commissions.
- The researcher has considered on secondary sources of research like text books, reference books, journals, legal news and views, uploaded authentic online articles, different online blogs, debate platform, public survey by different authorities and social media etc.
- For the collection of the primary data the researcher has also taken a group of around 122 people comprising of all possible population units from six metro cities namely Delhi, Mumbai, Bangalore, Kolkata, Chennai and Guwahati as far as possible for a simple random sample statistic by providing with structured questionnaires through email and face to face interview.
- Fifteen (15) relevant structured questions are chosen on the basis of 6 different factors, and bar code and pie charts are prepared accordingly.
- This research comprises of nine (9) case studies on live-in couples residing in Guwahati and the data is collected through personal interview by providing structured questionnaire.

- The Harvard Bluebook 19th edition citation is adopted as a unique footnote style in the whole thesis.

Diagram No: 1.4



The sources from the libraries of National Law University and Judicial Academy of Assam, K.K. Handiqui Library Gauhati University, NALSAR University of Law, Hyderabad, Maulana Azad Library, AMU Aligarh, Madras University Library, Central Library, University of Calcutta and my visit to Osgoode Hall Law Library, York University Library, Toronto Canada played an important role in completion of this PhD thesis.

1.4.2 LIMITATION OF THE RESEARCH

The research on this topic is limited to heterosexual persons engaging in live-in relationship in India. The Researcher has examined the legal status of women partner in live-in relationship and the legal status of the children born out of such live-in relationship as compare to marriage institution according to Hindu Law, Muslim Law, Christian Law and Parsi Law in India.

For primary data collection, the researcher has taken a group of around hundred and twenty two (122) people, through face to face interview and Google forms; comprising of all possible population units as far as possible for a random sample statistic by providing with structured questionnaires.

This research comprises of nine (9) case studies on live-in couples and the data is collected through personal interview by providing structured questionnaires.

The researcher draws out the analytical parts of fifteen (15) different countries' law related to live-in relationship and tries to make a road map for India.

1.4.3 PROBLEMS FACED DURING THE RESEARCH WORK

It is true that without any problems nothing possible to achieve. The present research work is not exempted from the problems. The researchers faced a lot of problems and hardship, even that to continue the work with dedication and challenges to do the research on opted topic "Status of women in live-in relationship in India in the light of legal and judicial responses". The main problem during the research work that there are lack of inclusive literature on this topic. Only case laws from Supreme Court of India and High Courts of different states are the main guiding sources of the study. During data collection it was also facing the ignorance and hesitation of the respondents to disclose their present status of intimate relationships. While talking with certain organisations working for women relating to relationship consultations are also not willing to share thair data.

Another issue had been arisen as the lack of proper defination of the term 'live-in relationship' to find out the actual lacuna of the socio-legal aplication. The accessible data on different aspects of live-in relationship in India are not comprehensive. The data base in every level is very negligable and not updated because of lack of proper law. Moreover, no inclusive research study, report was available releted to live-in relationship, their causes and consequenses. These genuine problems help the researcher to go into deep with keen interest of the work.

1.5 RESEARCH QUESTIONS

- What is Live-in relationship and what are the main causes of such relationships in India?
- Whether women living in Live-in relationships enjoy the status equal to legally wedded wife in India?
- Whether children born out of Live-in relationships enjoy equal rights to Inheritance with the children born out of lawful marriages?
- How the judicial responses to live- in-relationship affect the marriage institution?
- Whether women in live-in relationship are suffering in India?

1.6 REVIEW OF LITERATURE:

1.6.1 BOOK

Peter de Cruz in his book ***Family Law, Sex and Society: A comparative study of Family Law, (2010),*** discusses the development of the law relating to marriage, unmarried heterosexual and homosexual cohabitation or informal domestic partnership in common law and civil jurisdictions within and outside the United Kingdom. Both same-sex and opposite-sex cohabitation in the common law jurisdictions of United States, Australia and New Zealand are examined. The book, while reviewing the legal position in a range of jurisdiction, selected France and Germany as example of civil law Countries that have introduced legislation that affects such informal unions comparing them with the English common law position. The authors also consider Sweden as an example of a jurisdiction which has its roots in the continental or civil law tradition and whose main source of law is codified law or statutes. Sweden first introduced a Cohabitee Act in 1987and again in 2003. However authors agree that end of first decade of 21st century, there is no universally accepted statutory as well as social definition of heterosexual non marital cohabitation. Only different descriptions for different purposes are given.

N. V. Lowe and **G. Douglas** in the book ***Bromley's Family Law*****, (2007)**, discuss the large increase in the number of couples living together outside marriage has been noted. Various reasons are given for this development. For example some couples cannot marry, because one of them is in the process of obtaining divorce (or, occasionally, unable to do so. Some wish to avoid financial responsibilities attached to marriage. Others wish to postpone the assumption of the legal incidents of marriage and regard cohabitation as a form of trial marriage or merely 'a pre-marital experience'. Some drift into cohabitation as their relationship becomes more intimate. Some regard marriage as irrelevant and may cohabit because they reject the traditional marriage contract and the assumption of the roles which necessarily seem to go with it.

Paul du Plessis in his edited book ***Borkowski's Textbook on Roman Law (2010)*** under the Chapter the Roman Family, there are certain types of marriages in Roman Family are discussed. One of the types is *Usus*. In this form if a man and woman cohabited for a year with *affectio maritalis,* i.e. regarding themselves as man and

wife, even though they had not undergone any form of wedding ceremony. The required marital intention would normally be presumed from the fact of cohabitation. Another type of marriage in Roman family is *Free Marriage*. A free marriage is created by the cohabitation of the parties, provided that they regarded themselves as man and wife. As soon as such cohabitation began with necessary intent, the marriage came into existence. For free marriage intention of the parties are more important than the fact of cohabitation. Such union is regarded as a perfect marriage. In case of divorce no grounds were necessary to end a free marriage. As regards form, terminating a free marriage was basically as informal as the manner in which it was created.

Sanjay Gaur's work on ***Live-in relationship, (2011)*** is a well researched document. According to this book the most appropriate definition of live-in relationship is a mutual arrangement of living under the same roof followed by cohabitation without solemnizing the marriage as per personal laws of the partners or legal formalities to which they are subjects. It also focuses on the innumerable lifestyle magazine and widely read news paper's story on live-in relationship and their pros and cons on Indian society. Author accepts that live-in-relation is a common practice and acceptable norm in so called advanced countries, but this is in nascent stage in our country. It also pointed out that our old values and traditions are breaking and new generation is aping western lifestyle without any second thought. Various films which are based on live-in relationship are also adding fuel to the fire. The youngsters are at crossroads. To marry or live together without marrying is totally a matter of personal choice.

Vivek Mathur in his book ***Live-in relationship, Sex and Beyond***, (2011), writes as live-in relationship is simply a peep into the privacy of individuals who have now openly come up with their views for or against the fundamentals of cohabitation. The book quotes the instances of unwed couples from Indian Mythology underscoring that both premarital sex after marriage with another man or woman was a fact. The book deals with all the emotional and financial issues attached to the concept of 'Live in'. The book is useful for those who are already having the live-in relationship with someone or are planning for such an adjustment in the coming days. Because it is speaking in terms of legal practices, how to define what a live in relation is? Who will decide that it's actually a live in relation? Is it enough that one guy and one girl

stay together in one flat without any paperwork or bond and call it a legal live-in relationship or they need to have sex at least once so as to confirm it as legal? However the book answers all such queries in detail.

1.6.2 ARTICLE

Prof. Vijender Kumar in his well researched article ***Live-In Relationship: Impact on Marriage and Family Institutions*, (2012)** analyses live-in-relation and its impact on marriage and family institutions in India and also discussed and reviewed the law relating to matrimonial and proprietary rights of live-in partners besides the duties and obligations of live-in-partners. The author also compared the legal status of live-in-partners with the status of legally wedded pairs and status of offspring born out of such live-in relationship. As per the author; live-in relationship is an arrangement whereby a heterosexual pair inhabits together, without observing or entering into any formal requirements to enter into a valid marriage. It need not necessarily involve sexual relations. It is an informal arrangement between intended parties, although some countries allow registration of such arrangements between the couples. People generally prefers to enter into such arrangements with their free will either to assess their compatibility before marriage. Moreover, in many cases when people become unable to legally get married due to many adverse situations surrounded to them prefers to enter into live-in relations just to supersede the adverse consequences of marriage as because live-in relation does not involve the harsh hurdles of formal marriage. It may also be pointed out that partners in live-in relationship prefers to such relations as it curbs the financial hardship of marriage as well as it easy the advert consequences of break-down of marriage. The author has analysed live-in relationship and its impact on marriage and family institutions and also has analysed the law relating to matrimonial and proprietary rights of live-in partners besides the duties and obligations of live-in partners. The researcher has also compared the legal and social status of partners in live-in relationships with the status of legally wedded pairs and legal status of children born out of such live-in relationship as well in this paper.

Dr. Prativa Panda, in her article ***The Status of Live-in Relationship in India: A Legal and Judicial Approach*, (2016)** observed that live-in relationship is a living arrangement in which couple not legally wedded with their free will lives together in a long span relationship that be like a marital relation. Such a relationship is also

known as Common law marriage i.e. unceremonious marriage or marriage by practise and character. Live-in relationship forms a distinctive feature and unique way of living together under the same roof as like a married couple. This practice is a growing trend especially in metropolitan zones. However, the concept and ambit of live-in relationship is very ambiguous as there is no specific legislation in India on this subject, whatever legal status till date it gets is in the form judicial pronouncements by the courts in India depending upon the facts of each individual case in hand. This paper has made an attempt to analyze the concept and legal status of live-in- relationship in India and judicial approaches towards the same. The position of live-in Relationships is not very clear in the Indian context but the recent landmark judgments given by the Honourable Supreme Court provides some assistance when we skim through the topic of live-in and analyze the radius of the topic in Indian legal ambit. No specific law recognizes a live-in relationship in India. There is no specific legislation to define the concept of live-in relationship, the rights and obligations of the partners in such relation and the status of issues born due to the cohabitation by such pairs. The practice of live– in relationship has neither been recognized by Hindu Marriage Act, 1955 nor by any other laws of the land. Only the Protection of Women from Domestic Violence Act 2005 (DV Act) provides for the protection, maintenance and right of palimony to a live-in partner, subject to the complaints filed by the female partner.

Dr. Rabbiraj. C, in his article ***Socio-Legal Dimensions of Live-in relationships in India***, **(2014)** analyses that marriage and family is the foundation of Indian culture and tradition. The Indian society is mostly religious and family centric. The influence of live-in relationships in India is of very recent past which has raised several crucial questions relating to the impact of such relationships on the society. Although, there is no legislation on this subject matter, the Indian judiciary has thrown much light into the issue on live-in relationships and has prudently tried to balance the general expectations of the society and the individual rights of people. This article basically emphasized the problems of live-in relationships in India and observes the necessity to shield the upcoming generation from the inducement of live-in relationships which is no healthier arrangement than marriage.

1.7 SCHEME OF THE RESEARCH

The researcher in this research has aimed to come across the present position of live-in relationship and status of women and their children living in such relationship in India. The institution of marriage is considered as the forming part of the society and live-in relation is not somehow reaching that position but still certain people with different generations and situations are opting live-in relationship with the notion of easy walk in and walk out relationship. Indian Judiciary however also is trying to define such relations with in the frame work and as a consideration to marriage on the basis long durability and presumption of marriage in at first instance. Under the Protection of Women from Domestic Violence Act 2005 live-in relationships are included as a definition of "relationship in the nature of marriage".

Chapter I: **INTRODUCTION**

The researcher tries to give an explicit introduction of the main topic. Through this chapter, the researcher has given a concise revelation of the entire topic, the scope of study, hypothesis, research methodology, research questions, limitation of the subject matter, literature review, scheme of the research etc.

Chapter II: A CONTEMPORARY STUDY OF LIVE-IN RELATIONSHIP AND STATUS OF WOMEN IN INDIA

The researcher explains the causes of live-in relationship. It covers the main causes which are likely to be adopted in different conditions and among different generations in India. It also analyses the judicial pronouncement of different courts in India to study the legal status of women involve in live-in relationship in India. The position of women living in live-in relationship as a presumption of marriage, divorce, maintenance are also discuss exclusively in the light of legal and judicial pronouncements. The researcher has taken a broad view in to the legitimacy and rights of the offspring from the live-in relationship while analysed.

Chapter III: LEGAL STATUS OF WOMEN LIVING IN LIVE-IN RELATIONSHIP IN INDIA, MARRIAGE UNDER PERSONAL LAWS IN INDIA AND ANALYSIS OF PROTECTION OF WOMEN FROM DOMESTICT VIOLENCE ACT 2005

The researcher has discussed the legal status of live-in relationship, and marriage under Personal Laws of Hindu, Muslim, Christian and Parsi in India. The researcher

has also critically analysed relevant provisions of the Protection of Women from Domestic Violence Act 2005 with leading Apex Court judgments. It also has been analysed the Supreme Court's interpretation in the definition of 'domestic relation' as an association in the nature of marriage under section 2(f) of the Act.

Chapter IV: LEGAL STATUS OF LIVE-IN RELATIONSHIP IN OTHER COUNTRIES

The researcher has discussed the different position of live-in relationships in different other countries of the world. It is discussed the laws and the legal status which is governing the live-in relationships in these countries. In this chapter the socio-legal position of non-marital cohabitations in different parts of the world are exclusively focused. The researcher has discussed in this chapter about the laws enacted in some countries which have passed exclusively to legalise the status of live-in couples similar to married couples.

Chapter V: SOCIO-LEGAL OUTLOOK OF LIVE-IN RELATIONSHIP IN NEOTERIC INDIA

The researcher has analysed the present of the socio-legal standing of live-in relationship in India through data analysis of total hundred and twenty two (122) samples comprising with all possible data collected through random sampling by providing structured questionnaire. Nine (9) case studies of couples who are in non-marital cohabitation are also discussed with their socio-legal complexities.

Chapter VI: CONCLUSION AND SUGGESTIONS

The researcher has aimed to conclude the research study by making suggestions and recommendations that might be beneficial in finding a solution to the issues of status of women in live-in relationship and its legitimacy of live-in relationship in India.

CHAPTER 2

A CONTEMPORARY STUDY OF LIVE-IN RELATIONSHIP AND STATUS OF WOMEN IN INDIA

2.1 INTRODUCTION

It may be wrong if anyone thinks that notion of live-in relationship is a recent origin inclination in India. The involvement in live-in relationship without the valid and ceremonial marriages among heterosexual couples is a very old practice from very long time in India. It was not an immoral practice in the society for a man if he has a non-marital relationship with a woman outside the marriage. It was not illegal in the society to keep Concubines or *Avarudh Stris* by men for entertainment and relaxation. Moreover it is a matter of proud and proof of prosperous to keep mistress outside the marriage.

However, the "*Maitri Karar*", known as "friendship arrangement" was prevailed in few areas of Gujarat and Maharashtra. It was basically an agreement where two heterosexual persons voluntarily engaging in non-marital relationship. It is important to mention that such living arrangement necessarily be happened between a married man and a single woman and also agreeing that she would not claim any other rights except that intimate sexual relationship. The agreements worked as a security to such women who choose *Maitri Karar.* These agreements were registered in District Collector Office and were later known as live-in relationship.[16]

The social values associating with personal liberty and individual rights were developed after independence. It was the time when bigamy became crime and women became more awake of their individual rights this *Avarudh Stris* practice is now illegal on the basis of questioning on morality and legality.[17] But practice of live-in relationship is increasing in metro cities in India. It is the western culture where new style of non-marital cohabitation is prevailing in most of the western countries which is inspired and followed by today's modern India too.

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[16] Pragati Ghos, *Essay on the Maitri Karar under the Hindu Marriage Act,* (Jan. 23, 2017, 09:28 PM), http://www.shareyouressays.com/117237/essay-on-the-maitri-karar-under-the-hindu-marriage-act.

[17] Prof. Vijender Kumar, *Live-In Relationship: Impact on Marriage and Family Institutions*, 4 SCC. J-20 (2012).

It is the development of the mind set where young generation without disqualifying to getting into the formal marriage they are choosing cohabitation without marriage. On the basis of different reasons as categorized, Indian society does not recognize such relationship. Two main factors are there where live-in relationship is disallowing by the society in India, e.g., importance of marriage and dependency of women on men. However in metro cities live-in relationship increases so fast that most of young generation makes the marriage institution as failed institution.

Unlike many western countries like USA, Canada, France and UK etc, India still does not recognize the live-in relationship as a whole. India is still following the institution of marriage as the best forming part of society because of the traditional principles in the society and dependency of female on male. The legal status, social dependency, economic dependency and also domicile of a woman are changed with the change of her matrimonial status. So same are not possible in case of no-marital cohabitation like live-in relationship.

2.2 EVOLUTION AND PRACTICE OF LIVE-IN RELATIONSHIP IN INDIA

It is always in presumption that the live-in relationship is a western culture where new style of non-marital cohabitation is prevailing in most of the western countries which is inspired and followed by India. Unlike other countries of the globe, the concept of live-in relationship is not a new system of intimate relationship in India. But if we have the notion that practice of live-in relationship is prevailing only in metro cities in India we might be wrong. Various practices of non-marital cohabitations are prevailing among tribes and in civil society in India. Some common types of live-in relationships are discussed as follows-

2.2.1 MAITRI KARAR (GUJRAT, MAHARASHTRA)

Mainly in Gujrat and Maharashtra there was a system started during 1950's and prevailed in noticed till 1980's, called as Maitri Karar, where a man and a woman can sign before a Magistrate, into a 'friendship agreement' and can legitimise the contract. Later however this agreement was turned into a 'service agreement', where a man could reside in his house with a female partner of his choice in the tag of a maid, a domestic helper or full time servant. It is important that the parties to the contract must be competent to enter into a contract, e.g. there must be two

heterosexual parties, and both are major; sounds minded and have other competencies to a contract. In Ahmedabad it is known popularly as "kept-woman contract", and it has more responsibilities in action rather than just long lasting love as a promise. Essentially it also provides the 'legitimate' status to the child born during the continuance of the contract.[18]

Literally the term Maitri Karar means a 'friendship agreement' by expressing the terms and conditions in written form, registered followed by notarized, a man and woman agrees to enter into a non-marital cohabitation. However this 'friendship agreement' acts as a rule violator against the provision of compulsory monogamy of Hindu Marriage Act 1955. A Maitri Karar is basically a contract between a married man and an unmarried woman through formalizing the terms and conditions of maintenance, food, clothing, shelter and all other necessities of life between them for living together and usually by the man all the expenses are maintained for his companion. However, women contracted in Maitri Karar had a stronger status as compare to women in a live-in relationship.[19]

Hindu society in Gujrat were been threaten of its social stand through the popularity of Maitri Karars and also the offspring from such non-marital cohabitations, were not recognized as legitimate in the society, community and in the school though legally they are recognized as legitimate. That really creates an emotional and psychological stress, and so by pressure from eminent persons and social workers lead to banning of the practice by the state government in the early 1980s. Similarly, in the state of Maharashtra it is declared that "The registration of the 'companionship contract' or Maitri Karar was opposed to public policy."[20]

It is also held by the Gujrat High Court in ***Minaxi Zaverbhai Jethva v. State of Gujrat***[21] that "Maitri Karar is illegal as it is opposed to public health and morality."

The contents of the Maitri karar agreement are like, "If in the course of our companionship, we would make love together, and if of this love-making an offspring is born, then we shall be jointly responsible for that child".[22]

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[18] Pragati Ghos, *Supra Note* 16.

[19] Vijay Sharma, Monogamy: It's Inefficacious Legal Imposition, In Protection to Women in Matrimonial Home, 116-117, (Deep and Deep Publications, 1994).

[20] A resource book, Rights in Intimate Relationships, 61-65, (Partners for Law in Development, 2010).

[21] Minaxi Zaverbhai Jethva v. State of Gujrat Special Civil Appeal No.3708 of 1998 (India).

2.2.2 NATA PRATHA (RAJASTHAN)

"Nata Pratha", the customary practice for centuries is still practicing among Bhil tribe who are residing in the regions of Rajasthan, Gujrat and Madhya Pradesh. This custom is a non-marital cohabitation and also promotes polygamy of both genders and consequence is of children being abandoned by their parents. The traditional term is that Nata must be between married or widowed heterosexual persons but the custom has not been practiced properly. The woman basically follows the man to live with him by leaving her children from her previous marriage. However, a Bhil community is carrying this old custom by believing that it is for empowering of Bhil women by way of leaving her previous husband if they are not happy with them.[23]

This Nata relationship without marriage allows men and women to have non-marital cohabitation for number of times as much as they want. However, this custom has made it compulsory for a man to pay some amount of money to the woman with whom he wants to live-in without a legal marriage and the parents and members of the community will decide the amount but she will not receive the money, sometimes nor her consent will be taken for this relationship. So this is something depressing. Nata relationship is a similar concept of re-marriage which is widely practised as well as socially accepted among Bhil tribe but not legal.[24]

Similar to a marriage in every sense, the women in Nata relationship engage in cohabitation, child bearing, household works, care taking, nurturing of child, fieldwork in farms, any work of necessary and sexual relationship etc.[25]

In the Bhil community, there is a traditional perception of women in 'good' Nata and women in 'bad' Nata relationship. The 'good' Nata relationship is based on mutual consent; by way of dissolution of a prior marriage either by death or by desertion;

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22 Uday Chander Singh, *No cumbersome divorce proceedings, people of Ahmedabad opt for maître karar contract*, 24th October 2013, India Today, (Nov. 24, 2018, 09:14 AM), https://www.indiatoday.in/magazine/living/story/19811215-no-cumbersome-divorce-proceedings-people-of-ahmedabad-opt-for-maitri-karar-contract-773519-2013-10-24.

23 Sameer Mushtaq, *Nata Pratha, a tradition that allows men and women to live with person of their choice*, 10th May 2017, The Citizen, (Nov. 25, 2018, 12:14 PM), https://www.thecitizen.in//index.php/en/newsdetail/index/9/10641/nata-pratha-a-tradition-that-allows-men-and-women-to-live-with-person-of-their-choice.

24 Tariq Anwar, *'Nata Pratha' : An Unusual Marriage That Overrides 'Spousal Desire'*, June 15, 2019, Newsclick, (Aug. 20, 2019, 02:15 PM), https://www.newsclick.in/Nata-Pratha-Marriage-Spousal-Desire.

25 Annie Zaidi, *What India's old and unusual marriage customs tell us about a woman's consent*, 30th June 2015, Dailyo, (Sept. 20, 2019, 10:29AM), https://www.dailyo.in/politics/child-marraige-natha-pratha-divorce-dowry-women-consent-inheritence/story/1/4683.html.

and it must be acceptable by the family and the community. However, a 'bad' Nata relationship is defined as the relationship is forced to adopt, secretly engaged, by way of abduction, and entered with an illegal reason. Nata relationship is also practiced by man with any woman during marital cohabitation with his wife is continue but Nata for a woman is permissible as monogamy.[26]

2.2.3 COHABITATION AMONG KHASI TRIBES

The Khasis are one of the most popular and distinct tribe found in Meghalaya who has the social formation in the form of larger and smaller units, e.g. clan (*kur*), the larger unit and family (*iing*) the smaller unit.

Each Khasi belongs to a particular clan and they have strong belief that all are descended from a common female ancestor. The strict exogamy is followed among Khasis, so any form of inter-marriage between the members of the clan is a grave sin which cannot be forgiven and against their morality. The clan members are considered as brothers and sisters and for them it is a sin if marriage between brother and sister will be happened. The marriage is not a compulsory need to be solemnised with ceremonies, it is sufficient for a conjugal life that if mutually a man and woman have decided to cohabit together and procreate by obeying the rule of prohibition of incest. Marriage among the Khasis is known as *La-Poi Kha* or *La- Shong Kha*. It is not sanctioned by Khasi society if there is a polygamous or polyandrous marriage among Khasis. Marriages among Khasi within prohibited degrees are strictly banned, and the rule is governed by customary laws. By way of social sending to Coventry is sanctioned if any violation of these customary practices is observed. The couple will be punished by simply excommunicated from the clan instead of physical punishment and left to the mercy of supernatural powers for punishment. The Khasis and Jaintias are the two major tribes in Meghalaya which are prominent for its matrilineal inheritance, because the surnames of mother is taken by the children and daughters inherit the family property and youngest daughter gets the majority share and hold the family alone and among Khasis, women run most of the businesses. [27]

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[26] Uday Chander Singh, *Supra Note* 22.

[27] Dr. Jeuti Barooah, Customary Laws of the Khasis of Meghalaya, 21-27, (Law Research Institute, Eastern Region, Gauhati High Court, 2007).

The Khasi Social Custom of Lineage Act 1997 protects the matrilineal structure under the definition of "Rapiing".[28] However, under the Act, "Legal Marriage" is defined as it means "Any form of marriage performed, solemnised or recognized under any law for the time being in force or under the prevailing Khasi Customs." Under the category of recognition, cohabitation may become a legal marriage."[29]

The definition of Khasi includes "a person belonging to Khasi tribe who may be a Khasi, Jaintia, Pnar, Synteng, War, Bhoi or Lyngngam or who is recognized or deemed as such under prevailing Khasi Custom or this Act."[30]

The social activist Patricia Mukhim, a national award winner gave an exclusive interview which was published on 16th October 2013 by Al-Jazeera News Channel. She also edits the Shillong Times newspaper. She reveals that, "Matriliny safeguards women from social ostracism when they remarry because their children, no matter who the father was, would be known only by the mother's clan name. Even if a woman delivered a child out of wedlock, which is quite common, there is no social stigma attached to the woman in our society", she further disclosed the fact that, "Khasi men were known to be polygamous and marriages are brittle. Marriage as an institution came about only after Christianity and is practiced only among Christians. Those who follow the indigenous faith, or who are outside the purview of any religion, still practise cohabitation or living together. So our system works."[31]

2.2.4 NON-MARITAL COHABITATION AMONG ORAON, MUNDA AND HO TRIBES OF JHARKHAND

The men and women have equal rights in almost all tribal societies which also include the right to choose a life partner. So a tribal girl from Oraon, Munda and Ho tribes of Jharkhand can choose a non-marital relationship with her male partner without getting married to each other in the form of 'Dhuku' marriage and the women in such relationships are called 'Dhukua' or 'Dhukni' without having legal

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28 The Khasi Social Custom of Lineage Act 1997, No 22, Act of state of Meghalaya, 1997, Section 2(m).

29 The Khasi Social Custom of Lineage Act 1997, No 22, Act of state of Meghalaya, 1997, Section 2(i).

30 The Khasi Social Custom of Lineage Act 1997, No 22, Act of state of Meghalaya, 1997, Section 2(h).

31 Subir Bhaumik, Aljazeera's interview, *Meghalaya: Where women call the shots*, 16th October 2013, Aljazeera, (Aug. 29, 2019, 12:33 PM), http://www.aljazeera.com/indepth/features/2013/2013/2013/10/meghalaya-where-women-call-shots201310315293682451l.html?utm_content=bufferf9a60&utm_source=buffer&utm_medium=facebook&utm_campaign=Buffer.

rights on property and any other assets because of non-social recognition of the relationship. For social recognition the couple must arrange a wedding feast in the village and to invite all villagers to participate, which a very expensive to bear. So they prefer live-in relationship status in the form of 'Dhuku' marriage. Many couples in live-in relationship for more than 20 years as they couldn't organize a wedding feast so they simply move in together and start a family.[32]

The tribal society approves the right to choose live-in relationship as an intimate relationship by female partner to live-in with her chosen male partner, but she will not get the status of a wife, and society tagged her the title 'Dhukni', which means in tribal language "one who has entered a man's house", so it means a woman who has a household and a family without a legally wedded one.[33] Women in Dhuka relationships does not have any rights of a wife because in such living arrangement, couples live together not 'by choice', but 'by circumstances' or compulsion without getting married.[34]

These couples have poor backgrounds and doing really tough struggle to pay for a grand feast for the entire village. But they could not make it possible for many years, thus this leads to a legal problem in reality. The women do not have any legal or social rights to get ancestral property, and in some situations if the men die early and young, then women and children are left "empty-handed". Sometimes this waiting period becomes so long that many of these live-in couples having their grand children without a getting married. Dhukni or Dhukua relationship in the form of live-in relationships without marriage is a common practice among the extremely poor tribal people in Jharkhand, who are unable to arrange their wedding followed by a feast for the entire village to make the wedding socio-legal recognition.[35]

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32 Mukesh Ranjan, *After 14 years of living-in, Jharkhand tribal couple gets support for wedding*, Jan. 14, 2019, The New Indian Express, (Jan. 15, 2020, 08.37 PM), http://www.newindianexpress.com/nation/2019/jan/14/after-years-of-living-in-jharkhand-couples-get-support-for-wedding-1924783.html.

33 Debjani Chakraborty, *No feast, no marriage: Tribals forced into live-ins*, Jan. 15, 2019, Times of India, (September 14, 2019, 12:45 PM), http://timesofindia.indiatimes.com/city/ranchi/no-feast-no-marriage-tribals-forced-into-live-ins/articleshow/67535686.cms.

34 Kelly Kislaya, *Forced Cohabitation: Why Indian Couples Had To Live In Sin … Until Now*, March 17, 2019, OZY, (Aug. 7, 2019, 8:15 PM), https://www.ozy.com/rising-stars/forced-cohabitation-why-indian-couples-had-to-live-in-sin-until-now/92440/.

35 Staff Report, *Jharkhand: After living-in for 20 years, elderly tribal couple ties knot in a mass marriage ceremony*, 15th January 2019, Newsd (April 12, 2019, 07:20 PM), http://newsd.in/jharkhand-after-living-in-for-22-years-elderly-tribal-couple-ties-knot-in-a-mass-marriage-ceremony/.

2.2.5 NON-MARITAL COHABITATION AMONG GARASIA COMMUNITY OF RAJASTHAN

The Garasia tribe is an indigenous tribe from Rajasthan. From thousands of years this tribe has been practicing a different tradition. The indigenous Garasia tribe generally lives in the north-western state of Rajasthan and exclusively cohabiting in live-in relationship outside the marriage.[36]

The livelihood of Garasia tribal population depends on labour and farming of different crop; and the couples only get into marriage with their partners when they have sufficient amount of money until then they prefer live-in together. The living arrangement without a legal marriage is called as 'Dapa' and it is recognized in the Garasia society through some formal rituals where women retain a high status and very low occurrence of rape and dowry deaths among this tribe.[37]

The lack of wealth makes the couples to continue living-in relationship for a number of years and even many a time they become parents without afraid to bear a child outside of legal wedlock, and so in their lives, marriage happens after many years. The region surrounded at Udaipur and Kotra, the Garasia tribe are resided the most, where these kind of live-in relationship are prevailing in their culture as a choice of intimate relationship.[38]

2.3 LIVE-IN RELATIONSHIP AND ITS NEW DYNAMICAL ASPECTS IN INDIA

Marriage is a religious sacrament and a legal recognition of status which has civil as well as religious connectivity. However, today marriages are preferred to be solemnised more for legality rather than religious sanctity, but it can't be denied that the status of marriage has its historical traditional root as a religious institution. The new form of non-marital cohabitation has been emerged in 1960's in western countries which are gradually spread over in every corner of the world. Then question arises whether this kind of non-marital relationship existing in the ancient world also? Unlike the personal laws the concept of secularism is followed in live-in

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36 Shahnawaz Akhtar, *Marriage an alien notion for Indian tribe Live-in relationship are the norms of Garasia community where women retain a high status in western state of Rajasthan*, 17th June 2014, Aljazeera, (Jun. 17, 2019), http://www.aljazeera.com/indepth/features/2014/06/marriage-an-alien-notion-indian-tribe-2014617134343167160.html.

37 Dr. Swarupa N. Dholam, *Supra note* 11.

38 *Id*.

relationship, so religious foundation are not given priority while choosing partners. However, though institution of marriage is secular in nature, still it is associating with Personal Laws of the land and most of them are religiously, socially and legally developed and coded. Between a man and a woman when married, the sacramental vows and ceremonies to make marriage legally valid is actually defending the sanctity of marriage.

In almost every part of the world the concept and practice of non-marital relationship or pre-marital sex is not a new one. Marriage and non-marital relationships both are based on social norms to continue the society. So it may be wrong if anyone recognises marriage alone. In the new era of individual liberty and freedom of choosing; it's all about behavioural expectations for spouses, commitment between the partners and contribution to the stability of their relationship. It may be right way that sociologists describe live-in relationship as a "under-institutionalized" concept. In non-marital or rather say informal relations, the couple's behavioural expectations are different according to their way of experienced in the relationships. There is no any definite system to regulate their behaviour like marriage laws.[39]

The legality of marriage always holds the highest status as compare to non-marital relationship. The rights and obligations which arise on the basis of entering into the marriage institution are legally and socially enforceable and that also secures the substantial financial matters to dependent family members. Under marriage the family members share a standard social life, with care and support to each other in the family. The legal rights that provide for financial support and sharing of property are enforced after the dissolution of the union. These dissolution rules provide the spouse, who is a dependant, with certain measure of financial protection. Thus it is worth mentioning that the concept of legal rights and duties are generally uncommon in live-in relationships.[40] The definition of "live-in relationship" in today's generation is, without the formal ceremonial marriage where two heterosexual persons cohabit together yet there is no any prohibition to enter into the marriage. However, such live-in arrangements are disapproved by the traditional Indian society

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39 Muniruzzaman, *Transformation of intimacy and its impact in developing countries*, LSSP (2017), (13th March, 2019, 12:34 PM), https://link.springer.com/content/pdf/10.1186/s40504-017-0056-8.pdf.

40 Parul Bhandari , *Pre-marital Relationships and the Family in Modern India*, 16 SAMAJ (2017), (June 15, 2018, 02:30 PM), https://doi.org/10.4000/samaj.4379.

for certain reasons. In live-in relationship it may create a submissive status for the woman if she was financially dependent on her male partner.[41]

Parties may decide to live together in a cohabitation situation for a variety of reasons. In many cases the parties cohabit rather than go through a form of marriage because one or both are already married to a third party and are perhaps awaiting divorce conversations. In other situations couples decide to cohabit rather than marry because such a relationship accords more closely with their basic philosophy of life. In the former case where one of the parties has already contracted a valid marriage the legal effect may then be different because the rights of the spouse or children of the prior union may have some bearing on the determination of the rights of cohabitees.[42]

Different countries have different influence on relationship quality and welfare and on the basis of which non-marital cohabitation may differ. The main differences can be counted on the basis of institutionalization of the non-marital relationship and the common prevalence of unmarried cohabitation in that country. In the support, there are many unswerving as well as roundabout reasons which can easily find out the main causes for which a person normally opt live-in relationship. A marriage always creates correlating postulate of rights and duties when it is solemnised according to the law and religious ceremony cannot be waived easily. But in live-in relationship there are no rights and duties are prescribed so if any right violated there are only least and conditioned remedies are available.[43]

Becoming more individualistic and career oriented now a day's people in metros are following hectic lives where they don't have time for maintaining and nurturing a family in its true sense. Spending less time at home and more time in offices is a common practice in today's living condition. Increasing more of women are going out for work; as the main nurturer of the family could not devote enough time

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41 Shruti Shreya, *A Socio-Legal Study of Live-in relationships and its Impact on the Institution of* Marriage, 2(1) SA (2017), (July1, 2018, 02:10 PM), https://supremoamicus.org/wp-content/uploads/2018/06/237.pdf.

42 Alice Walton G., *The Marriage Problem: Why Many Are Choosing Cohabitation Instead*, February 7, 2012, The Atlantic, (Oct. 23, 2017, 10.45 AM), https://www.theatlantic.com/health/archive/2012/02/the-marriage-problem-why-many-are-choosing-cohabitation-instead/252505/.

43 Galena K. Rhoades, Scott M. Stanley, & Howard J. Markman, *Working with Cohabitation in Relationship Education and Therapy*, 2010, National Center for Biotechnology Information, U.S. National Library of Medicine, (Oct. 23, 2017, 11:00 AM), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2897720/.

towards family and children. It is also true everyone likes a life which is free of responsibility and tensions. Divorce procedure is also one of the biggest reasons for live-in-relations in India because the divorce laws are not friendly in India. It takes years to get a final divorce decree if anyone file a divorce petition and then after difficulties and trauma suffered by the partners during the pendency of the case. So, live-in relationship is a easy way to be involved in a short term relationship.[44]

Another way, there are many legal formalities relating to the institution of marriage which need not to be followed in the case of live-in-relationships. The term "taking a car for a test drive" is used in the very concept of live-in-relationships because without any legal formalities any person can easily walk in and walk out of the relationship. It's better to know the person in advance than marrying in hurriedness and getting oneself in a legal mess.[45]

Another reason to adopt live-in-relationship is when young people are without family away from home and living in metro cities or in abroad for higher studies or for work. Because of lack of emotional as well as financial support they become encouraged to adopt the open culture of the country. Similarly in India this trend is openly found mostly in multi-ethnic metro cities especially in the areas where people work in Multi National Companies and other multipurpose, modern developed work, relating to advertising, hotel, airlines or people in the art industry - music, theatre etc. Many a time's couples choose live-in relationship mainly because of out of love and they want to spend more time together. However they feel that their relationship is not a good match for a committed relationship like marriage. So they prefer live-in-relationship prior to marriage to make sure to them that they are compatible before a life time commitment. So basically it is a test of compatibility before marriage.

After engagement some couples decide to creep up together before the actual wedding just because to limiting expenses by paying for one rent instead of two and save the money jointly for their marriage. It is in existence that some couples choose live-in relationship as their intimate relationship for rest of their life if they decide not to get married. It is in the category of live-in relationship by choice. If an analysis is made to understand the need of these relationships, the prime reason will be

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[44] Shankar Siddhartha Mishra, *Living Relationship a trend or a Life out of way*, April 1, 2015, Just in Print, (November, 28, 2018, 01:10 PM), http://justinprint.in/living-relationship-trend-life-way/.

[45] Swasti Misra, *Live-in relationship: A Problem or Solution*, (March 11, 2018, 11:20 AM), http://www.mightylaws.in/705/liveinrelationship-problem-solution.

avoiding responsibilities. The lack of tolerance in relationships, commitments, the devaluing of social bonds, norms etc., are the reasons to choose alternative to marriage. So it may be an ideal move to enter into the live-in relationship where right to liberty and privacy are the main essential. Some pairs who animate together like gay and lesbian are vetoed from marrying.[46]

Another leading decision from the highest court came out in 2018 regarding adultery.[47] It is no more a criminal offence as the Supreme Court of India stroked down the provision of adultery under Section 497 of IPC. So now if a married woman is maintaining non-marital cohabitation with another man during continuation of her marriage with her husband, it is no more a crime, but only a civil ground to seek divorce by the aggrieved party.

In ***Joseph Shine v. Union of India***[48], the Supreme Court observed that "A time has come when the society must realise that a woman is equal to a man in every field. This provision, prima facie, appears to be quite archaic. When the society progresses and the rights are conferred, the new generation of thoughts spring, and that is why, we are inclined to issue notice."

The Supreme Court further ruled that, "Section 497 is based on gender stereotypes about the role of women and violates the non-discrimination principle embodied in Article 15 of the Constitution. Section 497 is a denial of the constitutional guarantees of dignity, liberty, privacy and sexual autonomy which are intrinsic to Article 21 of the Constitution; and Section 497 is unconstitutional."

The modern form of live-in relationship is a western concept and well recognized there. This western concept is imported to India also. Live-in relationship means, two persons of opposite sex live together with each other and perform marital activities without any religious sanctity means without proper marriage.

The Cambridge dictionary defined it as; two people cohabit in the same house and have sexual relationship, but are not married.[49] They often referred as live in partners. When man was uneducated, uncivilized surviving on the bloods of other; the live-in relationship was the trait of that time. But in modern time people are

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46 Dr G.L. Sharma & Dr Y.K. Sharma, *Live-in relationship: A Curse or Need of the Hour*, 3(25) IRRJ 57-58 (2011).

47 Joseph Shine v. Union of India, 2018 SC 1676 (India).

48 *Id*.

49 Cambridge Learners Dictionary, (Smart Treasure), (2nd Ed., Cambridge University Press, 2004).

opting live-in relationship because i) to test the relationship before marriage, ii) They are unable to marry legally, iii) They do not want long lasting relation, iv) It is easier to enter into and to put an end (without facing the legal consequences often accompanying with divorce).

Though it is presumed but which not true in today's trend that concubinage is equated with live-in relationship. There might be a reason that woman involved in concubinage is of lower social and economic rank than the man with whom she is living or because the man is already married. It is a general understanding that men who have high status in terms of economically and socially had concubines. People may live together for a number of reasons. But people who have chosen live-in relationships are having diverse variability from physical to monetary and other categories, for instance, they want to assess their compatibility or to fix their financial stability before getting married.[50]

If we look in the rural areas, every person is strictly bounded by established social norms, and every conduct of each villager is always under the inspection of the family members and fellow villagers. But in cities, there is no such social bounding as nobody is concerned in the personal life of others. Therefore, for an individual in cities there is ample freedom to live as he/she likes. Most of the young people get liberal opportunity and they also are interested to intimate and devote their time with each other. As a result; this atmosphere springs the opportunities to enter into a live-in relationship where marriage is not an essential. A marriage between two heterosexual persons who have diverse religious conviction, classes, grades or castes is still not welcomed by the society at large. But these requirements for a valid marriage under the personal laws are not required in case of live-in relationship.

The live-in relationship which is recognized and which creates rights and duties during the relationship and also after the dissolution is often termed as "common law marriage". It is an informal marriage or marriage by habit and repute. In common

[50] Amit Anand Choudhary, *Couple living together will be presumed married, Supreme Court rules*, April 13, 2015, Times of India, (Jan. 19, 2019, 10:25 AM), https://timesofindia.indiatimes.com/india/Couple-living-together-will-be-presumed-married-Supreme-Court-rules/articleshow/46901198.cms.

law marriage two heterosexual persons live together as husband and wife but without performing any legally recognized marriage ceremony.[51]

There are certain essentials of common law marriage, these are as following:

1. A common law marriage is not created through cohabitation alone, the couple must hold as spouses to the society, and
2. It is the consensual arrangement entered into with free will of the parties to the relationship instituting a common law marriage.
3. Relating to age, both parties must possess the legal age to enter into a marriage and otherwise there must be parental consent to marry.
4. Both the parties must be else competent to enter into a marital relation, which contains being an unmarried and of sound mind.[52]

If a person wishes for a carefree life, which is free from strict sense of responsibility and commitment then live-in relationships is the best choice, because responsibility and commitment are two of main requisites of marriage institution. In other hand while marriage promotes adjustment between the couples in the family, then in live-in relationship it is the individual freedom which emphasises the most. However, it is also not true in case of live-in relationship.

We must say, Indian society is changing, and this change has been reflected and recognized by Parliament by enacting the Protection of Women from Domestic Violence Act, 2005. [53]

"It is therefore, projected to enact a law keeping in view the rights guaranteed under Article 14, 15 and 21 of the Constitution of India, 1950 to aimed at a remedy under the civil law which is proposed to shield the women from being victimized of

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51 Catherine Fairbairn (Ed.), *Common law marriage and cohabitation*, House of Commons Library Briefing, August 13, 2019, (Oct. 28, 2019, 11:35 AM), https://commonslibrary.parliament.uk/research-briefings/sn03372/.

52 Catherine Fairbairn (Ed.), *Supra Note* 51.

53 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India) , Aim and object (An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto).

domestic viciousness and to reduce the incidence of domestic violence in the society".[54]

Live-in relationship can be considered in two parts, either 'by choice' or 'by circumstance'. Person who voluntarily consents to be in live-in relationship together are under the category of *'by choice'*. But sometimes by mistake or by fraud people are living together as husband and wife then they can be placed under the category of '*by circumstance'*.[55]Live-in relationship by choice does not have any legal issue as it does not need the legal recognition but live-in relationship by circumstances has certain problems because of presumption of a valid marriage or rather say misunderstanding of the status of marriage.

The conventional Indian society might have scowl upon live-in relationships but the increasing figure of live-in couples connotes the degree of its silent recognition. However, in most of the cases women are the victims in live-in relationship. As comparison to marriage, live-in relationship does not give the status of husband and wife. The couples who are living together are called partners only. Without the status they are not able to claim any matrimonial rights, such as rights relating to marriage, divorce, maintenance, property rights, right of custody of children, religious, social rights etc. Thus live-in relationship can't be considered as a marriage, neither in legal sense nor in the sense of any of the personal laws. For marriage we need to fulfil first the provisions given under section 5 of Hindu Marriage Act 1955 then section 7 of the same Act. But often in live-in relationship by circumstance people claimed that they got marriage because they fulfil the requirement under section 7 of Hindu Marriage Act 1955. Philosophy of section 7 is that to fulfil its requirement first need to fulfil the requirement of section 5 of the same Act. In case of divorce there must be a marriage between the parties. So in living relationship divorce concept is absent. They can be separated at any time at their own will without the right of matrimonial remedies.

The Fundamental right as contained under Article 21 of the Constitution of India, 1950 ensures to all its citizens "right to life and personal liberty" which means that every citizen is free to live a life with human dignity as per his or her wish within the

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54 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Statement of objects and reasons, Para 3.

55 Dr. Vijender Kumar, *Supra note* 17 at J-19.

norms of constitutional frame work. Every citizen is free to enjoy his or her liberty as ensured by the Constitution and he or she can't be deprived of such liberty except due procedure established by law. The concept of Live-in relationship might be unethical in the eyes of the conventional Indian society but it is not "illegal" in the eyes of law as there is no statutes declared it as illegal and hence an offence. Therefore, though there is no legal recognition of live-in relationship in India; but the partners are entitled to be in live-in relationship as a fundamental right guaranteed under Article 21 of the Constitution of India, 1950.

That is why various committees have recommended for the equal rights for a live-in woman on the footings of a married woman. The *Malimath Committee (2003)*[56] recommended that if a female counterpart has been in relationship for a reasonable period of time with a man as like his wife then she is entitled to claim maintenance under Section 125 of Criminal Procedure Code. But it was not accepted in the legislation to amend the provision. However, after the enactment of PWDV Act 2005 certain remedies are provided to those women who are victims of domestic violence in live-in relationship also under the term of "relationship in the nature of marriage".

The Court in ***Payal Sharma v. Nari Niketan***[57] observed that a man and woman can live together if they wish without even get married with each other. This might be regarded unethical or immoral by the society but the same is not illegal. We may mention there is difference between law and morality, as the British jurists, Bentham and Austin pointed out. As per them what is moral may not be law but what is law can be immoral."

In the case of ***Ramdev Food Products (P) Ltd.*** **v.** ***Arvindbhai Rambhai Patel***[58] the Apex Court observed that live-in relationship between two adults without marriage cannot be construed as an offence. It further observed that there is no law in India which postulates that live-in relationships are illegal.

In the judgement of ***Indira Sarmah v. V.K.V Sarmah***[59] the definition of live-in relationship is set out by the Supreme Court of India. Under the provisions of Domestic Violence Act the Apex Court made an important decision to discuss live-in

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56 Justice Malimath Committee, Report on *Reforms of Criminal Justice System*, Government of India, Ministry of Home Affairs, Volume I, March 2003, (Recommendation No 115).

57 Payal Sharma v. Nari Niketan, 2001 (3) AWC 1778: AIR 2001 All 25 (India).

58 Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel, (2006) 8 SCC 726 (India).

59 Indira Sarmah v. V.K.V Sarmah, 2013 (14) SCALE 448: AIR 2014 SC 304 (India).

relationships while by mentioning the lack of specific legislation on this socio-legal issue. The Court stated that Live-in or marriage-like association is neither an offence nor a sin though socially undesirable in this country. The decision to marry or not to marry or to have a heterosexual relationship is deeply personal choice of individuals and falls within the scope of personal liberty of a person.

The Court further observed in that case that there is no legal definition for a live-in relationship. It is treated to be a domestic association between two people in a romantic affiliation. Sexual intimacy is prevalently accepted, although not obligatory.

In the case of ***S. Khushboo vs. Kanniammaal & Anr***[60], the pre- marital sex and live-in relationship were supported and promoted by the south Indian actress, and so that a criminal-appeals were filed against her. Where the Apex Court dismissed the appeal by stating that how it could be illegal if two adults agreed to live together, and therefore, lives together.

It is not the problem with the people who have chosen live-in relationship as their intimate relationship. The question of legal limitation or status of live-in relationship is not an issue, but now it is the question of claiming the rights of the live in partners and also to adopt the status or position of the children born out of such non-marital relationship are the issues.

If we can see the provisions of Hindu Marriage Act 1955, it gives all rights as a husband or wife only on the basis of a valid marriage and status of legitimacy to every child, born regardless of a void or voidable or valid marriage.

Nevertheless, there is no legalization or recognition of live-in relationship in any personal law in India. The female live-in partner remains vulnerable as well as always at risk in a live-in relationship as compare to male counterpart. If any female live-in partner during the continuation of relationship is exploited physically, sexually, emotionally and economically the Protection of Women from Domestic Violence Act 2005 provides protection to the female counterpart if the association is "in the nature of marriage" with certain requirements.[61]

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[60] S. Khushboo v. Kanniammaal & Anr , (2010) 5 SCC 600 (India).

[61] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

However, The Apex Court in ***D. Veluswamy v. D. Patchiaiamal***[62] observed that a 'relationship in the nature of marriage' under the 2005 Act must fulfil the following requirements:

(a)The pair must clutch themselves out to society as being alike to spouses.

(b)The pair must be major i.e. must attain the age to marry as per the laws to which they are subject.

(c)They must be otherwise competent to enter into a legal marital relation, including being unmarried."

The Apex Court further observed that merely spending few weekends together or a single night stand together would not make it a domestic association. It was further observed that if a man has a 'keep' whom he maintains financially and uses primarily for meeting his sexual need and/or as a servant it would not be a relationship in the nature of marriage.

It is the National Commission for Women that recommended to the Ministry of Women and Child Development in June 2008, in the way of suggestion to include live-in female partners to claim right to maintenance under Section 125 of Criminal Procedure Code. Same point of view was taken in the judgment of ***Abheejit Bhikaseth Auti v. State of Maharashtra and Others***[63].

As an acceptance of live-in relationship, in October 2008, Maharashtra Government accepted that if a woman who has been in a live-in relationship for reasonably and considerably long time, she will enjoy the same legal status as given to a legally wedded wife. This is a proposal suggested by Malimath Committee and Law Commission of India.

In ***A. Dinhammy v. W.L. Balahaamy***[64], it is the general proposition adopted by Privy Council that where a man and woman are evidenced to have lived together for a reasonable period of time as husband and wife then in that case the law will presume unless the contrary is proved, that they were living together as a outcome of valid marriage, and not in a state of concubinage.

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62 D. Veluswamy v. D. Patchiaiamal, AIR 2011 SC 479 (India).

63 Abheejit Bhikaseth Auti v. State of Maharashtra and Others, Criminal Writ Petition No.2218 of 2007 (India).

64 A. Dinhammy v. W.L. Balahaamy, AIR 1927 P.C. 185 (India).

The Privy Council in ***Muhabbat Ali Khan v. Muhammad Ibrahim Khan and Others***[65] the same principal has been laid down by observing that the law presumes in favour of marriage and against concubinage, once a man and woman have cohabited, however, prolonged can never give rise to the presumption of marriage.

In ***Gazanfar Ali v. Kaniz Fatma***[66] again **t**he Privy Council held that, "where a woman is prostitute; cohabitation, however, prolonged never give can rise to presumption of marriage."

In the case of ***Gokal Chand v. Parvin Kumari***[67] **t**he Supreme Court held that unremitting cohabitation of man and woman as husband and wife might advance the conjecture of marriage, which might be drawn from long cohabitation. The facts which weaken and destroy that presumption, the court cannot overlook these.

In ***Amanullah v. Rajamma***[68] in this case the Andhra Pradesh High court held that "marriage may be established by indirect proof, i.e., by presumption drawn from certain factors. It may be presumed from prolonged cohabitation or from acknowledgement of legitimacy of the child of the fact of acknowledgement by the man of the woman as his wife."

Further in the case of ***Badri Prashad v. Deputy Director of Consolidation & Others***[69] the Supreme Court held that strong conjecture ascends in favour of wedlock where the partners have lived together for a reasonable long period of time as husband and wife. Though the conjecture is rebuttable, a burden of proof lies upon the party who seeks to withdraw the relationship of legal origin.

Again, in ***Tulsaa and Others V. Durghatiya and Others***[70] the Apex Court held that where partners lived under the same roof together for a long duration as husband and wife, a presumption would arise in favours of a valid wedlock.

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65 Muhabbat Ali Khan v. Muhammad Ibrahim Khan and Others, AIR 1929 PC 135 (India).
66 Gazanfar Ali v. Kaniz Fatma, ILS 32 All 345 (India).
67 Gokal Chand v. Parvin Kumari, AIR 1952 SC 231 (India).
68 Amanullah v. Rajamma, AIR 1977 Andh.152 (India).
69 Badri Prashad v. Deputy Director of Consolidation & Others, (1978)3 SCC 527 (India).
70 Tulsaa and Others vs. Durghatiya and Others, (2008) 4 SCC 520 (India).

2.4 JUDICIAL TREND TO DETERMINE LIVE-IN RELATIONSHIP IN INDIA SPECIAL REFERENCE TO OBSERVATIONS AND GUIDELINES OF SUPREME COURT OF INDIA

The Supreme Court of India lays down certain guidelines to determine the circumstances where a 'relationship in the nature of marriage' can be arisen. It has critical observation in the case of ***Indira Sharma v. V.K.V Sharma***.[71]

It is one of the leading cases relating to live-in relationship. The Supreme Court has framed some major deciding guidelines like duration of relation, shared house-hold and pooling of resources for conveying live-in relationship within the countenance 'relationship in the nature of marriage' under section 2(f) of Protection of women from Domestic Violation Act 2005; for the protection of aggrieved women in domestic violence. The court observed that amalgamating of pecuniary and domestic activities, assigning the accountability, sexual affiliation, bearing children, socialization in public and intention and demeanour of the partners are some of the other measures to be considered. For length of relationship, the court said that the section 2(f) of the Domestic Violence Act has used the expression "at any point of time", which means a reasonable period of time to endure and continue a relationship which may differ from case to case, contingent upon the facts and circumstances.

The court further observed that the parameter of sharing of resources and monetary arrangements intended to supportive each other or any one of them, sharing of bank accounts, owning immovable properties in joint names or in the name of the female counterpart, long term investments in commercial establishments, receiving of shares in separate and joint names, so as to have a long standing relationship, might be a guiding factor.

The Court further observed that the domestic arrangements where there is an entrustment of accountability, especially on the female counterpart to run the home, do the household activities such as cleaning, cooking, maintaining or up-keeping the house are indication of a relationship in the nature of marriage.

The basic requirements which contains the presence of sexual relationship and procreation of issues which mean a marriage like relationship followed by sexual relationship, not just for urge, but for emotional and demonstrative relationship

[71] Indira Sharma v. V.K.V Sharma, 2013 (14) SCALE 448 (India).

including the reproduction of children, so as to give demonstrative sustenance, companionship and also material affection, caring etc.

Having children is one of the very essential requisitions of a marital relation. Parties, therefore, intend to have a long lasting bond in live-in relationship, sharing the accountability as mutually agreed upon for bringing up and supporting each other is also a strong indication.

The Supreme Court passed the verdict while adjudicating dispute between a live-in-partner where the woman had sought maintenance from the man after the relationship came to an end.

2.5 JUDICIAL RESPONSES TO VALIDATE THE LIVE-IN RELATIONSHIPS IN INDIA

The judicial decisions of Supreme Court and other High Courts of India are the guiding paths to research on this topic. There are many technical points which are come out in these judgments to find out the validity of live-in relationship in different facts and circumstances. The validity determinations of live-in relationship in different courts are varied case to case.

In ***Payel Kattara v. Superintendent of Naari Niketan, Agra***[72], the Allahabad High Court favoured live-in relationship with a bold observation by stating that anyone, man or woman, could live together even without even being get married if they wished to do so.

In ***Tulsa and Others vs. Durghatiyya and Others***[73] the alike step was taken into consideration by the Apex Court comprising Justices Arijit Pasayat and P. Sathasivam decided the case in favour of "legitimizing a live-in couple as they had lived together for 30 years"**.**

While answering to the question relating to legalizing live-in relationships in India, Mr. H. R. Bhardwaj, Hon'ble Union Law Minister[74], said that if live-in- relationships will be accepted by society as a whole, and then only government can legalize live-in-relation through new legislation in Parliament. Laws are made for the social needs and also for social inclinations. It is hypothetical to ask a question whether we are

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72 Payel Kattara v. Superintendent of Naari Niketan, Agra, AIR 2001 All 254 (India).
73 Tulsa and Others vs. Durghatiyya and Others, (2008) 4 SCC 520 (India).
74 15th December, 2008 in the Question Hour, Lok Sabha Debate.

foreseeing a law to administer live-in relationships as because less than one percent of the people are in such relationships. If a law is enacted, there is all possibility that such law will only be misused.

Supreme Court of India on 8th April 2015 in ***Dhannulal and others Vs. Ganesharam and another***[75], declared that "a woman living with a man for a long and considerable period, law will presume that they are husband and wife unless and until contrary proved and also entitle to claim inheritance rights."

In ***Alok Kumar v. State & another***[76], both the parties were in a live-in relationship for more than 5 years. They spent their times both in India as well as in London. Both of them were one issue from their earlier spouses. The male partner was seeking divorce from his wife while he had been in live-in-relation with his female partner. Due to an altercation the woman filed a FIR under section 354/506 of the Indian Penal Code, 1860. Subsequently, she also filed another FIR of committing rape on her in the pretext of marriage under section 376, IPC. The Delhi High observed that "the phrase live-in-relationship is a walk-in and walk-out relationship. There are no strings attached to such relationship. Such relationship does not create any legal obligations upon the parties' concern and both are free to put an end to such relations whenever they wish. The relation is renewed by every single day and can be terminated by either party with the consent of the other party and one party can walk out at any time." The FIR was quashed.

Those, who do not want to enter into this kind of walk-in and walk-out relationship may enter into a marital relation, where the bond between the parties has legal implications and responsibilities and cannot be broken by either party at will but under the frameworks of law to which they are subjects. Therefore, people who chose to have 'live-in relationship' cannot complain of disloyalty or immorality as live-in relationships are also often found between married man and unmarried woman or between a married woman and an unmarried man. Keeping in view the above circumstances, the court further observed that it was a fit case where FIR could be quashed to prevent the misuse of criminal justice system for personal revenge of a partner of live-in relationship.

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75 Dhannulal and others vs. Ganesharam and another, Civil Appeal No.3411 of 2007: (2015) 12 SCC 301(India).

76 Alok Kumar v. State & another, Cr.M.C.No. 299/2009 (India).

In ***Gajjanaan Ramrao vs. State of Maharashtra and another***[77], the Bombay High Court has opined that not all live-in relationships would amount to a relationship in the nature of matrimonial relations to get the advantage of the Domestic Violence Act of 2005. In order to get the benefit of DV Act, 2005 the essential ingredients provided under the provisions of the Act must be fulfilled, and the same has to be proved with evidences. If a man keeps a mistress and maintains her financially and uses her primarily for satisfying his sexual urge and/or as a servant then the same would not be treated to be a relationship in the nature of marriage.

In ***Varshaa Kapoor vs Union of India & Ors***.,[78] in the perspective of section 498A of the Indian Penal Code, *1860* the judicature of the Delhi High Court held that women living-in a relationship in the nature of marriage has the right to file a complaint not only against her husband or male counterpart, but against his relatives too.

In the case of ***Koppisetti Subbhaarao Subramanniam vs. State of Andhra Pradesh***[79], the defendant used to harass his live-in partner to meet the demand of dowry. In this case the Apex Court held that "the taxonomy of 'dowry' does not have any magical attraction written over it. It is just a marque given to demand of bucks in relation to a matrimonial relationship. The Court has forbidden the contention of the defendant that as he was not married with the complainant, hence section 498A did not apply to him." Therefore, the Supreme Court took one more step ahead with a liberal interpretation and covered to protect the woman in a live-in relationship from harassment for dowry.

2.6 SOCIO-LEGAL STATUS OF THE CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP

2.6.1 CONCEPTUAL ANALYSIS

The term "solemnization of marriage" is symbolically essential criteria which can differentiate a valid formal marriage and a live-in relationship to occupy the legal status of a legitimate intimacy. There are an increasing number of couples from the young generation are choosing live-in relationships, not as an antecedent but as an ancillary of recognized marital institution in the present era of modern civilization. The term "live-in relationship" in its significant concept, is a relationship where two

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77 Gajjanaan Ramrao vs. State of Maharashtra and another, 2015 CRLJ 4833 Bom (India).

78 Varshaa Kapoor vs. Union of India & Ors.,WP (Crl.) No. 638 of 2010; Del. (India).

79 Koppisetti Subbhaarao Subramanniam vs. State of Andhra Pradesh, AIR 2009 SC 2684 (India).

heterosexual persons cohabit with each other under the same household without marriage. Without codified law to regulate and govern this kind of relationship and as a consequence the partners are free to be separated from each other at any time.

Legitimacy is a status conferred by law. A child enjoying such status is entitled to full recognition as a member of the family group in question and he or she has all the legal rights which such status involves. The child who does not enjoy such status is illegitimate and will suffer disadvantages as a consequence. In addition to legal disadvantages, there are social consequences which result from being classed as illegitimate, although the stigma attached is not as great as it formerly was. In recent years the general trend in most jurisdictions has been to reduce the consequences of illegitimacy, and some jurisdictions have even abolished the status of illegitimacy altogether.

In ancient Roman family there could be no *potestas* (Family Unit as a Power) over an illegitimate child. It followed that a *paterfamilias* (Male family head) had no right to expose a newborn illegitimate child, nor he have any other of the rights associated with *potestas.* The illegitimate child was thus in a more favourable position (*sui iuirs*) than the legitimate one in some respect, a curious consequence of a rigid rules of *potestas*.[80] Nor could an illegitimate child be agnatically related to anyone since such a relationship depended on subjection to a common *potestas*. The child 'belonged' to the mother, but in a practical rather than a legal sense since a mother could not have *potestas* over anyone. Nevertheless, their relationship had legal consequences: the child took the mother's status, was recognized as her blood relation, and acquired the right to succeed on her intestacy and vice versa, and could not sue her. Legitimating of illegitimate children was generally not possible until the reign of Constantine. Constantine's reforms, and those of subsequent Emperors, were applicable only to the children of concubines. Concubinage was a settled union; normally involving cohabitation but falling short of marriage because of the absence of the necessary marital intent.[81]

Justinian introduced another form of legitimating by imperial rescript. It applied where marriage to the concubine was impossible for some reason, or undesirable because of her 'unworthiness'. The father could apply to the Emperor (by petition or

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80 Plessis Paul Du, Borkowski's Textbook on Roman Law, 118-121 (4th ed. 2010).

81 Plessis Paul Du, *Supra Not* 80, at 122.

will) for the legitimating of the child, provided that the father was without legitimate issue. Additionally, children born in concubinage could be legitimated by *oblatio curiae* (an offering to a municipal council), an imaginative method introduced in the late Empire in an attempt to encourage persons to become municipal councillors (*decuriones*), and an office normally to be avoided like the plague. Legitimating occurred if a man (without legitimate children) gave his son sufficient property to qualify the son to become a *decurio* or if the father married off his daughter to one. Such children acquired rights on their father's intestacy, but did not come under his *potestas.*[82]

At common law the illegitimate was called *filius nullius.* He was in law a stranger to his mother and father and other near relatives. Any benefits which flowed from the status of legitimacy denied to him. It was an established rule of statutory interpretation that any reference to a child meant a legitimate child unless the contrary intention was expressed; this is also true in relation to the construction of wills. The illegitimate child had no rights of inheritance and there was no obligation to support him or her.[83]

During the twentieth century there have been considerable changes in an effort to narrow the distinction between illegitimate and legitimate children. This is true in many areas, such as succession rights, support obligations, custody and guardianship and access rights etc. These points will be considered separately. Even in the interpretation of the world "child" in a statute the courts have been prepared to accept that the *prima facie* meaning has changed.

In many cases it is also found that in long term relationships often planned for procreation of children. In live-in relationship "by circumstances", the live-ins believe that they are legally married so procreation of children is a normal reproductive right. However their belief on 'de-facto married' and after procreation they will be 'de-jure married' cannot be termed as false, because it is one of the essential criteria in the guidelines of Supreme Court to decide 'relationship in the nature of marriage'. It is often a subject of debate because till now there is no any exclusive legislation which can regulate the legal status of a child born out of such relationship and the rights of such issues are always a matter of concern in

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82 Andrew M. Riggsby, Roman law and the Legal world of the Romans, 151-153, (1st ed. 2010).

83 Catherine Fairbain *Supra not* at 51.

comparison to those issues born out of a valid marriage. Again without a proper legal definition of live-in relationship, there is a huge chaos relating to legal entity of such relationship in the society. So, it is a call of time to properly regulate the relationship within the well decorated legal framework. The laws in India as mainly based on traditional ethos, does not provide any suitable civil liberties or obligations to the partners in a non-marital cohabitation. The children born out of such relationship are not given a clear status that is why the courts in India through its various judicial pronouncements have explained the concept of live-in relationships in the past few decades. If any heterosexual persons are cohabiting for a reasonably long period of time court will presume them as legally married under the law unless contrary is proved.

The concept of *Aurasa* son was taking very important from the early times in India. It is prevailing from the early families in the society as an important role of having male descendants for the prolongation of his family as well as for the performance of committal rites, rituals and offerings. It is defined by Manu, an *Aurasa* or legitimate son is one "whom a man begets on his own wedded wife".[84] A legitimate son must be born during the continuation of a valid marriage to be represented as *Aurasa* son in a very strict sense.[85]

The Privy Council in 1874 had ruled that "Hindu law does not require procreation, as well as birth, after marriage to render a child legitimate is binding as law," in ***Pyedda Ammani v. Zamindar of Marungapuri***[86]

2.6.2 LIVE-IN RELATIONSHIP AND LEGITIMACY OF CHILDREN

It is settled law that "legitimacy in law" may not in fact legitimate but "legitimacy in fact" certainly in law legitimate. The question of legitimacy or illegitimacy always in trend to debate, as the term 'illegitimacy' is not a new concept and it has the roots with Roman law and termed as "*Nullius Filius*" and tramp to the common law and well entrenched its roots there. Again in Muslim law also has the procedure to legitimating illegitimate child in certain circumstances. Though the Muslim law holds the concept 'illegitimacy' very rigidly but concurrently adopted preventive measures to ensure that all born legitimate child does not befall as illegitimate.

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84 Manu, IX :166.

85 Justice Misra Ranganath & Dr. Kumar Vijender, Mayne's Hindu Law and Usage, 172-174 (17th Ed., 2011).

86 Pyedda Ammani v. Zamindar of Marungapuri, (1874) I IA 282, 293 (India).

Therefore, Muslim law introduced the legal concept of "*Acknowledgement of Paternity*" and "*Iddat"*.[87]

In regard of recognition of children the Muslim law is a very strict kind. So according to it, a legitimate child is one who is the offspring between a man and his legally wedded wife. Thus, a child born out of any non-marital cohabitation is treated as "illegitimate" in the eyes of existing Muslim personal law.

The Andhra High Court in ***S. A. Husain v. Rajamma[88],*** held that "where the paternity of a child cannot be proved by establishing a marriage between the parents, Islamic law recognises 'acknowledgement' as a method whereby such marriage and such legitimate descent can be established as a matter of substantive law for the purpose of inheritance."

Under the Hindu Marriage Act 2005 also provides codified provisions to ensure the rights of the children born out of void or voidable marriage. Through interpretation of section 16 (3) of the Act 1955, if we analyse it is evident that rights of illegitimate children born out of only void or voidable marriages are protected in Hindu law. Therefore, under Section 16 of the Act 1955 the legitimacy of a child born out of void and voidable marriages is recognised through legal interpretation. But legislation assign a legal status as *legitimate in law* to children born out of live-in relations under Section 125 of Criminal Procedure Code 1973 and open a subject to debate with regard to the property and maintenance rights of the off springs born out of such non-marital cohabitation.[89]

So, there are certain legal difficulties to recognise the status of children born out of a live-in relation within the purview of Section 16 (3) of Hindu Marriage Act 1955. The provision of Section 16 (3) of Hindu Marriage Act 1955, as we can analyse that it is codified for the purpose of covering those off springs born out of subsequently becomes void or voidable marriages which intend into or attempt to enter into a valid marriage institution, although essential requirements for a valid marriage at the very first instance could not have been fulfilled under Section 5 of the Hindu Marriage Act 1955. However, in live-in relationship there is neither such intention to enter into any such marital bonding nor have any attempt to get married ever, so the provision

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87 Rashid Syed Khalid, Muslim Law, 52-61, (4th ed., 2008).
88 S. A. Husain v. Rajamma, AIR 1977 AP 152 (India).
89 Paras Diwan, Modern Hindu Law, 63 (20th edition, 2009).

of section 16 (3) of the Act 1955[90] does not attract and doesn't not provide any security to the children born out of live-in relationship.

Again under Section 112 of Indian Evidence Act, 1872 also illustrates that the legitimacy of a child is established only if he or she was born during the continuance of a valid marriage between his or her mother and father, and if consequently they fail to prove the validity of marriage and children born out of such relationship becomes illegitimate.[91] So, in India, children from parents who are in live-in relationship have been given the status of *"Legitimate in law, but not Illegitimate in fact"*.

However, Supreme Court in ***S.P.S. Balasubramanyama v. Sruttayana***[92], observed that if two heterosexual persons are living under the same roof and cohabiting for a reasonable period of time then there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will be presumed to be legitimate. The interpretation of the court with regard to the status of children born out of the live-in relations is to be construed in accordance with the Constitution of India, 1950 vide Article 39(f), which imposes the State a responsibility to provide the children with ample opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against any exploitation and safeguard their interests.

As one of the landmark judgements, the Apex Court in this case for the first time recognised indirectly live-in relationship and also preserved the status of legitimacy of the children from such relationship.

Although the society always raises questions in non-marital cohabitation as there is no ceremonial or ritual marriage is being solemnized as between the partners and these relationships have no social acceptances can be established, therefore, as a general principle the parties in such relationship will not be recognised as husband and wife and if their issues born will become illegitimate. So it is the need of the time to amend the provision under Section16 (3) of the Hindu Marriage Act 1955 is

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90 Hindu Marriage Act 1955, No. 68, Acts of Parliament, 1976 (India), Section 16 (Legitimacy of children of void and voidable marriages).

91 Dr. Avatar Singh, Principles of the law of Evidence, 459-62, (18th ed., 2010).

92 S.P.S. Balasubramanyama v. Sruttayana, 1994 AIR 133, 1994 SCC (1) 460 (India).

to bring the social reform, by considering the status of legitimacy of children born of live-in relationship.[93]

The Supreme Court in ***Bhartha Matha & Another vs. R. Vijaya Ranganaathan & Others***[94] observed that it is evident that Section 16 of the Hindu Marriage Act intends to bring about social transformations, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as one of its prime objects. The Courts in India time and again upheld this interpretation of law in a manner to ensure that no child is *bastardized* without a fault on their part. In this above-mentioned case, the Hon'ble Apex Court also observed that a child born out of a live-in relationship might be allowed to inherit the heritable properties of their parents and also be given the status of legitimacy in the eyes of the law.

In ***Tulasa & another vs. Durghatiyaa & Another***[95]the Hon'ble Supreme Court observed that a child born out a marriage like relationship will no more be treated as an illegitimate child. The crucial pre-condition for a child born out of live-in relationship to be not treated as illegitimate is the parents of such child must have lived together under the same roof and cohabited for a significantly long period of time as fact the society recognizes them as husband and wife and the relationship should not be a mere 'walk in and walk out' relationship. In the similar context, the Hon'ble Apex Court has viewed in its judgment in ***Madan Muhan Singh and Others vs. Rajani Kant & Another.***[96]

In the case of ***Hanifa v. Pathummal Beebi***[97] court held that "where in certain circumstances give rise to the presumption of marriage, they also give rise to presumption of legitimacy of the offspring."

The Hon'ble Supreme Court opined in ***Vidhyadhaari v. Sukhrana Bai***[98], that even if a person had entered into a second marriage during the existence of his first marriage, the issues born out of the second marriage would still be legitimate though the status of the second marriage would be void. The Privy Council in ***Mohammad Baukar v. Shurafun Nisa Begam***[99] held that legitimacy of children of Muslim

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93 Paras Dewan, *Supra note* 89 at 64.
94 Bhartha Matha & Another vs. R. Vijaya Ranganaathan & Others, AIR 2010 SC 2685 (India).
95 Tulasa & another vs. Durghatiyaa & another, (2008) 4 SCC 520 (India).
96 Madan Muhan Singh and Others vs. Rajani Kant & Another, AIR 2010 SC 2933(India).
97 Hanifa v. Pathummal Beebi, 1972 KLT 512 (India).
98 Vidhyadhaari v. Sukhrana Bai, (2008) 2 SCC 238 (India).
99 Mohammad Baukar v. Shurafun Nisa Begam, (1859) 8 MIA 136 (India).

parents might be inferred without any direct proof of marriage, if there is proof of prolonged and continuous cohabitation. Therefore, in a case where a couple has lived together for a reasonable duration, then in such case there shall be presumption of marriage and an issue born out of that association is entitled to enjoy all the rights of a legitimate child.

In ***Ayesha v. Ozair Hassan***[100] Justice C. S. Karnan ruled that "the petitioner was not entitled to claim maintenance as the marriage between the petitioner and the respondent was not proved through documentary evidence but the respondent was the father of the two children and required him to pay them each Rs 500 per month."

2.6.3 LIVE-IN RELATIONSHIP AND MAINTENANCE RIGHTS OF CHILDREN

The *Hindu Adoptions and Maintenance Act 1956, states that* a legitimate son, son of predeceased son or the son of predeceased son of predeceased son, so long as he is minor, and even after attained the age of majority if such child is by reason of any physical or mental abnormality or injury unable to maintain itself and a legitimate unmarried daughter or unmarried daughter of the predeceased son or the unmarried daughter of a predeceased son of predeceased son, so long as she remains unmarried, shall be maintained as dependants by his or her father or the estate of his or her deceased father will be made responsible.[101]

As a civil matter, maintenance is explained as the obligation to afford by one party for another party. To maintain the children born out of the live-in relationships without codified legal obligation is a matter of concern to cover up the 'maintenance right of children born out of the live-in relations'. The 'right to maintenance during the life time of his or her father or mother' is always the situation which creates chaos with children from live-in relationships, so under section 125 of the Code of Criminal Procedure, maintenance is provided to children irrespective of his or her status as legitimate or illegitimate while they are minors or even when they become major, but unable to maintain himself by reason of any physical or mental aberration or injury from their parents.

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100 Ayesha v. Ozair Hassan, 2013 (5) MLJ 31(India).

101 The Hindu Adoptions and Maintenance Act 1956, No. 78, Acts of Parliament, 1956 (India) Section 21 (iv) and (v).

In ***Dimple Gupta v. Rajiv Gupta***[102] Supreme Court upheld the right to up bring and maintain the offspring born out of a live-in relationship. The Supreme Court in this case held that "even an illegitimate child born out of an illicit relationship is equally entitled for maintenance under *section 125* of the *Code of Criminal Procedure, 1973* which provides maintenance to children irrespective of their legitimacy or illegitimacy till they attain the age of majority and in cases where they are unable to maintain themselves due to any disability then even after their attaining majority they are also entitled to be maintained."

The Supreme Court in ***Sabitaben Somabhai Bhatiya v. State of Gujarat***[103] made an exception that "the live-in partner had assumed the character of a second wife and therefore, not entitled to any maintenance but the child born out of the said relationship are entitled to maintenance."

Moreover, there are a number of cases which upheld the maintenance rights of live-in partners by Supreme Court as well as High Courts and the interpretation of the statutes are intriguing in a very inclusive manner to embrace female live- in partners as "legally wedded wife".

According to *Article 32* of the Constitution of India, the rejection to provide maintenance right to an issue born out of a live-in relationship can be challenged. As the rejection to maintain the issues violates the very fundamental rights guaranteed under *Article 21* as "Right to Life and Personal Liberty". Denial of fundamental right of maintenance can be treated as denial of an individual's right to live a life with dignity. The judicature of the Kerala High Court upheld the same subject matter in ***PV Sushila v. Komalavally.***[104]

Article 14 of the Constitution of India, 1950 deals the remedy for any unequal dealing of an issue born out of a live-in relationship and an issue born out of lawful wedding, though in both the cases children born are perceived as legitimate in the eyes of law. Human dignity is one of the essential and very fundamental rights enshrined to a child with his or her birth which is required to maintain. It cannot be denied merely at the whims of some technicality of laws; therefore, it is the jurisprudential philosophy which needs to be construed in a clearly liberal manner so

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102 Dimple Gupta v. Rajiv Gupta, (2007) 10 SCC 30: (2008) 1 SCC (Cri) 567 (India).
103 Sabitaben Somabhai Bhatiya v. State of Gujarat, AIR 2005 SC 1809 (India).
104 PV Sushila v. Komalavally, (2000) DMC 376 (India).

as to ensure the upbringing of such children born out of the live-in-relations in a very dignified manner.

2.6.5 INHERITANCE RIGHT TO THE OFFSPRING BORN OUT OF LIVE-IN RELATIONSHIP

As *Sunni* Muslim law provides that an illegitimate offspring only can inherit the property of his mother and not from putative father, on the other hand under *Shia* law it is stricter as such child cannot even inherit from his mother. If children born out of non-marital cohabitation are still being considered "illegitimate", they will be barred to inherit from the ancestor's estate.[105] However when the live-in relationship has not been continued for a reasonably long duration, then the courts should not treat a child born out of such relationship to be legitimate, thereby exclusive of his inheritance. However that child should be maintained by any of the parents or both that parents as provided under section 125 of CrPC.

The Supreme Court in ***Bharatha Matha & Another vs. R. Vijaya Renganathan & Others[106],*** observed that an issue born out of a live-in relationship is not entitled to inherit the Hindu ancestral *coparcenary* property (in the undivided joint Hindu family) but can claim a share in his parent's self-acquired property.

Under the *Hindu Succession Act, 1956* a legitimate child means and includes both son and daughter from the Class-I inheritors[107] in the Joint Family Property and an illegitimate child means one who can inherit the property of his or her mother's only and not of his or her father.[108]

To get the inheritance rights under personal laws, the *prima facie* requirement is legitimacy in fact. Subsequently, the Courts have always made certain that a live-in relationship should be of a reasonable period and any child who is born out of such live-in relationship should not be deprived of the right of inheritance and it must be in conformity with *Article 39(f)* of the Constitution of India, 1950.

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105 Syed Khalid Rashid, *Supra note* 87 at 177.
106 Bharatha Matha & Another vs. R. Vijaya Renganathan & Others AIR 2010 SC 2685 (India).
107 The Hindu Succession Act 1956, No. 30, Acts of Parliament, 1956 (India), Section 10.
108 The Hindu Succession Act 1956, No. 30, Acts of Parliament, 1956 (India), Section 3(1)(j).

The Hon'ble Apex Court in ***Vidyaadhari v. Sukhrana Bai***[109] observed that the right of inheritance of the offspring born out a live-in relationship and attributed them with the status of 'legal heirs'.

Section 16, sub clause (1) & (2) of *Hindu Marriage Act 1955* clearly describe that "children born out of void or voidable marriage, should be considered as legitimate in the eyes of law. However, live-in relationship neither a void nor voidable marriage to be remedied under the above provision. Therefore, to sort out such conflict and to prevent discrimination against children born out of marriage like relationship, and this may lead to legally entitled to all the rights in the property of their parents, both self-acquired and as coparcenaries, simply required an amendment to this provision. Afterwards, in ***Parayana Kandiyal Erawath Kanapravan Kalliani Amma and Others vs. K. Devi and Others***[110] the Supreme Court held that "the *Hindu Marriage Act 1955,* an advantageous legislation, has to be construed in a manner which advances the objective of the law."

If there is a subsequent amendment with regard to *Section 16* of the *Hindu Marriage Act, 1955* it will remove all the variances between children born out of valid or void or voidable marriages, and children born from any kind of marriage like relationship and this will bring about social reforms as well as stable social status of legitimacy on innocent children, to whom some restrictions imposed on rights guaranteed under the Constitution of India.

The Hon'ble Supreme Court in ***Ravaanasiddappa v. Mallikaarjun***[111] opined and held that "children born from the female counterpart in a live-in relationship are entitled to inherit the property of their biological father as 'his legal heirs'." Therefore, the Court has affirmed through many of its judicial pronouncements that "no child be denied their inheritance right merely because of the fact of being born out of a live-in relationship within a reasonable period of time."

The Supreme Court in ***S.P.S. Balasubramanyama v. Sruttayana***[112] observed that "if a man and woman are living under the same roof followed by cohabitation for a considerable period of time, then there will be presumption that they live as husband

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109 Vidyaadhari v. Sukhrana Bai AIR 2008 SC 1420 (India).

110 Parayana Kandiyal Erawath Kanapravan Kalliani Amma and Others vs. K. Devi and Others, (1996) 4 SCC (India).

111 Ravaanasiddappa v. Mallikaarjun, (2011) 11 SCC 1: (2011) 3 SCC (Civil) 581(India).

112 S.P.S. Balasubramanyama v. Sruttayana, 1994 AIR 133, 1994 SCC (1) 460 (India).

and wife and the children born to them will be treated as legitimate." In this landmark judgment the Supreme Court by interpreting the provision in according with Article 39(f) of the Constitution of India and indorsed the legitimacy of the progenies born out of live-in relationships and confirmed that to provide the children with ample opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against any exploitation and safeguard their interests.

In ***Uday Gupta v. Aysha and Another***,[113] on behalf of the petitioner it was argued before the apex court that the High Court erred while observing that it was not necessary for a valid marriage that all the customary rights pertaining to the married couple are to be followed. It was pointed out that such observation would demolish the very institution of marriage itself.

The apex court observed that the said observation was made for the particular marriage in question and not for universal application. The court while quoting various judgments observed that "the law presumes in favour of marriage and against concubinage. When a man and woman have cohabited continuously for a number of years law presumes in favour of their marriage however, the same is subject to be rebutted by leading unimpeachable evidences."

The court further observed that "it is evident that sec 16 of HM Act, 1955 intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object."[114]

So if two opposite partners mutually agreed to live together and as a result live together for a considerable period as husband and wife without being legally married then there would be a conjecture of marriage and their offspring could not be treated to be illegitimate.

2.6.5 LIVE-IN PARTNERS'S GUARDIANSHIP AND CUSTODIAL RIGHTS OF CHILDREN

The custody of a child in live-in relationship is significantly a legal obstacle as comparison to a married person. It is very difficult when a child is born out of such non-marital relationship without being a proper legislation. As there is no specific

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113 Uday Gupta v. Aysha and Another, SLP (Criminal) No. 3390 of 2014 (India).
114 *Id*.

law dealing with the custody of an offspring born out of a live-in relationship therefore, the existing law for children born out of married couple is also applicable to such issues born out of a live-in relationship.

The *Hindu Minority and Guardianship Act, 1956* clearly states that the biological father is the natural custodian of his minor legitimate children and in cases where there is no father of such child alive or non-exist the mother becomes the natural guardian; that means when the father is unable to act as the natural guardian; the mother becomes guardian for such minor. However, in the case of an illegitimate boy or an illegitimate unmarried girl, the mother, and after her, the father is the natural guardian.[115]

In the case of ***Geeta Hariharan v. Reserve Bank of India***[116] same has been laid down in a prescribed manner.

Section 6(a) of the Hindu Minority and Guardianship Act 1956 provides that the father as the natural guardian for his minor legitimate children on the other hand the mother is the natural guardian in his absence i.e. where father is unable to act as the guardian.

As per Hindu law; if a man legally married to a minor girl, then in that case the husband is the legal guardian of his minor wife and entitled to her custody. But where the couples are not legally wedded to each other and if any issues born to them, then only the mother has the parental responsibility including custody of the child and not the biological father. The interpretation of codified provision under Section 6(b) of the Hindu Minority and Guardianship Act 1956 which grants an indirect right to custody of a child born from non-marital cohabitation, to the mother in the tag of illegitimate relation. While the law is interpreted positively, it can be asserted that, if the live-in partners decide to put an end to their relation and there is any issues born out of them then being the natural guardian, naturally the biological father can acquire the custodial rights of the concerned child.

Section 13 of the Hindu Minority and Guardianship Act 1956 provides that the welfare of the minor is the *paramount consideration* and thus to negate the

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115 The Hindu Minority and Guardianship Act 1956, No. 30, Acts of Parliament, 1956 (India), Section 6 (a) and (b).

116 Geeta Hariharan v. Reserve Bank of India, AIR 1999 2 SCC 228 (India).

consequence of previous provisions if they are by any means in contravention of the said provisions.

In ***Shyam Rao Maruti Karwate v. Dipak Kishan Rao Tekam***[117] *Supreme Court* observed that the word, 'welfare' as used in *Section 13* of the Act has to be interpreted literally and must be taken in its exhaustive sense. Such an interpretation is in harmony with the well-being of the child so as to shape them in a vigorous and decorous atmosphere.

Under the Muslim law always father is recognised as the natural guardian for the legitimate children, but the mother even for a legitimate child, does not become the natural guardian even after death of the father. Muslim law does not provide guardianship of illegitimate children, so through the judicial pronouncements the guardianship of illegitimate children is given to mother. As per the *Hanafi* school of Muslim Law; "till a minor son attains age of 7 years and a daughter reaches her puberty; mother is the guardian." However, under *Shia* School of Law, "till son attains the age of 2 years and daughter attains the age of 7 years; mother is the guardian."[118]

It is now settled law that, certain things like age, sex, welfare of the child, his or her wish to stay with whom, are the matters which will be taken into consideration by the court as a matter of facts while deciding to whom custody will be given. The welfare of the children must be the paramount consideration and this rule also applies in custody issues for the children born out of the live-in relationships to their parents.

Children are the future often considered as the future generation of the human kind and structures the most primary unit as well as future of the human generation and their providence is frequently firmed by the social relations and individual liberty in their lives. So, the parents pertaining to in any form of relationship and subsequently do engage in procreation of children significantly decide the status of such newly born individuals in the society as well as in the legal system. In India the concept of "legitimate in law and illegitimate in fact", are arising with such children whose parents are not legally wedded but use to live in a mutually agreed cohabitation. Such children have been given the status of the insecure individuals, their future become depressing and their state of affairs will be limited in a different stratum in the

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117 Shyam Rao Maruti Karwate v. Dipak Kishan Rao Tekam, 2010 (10) SCC 314 (India).
118 Syed Khalid Rashid, *Supra Note* 87 at 164-165.

society. The Directive Principles of State policy under Article 39(f) of the Constitution of India, states that "Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

2.6.6 STATUS OF CHILDREN BORN OUT OF NON-MARITAL COHABITATION IN OTHER COUNTRIES

Legitimacy is a status conferred by law which has created many issues globally. A child enjoying legitimate status is entitled to full recognition as a member of the family group in question and he or she has all the legal rights which such status involves. The child who does not enjoy such status is illegitimate and will suffer disadvantages as a consequence. In addition to legal disadvantages, there are social consequences which result from being classed as illegitimate, although the stigma attached is not as great as it formerly was. In recent years the general trend in most jurisdictions has been to reduce the consequences of illegitimacy, and some jurisdictions have even abolished the status of illegitimacy altogether.

UNITED STATES OF AMERICA

In United States of America, children born out of wedlock have not traditionally enjoyed the same legal protections as children born in wedlock. Such children were historically referred to as "bastards" in a legal context. However, many restrictions on illegitimate children have been repealed in most of the states now. State laws have traditionally prevented unmarried couples from adopting children. Though some states have begun permitting unmarried couples to adopt, these couples still must surmount prejudice and may face other difficulties. Married couples, on the other hand, are permitted to adopt and are usually preferred over unmarried individuals.[119]

In US substantial inroads have been made in abolishing the distinction between legitimate children and illegitimate children. The US Supreme Court has held that discrimination against the illegitimate child violates the equal protection clause in the constitution.[120] In ***Trimble v. Gordon***[121] in 1977 the court by 5:4 majorities held that

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[119] Stimmel, Stimmel & Roeser, *Cohabitation and the Rights Conferred under the Law*, (July 29, 2020, 11:20 AM), https://www.stimmel-law.com/en/articles/cohabitation-and-rights-conferred-under-law.

[120] Clark J. Homer, *Constitutional Protection of Illegitimate Child?*12 U.C.D.L. Rev., 383 (1979).

an Illinois statute which provided that illegitimates could inherit from their mothers but not from their fathers was unconstitutional. Here the child's paternity had been established before death, the father was supporting the child and had acknowledged her as his child. The issue of unconstitutionality on the basis of discrimination against illegitimate child has also arisen in connection with the Social Security Act,[122] various support statutes[123] and immigration laws.[124]

UNITED KINGDOM

The couples living together without marriage in the United Kingdom does not enjoy the status of married couple. They do not have same legal rights and duties as assured to married couples. Though they are free to maintain each other separately, there exists no duty or obligation on anyone of them to maintain other. Though the partners do not have inheritance right over each other property but one is eligible to be maintained where a partner had specifically mentioned the name of other partner in the will. Thus couple in such a relationship is not plainly free from all legal consequences.[125] The state pensions that are available to the wives and civil partners who have legalized their status are not similarly applicable to partners who live together unmarried. Bereavement allowance that is available to widowed person is also not available to surviving live-in partner if the other dies. However, the law seeks to protect the rights of a child born under such relationships and hence both parents have the responsibility of bringing up their children irrespective of the fact whether they are married or cohabiting.[126]

FRANCE

Both French tradition and the French law consider the biological parents as the persons most naturally inclined to serve the interests of their children. The right to custody of one's children is included within the scope of parental authority.

A new Article in the Civil Code introduced the principle of equality between legitimate and illegitimate child. This reform allowed an illegitimate child to inherit its father. In case of unmarried parents, same rules apply to cohabiting and non-

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121 Trimble v. Gordon (1977), 430U.S 762, (US).
122 Richardson v. Devis 409 U.S. 1069, (1972).
123 Gomez v. Parez 409 U.S. 535, (1973).
124 Fiallo v. Bell 430 US 7787, (1977).
125 English Law Commission, *Family Law, Illegitimacy*, Working Paper No 74, 1979.
126 *Id*.

cohabiting parents regarding establishing filiations.[127] Although in earlier times natural born children inherit only three quarters of the entire estate of their parents, however, now in France a natural child inherits from his parents similarly as a legitimate child does, of course, the estate is divided into equal shares among them and their legitimate siblings, if they exists. More importantly, natural children are now integral parts of their parents' respective families and lineages. Better yet, reciprocal inheritance is now permitted between natural born children and their parents. The central point to grasp with French inheritance laws is that children are specifically protected from being disenfranchised from parent's estate. Parent cannot freely dispose of any part of *la réserve*, which must be held for children.[128]

The French Civil Code states that the breakdown of a marriage or a relationship does not affect the rules governing the exercise of parental responsibility. Therefore, separated parents continue to exercise joint parental responsibility over their children, which is the general principle provided for by Civil Code.[129]

PHILIPPINES

In Philippines children born outside a marriage are illegitimate.[130] The Family Code of Philippines provides for the legitimization of illegitimate children, however, children of cohabitants having no impediments to marry each other can only be legitimated.[131] Legitimating takes place by a subsequent valid marriage between parents.[132] The effect of legitimating a child retroacts to the time of the child's birth[133] and a legitimated child enjoys the same rights as a legitimate child.[134]

The Philippine Family Code provides that illegitimate child shall use the surname of his/her mother. Such children shall be under the parental authority of their mother and shall be entitled to support in conformity with provisions provided in Family

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127 Jean Marie Le Goff, *Cohabiting unions in France and West Germany: Transitions to first birth and first marriage*, 7(18) *Demographic Research* 602(2002), (July 24, 2020, 05:20 PM), http://www.demographic-research.org/volumes/vol7/18/7-18.pdf.

128 Christian Dadomo, *The Evolution of the Status of the Child in French Family Law*, University of the West of England, Bristol, United Kingdom, The 12th World Conference of the International Society of Family Law, Salt Lake City, Utah, 2005, (Sept. 12, 2019, 11:30 PM), https://webcache.googleusercontent.com/search?q=cache:avaCWZWiBV0J:https://uwe-repository.worktribe.com/OutputFile/1032407+&cd=11&hl=en&ct=clnk&gl=in.

129 Civil Code 1999 (France), Article 372.

130 Family Code of Philippines, 1987, Article 220.

131 Family Code of Philippines, 1987, Article 177.

132 Family Code of Philippines, 1987, Article 178.

133 Family Code of Philippines, 1987, Article 180.

134 Family Code of Philippines, 1987, Article 179.

Code of Philippines.[135] The effect of legitimating a child retroacts to the time of the child's birth[136] and a legitimated child enjoys the same rights as a legitimate child.[137] Philippine Civil Code provides that an illegitimate child shall receive a share equivalent to half of the share that will be received by a legitimate child who in turn shall receive a share of half of the value of the whole legitimate.[138]

SCOTLAND

The Family Law (Scotland) Act of 2006 has abolished the discrimination between legitimate and illegitimate child. It provides that no person shall be illegitimate whose status is governed by Scots law; and accordingly, in determining the person's legal status the fact that a person's parents are not or have not been married to each other shall not be taken into consideration; and further, such fact shall be left out of account in establishing the legal relationship between the person and any other relations.[139] Thus it has been made statutorily clear in Scotland that the child born out of wedlock will be legitimate and no person's status shall be illegitimate.

Even if there is no Will, a child of unmarried parents has a legal right to inherit from both parents and the families of both parents like a child born within marriage can inherit automatically from both parents and the extended family of both parents.[140]

In China couples also sign a contract for live-in relationship. The child born through such relationships enjoys the same succession and inheritance rights as are enjoyed by children born through marriages.[141]

AUSTRALIA

In Australia only when children are involved, de-facto relationships come under the jurisdiction of the Family Law Act, 1975. Although a parliamentary review committee is considering whether the Act should be extended to cover all de-facto relationships, at present it stands that the legal system is inconsistent in the way it deals with these relationships; laws vary between states, between the states and even

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135 Family Code of Philippines, 1987, Article 176.
136 *Supra note* 134.
137 *Supra note* 133.
138 The Civil Code of Philippines, 1949, Article 895.
139 Family Law (Scotland) Act 2006, Section 21 & The Law Reform (Parent and Child) (Scotland) Act 1986, Section 1.
140 *Living Together and Opposite Sex Marriage: Legal Differences*, (July 24, 2020, 05:20 PM), https://www.citizensadvice.org.uk/scotland/family/living-together-marriage-and-civil-partnership-s/living-together-and-opposite-sex-marriage-legal-differences-s/.
141 Dr. Swarupa N. Dholam, *Supra note* 11.

between government departments.[142] Law grants common-law partners the same fundamental rights as married couples after two years of cohabitation; it casts a light on how common-law couples are treated. The presence of children can significantly affect the way a common-law relationship is viewed in the eyes of law.[143]

ITALY

In Italy, cohabitation is not as common as in other countries of Europe, because of its Roman Catholicism had a historically strong presence. However cohabitation without marriage has increased in recent years. There are significant regional differences in non marital cohabitation can be found, as non-marital unions are more common in the Northern Italy than in Southern Italy.

A survey report was published in 2006, which said that "long term cohabitation was still novel to Italy, though more common among young people."[144] In 2015, the children born outside of marriage were total of 28.7 percent which was total of 27.6 percent, in 2014. But this statics was varied in different parts of Italy as follows- Central Italy from 32.8 percent to 33.8 percent, Northeast Italy from 31.8 percent to 33.1 percent, Northwest Italy from 30.1 percent to 31.3 percent, Insular Italy from 22.4 percent to 24.2 percent, and South Italy from 19.4 percent to 20.3 percent. [145] Urban versus rural living also plays a role in cohabitation arrangements, a 2001 study described cohabitation in Italy as "still rare outside of large cities".[146] In general, couple's relationships in Italy were characterized by very long engagements.

In 1975, certain fundamental improvements were done in Italian family law. These amended provisions were providing the same right to maintenance to children born out of a valid marriage (*filiazione legittima*) as well as to those born outside marriage (*filiazione naturale*). Previously, children born outside of a legal wedding had to suffer legal drawbacks. In principle, unmarried parents have the chance to accept parenthood officially. This acknowledgement ensures to the legal validity of rights

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142 Helen Glezer, *Cohabitation*, (May 20, 2019, 11:20 AM), https://aifs.gov.au/publications/family-matters/issue-30/cohabitation.

143 Sonali Abhang, *Supra note* 5.

144 C. Schröder, *Cohabitation in Italy: Do parents matter?*, Max Plank Institute for Demographic Research (2006).

145 Statistics Report 2015, NATALITÀ E FECONDITÀ DELLA POPOLAZIONE RESIDENTE, 28th Nov 2016, (July 24, 2020, 05:20 PM), https://translate.google.com/translate?hl=en&sl=it&u=https://www.istat.it/it/files/2016/11/Statistica-report-Nati.pdf&prev=search&pto=aue.

146 Christin Löffler, *Non-Marital Cohabitation in Italy*, 176-179 (Sudwestdeutscher 2009).

and duties toward the child. So far, Italy has witnessed no real establishment of legal regulations that regard informal unions. Judgments are basically made on the basis of respective situations. As an independent field of law it has not developed yet.[147]

In the language of Leon R. Yankwich, "There are no illegitimate children – only illegitimate parents." Since there is no specific law that recognizes the status of the couples in live-in relationship, hence the law as to the status of children born to the couples in live-in relationship is also not very clear. The greatest importance in the protection of child rights parameter is to ascertain the status of such children in law as well as in society. The need of the hour is that it should be the primary agenda of the legislation to ensure the rights of the children born out of marriage like relationships, i.e. live-in relationship. The decisions pronounced by the Supreme Court of India hold significant assessment in dealing with the fact in issues, arising to identify the position of the children born out of live-in relationship in socio-legal arena. Now it is out of harm's way to conclude that the modern society while fixing the debated issue turns into the well being of the legal circumstances; as a result the child born from a marriage like relationship is bound to face requirement of clarity of legal status in life, the origin and subsequent rights etc. This can lead to instability and insecurity in the child's life both mentally and emotionally.

2.7 LIVE-IN RELATIONSHIP AMONG ELDERLY CITIZENS OF INDIA

The concept of live-in relationships are gaining popular among young generations as a to compatibility test with their partners before entering into a marriage. But from last decade it is also popular among the elderly persons in India. The live-in relationship has been interested among those elderly,

- Who are not interested to getting married again,
- Many of them are afraid of legal disputes as well as complexity and succession conflict with their children born out of their previous spouses,
- Many seniors are out of experiences in marriage, always cautious of being trapped with an incompatible life partner in their old age.[148]

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147 Christin Löffler, *Supra note 146*.

148 Silver Talkies, *Are Live-In Relationships For Older Couples A Solution To Loneliness?* May 2, 2019, (June 25, 2019, 03: 45 PM), https://silvertalkies.com/live-relationships-older-couples-solution-loneliness/.

So it is analysed in favour of an elderly couple in live-in relationship as an informal arrangement which is ideal for older couples to develop an independent relationship to reduce loneliness and to avoid complications of marriage, i.e., divorce, property issues etc.

A live-in relationship has its all advantages like companionship to take out loneliness, and if the relationship is not compatible any party can leave without any responsibilities. It is not always true that through live-in arrangements elderly people may not face any difficulty, sometimes may be they have moral issue, but for the sake of removing the loneliness they might accept it. However, time has changed, as the SC ruled out by saying "Live-in relationships are neither a sin nor a crime"[149]. It is always problem with divorce, because marriage is not much time taking but divorce can take many years. People need companionship and happiness in old age, and then it is very hard to go through the pain of divorce and separation at that age.[150]

The United Nations Population Fund (UNFPA) and Help Age International jointly released the report in 2012, which analysed that by 2050, India and China together will have approximately 80 per cent of the world's elderly population. As of today, a total of 12 percent of India's population is over the age of 60. It is worth mentioning that in recent developed era with the progression of science and technology, we got the magic to increase the span of life or quality of life. So now with the increasing durability, our elderly generation who have lost his/her spouse are confining themselves a lonely shell.[151]

However in a positive note, in their old age our senior citizens in India are gradually move towards companionship as an alternative of living alone, sometimes even for the second time choosing marriage. After facing lots of issue in marriage, they perhaps now turned on towards live with liberty and out of responsibilities, thus they are now open to enter into a live-in relationship for happy companionship, because such relationship brings you someone with whom you can share your life without the

149 Indra Sarma v. VKV Sarma, 2013(14) SCALE 448: AIR 2014 SC 304 (India).

150 Silver Talkies, *Supra note* 148.

151 Sunanda Mehta, *No strings attached: Why elderly Indians are getting into live-in relationships. What compels elderly to get into live-in relationships and what are the new rules of engagement?*, August 2, 2015, (Nov. 5, 2019, 06:35 PM), https://indianexpress.com/article/lifestyle/feelings/no-strings-attached-why-elderly-indians-are-getting-into-live-in relationships/.

responsibilities. Living together is better at old age, because there are no legal hurdle and property disputes at risk. Many elderly men in live-in relationship have intention as well as they are trying to have an informal understanding with their respective families for a will in the name of the live-in partner after their death. More importantly, the families also accept the new relationship quickly in the absence of any legal obligation.

Jyeshthaa Nagrik live-inrelationship Mondal (JNLM), a Pune based non-profit organization taking the responsibility to arrange live-in relationships for elderly heterosexual persons as a solution to loneliness. The founder Madhava Damle, a publisher previously, runs an old age home at his ancestral home in Wai in Pune for widowed elders. In the old age home most of the seniors were at their old ages, suffered a lot as being alone and going with troubles. They having lost their spouse and in most cases, children were not in the position to understand and have an indifferent attitude to their old parent's loneliness. Initially Mr. Damle thought of marriage may be a good idea and worked with it. Though its response was good but it is also carrying with the property issues, objections from children and many other things. Then the idea to encourage live-in relationships for older adults coming up to his mind and started an organisation through trial and mistakes. With more hassle-free way in intimacy and companionship live-in relationships can be the best solution to remove loneliness. Mr. Damle says, *"I did a survey and made 300 questionnaires. More than 70 percent of people who were participated in the survey said live-in relationships would be an ideal situation for lonely senior citizens looking for companionship, but after 10 years."*[152]

JNLRM has successfully matched thirty nine (39) couples despite lots of under process system. Mr. Damle has said, "After good mix of candidates, they usually go on a picnic or road trip together, as it helps to break the ice. Most of the couples who met through them started by live-in together for 5-6 months before any decision to opt to get married, more often than not due to social expectations." With experience, Mr. Damle has opinion that, "society was more open-minded and accepting of live-in relationships among older people. Although children (including one grandchild) have met him looking for a partner for their parent, he has also come across many who

[152] PTI Report, *Nagpur: Senior Citizens Search for Live-In Partners*, Outlook, 24 January 2012, (May 23, 2017, 10:20 PM), https://www.outlookindia.com/newswire/story/nagpur-senior-citizens-search-for-live-in-partners/748800.

have opposed. However, we always ask people to keep their children aware of their intentions to find a partner."[153]

In 2001, another organization, *Vina Mulya Amulya Sewa- Anubandh Foundation*, was formed to arrange marriages as well as live-in relationship among lonely senior citizens in the country. Mr. Natubhai Patel, a senior citizen himself is the organizer of first public function held on November 20, 2011 to help more than fifty (50) men and women across the country to find companionship in the form of live-in relationship at Mehndi Nawaz Jung Hall in Ahmedabad. Total of three hundred (300) men and 70 were participated from all over India. Mr. Patel also invited to Aamir Khan's TV show *'Satyameva Jayate'* and got the popularity among people and they were inviting him to hold similar events in other cities.[154]

Mr. Natubhai Patel said, "Of the 3,000 odd applications, nearly 1,000 prefer finding a live-in partner who will keep them company without inviting social and legal complications associated with marriage. Most women still prefer marriage but many say they are fine with live-in companions if they provide them financial security..."[155]

Further Mr. Patel said, "When I started my organization, we managed to get more than 50 people married but we found some of the marriages failed due to property issues, family opposition and lack of sexual compatibility."[156]

A Mumbai-based foundation and bureau, *Re-marriage.com* since 15 years are working on marriage and live-in relationship among senior citizens. Mr. A.M. Badal has founded the organization, who has observed the steady increase of the numbers of seniors registering for live-in relationship. When he first start the organization only one or two persons registered in search of live-in partner but they now have registered about 20 percent of his profiles. [157]

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153 Silver Talkies, *Supra note* 148.

154 Times of India, *Elders now explore live-in relationships*, July 27 2013, (Nov. 21, 2018, 08:50 AM), https://timesofindia.indiatimes.com/topic/live-in relationship.

155 Radha Sharma, *Now, senior citizens look for love and live-ins*, Times of India, Nov. 3, 2011, (Nov. 20, 2018, 11:20 AM), https://timesofindia.indiatimes.com/city/ahmedabad/Now-senior-citizens-look-for-love-and-live-ins/articleshow/10586142.cms.

156 *Id*.

157 Zubeda Hamid, *Senior citizens take a second shot at remarriage, companionship and fun. They are 60, 70 or 80 years of age and finding love again*, The Hindu, January 13, 2018, (June, 15, 2019, 04:16 PM), https://www.thehindu.com/society/love-again-they-are-60-70-or-80-and-finding-life-partners/article22429443.ece.

The *Thodu Needa*, an agency to arrange companionship between single or widowed elderly men and women for a hassle free life and to reduce loneliness. A retired school teacher M. Rajeswari had started this agency in December 2010. *Thodu Needa* is helping in matching of almost 200 couples over the age of 50, and in totality 95 per cent of them are opting for live-in relationships rather than formal legal marriages. M. Rajeshwari says "Many children welcome the decision; some, however, feel that the parents should live separately and only meet or go out together on vacations"[158]

The 'Companionship Carnival' in June 2013 was organized for senior citizens by the *Dignity Foundation* in Chennai. The director of Dignity Foundation, Chennai chapter K. Radhakrishnan told that, "We have been asked by a couple of people speaking about live-in relationships who wanted to help us find them partners but the majority of the people had reservations talking about it"[159]

The *Happy seniors*, is an organisation which has helped many old single men and women to bought about at least thirty nine (39) couples in to the 'meet cute' event in Maharashtra especially Mumbai and Pune. Most of the elderly are either lost their spouses to death or divorce and they are taking much interest in the live-in relationships rather than formal marriages.[160]

Another agency cum organisation the *Adhar Marriage Bureau* is also working for promoting of live-in relationships for their registered old elderly members. Savita Vinchurkar, the Director of the agency said that "The concept of live-in is gaining popularity among the senior citizens, as it comes without any tags or responsibilities and best for companionship and as a loneliness reducer."[161]

It the long journey of life, a good companionship among elderly citizens acts as a golden happiness which makes them stay busy and have a peace in life. As there are no legal and property obligations in live-in relationship which makes it gaining popularity among senior citizens. The senior couples in live-in relationship equally share their expenses and responsibilities, or joint financial responsible to run their

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158 Ghos Pragati, *Supra note* 16.

159 Vijay Sharma, *Supra note* 19.

160 *Id*.

161 Joshi Prajakta, *Live-in relationship a second chance for elderly couples*, Sakal Times, 20th May 2019, (Nov. 22, 2019, 05:15 PM), https://www.sakaltimes.com/pune/live-relationship-second-chance-elderly-couples-35362.

shared household. So it is a good way to know each other and spend their last innings together with peace and happy.

2.8 RIGHT OF LIVE-IN COUPLES TO ADOPT CHILDREN IN INDIA

The Central Adoption Resource Authority (CARA) is the nodal body to regulate adoption in India, which barred live-in couples to adopt a child on the ground that unlike marriage, non-marital cohabitation cannot be considered as a stable family in India in May 2018.[162]

As per the Adoption Regulations 2017, CARA allows a single woman to adopt a child of either gender but single man can adopt only boys and not girl child. Consent for adoption from both the spouses is necessary if the applicant is married and both should live together minimum of two years in a stable marriage. However, whether single or married the candidate must be physically fit, financially sound, and mentally alert and must have higher motivation to adopt a child.

CARA Authorities have considered that in India, a live-in relationship is not treated to be a stable family and therefore it is needed to secure the best interest of the child.[163]

The Hon'ble Apex Court in ***Indira Sarmah v. V.K.V. Sarmah***[164] said that live-in relationship is not a crime and also not a sin but not acceptable by the society as a whole. The legislature however, recognised live-in relationships as domestic relationship in the form of 'relationship in the nature of marriage' under the Protection of Women from Domestic Violence Act, 2005.[165]

It was in September 2018, the previous rule of not allowing the live-in partners to adopt child had been overruled by Child Adoption Resource Authority (CARA). So now it is allowing the live-in couples to adopt children from and within India and the requirements are provided as

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162 Staff Reporter, *Couples in live-in relations cannot adopt, says CARA, New Delhi*, The Hindu, June 14, 2018, (Nov. 20, 2018, 11:20 AM), https://www.thehindu.com/news/national/couples-in-live-in-relations-cannot-adopt-says-cara/article24165917.ece.

163 *Supra Note* 162.

164 Indira Sarmah v. V.K.V. Sarmah, 2013(14) SCALE 448: AIR 2014 SC 304 (India).

165 Staff Reporter, *Good News: Live-in Couples Can Now Adopt In and From India*, The Quint, Sept. 22, 2018, (Nov. 23, 2018, 09:13 AM), https://www.thequint.com/news/india/adoption-live-in relationship-children-india.

- The couple must be financially, physically and mentally stable to raise a child with higher motivation.[166]
- Equal to a married couple, live-in couples if seek to adopt a child, then both partner must give its consent for adoption and they must be in a stable relationship for minimum of two years.[167]

A huge relief is given to live-in couples by way of right to adopt a child by CARA, because under the Adoption and Maintenance Act 1956 the right to adopt a child is provided for only married couples.

SUMMATION OF THE CHAPTER

It was not considered as immoral for men to have live-in relationship with women outside the marriage. Concubines (*Avarudh Stris*) were kept for men's entertainment and relaxation. After independence, society has learned its social values with individual rights, bigamy became proscribed and women became more conscious of their civil rights, this exercise of live-in relation is now unacceptable merely on the basis of morality and ethos. But still practice is going on. The new style of cohabitation as inspired by western culture is going famous in India i.e. live-in relationship. Though Indian society does not allow such relation but judiciary is somehow recognizing it by interpreting the existing law. Personal laws however do not countenance live-in-relation on the footing of marriage, but under section 2(f) of Protection of Women from Domestic Violation act 2005 it is allowed as "marriage like relation".

Children actually structure the most primary unit as well as future of the human generation of recent progressive society and their providence is frequently firm by the social relations and individual liberty in their lives. So the parents pertaining to in any form of relationship and subsequently do engage in procreation of children significantly decide the status of such newly born individuals in the society as well as in the legal system. In India the concept of "legitimate in law and illegitimate in fact", are arising with such children whose parents are not legally wedded but in marriage like relationship. Such children have been given the status of the insecure

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166 Newsd, *Couples in live-in relationship can now adopt child*, 22nd September 2018, (Sept. 30, 2018, 04: 30 PM), https://newsd.in/couples-in-live-in relationship-can-now-adopt-child/.

167 Staff Reporter, *Live-in partners can adopt now*, The Hindu, September 21 2018, (Sept. 30, 2018, 04: 40 PM), https://www.thehindu.com/news/national/live-in-partners-can-adopt-now/article25010051.ece.

individuals, their future becomes depressing and their state of affairs will be limited in a different stratum in the society. The Directive Principles of State policy under Article 39(f) of the Constitution of India, states that "Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment." Another way, *Hindu Minority and Guardianship Act, 1956* under *Section 13*, specially talks about "the welfare of the concerned minor and regards as the paramount consideration of the society."

Since there is no specific law that recognizes the status of the couples in live-in relationship, the law dealing with the status of children born to such couples is too not very clear. The need to ascertain the status of such children catches greater importance in the protection of child rights parameter and that should be the primary agenda of legislation. With respect to this, legal precedents have gone on to hold tremendous value in tackling the issues faced by children of live in relations in identifying their position in the socio-legal setup.

Another way, *Hindu Minority and Guardianship Act, 1956* under *Section 13,* specially talks about "the welfare of the concerned minor and regards as the paramount consideration of the society." It is the jurisprudential philosophy which needs to be construed in a clearly liberal way so as to ensure the upbringing of such children born out of the live-in-relationship in a very dignified manner.

CHAPTER 3

LEGAL STATUS OF WOMEN LIVING IN LIVE-IN RELATIONSHIP IN INDIA, MARRIAGE UNDER PERSONAL LAWS IN INDIA AND ANALYSIS OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005

3.1 MARRIAGE UNDER PERSONAL LAWS AND LEGAL STATUS OF WOMEN IN LIVE-IN RELATIONSHIP IN INDIA

3.1.1 HINDU LAW

3.1.1.1 INRODUCTION

Some centuries ago, when civilization has been emerged the basic need of the society was identified, e.g. need of togetherness through the name of companionship between men and women, as 'marriage'. Through the "*Dharma*, the Hindu code of right conduct", the ancestors of Hinduism set out certain guidelines to ensure the permanency of the marriage institution. It also aimed not only to bring happiness among couples but also keep delicate balance within the relationship, so that family can enjoy the fullness of life with rights and obligations. Companionship in Hinduism is revealed from very ancient period though it may appear identical a newly developed notion by contemporary psychologists.

An ancient Hindu prince popularly known as *Yudhishtira* revealed this "secret" about four thousand years ago. In an episode known as *Yaksha Prashna*, in the *Aranya Parva* of the prodigious epic, the Mahabharata, one of the queries the *Yaksha* queried *Yudhishtira* was "*kimsvinmitramgrhesatah*? i.e. who is the acquaintance of a householder?" The prince answered that the *bhaaryaamitramgrhesatah*, i.e., the acquaintance of a householder is his wife. The wife is half the man, his greatest of friend, the foundation of the three ends of lifecycle, and of all that help him in the next world with a wife a man does enormous deeds, with a wife a man finds courage, and a wife is the innocuous sanctuary.[168]

[168] Nitansh Rai & Sukant Rawat Singh, *Live-In Relationship Among Hindus: Reincarnation of Marriage*, November 12, 2011, Legal India, (April 5, 2018, 02:30 PM),

The evolution of cohabitation without marriage in India as compare to marital relation among Indians was relatively low. An individual was married at a very tender age and too there stood no compulsion of monogamy in Hinduism before 1955 Hindu Marriage Act. However woman outside marriage is a "Secret keeping". The concept of today's live-in relationships is not a welcoming concept in Hinduism. It is a new added concept from western culture. India is a majority Hindu populous country, where marriage is still considered as a sacrament in practically as well as philosophically. However, in ancient India, as described and admitted by old Hindu Scriptures pre-marital relationship existed. According to Manu premarital relationships happened both in the Vedic period and later, but was an infrequent existence.[169]

The Dharmashastras prescribed four main objectives of Human life. These are Artha, Dharma, Karma and Moksha. Salvation i.e., Moksha is known as the ultimate purpose of Human life. It is to be known to be the last goal as it must through by attaining three stages of goals. However these four goals are inter connected to each other, e.g. Artha and Karma are for this living world, whereas Dharma and Muksha are connected for the next world. It is the way to upgrade to the next world. Dharma and *Muksha* are the two main attainment goals of human being for life. When people are following *Dharma* properly it will give them happiness and pleasure in this life too.[170]

The Hindu Philosophers divided the whole life of human being into four *Ashramas*[171] to attain Salvation- as *Brahmacharaya*, *Grihastha*, *Vanaprastha* and *Sanyas*. The duration of these Ashramas are calculated by considering the average age of a human being is hundred years and for each Ashrama it divides equally, i.e. twenty five years for each *Ashrama*. A Hindu can get salvation from this physical world's affairs by performing the prescribed duties under these four Ashrams.[172]

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https://www.legalindia.com/live-in-relationship-among-hindus-reincarnation-of-marriage/#:~:text=Live%20in%20relationship%20may%20be,in%20the%20eyes%20of%20law.&text=In%20Patel%20and%20others%20case,be%20construed%20as%20an%20offence.

169 Nitansh Rai & Sukant Rawat Singh, *Supra note* 168.

170 Akhilesh Sivakumar, *The Meaning of Life According to Hinduism*, October 12, 2014, The Ohio State University, (July 16, 2018, 01:20 PM), http://www.religionfacts.com/hinduism/beliefs/purpose.htm#dharma.

171 Olivelle Patrick, The Ashrama System: The History and Hermeneutics of a Religious Institution, 1-29, 84-111, (Oxford University Press, 1993), OCLC 466428084.

172 R.K. Sharma, Indian Society, Institutions and Change, 28-30 (Atlantic Publishers & Dist, 2004).

The second *Ashrama*, i.e. *Grihastha Ashrama* is the second stage where it is prescribed to get married happily to experience the pleasure of life through social participation. According to the *Purushartha* theory[173] in *Grihastha Ashrama*, *Artha* and *Karma* must be observed. Here *Artha* means wealth e.g., the acquisition of wealth, property and prosperity and *Karma* means action, e.g., work or deed etc. and which includes enjoyment and pleasure, including the sexual enjoyment and pleasure both. The *Artha* and *Karma* both the objectives must be observed and acquired simultaneously as the main objects of *Grihastha Ashrama*. In the Mahabharata, in part of *Shanti Parva* it is provided that, "of all the *Ashramas* however the *Grihastha Ashrama* is given a very high place of honour".[174]

In *Grihastha Ashrama*, it is the prime requirement to enter into a valid marriage and it doesn't recognise non-marital sexual relationship. Hindu philosophers legally did not recognise the sexual relation outside marriage and accepted as a sin and also punishable. *Apasthamba* put marriage as "was meant for doing good deeds and attainment of *Moksha*." There are certain of *Samskaras* are prescribed in Hinduism which that are to be performed during the course of human life. The *Pumsavana* is the earliest and the *Antyasamaskara* is the last.[175] According to Manu, "the *Vivaha Samaskara* is the most important one."[176]

According to *Darmasastras*, marriage is for the attainment of three objectives in life i.e. Dharmasampatti, Prajya and *Rati*. According to Manu "the main aim of marriage was not the satisfaction of vernal desires but it was considered that a man as an individual only after he got married and his wife was described as other half of man." However, not only these three objectives, the *Mahabharata* prescribed the fourth objective that is *Samajarina*, *e.g.* the duty of a person towards the society which requires the presence of a legally wedded wife.[177]

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173 M Hiriyanna, Philosophy of Values, in Indian Philosophy: Theory of value, 8-10, (Ed. Roy Perrett, Routledge, 2000).

174 S. Garg, *Political Ideas of Shanti Parva*, 65(1) IJPS, 77-86 (Jan.-March, 2004).

175 Puja Mondal, *Four Ashramas of Vedic Life: Stages of Life in Realising the Hindu Ideal of Life!*, (June 21, 2019, 11.00 AM), https://www.yourarticlelibrary.com/society/indian-society/four-ashramas-of-vedic-life-stages-of-life-in-realising-the-hindu-ideal-of-life/39153#:~:text=There%20are%20four%20ashramas%20in,the%20Nivrtti%20Marg%20of%20development.

176 Manusmriti, III: 20.

177 R.K. Sharma, *Supra note* 172 at 31.

The Supreme Court of India in ***Kamesh Panjiyer v. State of Bihar***[178] held that "marriages are made in heaven, is an adage."

However, when two people of opposite sex decide to live together in a non-marital short-term or long-term or permanently or in an emotional and or sexual relationship it is called as Live-in relationship. The Hindu law does not recognise as a valid relationship when a man and a woman have sexual intercourse outside the institution of marriage. Under the classical Hindu law these types of non-marital sexual relations have been strongly condemned and serious punishment has been mentioned. For instance adultery, Manu prescribed severe punishment for committing adultery with the wives of others: "Men who indulge in committing adultery with the wives of other, the King shall cause them to be marked by punishment such as cutting of nose and lips which cause terror, and afterwards banish them."[179]

Further, Manu justified severe punishment for the offence of adultery: "*Adultery carried mixture of castes among men; hence follows sin which cuts up even the roots an cause the destruction of everything.*"[180]

In *Manusmriti* it provided that, in case a wife is a habitual offender as well as indulging in illicit sexual relationship repeatedly, severe punishment should be ordered, "*A woman who neglects her husband and goes over to another man through pride consisting in the idea; I have several relation who are powerful and wealthy and I myself possessed of all the excellent qualities of a woman, such as beauty and love, why should I then mind my character, such a woman the king shall get devoured by dogs till she dies*."[181]

3.1.1.2 PRESUMPTION OF MARRIAGE UNDER HINDU LAW

It is always taking a positive view for a legally wedded marriage and children born out of such legality. So extremely strong presumption has been taken place in favour of marriage and legitimacy of its offspring from the time of the alleged marriage, and the parties are recognized as husband and wife and are so must be declared in

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178 Kamesh Panjiyer v. State of Bihar, (2005) 2SCC 388: 2005 SCC (Cri) 511(India).
179 Manusmriti IX : 9.
180 Manu Smiriti VIII: 353.
181 Medahatihi on Manu VIII: 371, (April 20, 2018, 10:10 AM), https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi/d/doc201304.html.

important documents. However, there are certain cases to provide presumption to the live-in relationships as a marriage in some circumstance.

Delhi High Court in **Ashok Kumar v. Smt. Usha Kumari**[182] held that if the parties are recognised as husband and wife, there is a strong presumption in favour of the validity of marriage and from ceremonies of the marriage and legitimacy of its off springs. After all, the rites and ceremonies only serve to provide proof of marriage as registration does.

In ***M. Mohan Singh & Ors vs. Rajni K. & Anr***[183] Supreme Court held that the courts have unswervingly held that the law presumes in favour of marriage and against concubinage. So once a man and woman have cohabited uninterruptedly for a number of years it is presumed as marriage. Though, such conjecture can be refuted by leading irreproachable evidence.

3.1.1.3 MAINTENANCE RIGHT UNDER HINDU LAW

The right of a wife to claim maintenance is an incident of the status of matrimony and if the relationship of husband and wife is established as a matter of course the wife is entitled to maintenance.[184] There is no right of maintenance to a woman living in live-in relationship with a Hindu man unless and until it has been proved or presumed that the man and woman living together are husband and wife. The obligation of maintenance of woman is only in the relation of marriage as a legally wedded wife and not in any other non-marital relation in Hindu Law. Thus Hindu Personal law does not recognise live-in relationship, so maintenance right under Hindu Personal law cannot be claimed by the women previously lived or still living in live-in relationship.

3.1.2 MUSLIM LAW

3.1.2.1 INTRODUCTION

Live-in relationship is the synonym of non-marital cohabitation. In the eyes of Islamic law this type of cohabitation is recognised as the illicit sexual relation and it is toward to the evil guided path and through this other doors of evil can be opened. This type of evil-illicit-sexual relationship is called *zina*. It is an Arabic term which

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[182] Ashok Kumar v. Smt. Usha Kumari, AIR 1984 Del.347(India).
[183] M. Mohan Singh & Ors vs. Rajni K. & Anr, AIR 2010 SC 2933(India).
[184] Rao Mamata, *Law relating to Women and Children,* 143-150 (2nd ed. 2010).

means “any sexual intercourse outside the marriage which stands for both adultery and fornication, as Islam prohibits all sexual intimacy other than between husband and wife within marriage.” In legal terminology the term *zina* means, “A man and women are said to commit *zina*, if they wilfully have sexual intercourse, without having validly married to each other.”

It is in *Holy Quran* that;

“Assuredly, the command of Allah (subhanawata'ala): And come not near unto adultery.

Lo! It is an abomination and an evil way.”[185]

The prophet (Peace be upon on Him) said: “No adulterer is a believer at the time when he is committing adultery”.[186] It is just and true that Islam prohibits steps and every means leading to *haram*. Accordingly every illicit sexual relation is *haram*, so *zina* is a crime which comes under the types of *haram*. Indeed, it is not only a sin but also a heinous crime. Therefore punishment is prescribed not only to protect man and woman but also for the respect of marriage.

It is noteworthy that voluntarily non-marital sexual relationships are not considered as crime in Modern Penal System, though sexual liberty outside marriage is forbidden under all sacred laws. These laws not only forbid but also provide harsh and exemplary punishments for all kinds of sexual relations outside the marriage. These punishments are provided against *zina* as a greatest sin as well as a crime against honour and generations.

The *Holy Quran* says:

“Nor come nigh to adultery: for it is a shameful deed, and an evil, opening the road to other evils.”[187]

“The woman and the man guilty of adultery or fornication - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment.”[188]

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185 Quran 17: 32.
186 Al-Bukhaari, 2475; Muslim, 57.
187 Quran 17:32.
188 Quran 24:2.

" And those who cry not unto any other any God along with Allah, nor take the life which Allah hath forbidden save in (course of) justice, nor commit adultery and who so doeth this shall pay the penalty"[189]

Prophet Mohammad (*Peace Be upon on Him*) has "condemned *zina* to the greatest sin after *shirk*. There is no sin after association is much greater in the eye of Allah (*SubhanaWaTa'ala*) than a drop of semen which a man places in the womb which is not lawful for him."[190]

Prophet Mohammad (*Peace Be upon on Him*) has said, "Allah has ordained a way for those women. When an unmarried male commits adultery with an unmarried female, they should receive one hundred lashes and banishment for one year. And in case of married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death"[191]

3.1.2.2 PRESUMPTION OF MARRIAGE UNDER MUSLIM LAW

Whether a marriage has been taken place between a man and woman validly can be proved through direct evidence. For example, producing marriage deed signed by the parties (*Nikahnama*), calling witnesses etc. Though direct evidence is the best form of evidence, but sometimes direct evidence may not be available, as Muslim marriages many a times take place without ceremony. [192] So where direct evidence is absent and if man and woman living together from the time of their alleged marriage as a husband and wife then from the circumstances and the conduct, such marriage can be proved.

In the case of ***Rasheeda Khatoon v. S.K. Islam***,[193] The Orissa Court held that "in the instant case there was no acceptance of the offer to marry, but there was only assurance to marry in future and therefore, mere cohabitation with such an assurance does not constitute the factum of marriage to give the status of a validly married woman."

Islamic law is completely against of sexual relationship of any kind outside the marriage. It is strictly prohibited and severely punishable offence. So if we take the

189 Quran 25: 68.
190 Al-Bukhaari, Kitab-al-Hudud.
191 Sahih Muslim, 17:4191.
192 I.A. Khan, *Mohammedan Law*, 135, (23rd ed. 2010).
193 Rasheeda Khatoon v. S.K. Islam, AIR 2005 Ori.57 (India).

above discussion, then it is cleared that continuously doing *zina* will not give any presumption of marriage, because continuous repeating the sin will not turn into a virtuous deed. One *Hadith* saying that, *"Whomever Allah blesses with a righteous wife, He has helped him with half of his religion, so let him fear Allah with regard to the other half."*[194]

The Allah (*SubhanaWaTa'ala*) says in the Holy Quran that:

"The adulterer shall not marry save an adulteress or an idolatress, and the adulteress none shall marry save an adulterer or an idolater. All that is forbidden unto believers."[195]

"And the two who commit it among you, dishonour them both. But if they repent and correct themselves, leave them alone. Indeed, Allah is ever accepting of repentance and Merciful. The repentance accepted by Allah is only for those who do wrong in ignorance (or carelessness) and then repent soon after. It is those to whom Allah will turn in forgiveness, and Allah is ever knowing and wise."[196]

However, marriage between the accused parties to such immoral activity can be allowed with two prescribed conditions.

Shaykh Muhammad Ibn Ibrahim (May Allah has mercy on him) said that "it is not permissible to marry a woman who has committed *zina* until she repents. If a man wants to marry her then he must wait for one menstruation cycle (*istibra*) to establish that she is not pregnant before doing the marriage. If she is pregnant; it is not permissible for him to do the marriage contract with her until after she gives birth."[197]

Ibn Qudaamah (May Allah have mercy on him) said that "if a woman commits *zina*, it is not permissible for the one who knows of that to marry her unless two conditions are met:

1. That her *istibra* (determining that the woman is not pregnant) has ended. If she is pregnant as the result of *zina* then her *iddat* ends when she gives birth, and it is not permissible to marry her before she gives birth,

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194 Saheeh al-Targheeb wa'l-Tarheeb.
195 Quran 24: 3.
196 Quran 4:16-17.
197 Al-Fataawa al-Jaami'ahli'l-Mar'ah al-Muslimah (2/584).

2. That she repents from committing *zina,*

And he said that if both conditions are met, it is permissible for the *zaani* (adulterer) or anyone else to marry *zaanyah* (adulteress).” According to the majority of the scholars, including *Abu Bakr, Umar and his son, Ibn Abbas, Jaabir, Sa’eedibn al Musayyab, JaabiribnZayd , Ata, Al Hasan, Ikrimah, Al Zuhri, Al Thawri, Al Shaafa’I, Ibn al Mundhir and Ashaab al ra’y* (May Allah have mercy on all of them) view that the marriage of the *zaani* and *zaaniyah* is valid, even if they have not repented.[198]

In case of children born out of non-marital sexual relationship, they will be recognised as “illegitimate child from illicit relationship”. He/she will not be allowed to be named after his/her illegitimate father and allowed to be named after his/her mother. There are also no property rights and inheritance rights are given from the illegitimate father. It was narrated from *Amr ibn Shu’ayb* from his father that his grandfather said that the *Prophet* (*Peace Be upon on Him*) ruled that “whoever was born to a slave woman his father did not own or to a free woman with whom he committed adultery, then he cannot be named after him and he does not inherit from him, even if the one whom he claims is his father acknowledges him. So he is the product of zina, whether his mother was a free woman or a slave”.[199]

3.1.2.3 MAINTENANCE RIGHTS UNDER MUSLIM LAW

Marriage has legal and social effects and it creates certain legal and moral obligation towards each other. A Muslim husband is bound to maintain his wife during the continuance of the marriage and after divorce; it is incumbent on him whether she is a Muslim or *Kitabiyyah*, poor or rich, young or old. It is only in the case of a wife that the obligation to maintain is absolute.[200] So if any woman is claiming maintenance then it must be proved that there is a valid marriage between the man and woman.

However, in live-in relationship there are no any legal and social effects which can create legal as well as moral obligation between live-in-partners. The women in live-in relationship are not entitled to the rights and privileges which are given to the

198 Al-Mughni (7/108, 109).
199 Narrated by Abu Dawood (2265) and Ibn Maajah (2746) classed as hasan by al-Albaani in Saheeh-Abu-Dawood.
200 Mamata Rao, *Supra Note* 184.

legally wedded wife. For example, dower, maintenance and residence and the right of inheritance in the husband's property after husband's death; are only given to the legally wedded wife. The woman partner in live-in relationship is not entitled to these rights. The offspring's from the illegal union like live in relation are recognised as illegitimate. So in a simple manner, Muslim Personal law does not recognise live-in relationship thus right of maintenance is not arisen according to its established rules.

3.1.3 CHRISTIAN LAW

3.1.3.1 INTRODUCTION

Whether marriage is named as "just a piece of paper" or a legal formality, marriage is a legal institution. Non-marital cohabitation is now days can be termed as a "trial marriage," because people want to test their compatibility before they make a commitment. Some other persons may justify their sexual relations with another who are dating so long as they care for one another and have a "meaningful relationship." It is counted nearly 4 million couples living together without being married by the US Census in 2000.[201]

According to Bible, it is clear that living with the partner before marriage is sexual immorality. The Bible clearly mentions about sexual immorality. Marriage between a man and a woman is the only justified form of partnership that God accepts and blesses. All non-marital sexual relationships are considered fornication.

"Marriage is honourable among all, and the bed undefiled; but fornicators and adulterers God will judge."[202]

It is understandable that there is nothing illegal about sexual relations within marriage. But in Christianity, this is recognised as illegal or sin as fornication those who engaged in sexual relations outside the marriage and this includes cohabitation, i.e. people living together before marriage as a couple. The non-marital union is described as fornication and adultery. Though it described as fornication and sin in the Bible, living together before marriage is becoming more and more common in many parts of the world.

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201 Simmons Tavia & O'Connell Martin, *Married-Couple and Unmarried- Partner Households: 2000*, February 2003, (July 18, 2019, 11:20 AM), https://www.census.gov/prod/2003pubs/censr-5.pdf.

202 Hebrews 13:4.

The world constantly goes in the direction of fornication and sin in the name of developments. However, the religious community is not able to stop this development. On the contrary, it is seen that as non-marital cohabitation, sin becomes more and more widespread and widely accepted, resistance decreases, even among those who call themselves Christians and who should be enforcing God's Word. What was called sin only a few years ago is today termed as love. It is when the light from heaven is extinguished that people with unclean spirits can find peace in the congregation. Such an assembly is without power and blessing and the seeking soul cannot find help.[203]

The Words of God can be falsified by selfishness which can lead towards the fragile morality which is constantly increasing in the society. In the social set ups, we have to deal with people who live in conditions that God's Word describes as fornication, adultery, immorality, infidelity, etc. The practical application of God's eternal laws sets requirements for those who want to keep them alive.

"*As personal Christians and disciples of Jesus, it should be totally natural to follow the words of Scripture and not falsify the word of God for profit*."[204]

When there is a life without adultery, it is the best life as prescribed by God, but such understanding will create doubt in the minds of those who falsify the word of God for their own profit. Thus about interpretation of the words of God, there is always controversy and doubt. Although new forms of sin, with new manifestations, and the words of Scripture stand firm and call these wickedness's with proper name e.g., sexual immorality. If anybody professing Christianity which is based on the Bible, where God loves the sinner and hopes for the repentance of his sin, then it is beyond doubt that God hates such sins.

"*As parents, brothers and sisters, we must always be filled with the goodness of God that leads to repentance*."[205]

"Therefore, I judge that we should not trouble those ... who repent to God, but we write to them to abstain from things polluted by idols, from sexual immorality ..."[206]

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203 Active Christianity, *What does the Bible say about living together before marriage?*, (Oct. 27, 2019, 5:45 PM), https://activechristianity.org/what-does-the-bible-say-about-living-together-before-marriage.

204 2 Corinthians 2:17.

205 Romans 2:4.

206 Acts 15:19-20 and Acts 15:28-29.

Here we see clearly that one cannot live for God as a disciple of Christ, while at the same time living together before marriage e.g., living in adultery. "When God wants to use the most beautiful and powerful image to describe the relationship between His Son Jesus Christ and His church, He uses the image of fidelity between the groom (Christ) and his pure bride (the church)."[207]

As professing Christians believe in God's word, when the Bible so clearly speaks of the normal Christian life as a life of obedience to God's eternal promises, so Christians believe it and live by it!

"Jesus taught that fornication comes from the heart and defiles a man."[208]

"The Corinthians had been fornicators, adulterers, etc. Those who engage in such practices cannot inherit the kingdom of God."[209]

"Fornication should not even be named as existing among God's people, for those who are guilty have no inheritance in the kingdom of God."[210]

"Fornicators are among those who will not enter heaven but will be in the lake of fire."[211]

"You have heard that it was said to those of old, 'You shall not commit adultery.' But I say to you that whoever looks at a woman to lust for her has already committed adultery with her in his heart."[212]

"Every sin that a man does is outside the body, but he who commits sexual immorality sins against his own body."[213]

"...It is good for a man not to touch a woman. Nevertheless, because of sexual immorality, let each man have his own wife, and let each woman have her own husband."[214]

"But I say to the unmarried and the widows: It is good for them if they remain even as I am; but if they cannot exercise self-control, let them marry. For it is better to marry than to burn with passion."[215]

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207 Ephesians 5:31-32; Revelation 14:4; Revelation 19:7-8.
208 Mark 7:20-23.
209 1 Corinthians 6:9-11.
210 Ephesians 5:3-6.
211 Revelation 21:8; 22:14, 15.
212 Matthew 5:27-28.
213 1 Corinthians 6:18.
214 1 Corinthians 7:1-2.

"For this you know, that no fornicator, unclean person…has any inheritance in the kingdom of Christ and God."[216]

"For this is the will of God, your sanctification: that you should abstain from sexual immorality; that each of you should know how to possess his own vessel in sanctification and honour, not in passion of lust, like the Gentiles who do not know God."[217]

"Marriage is honourable among all, and the bed undefiled; but fornicators and adulterers God will judge."[218]

Marriage is a relationship defined and ordained by God. Therefore, it must follow His rules. Man has no right to change those rules or to violate them. Further, marriage is a relationship between one man and one woman which is intended to be a permanent relationship. The sexual union is to occur within this marriage relationship as God told the man and woman to reproduce. Whenever the sexual union occurs there is the possibility that a child will result, and children need the security of a father and a mother to raise them. Here is another reason for reserving the sexual union for marriage. So any children that might be conceived would have the benefit of being raised by two parents who have a lifetime commitment to the family.

In cohabitation without marriage the Bible's teachings cannot be followed. When a couple lives together before marriage, they do not intend to form a marriage or a new family unit. They do not intend to "cleave" in a permanent relationship. So they are not abiding by God's rules for marriage and their sexual union is illegal.

3.1.3.2 PRESUMPTION OF MARRIAGE UNDER CHRISTIAN LAW

In India the law relating to solemnisation of marriage of persons professing Christian religion was spread over two Acts of English Parliament and three Acts of the Indian Legislature. The Indian Christian Act 1872 is the guiding enactment with all important provisions to regulate Christian marriages in India.[219]

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215 Corinthians 7:8-9.
216 Ephesians 5:5.
217 Thessalonians 4:3-5.
218 Hebrews 13:4.
219 Kusum, Cases and materials on Family Law, 197-198, (Universal Law, 2015).

Part III of the Act provides before solemnisation of a Christian marriage, the Minister of Religion must issue a certificate. Such a certificate shall not be issued before the expiry date of four days from the date of the receipt of notice. If the marriage is not solemnised within two months from the date of issuing of certificate it becomes void and fresh notice is to be served. If there is making of false declaration or signing a false notice or certificate a punishment of three years imprisonment is prescribed. Solemnisation of marriage without due authority is also punishable.[220] The factum of marriage can be proved by producing entries from the register and other evidence also can be produced for this purpose.

In ***G. Adinarayan v. B. Abelu***[221] it was held that, "The Christian marriage must be performed in a particular form and duly entered in the marriage register maintained for this purpose. The factum of marriage can be proved by producing entries from this register. The versions of eyewitnesses to the marriage and subsequent conduct of the couple living together as husband and wife can be a presumption of factum of a Christian marriage."

In the case of ***K.I.P. David v. Nilamoni Devi***[222] it was held that, "Christian marriage can also take place at the house of the bride's mother and in that case the signing of the Marriage Register is not essential."

In ***Jayanthi Kanakavalli v. K. Louis Raju and ors***.[223] The Andhra Pradesh High Court held that "It mandates that a certificate, in accordance with the relevant provisions, shall be received in any suit, touching on the validity of the marriage as conclusive proof of the performance of marriage."

3.1.3.3 MAINTENANCE RIGHTS UNDER CHRISTIAN LAW

Christianity never supports non-marital intimacy of any kind. It is rather 'sexual immorality'. Non-marital cohabitation e.g. live-in relationship is also a sexual immorality in Christian religion. Unlike marriage, the main objective of live-in relationship is never a social and moral intend. There is no any status in live-in relationship. However marriage ensures the status of husband and wife and the rights and obligation towards each other and for the society also. In live-in relationship

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220 The Indian Christian Act 1872 No. 15, Acts of Parliament, 1872 (India), Part III, (Section 12-26).

221 G. Adinarayan v. B. Abelu, (1964) 2 Andh WR 136 (India).

222 K.I.P. David v. Nilamoni Devi, AIR 1960 Ori. 164 (India).

223 Jayanthi Kanakavalli v. K. Louis Raju and ors, 2005 (1) ALD 795, 2005 (2) ALT 420 (India).

women partners not entitled to the rights and privileges which a legally wedded wife can enjoy. It is immaterial that couples are unmarried or one partner is married but has live-in relationship with another person. To claim maintenance or alimony a woman must be a 'legally wedded wife', so a live-in woman partner can't claim maintenance from her male partner and also the children born from live-in-relation are recognised as illegitimate.

3.1.4 PARSI LAW

3.1.4.1 INTRODUCTION

In ***Parsi Law*** of ***Zoroastrian*** faith marriage is a very important institution and it is the only way to legitimize sexual intercourse of two Zoroastrians. Through marriage only a Zoroastrian who wishes to attain the faith of Zoroastrianism and maintain purity can be achieved. According to Zoroastrianism, until marriage, a saint who can perfectly maintain himself by holiness will be chaste. However, the Zoroastrian priesthood saw as important similarity to note that it was of *Prophet Zarathustra Spitama (i. e. Zoroaster)* himself who was the keeper of purity.[224]

It is significant to mention that the consensual premarital sexual-intercourse of two single *Zoroastrians* may be not considered as a grave sin as the religious scriptures are silent about it, although it is certainly not the path of him who perfected himself by holiness. Unlike adultery where betrayal of the rightful spouse done, consensual premarital sexual-intercourse is a simple sin which can be remedied by consequent marriage with repentance. The traditional *Zoroastrian* scriptures, do not consider it as a major sin unless it is connected with multiple partners e.g. promiscuity.[225]

3.1.4.2 PRESUMPTION OF MARRIAGE UNDER PARSI LAW

Parsis are governed in the matters of marriage and divorce by the Parsi Marriage and Divorce Act 1936. This act has been amended by the Parsi Marriage and Divorce Act 1988.

A Parsi marriage stands invalid if such marriage is not solemnised according to the Parsi from of Religious ceremony called 'Ashirvad' by the priest in the presence of two Parsi witnesses other than that priest. However, any child of such invalid nuptial

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[224] Zartusht Ashavan, *Is fornication a sin in Zoroastrianism?* December 28, 2018, Quora, (April 12, 2019, 12:20 PM), https://www.quora.com/Is-fornication-a-sin-in-Zoroastrianism.

[225] *Id*.

tie, who would have been lawful if the wedding had been valid between his or her biological parents, shall be treated as legitimate. Every marriage contracted under the Act shall, immediately on the solemnisation of the marriage, be certified by the officiating priest in the prescribed form.[226] Every such registration shall be evidence of the truth of the statement from any presumption.[227]

In order to prevent the Parsi trust property and fire temples from slipping away from the pure Parsi fold, it was ruled in ***Sakalt v. Bella***[228], that "converts to Zoroastrianism and children born to a Parsi woman who has married a non-Parsi are not Parsis."

In the very famous case of ***Maneka Gandhi v. Indira Gandhi***[229], it was held that" Sanjay Gandhi who was born of a Parsi father and a Hindu mother was a Hindu because he was brought up as Hindu. Any Indian Parsi who does not subscribe to Zoroastrianism is not a Parsi by religion. So it is cleared that faith as well as practice of Zoroastrianism is important to become a Parsi, and it is however keeping the same status whether it is marriage or live-in relationship.

In the case of ***Sarwaar Merwan v. Merwaan Rashid***, "where an Iranian who temporarily resides in India and is registered as a foreigner and who has a Persian domicile, he does not become Parsi merely because he is a Zoroastrian. As he is not a Parsi, Act does not apply to him. He cannot be married under this Act. The Parsi Chief Matrimonial Court set up under this Act cannot have any jurisdiction over him." [230] So presumption of marriage merely does not arise if the two or one heterosexual Parsi living as husband and wife without fulfilling the requirement prescribed by the Act.

3.1.4.3 MAINTENANCE RIGHTS UNDER PARSI LAW

According to Parsi Marriage and Divorce Act 1936, when there is no independent income of husband or wife which is sufficient for the necessary expenses and to maintain the court orders to pay the plaintiff the expenses and weekly or monthly or periodical allowance for a term not exceeding the life of the plaintiff or remarried.[231] So only upon marriage the maintenance rights have arisen. So any woman who is in

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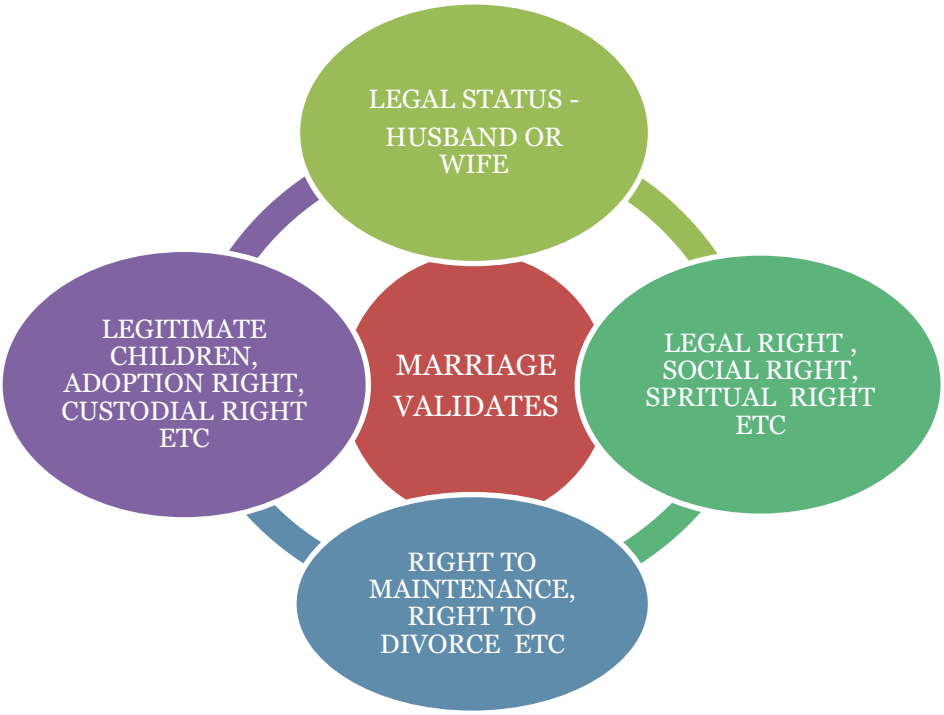
226 The Parsi Marriage and Divorce Act 1988, No. 5, Acts of Parliament, 1988 (India), Section 6.
227 The Parsi Marriage and Divorce Act 1988 No. 5, Acts of Parliament, 1988 (India), Section 8.
228 Sakalt v. Bella 1925 ILR 53 IA 42 (India).
229 Maneka Gandhi v. Indira Gandhi, AIR 1984 DEL 428 (India).
230 Sarwaar Merwan v. Merwaan Rashid, AIR 1951 BOM 14 (India).
231 The Parsi Marriage and Divorce Act 1936, No. 3, Acts of Parliament, 1936 (India), Section 39.

live-in relationship can't claim maintenance from her live-in male partner. The woman partner in live-in relationship is not entitled to any legal rights arising in marriage only. However offspring's from the prohibited union e.g. invalid marriage are not recognised as illegitimate.[232] *Parsi* law is rather liberal in that sense.

DIAGRAM 3.1

STATUS OF MARRIAGE UNDER PERSONAL LAWS IN INDIA



3.1.5 LEGAL STATUS OF WOMEN LIVING IN LIVE-IN RELATIONSHIP IN INDIA

3.1.5.1 INTRODUCTION

There is no legal blockade to preclude a man and a woman cohabiting together without being formal married but in the arrangement of "live-in-relationship". The traditional society of India however does not approve such living arrangements, for several reasons. First, society still believes marriage institution as the forming part of society. Furthermore, if a woman was economically dependent on his male counterpart, the impulsiveness of such a relationship shaped an acquiescent status for

[232] The Parsi Marriage and Divorce Act 1936, No. 3, Acts of Parliament, 1936 (India), Section 3(2).

the woman. Now in comparatively trivial towns and cities social denunciation and disgrace are faced by such relationship. As a result, it remains largely secretive.

There is no any legal definition of live-in relationship or non-marital cohabitation or living together or de facto relationship or marriage like relationship etc. The rights and obligations of live-in couples are not prescribed and children born out of such non-marital intimacy are legitimate in law. There is no any law has been formulated as well as enacted for the regulation of live-in relationship in India. However interpretation under Section 2(f) of PWDV Act can be considered as 'marriage like relationship'. The courts in certain case laws live-in relationship are tagged as marriage. Almost in every case the court intend to presume marriage on the basis of long term cohabitation.

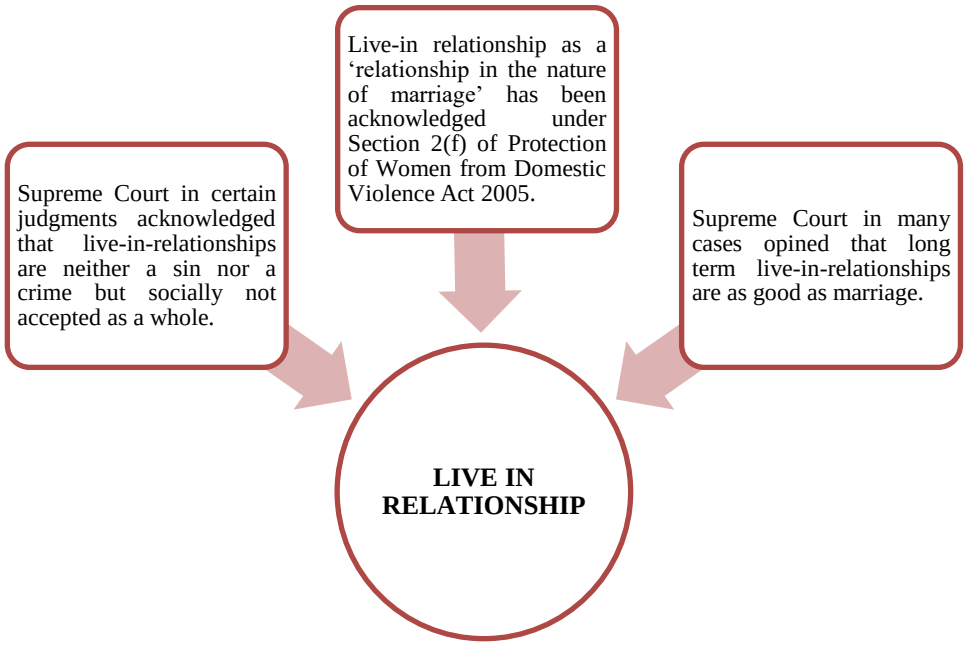
Presently there is no prevailing legal context which deals with the impression of live-in relationships in India. The Hindu Marriage Act 1955, Muslim Personal Law, Christian Marriage and Divorce Act and Parsi Marriage and Divorce Act do not recognise live-in relations and nor does the Code of Criminal Procedure of India. The only Act which dealt with the existence of live-in relationships is the Protection of women from Domestic Violence Act, 2005. For the very object of safety and maintenance to women, an aggrieved live-in partner may be granted maintenance under the Act.

A unembellished analysis of this act reveals the following as the Act defines a "domestic relationship" to mean "an association between two persons who live, or have, at any point of time, lived together in a common household, once they are connected by consanguinity, marriage or through an association in the nature of marriage, adoption or are family members living together as a joint family."[233] The expression "in the nature of marriage" covers in its ambit live-in relations or non-marital cohabitation. Unfortunately, no legal definition has been provided in any Act but the same has been left for court's interpretation.

[233] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

Diagram No 3.1.5

LEGAL STATUS OF LIVE-IN RELATIONSHIP IN INDIA



Cohabitees still have to take the tortuous route along which married persons were forced to go prior to reform, and are obliged to establish property rights through the devices of contract and the law of trusts. Thus, there is a willingness to extend some of the remedies available in a marriage situation to cover cohabitation situations but a refusal to extend the full range of remedies. On the other hand it is possible to see the whole problem from an entirely different way. Marriage and cohabitation seem to be converging, and viewed from a different perspective that it is the concept of marriage itself which is changing. It may be that indeed the status of marriage is being increasingly deemphasized and that the trend is to treat marriage more like cohabitation with the emphasis being placed on the freedom of parties to contract rather than on status. This is a consequence of the changing role of women in society and their increasing independence. If that is indeed the trend then lawmaking bodies should be cautious about creating a new status of dependency arising from cohabitation.

Both cohabitees and married couples tend to show a lack of foresight about the legal consequences of their respective relationships. When a relationship is harmonious little thought is given to the legal problems which may arise if the relationship breaks

down. Property is purchased in the name of one person alone, and bank accounts are opened without realizing that a veritable Pandora's Box of legal problems has been created.

3.1.5.2 PRESUMPTION OF MARRIAGE IN LIVE-IN RELATIONSHIP

The institution of marriage is viewed from many different angles, for it is intimately connected with the crude customs of a locality. Any broad definition of marriage is thus liable to exclude one or other form of the institution. Marriage is the act of marrying that confers status on a union of a man and woman, for some legal purpose.

In Roman law, marriage is defined as a contract by which a man and a woman enter into mutual engagement in the form prescribed by law, to live together as husband and wife for the reminder of their lives.[234]

"Marriage as understood in the Christianity means the intended unification for life of one man and one woman, to the omission of all others, entered into some form recognised by *lex loci."*[235]

Marriage is well recognised institution in ancient India for intimate relationship. In ancient Hindu Law, marriage was conceived as sacramental union and sacramental union implies that it is a permanent union which cannot be dissolved. According to Manu a spouse is amalgamated to each other not only for this life but after death i.e. in the other world.[236]

Muslim Jurists regard the marriage institution of marriage as partaking both of the nature of *ibadaat* (devotion) and *muamlat* (dealings among men).[237]

In ***Abdul Kadir v. Salima***[238] Mahmood. J. observed that "Marriage is a civil contract upon the completion of which, by proposal and acceptance, all the rights and obligations which it creates arise immediately and simultaneously." However marriage in Muslim law is a legal, spiritual as well as social union of two heterosexual persons.

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234 Andrew T. Birrkan, D. C. L., *Marriage in Roman Law*, 16(5) Yale LJ 303(1907), (March 21 2018, 09:10 AM), https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1887&context=ylj.

235 Hyde v. Hyde, [1866]1 P & D 130 (UK).

236 Manu, III, 24, 39, 41, 42; Grant IV, 14; Bandh I, xi, 20, 10.11.

237 Abdur Rahim, Principles of Muhammadan Jurisprudence, 327, (KEY Law Reports Publication, Paperback 1994).

238 Abdul Kadir v. Salima (1886) 8 All 149 (India).

Marriage in Indian society is the most important *samskara*[239]; but unfortunately for many women practically it turns out to be a nightmare. Despite religious sanctity being given to marriage with high esteem, marriage is often the place where women face maximum violence and lots of deprivations. In fact the moment a woman is married she faces violence in the form of demand for dowry and is even killed and burnt alive for bringing insufficient dowry. Overgenerous weddings culture in India and expenditure of weddings beyond their means are among the tribulations that prevail in society.

In ***A. Deenohamy v. W.L. Blahamee***[240], the Privy Council laid down a comprehensive rule on cohabitation as that where a man and a woman are evidenced to have lived together as spouse, the law will presume, except the contrary be undoubtedly proved, that they were living together as a result of a valid marriage and not following concubinage. The same opinion was reaffirmed in ***Mohabbhat Ali v. Mohammad Ibrahim Khan***[241]

The Hon'ble Apex Court in ***Lata Singha v. State of U.P.***[242] held that the live-in-relationship is permitted only between two unmarried heterosexual individuals with age of majority. The live-in relationship if sustained for a considerable long duration, then it cannot be considered as a 'walk in and walk out' relationship; there has to be a conjecture of marriage between them.

In ***Gokhal Chand v. Parveen Kumari***[243]the court cautioned that the relationship outside marriage would not get legitimacy, if the divergent evidence of them living together is there. Courts never intended to recognize live-in relationships as autonomous of the institution of marriage; conjecture of marriage was a key constituent.

In ***S.P.S. Balasubramanyama v. Suruttayana***[244], one Chinathambi who had a legally wedded wife namely, Pavayee. He also was in living together with another woman namely, Pavayee too. Out of Second Pavayee, Chinthambi was an offspring namely Ramaswamy. However, Chinthambi's father executed his properties among three of

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239 P. V. Kane, *History of the Dharmasastras*, 427 (Vol II, Chapter IX, 1962).
240 A. Deenohamy v. W.L. Blahamee, AIR 1927 P.C. 185 (India).
241 Mohabbhat Ali v. Mohammad Ibrahim Khan, AIR 1929 P.C. 135 (India).
242 Lata Singha v. State of U.P., (2006) 5 SCC 475 (India).
243 Gokhal Chand v. Parveen Kumari, AIR 1952 SC 231 (India).
244 S.P.S. Balasubramanyama v. Suruttayana, 1994 AIR 133, 1994 SCC (1) 460 (India).

sons and grand-sons but excluded Ramaswamy. It was alleged that Second Pavayee lived together with Chinthambi since 1920 after separating from her husband as a live-in partner. But there was clear proof of legally wedded marriage between Chintambi and Second Pavayee.

The issues had been arisen as whether Ramaswamy was the legitimate child of Chinthambi, and whether Ramaswamy was entitled to the ancestral and coparcenary properties of Chinthambi received from his father.

The Supreme Court had observed that, “If a man and woman live together for long years as husband and wife then presumption arises in law of legality of marriage exist between the two but the same presumption is rebuttable. (Para 4)”

The court again observed that, “once Chinthambi got his share as a result of partition, the nature of ancestral and coparcenary property does not exist any longer, therefore, the deed of settlement in favour of Ramaswamy by Chinthambi is valid in law as Chinthambi is the exclusive owner of his share. (Para 6)”

The Supreme Court finally held that “if a couple is living under the same roof followed by cohabitation for a reasonable number of years, then there will be a presumption under section 114 of the Indian Evidence Act, 1872 that the couple lives as husband and wife and if any issues born to such couple then such issues will be deemed to be legitimate. This verdict suggested that the law treats long existing live-in relationships as decent as marriages.”

It would be convenient and concerning that if the live-in-relations can be interpreted subsequently to mean “living together as husband and wife” by the courts to discount those pairs who move in into a live-in relationship “by choice” without intending to indulge into marital bonding either formally and legally. However, non-marital living together for the life-time is rare and a matter of doubt and debate.

3.1.5.3 RIGHT TO CLAIM MAINTENANCE AND LIVE-IN RELATIONSHIP

Supreme Court had opined that if the parties are cohabiting a long term without valid marriage, the woman is entitled to maintenance. Considering that there was divergence of judicial opinion on interpretation of word wife" in Section 125, matter referred to larger Bench in light of Protection of Women from Domestic Violence Act, 2005, which gave wide interpretation to terms like “domestic abuse" and “domestic relationship" which included live-in relationship and entitles such women

to reliefs under 2005 Act. Opinion expressed that a broad and expansive interpretation should be given to term “wife" to cover-up those cases where a man and woman have been living together as husband and wife for a considerably long duration, and precise proof of marriage necessarily not required to be a precondition for claiming maintenance under section 125 Criminal Procedure Code, so as to fulfil true spirit and essence of the beneficial provision of maintenance under section 125 of Code of Criminal Procedure, 1973.[245]

The Supreme Court in ***Yaamunabai Ananthrao Adhav v. Ananthrao Shivaram Adhav***[246]held that where a man having his legally wedded wife alive marries again; his second ‘wife’ is debarred from claiming maintenance under Section 125 of the Code of Criminal Procedure 1973, even though she might be ignorant of his prior marriage. The Court rejected to give any acknowledgement to the fact that they had lived together even if their marriage was void.

In ***Malti v. State of U.P.***,[247] the Allahabad high Court held that” a woman living with a man could not be equated as his wife.” In this case the woman was a cook in the man’s house. She had started staying with him and both lived together without being married and shared an intimate relationship. She claimed maintenance under section 125 Cr. P.C.

The court observed that “if a man and women choose to live together without formally being married no legal status of wife developed automatically out of such relationship. Both law and society treat such women either as concubine or mistress. No marital obligations accrue to such women against her husband.”[248]

Court further observed that “wife means a legally wedded wife according to section 125 Cr.P.C. There ought to be a marriage according to religion or customs prevalent amongst their community. A marriage carries a legal, social or religious sanction behind it.”[249]

In ***Sabitaben Soomabhai Bhatiya v. State of Gujarat***[250], the Hon’ble Apex Court went further to the extent and observed that though the fact was that the respondent

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245 Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 (India).
246 Yaamunabai Ananthrao Adhav v. Ananthrao Shivaram Adhav (1998) 1 SCC 530 (India).
247 Malti v. State of U.P., 2000 Cri LJ 4170 (All) (India).
248 *Id* at (Para 9).
249 *Id*.
250 Sabitaben Soomabhai Bhatiya v. State of Gujarat (2005) 3SCC 636 (India).

had been treating the appellant as his wife. However, the appellant was not informed about the respondent's previous marriage. But according to section 125, it is very clear that the expression 'wife' as used in section 125 of the Code of Criminal Procedure, 1973 refers only to the 'legally wedded wife'.

Therefore, the child born out the second marriage was given maintenance under section 125 Cr. P. C. but not to the second wife. Under the law a second wife whose marriage is void as because of the fact of the existence of the first marriage is not a legally wedded wife, therefore, the second wife is not entitled to get maintenance under this provision.

In ***Narindar Paul Kaur Chawla v. Manjit Singh Chawla***[251], the Delhi High Court took a liberal view and opined that the second wife is entitled to claim maintenance under the Hindu Adoptions and Maintenance Act, 1956. In this case the husband had not unveiled the actualities of his previous marriage and despite that he maintained an association with appellant for about 14 years as husband and wife. The Court while interpreting the provision of Protection of Women from Domestic Violence Act 2005, and observed that if no maintenance was allowed to the second wife it would amount to giving premium to the respondent for deceiving the appellant.

The Hon'ble Apex Court in ***Romeshchandraa Rampratapajee Daga v. Romeshwari Romeshchandara Daga***[252] tried to differentiate between the terms 'legality' and 'morality' of relationships. In this case the Supreme Court observed that a bigamous marriage might be declared illegal as because it disregards the provisions of the Hindu Marriage Act, 1955 but it cannot be treated as immoral.

The growing numbers of live-in relationships, especially those ensue "by circumstance", needs some reforms. In 2003, the Malimath Committee Report on 'Reforms in the Criminal Justice System' recommended necessary amendment of the term 'wife' in Section 125 of the Code of Criminal Procedure to include a woman living with her free will followed by cohabitation with her male counterpart for a 'reasonable period'.

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251 Narindar Paul Kaur Chawla v. Manjit Singh Chawla, AIR 2008 Delhi 7, 148 (2008) DLT 522, I (2008) DMC 529 (India).

252 Romeshchandraa Rampratapajee Daga v. Romeshwari Romeshchandara Daga, (2005) 2SCC 33 (India).

The Supreme Court in ***Soumitra Devi v. Bikan Choudhary***[253] held that where a man and woman were cohabiting for a considerable long period and were presumed and treated by society as husband and wife, then there is a presumption of marriage for awarding maintenance. However, the courts have not relaxed this principle to cover ostensible live-in partners.

In ***M. Pallani v. Meenakshi***[254] the Madras High Court interpreted the definition of 'domestic relationship' as given in Section 2(f) of the Protection of Women from Domestic Violence Act 2005. It says that "Section 2(f) did not specify the time duration for the relationship to be a domestic relationship. Therefore, the provisions of the Act might amply apply even in those cases where man and woman stake a regular sexual relationship, even if there is no commitment from either partner to continue the relation for a very long duration. Partners in a live-in relationship do not enjoy an instinctive right of inheritance to the assets whether movable or immovable of either partner. The Hindu Succession Act 1956 does not stipulate succession rights to even a mistress living with a male Hindu.

However, the Apex Court in ***Vidhyadhari v. Shukharana Bai***[255]generated a hope for persons living together as couple. The Court held that those couples who have been in a live-in relationship for a considerable long duration can obtain property in inheritance from their counterpart in such relations. In this case the assets of a Hindu male, upon his death (intestate), was transferred to a woman with whom he was in live-in relationship despite the fact that he had a legally wedded wife alive.

In ***Dhannulaal and others Vs. Ganeashram and another***[256], Supreme Court of India passed an order in a property dispute where family members contested that their grandfather, who was living with a woman for 20 years after his wife's death, was not legally wedded to the woman and so she was not entitled to inherit the property after his death. They contended that she was their grandfather's mistress. Despite the woman failing to prove that she was legally wedded, the court presumed that she was the legal wife after the family admitted that their grandfather had a relationship with the woman who was living with them in the joint family. The apex court declared that "if a woman living with a man for a long and considerable period, law will

253 Soumitra Devi v. Bikan Choudhary, 1985 SCC (Cri) 145 (India).
254 M. Pallani v. Meenakshi, AIR 2008 Mad 162 (India).
255 Vidhyadhari v. Shukharana Bai, (2008) 2 SCC 238 (India).
256 Dhannulaal and others Vs. Ganeashram and another, (2015) 12 SCC 301 (India).

presume that they are husband and wife unless and until contrary proved and also entitle to claim inheritance rights."

3.1.5.4 RIGHT TO DIVORCE AND LIVE-IN RELATIONSHIP

Women in live-in relationships are not documented with their partner's surname as compare to married women, for any legal or financial matters including opening for bank account, tendering of income tax return, applying for financial assistance in terms of loan etc, etc. The female counterparts in such a relation hold their independency as an individual and neither recognized neither as a "wife" nor as a "domestic partner" even.

Therefore, live-in pairs need not be separated by any formal decree divorce or with the court's intervention. The matrimonial laws specify that until this kind of association is not recognized in law the partners cannot be allowed to avail the legal formalities to be followed for separation including divorce. It is easy to get into live-in relationship whether "by choice" or "by circumstance" but difficult to put an end to this relationship formally. While the consequences of this association are left unanswered in law, for instance, there is no law in existence dealt with the division and protection of their separate or joint property on separation.[257]

In June, 2008, The National Commission for Women recommended to the Ministry of Women and Child Development whereby suggested to include live in female counterparts so as to enable them to avail the right of maintenance under Section 125 of Code of Criminal Procedure, 1973.[258]

The positive view in favour of live-in relationship was also approved by the Maharashtra Government in October, 2008 when it approved the proposal made by Malimath Committee. Again the Law Commission of India, where it was also suggested that if a woman has been in a live-in relationship for considerably long duration, she ought to enjoy the legal status as of a legally wedded wife.[259] However, recently it was observed that it is only the divorced wife who is considered as wife within the scope of section 125 of Code of Criminal Procedure, 1973 and if a woman

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257 Prof. Kumar Vijender, *Supra* 17 at J-19.

258 Prakash Satya, *NCW pleads case of live-in partners*, Dec 26, 2006, Hindustan Times, (June 12, 2018, 11:25 AM), https://www.hindustantimes.com/india/ncw-pleads-case-of-live-in-partners/story-QlUkFC76vsLYlsd1eAihUI.html.

259 Law Commission of India, Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, Report No.242, Aug. 2012, (Recommendation no 7.2).

has not even been married i.e. in the case of live in partners, she cannot be divorced within the strict sense of law, therefore, cannot claim maintenance under Section 125 of Code of Criminal Procedure, 1973. Section 125 Cr.P.C. provides for giving maintenance to the wife and some other relatives. The word 'wife' has been defined in Explanation (b) to Section 125(1) of the Cr.P.C. as follows; "Wife includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried."

3.1.5.5 RIGHT OF INHERITANCE AND LIVE-IN RELATIONSHIP

Partners in a live-in relationship do not enjoy an automatic right of inheritance to the property of their partner. The Hindu Succession Act 1956 does not specify succession rights to even a mistress living with a male Hindu. However, the Supreme Court in ***Vidhyadhari v.*** **SukhranaBai**[260] created a hope for persons living together as husband and wife by providing that those who have been in a live-in relationship for a reasonably long period of time can receive property in inheritance from a live-in partner.

In the case of ***Revanasiddappa v. Mallikarjun***[261] the property of a Hindu male, upon his death (intestate), was given to a woman with whom he enjoyed a live-in relationship, even though he had a legally wedded wife alive.

In ***Dhannulaal and others Vs. Ganeashram and another***[262], Supreme Court of India passed an order in a property dispute where family members contested that their grandfather, who was living with a woman for 20 years after his wife's death, was not legally wedded to the woman and so she was not entitled to inherit the property after his death. They contended that she was their grandfather's mistress. Despite the woman failing to prove that she was legally wedded, the court presumed that she was the legal wife after the family admitted that their grandfather had a relationship with the woman who was living with them in the joint family. The apex court declared that "if a woman living with a man for a long and considerable period, law will presume that they are husband and wife unless and until contrary proved and also entitle to claim inheritance rights."

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260 *Vidhyadhari v.* SukhranaBai, (2008) 2 SCC 238 : (2008) 1 SCC (L&S) 451 (India)
261 Revanasiddappa v. Mallikarjun, (2011) 11 SCC 1: (2011) 3 SCC (Civ) 581(India).
262 Dhannulaal and others Vs. Ganeashram and another, (2015) 12 SCC 301(India).

3.2 STATUS OF WOMEN IN LIVE-IN RELATIONSHIP UNDER PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005: A CRITICAL ANALYSIS

3.2.1 INTRODUCTION

It is the real fact that the status of a female in any relationship remains vulnerable, whether it is marriage or in the nature of marriage, or living relationship. During the continuation of the relationship she is subjected to exploitation of emotions or physical or sexual or all at a time. However, under marriage laws the rights of a legally married woman are secured but such rights cannot be entitled to women who are living in a marriage like relationship or live-in relationship. A live- in-relationship is recognized as a mutually agreed living arrangement whereby two unmarried heterosexual persons live together under the same roof followed by cohabitation for a considerable long duration and such relation resembles as that of a real marriage. So it is a non-marital living arrangement where a man and woman living jointly. In metropolitan cities among young generation, this kind of intimate relationship becomes an alternative to marriage where individual liberty and freedom of choice are the priorities. Young generation has the attitude to just get rid of all typical marital responsibilities and traditional compulsions.

The marriage institute has its social as well as individual commitments and adjustment, but live-in relationship based on individual liberty and freedom of choice. However as a simpliciter, live-in relationship or non-marital cohabitation is not recognized by any personal law or any other statutory law in India.

The National Commission for Women submitted its suggestions in 2008 to the Ministry of Women and Child Development to include women who are living in live-in relationship to claim the right to maintenance under Section 125 of Criminal Procedure Code, 1973. Malimath Committee which was formed to Reform the Criminal Justice System in India submitted its first report on March 2003 with the recommendation to amend the definition of 'wife' in Section 125 of the Criminal Procedure Code and to include a woman who was living with the man like his wife for a reasonably long period.[263]

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[263] Justice Malimath Committee, Report on *Reforms of Criminal Justice System*, Government of India, Ministry of Home Affairs, Volume I, March 2003, (Recommendation No 115).

The Maharashtra Government had accepted the recommendation of Malimath Committee and recognised the concept of live-in relationship, and allowed to enjoy the same legal status of wife to the women who has been in a live-in relationship for reasonably long duration.

Again in 2012 Law Commission of India also recommended that live-in relationships should also be included and the protection of the law secured for persons in such relationships.[264]

It is worth mentioning that in the definition of 'wife' under Section 125 of Cr.P.C. a divorced wife will be treated the same way as wife, however a live-in female partner has not been married but cohabited, so the question of divorce will not be arisen and hence cannot claim maintenance under Section 125 of Cr.P.C.

The PWDV Act 2005 is protecting not only the married women but also to the women who are in marriage like relationship i.e., live-in relationship from domestic violence.

Section 2(f) of the PWDV Act describes domestic relationship which means it is a relationship between two persons who live or at any point of time have lived together in a mutual household and they are related by consanguinity, marriage, or in a relationship which is like marriage, adoption or are family members living together in joint family set up. Therefore, the meaning of domestic relationship consists of not only the association of marriage but also an association resembles to that of a real marriage'.

Certain important grounds are followed to recognize live-in relationship as an association in the nature of legally solemnized marriage. If these conditions are fulfilled by live-in partners while both are living together under one roof and female partner is subjected to abuse and harassment then only the aggrieved woman can seek Maintenance. These conditions are:

- A live-in pair must grasp themselves out to society they are living as being alike to spouses,
- They must have attained the age of majority to marry in accordance with the law to which they are subjects,

[264] Law Commission of India, *Supra Note* 259.

- They must not be married with some others or if married then their spouse must not be in existence or must be divorced as per law,
- They must not be otherwise disqualified to enter into a legal marriage,
- They must have entered into such non-marital cohabitation with their free will and held themselves out to World as being alike to spouses for a substantial period of time.

Under this Act not only women in live-in relationship is protected but also women who are engaged in fraudulent or invalid marriages are also protected and can approach to get relief against their male partner in case of abuse and harassment.

The PWDV Act is protecting the women from domestic abuse and provides right to claim maintenance in the form of alimony not only to the aggrieved wife but also to an aggrieved female live-in partner.

3.2.2 CERTAIN IMPORTANT FEATURES OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005

On October 26, 2006 the government of India passed the Protection of Women from Domestic Violence Act 2005 and got the assent of the President on 13 September 2005.

With the prime object to afford the safeguard of the right of woman guaranteed under the Constitution of India who is often subjects of violence of any kind occurring within the family and for matters connected therewith or incidental thereto more effectively this Act was passed.

The salient features of the Protection from Domestic Violence Act, 2005 are as follows:

- This Act includes almost every women victim relating to domestic life. The Act covers any woman who is or has been in an association with the abuser/offender and has lived together with him under the dowelling house. The women who are connected by consanguinity, marriage or a relationship resembles to that of marriage, or by adoption; living together with other family members as a joint family are also included within the scope of this Act. Moreover, women who are sisters, widows, mothers, single woman, or living with the abuser are also entitled to get legal protection under this Act.

- The real abuse or the threat of abuse either in the means of physical, sexual, verbal, emotional and economical is inclusive of the definition "Domestic violence". The demands of dowry to the woman or her relatives in the nature of harassment would also be covered under this definition.
- The Act also importantly secures the right to separate resident to the victim women. It is immaterial whether or not woman has any title or rights in the household this Act dealt with the woman's right to reside in the matrimonial dwelling or in the shared accommodation. The court passes residence order to secure the right to residence of victim women.
- The court is empowered under this Act to pass any appropriate order or orders at its discretion so as to prevent the abuser from aiding or committing an act of domestic violence or any other form of cruelty, or to enable the victim to enter into any workplace or any other place frequently by the victim, attempting to communicate with the victim, isolating any assets used by both the parties and causing violence to the victim woman, her relatives and others who provide her assistance from the domestic violence.
- For assistance to the woman who is a victim of domestic violence with respect to medical examination, legal aid, safe shelter, etc., Protection Officers and NGOs are appointed under this Act.
- If the respondent violates any orders passed for the protection of the victim or any interim order then the same amounts to a cognizable and non-bailable offence under the Act which is punishable with imprisonment of either description for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or failure to discharge the duties by the Protection Officer is also made an offence under the Act with similar punishment.[265]

While "*economic abuse*" covers within its scope that is the denial of all or any economic or financial possessions to the victim which she is at liberty under any law or custom, and it is not limited only to domestic necessities for the aggrieved person

[265] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 31(1) and 32.

and her kids, but to her property, her *stridhan*, mutually or independently hold by her, rental payment to the joint household and maintenance.[266]

It also includes "Disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the victim has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or her children or her *stridhan* or any other property jointly or separately held by the victim and prohibition or restriction to continued access to resources or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household"[267]

"Physical abuse means any act or conducts which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the victim and includes assault, criminal intimidation and criminal force."[268]

"Sexual abuse includes abuse of any sexual conduct, humiliation, degradation or otherwise violation of dignity of a woman."[269]

Under Section 12 of the Act, an aggrieved person can approach to the magistrate for seeking one or more relief mentioned in there. An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person can approach through an application to the Magistrate seeking one or more reliefs under this Act. However, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider before passing any order on such application. The relief may include for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a

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266 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 3 Explanation I (iv) (a).

267 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 3 Explanation I (iv) (b).

268 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 3 Explanation I (i).

269 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section Explanation I (ii).

suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent.[270]

'Domestic relationship' is defined under Section 2(f) of the Act, provides that "Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through "*a relationship in the nature of marriage"*, adoption or are family members living together as a joint family."[271] It is cleared from the definition that the Protection of Women from Domestic Violence Act 2005 has an extensive expression of 'domestic relationship' includes not only the association of marriage but also includes a relationship resembles to that of a real marriage.

In consequence to the domestic violence if the aggrieved partner and any child of the aggrieved partner suffered damage and expenses incurred for the suit, the Magistrate while disposing of an application under sub-section (1) of section 12 may direct to the respondent to pay damages in the form of monetary relief and such relief may include, but not limited to the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.[272]

An aggrieved woman as defined in PWDV Act can claim relief under the same Act; however it is immaterial whether she is claiming as a married woman or woman "a relationship in nature of marriage". Under Section 125 Criminal Procedure Code of 1973 also, a married woman can claim maintenance but a woman in "relationship in the nature of marriage" cannot claim the maintenance under section 125 Criminal Procedure Code of 1973.

However certain authorities are trying to give the wide interpretation to the word 'wife' under section 125 Criminal Procedure Code, i.e., the Supreme Court of India, Malimath Committee, National Women Rights Commission, Law Commission of

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[270] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 12.

[271] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

[272] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 20.

India. So if a woman is produced to be aggrieved whether in "marriage" or in "a relationship in the nature of Marriage" can claim the rights under Domestic Violence Act 2005.

An aggrieved woman as a domestic partner under the definition of domestic relationship is in the nature of a relationship which resembles to that of an actual marriage and has been endorsed and given legal recognition under the protection of Women from Domestic violence Act 2005. However such relationships in various issues have been creating complexity, confusion and uncertainty but in due course of time with more and more judicial pronouncements these issues might be resolved with a meaningful solution. When a relationship "in the nature of marriage" need to be recognised then strict compliance of conditions for a valid marriage need to be hold to.[273]

It is very important to note that, the Parliament has recognized a "relationship in the nature of marriage" and not simply the live-in relationship through the PWDV Act.

3.2.3 INTERPRETATION OF 'RELATIONSHIP IN THE NATURE OF MARRIAGE' UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 AND CONCEPT OF 'COMMON-LAW-MARRIAGES'

3.2.3.1 INTERPRETATION OF 'RELATIONSHIP IN THE NATURE OF MARRIAGE' UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005

The PWDVA 2005 is the first legal enactment of the Parliament to recognise the heterosexual non-marital relationship.[274] This Act defines an "aggrieved person" who will be covered under this Act as any woman who is, or she has been, in a domestic set up with the respondent and who has been subjected to any act of domestic violent behaviour by the respondent.[275]The Act further describe the term domestic relationship as it is a relationship between two heterosexual persons who are living or have lived together previously in a shared household, and they are related by

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273 Kusum, *Supra note* 219 at 198.

274 Karanjawala, et al, *The Legal Battle Against Domestic Violence in India: Evolution and Analysis*, Vol. 23, No. 3, 2009, International Journal of Law, Policy and the Family.

275 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(a).

consanguinity, matrimonial vows, or through a relationship in the nature of marriage, adoption or are family members living together as a joint common family[276]

It is cleared that the definition of domestic relationship includes both the relationships, e.g., a relationship of marriage and a relationship 'in the nature of marriage'.

Whether a relationship will fall within the scope and expression, "relationship in the nature of marriage" within the meaning of Section 2(f) of the DV Act, can be examined through certain guidelines as mentioned in above cases and discussion.

Under what circumstances; a live-in relationship can be docketed as "relationship in the nature of marriage" under Section 2(f) of the Protection of Women from Domestic Violence Act the following guidelines as given in ***Indira Sharma v. VKV Sharma***[277], will positively extend some understanding to such relationships.

- Duration of the relationship: The expression "at any point of time" under Section 2(f) of the Protection of Women from Domestic Violence Act, means a reasonably long duration to maintain and continue an association which may vary from case to case, depending upon the facts and circumstances.
- Shared household: The expression has been defined under Section 2(s) of the Act. It means a dwelling where the aggrieved woman lives or has lived in a domestic relationship singly or with the respondent.
- The Pooling of Resources and Financial Arrangements: Supporting each other, or any one of them, economically, by sharing bank accounts, owning immovable properties in joint names or in the name of the aggrieved woman, long term investments in commercial establishments, receiving shares in separate or in joint names, so as to have a long standing relationship, may be a guiding factor.
- Domestic Arrangements: Entrusting the accountability, especially on the woman to take care of the indoors by engaging herself in the household activities like cleaning, cooking, maintaining or preserving the homely environment in order, etc. are the signs of a relationship in the nature of marriage.

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[276] Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

[277] Indira Sharma v. VKV Sharma, 2013 (14) SCALE 448 (India).

- Sexual Relationship: Marriage like relationship refers to sexual cohabitations, not just for the purpose to meet the urge, but for emotional and dearly association, for procreation of offspring, so as to give emotive bonding and support, companionship and also quantifiable affection, caring etc.
- Children: to procreate children is one of the prime indications of a relationship in the nature of marriage. Partners to the relationship, therefore, intend to have a long-standing relationship. Sharing the accountability for bringing up and supporting them is also a necessary indication.
- Socialization in Public: Holding out to the public and mingling with friends, relatives and others, as if they are spouse is one of the very essential indications to hold the relationship is in the nature of marriage.
- Intention and conduct of the parties: Common intention of partners to the relationship as to what their association is to be and to comprise, and as to their respective roles and responsibilities, primarily governs the nature of that relationship.[278]

However, the Act does not include all forms of domestic relationship in the definition, for instance it excludes the domestic relationship between a male employer and a live-in domestic worker.[279] The Act also clearly excludes adult homosexual relationships. However this Act does not necessarily delimit the scope of non-marital relationships in a single border. Whether a relationship is a 'marriage like relationship' or not it must be with certain considerations. Thus this Act has widened the scope to recognise the domestic relationships between men and women.

The question, hence, arises as to what is the connotation of the expression 'a relationship in the nature of marriage', an expression which has not been defined in the PWDV Act. Since a large number of cases have been coming up before the courts in India on this point, it becomes all the more imperative to initiate a discussion on what should be included in the interpretation of this expression. If the expression is analyzed then it can be divided in two parts. One is "relationship" and the second is "in the nature of marriage." The concept of marriage is quite clear

[278] Indira Sharma v. VKV Sharma, 2013 (14) SCALE 448 (India), Guidelines prescribed.

[279] Lawyers Collective, 2009, 234, Staying Alive: Third Monitoring & Evaluation Report 2009 on the Protection of Women from Domestic Violence Act, 2005.

because, as aforementioned, in India marriage is governed by the personal laws which are based on religion to which the parties belong.

So, the question that arises, is whether the objective of the PWDV Act is to offer protection to woman whose 'marriages' are not valid in law or fail to meet the requirements of a legally valid marriage, hence they are in a "relationship in nature of marriage"? Or related question is the PWDV Act a step in the direction of providing protection, maintenance, residence, compensation and custody orders to the woman who had so far little or no rights, merely because she was outside the 'legally, socially and morally acceptable' institution of marriage.

Another question is that, whether the PWDV Act is addressing a new social phenomenon in our society that legal protection to the female companion. Undoubtedly, marriage is a legal and socially sanctioned union that identifies the family. However, the institution of marriage is itself undergoing change against the backdrop of today's lifestyle. It has become more important to protect the rights of a woman in an intimate relationship that turn abusive, since the changing social norms in today's fast changing globalised society are making relationships more impermanent.[280]

It becomes all the more important to emphasis deeper into the concept of marriage and to ask ourselves the question as to what is a valid marriage and whom does the law consider to be husband and wife. In India since various communities have different marriage customs and ceremonies, for example, the Hindu Marriage Act, 1955, applies not only to Hindus but also the Buddhists and Jains. However marriages among Sikhs and their registrations are regulated under Anand Marriage laws.[281] A Hindu marriage is to be valid in the eyes of law when it has fulfilled certain conditions at two levels. At the first level, the parties should be competent to marry. Mainly neither bride nor groom should have a spouse living at the time of marriage. The husband-to-be should have attained the age of 21 years and the wife-to-be, the age of 18 years at the time of marriage. If either of the partners has a spouse at the time of marriage, contravening the Act, the marriage shall be null and void.

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280 *Supra note* 279.

281 The Anand Marriage (Amendment) Act 2012, No. 29, Acts of Parliament, 2012 (India).

Secondly, the marriage should be executed or "solemnized" in accordance with the customary rites and rituals of either party. The law makes it very clear where such rituals and ceremonies including the *saptapadi* (i.e. completing of seven steps by the bridegroom and the bride together before the sacred fire), the marriage is complete and binding once the seventh steps is finished. Thus it is clear that any marriage which does not satisfy the aforesaid conditions will not be a legal marriage in the eyes of law and the partners living together not husband and wife.

In the other words we may say that for the purpose of the PWDV Act, they may be recognized as in a 'relationship in the nature of marriage' and as a result of the above, it follows that an association in the nature of marriage between two partners is based on the following two sets of circumstances:

(i) When both, the male as well as his female companion, are not competent to marry as per the statutory provisions but they still opt to marry.

(ii) When both the partners, male as well as female are competent to marry as per the statutory provisions but they opt not to marry.

In the case where the partners are not competent to marry:

(a) A man, who (may or may not be married to another woman) starts living with a female companion, who is dependent on him for her physical, mental and economic needs. This relationship may continue for a considerable length of time.

(b) Both man and woman are married to some other person but they start living together as husband and wife. In the society also they are showing themselves as husband and wife and lend their names to the children who may or may not have been born to them.

(c) A man is already married and gets married to another woman, but with the view to avoid the punishment of bigamy performs the rites of the marriage in a way that solemnization of marriage is not fulfilled and completed.

(d) A man first starts living with a woman but does not marry due to cast or religious consideration, and may even have children from the relationship. Later due to parental as well as societal pressure he gets married to another woman of their choice and from his own community.

(e) The man hides his marital status from the woman, not disclosing the fact of his earlier marriage, and the woman marries him under the impression that he is competent to marry.

(f) At the time of marriage, the man is competent to marry but subsequently this marriage turns out to be void as the earlier marriage was not dissolved legally or the ex-parte divorce was set aside.

In the case where the partners are competent to marry:

(a) Both the partners by choice make a conscious decision not to marry and remain in a relationship with each other, more popularly called 'intimate partner relationship' or 'non-marital cohabitation'. This may be because of their liberal non-conventional approach.

(b) Both the partners want to get marry and they get married, but the marriage is not legal in the eyes of the law. In other words the customary rites and ceremonies as required by law are not complete, for example a defective ceremony is undergone like merely exchanging garlands, applying *sindhur etc.* This couple is under the impression that they are married but they are actually not married as per law.

In all the aforementioned situations the man and the woman are over a period of time in a committed relationship. The natural proposition follows that they both must take the responsibility for the outcome of their actions. They must not only care for each other but must understand sensitivity to each other's needs. Undoubtedly, there is conflict of interests in every relationship and often domestic situations may arise that escalate into arguments. It is unacceptable, if during the arguments, the aggressor uses the violence to show his dominance.

Many questions are arisen,

- Should not the woman be entitled for protection, when she is subjected to violence, whether physical, mental, sexual or economical?
- Should a man be allowed exert power and control through money; giving money to the dependant woman when he wants and taking it away on a whim?
- Should he be allowed to belittle his partner of several years, undermine her confidence or resort to physical abuse?

The fundamental issue being underpinned is that the perpetrator of violence must bear the burden and liability of his wrongful act. Society must not expect the aggrieved women to answer how her behaviour 'caused' the partner's violence. The domestic violence does not comprise isolated instances of a loss of control, or even cyclical expression of anger and frustration of a man. Rather, each instance part of a larger pattern of behaviour designed to exert and maintain power and control over the victim. It is incredible that any reasonable intelligent mind can believe that domestic violence is a response to "provocation" from the female partner. This is nothing but simply another form blaming of victim.

A relationship is not just about physical proximity, but also loves empathy, trust, faith, forgiveness and freedom etc. In any relationship between two consenting adults who share a household there are duties and obligations on both sides. Domestic rows need to be sorted out with patience, communication skills and by negotiating a compromise not by violence. A man cannot and should not allowed to use violence, whether physical or withdrawal of economic support, as means to evade his responsibility. It is emphasized that domestic violence hardly ever goes away by itself. In fact, it gets worse over a period of time. There are strings attached to every relationship and one has to bear that in mind before entering one. If a man enters into a relationship with a woman, irrespective of whether it is legal or outside the law, it is an irrecusably premise that he is duty bound to discharge his responsibilities in a household and not to misuse his position by violence.

It is clear from the provisions and its definition parts that the PWDV Act is not simply conferring legal status and rights to protect and provide maintenance to the non-marital relationships. It is actually acknowledging the existence of marriage like relationship in the society and securing the right of women in such relations as well as protecting from violence.

In the case of ***Aruna Pramod Shah v. Union of India***,[282] the petitioner affirmed that a ring ceremony had been performed with the respondent, whereas no marriage took place between them. On contrary to that, it was submitted by the respondent that the marriage was duly solemnized between them. But no such document was present. Certain issues before the court had been arisen, e.g., constitutionality of PWDV Act, 2005 was challenged, scope of the definition of "domestic relationship" under

[282] Aruna Pramod Shah v. Union of India, 2008 (102) DRJ 543 (India).

section 2(f) was challenged etc. However, constitutionality of the PWDV Act is challenged on two grounds; (a) it is a discrimination against men, (b) the definition, under Section 2(f) of the PWDV Act as "domestic relationship" is not cleared and objectionable and it was argued from the petitioner's side that while inserting status of "relationships in the nature of marriage" in the equal footing with that of a real "marriage" leads to a deprivation of dignity of the legally wedded wife. Constitutionality of PWDV Act, 2005 was upheld. The Court took a very liberal view while interpreting the scope of section 2(f) of the DV Act, 2005. It was argued that the scope of the definition of section 2 (f) of the PWDV Act can only be applied to married women and further objected to place the married person as to the same place as of those in a relationship in the nature of marriage. The court while reacting on this issue observed that "there was no harm if equal treatment was given not only to married women but to women living with men as his common-law wife or even as a mistress." The court further observed that "it would not be unconstitutional for the parliament if it provides protection to a woman in a relationship akin to marriage."[283]

Another quote from the judgment, "An assumption can fairly be drawn that "a live-in relationship is invariably initiated and perpetuated by the male… The Court should also not be impervious to social stigma which always sticks to women and not to the men, even though both partake of a relationship which is only in the nature of marriage."[284]

In her commentary on the PWDV Act, 2005, Flavia Agnes in her book has opined that the "PWDVA has transformed the yesteryears concubines into present day cohabitee."[285]

"While some may dismiss the term cohabitee as a western or urban phenomenon, this term can now be invoked to protect the rights of thousands of women, both urban and rural, who were earlier scoffed at as mistresses or keeps in the judicial discourse."[286]

But the judges further observed that no doubt the view as they forwarded would exclude many women who have had a live-in relationship to avail the benefits of the

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283 Aruna Pramod Shah v. Union of India, 2008 (102) DRJ 543 (India).
284 Aruna Pramod Shah v. UOI 2008 (102) DRJ 543 (India), (Judgment).
285 Flavia Agnes, Law, Justice, and Gender: Family Law and Constitutional Provisions in India, 233-238, (oxford University Press, 2011)
286 *Id*.

Act of 2005, but it is not for the Court to legislate or amend the law. Perhaps it is the legislation made by the parliament which has used the expression 'relationship in the nature of marriage' and not 'live-in relationship'.

It can be traced from the opinion of the judges that the term 'live-in relationship' has broader scope than that of 'relationship in the nature of marriage' circuitously. It is to be considered as 'new social phenomena' in the definition of "relationship in the nature of marriage".

Indira Jaising of the Lawyers Collective, who is a prominent jurist in the country and also one of the main drafter of this Act, is remarkably disappointed with the manner in which the court has interpreted the provision.[287] She specifically pointed out to the exclusion of cases in which one of the parties is already married. She argues:

"This would mean that if a married man deceived a woman into marrying him, and lived with her as if married, this would not be a relationship resembles to that in the nature of marriage, even though they represent to the world that they are married and live in a stable relationship and have children together. This was not the intention of the Act and it was in some measure intended to protect women like these.… The phenomena of a man marrying more than once is well known in this country, and the history of permitting multiple marriages has not been erased by the law but continues to influence the behaviour of men. The strange result of this interpretation has been that the man will not be in a relationship in the nature of marriage for he is previously married but the woman will be in a relationship in the nature of marriage, as she is not previously married."

The chaos with the complexity of simple heterosexual marriages are unequal and conflicting in many ways then again non-marital heterosexual relations construed to be so unpredictably confusing, so it is not a smoothly easy run Act to interpret regarding legal visibility to live-in relations in India.

The meaning of "relations in the nature of marriage" in PWDV Act 2005 is subject to understand the intentions of the legislature and it is contrary to Jaising's disagreement that "the expression is self-explanatory... It obviously relates to those cases in which the parties are not married yet cohabits". However, judges Markandey Katju and T.S Thakur have suggested that the "Parliament has used the expression

[287] Staying Alive, 4-5, (2010), "Preface".

relationship in the nature of 'marriage' and not 'live-in relationship'", thereby suggesting that the two have very different concept and understanding.[288]

3.2.3.2 CONCEPT OF COMMON-LAW MARRIAGE

Common-law marriage, also known as *sui iuris* marriage, informal marriage, marriage by habit and repute, or marriage in fact, is a legal framework in a limited number of jurisdictions where a couple is legally considered married, without having formally registered their relation as a civil or religious marriage. The original concept of a "common-law marriage" is a marriage that is considered valid by both partners, but has not been formally recorded with a state or religious registry, or celebrated in a formal religious service. In effect, the act of the couple representing themselves to others as being married, and organizing as well as evident their relationship as if they were married.[289]

The term common-law marriage has wide informal use, often to denote relations that are not legally recognized as common-law marriages. The term common-law marriage is often used colloquially or by the media to refer to cohabiting couples, regardless of any legal rights that these couples may or may not have, which can create public confusion both in regard to the term and in regard to the legal rights of unmarried partners.

If we see the position of common-law marriage in Canada, the married couples represented the majority of couples in 2016, although common-law unions are becoming more frequent in every province and territory. In 2016, over one-fifth of all couples (21.3 percent) were living in common law, more than three times the share in 1981 (6.3 percent). The proportion of couples living common law was higher in Canada than in the United States, where 5.9 percent of couples were in non-marital cohabiting unions in 2010. The proportion in Canada was also slightly higher than in the United Kingdom (20.0 percent in 2015), but lower than in France (22.6 percent in 2011), Norway (23.9 percent in 2011) and Sweden (29.0 percent in 2010). In 2016, Quebec (39.9 percent) and the three territories, Nunavut (50.3 percent),

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288 D. Veluswamy v. D. Patchaiammal, AIR 2011 SC 479 (India).

289 The Editors of Encyclopaedia Britannica, *common-law marriage*, Jul. 20 1998, (April 20, 2019, 10:00 PM), https://www.britannica.com/topic/coverture.

Northwest Territories (36.6 percent) and Yukon (31.9 percent) had the highest proportions of common-law unions.[290]

In Canada, in the immigration context, a common-law partnership is defined as a couple have lived together for at least one year in a conjugal relationship.[291] A common-law relationship exists from the day on which two individuals can provide evidence to support their cohabitation in a conjugal relationship. The onus is on the applicant to prove that they have been living common-law for at least one year before an application is received. A common-law relationship ends when at least one partner does not intend to continue it.[292]

A common-law or conjugal partnership cannot be established with more than one person at the same time. The term conjugal by its very nature implies exclusivity and a high degree of commitment. It cannot exist between more than two people simultaneously. Polygamous-like relationships cannot be considered conjugal and do not qualify as common-law or conjugal partner relationships. Common-law relationships have most of the same legal restrictions as marriages, such as monogamous union, prohibited degrees of consanguinity etc.[293]The list of relationships falling within the prohibited degrees in the Marriage (Prohibited Degrees) Act 1990 applies equally to common-law partners.

The same minimum age applies to spouses and common-law partners at the age of eighteen years. Partners may begin to live together before eighteen years of age, but their relationship is not legally recognized as common-law until both partners have been cohabiting for one year since both were at least eighteen years of age.[294]

In United States generally, common-law marriages are recognized, however, the following states never permitted common-law marriage; Arkansas, Connecticut,

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290 *Families, households and marital status: Key results from the 2016 Census*, Aug. 02, 2017, Statistics Canada, (June 11, 2019, 03:20 PM), https://www150.statcan.gc.ca/n1/daily-quotidien/170802/dq170802a-eng.htm.

291 Immigration and Refugee Protection Regulations (Canada) 2002. Section 1(1).

292 What does the Government of Canada consider to be a common-law relationship?, (April 17, 2019, 10:00 PM), https://web.archive.org/web/20150821093246/http://www.cic.gc.ca/english/helpcentre/answer.asp?q=346&t=14.

293 The Marriage (Prohibited Degrees) Act 1990, Section 2 (2).

294 *Processing spouses and common-law partners: Assessing the legality of a marriage*, (July 12, 2019, 11:10 AM), https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/legality.html.

Delaware, Louisiana, Maryland, North Carolina, Oregon, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wyoming.[295]

The states which legally recognize common-law marriage in United States are Colorado, District of Columbia, Iowa, Kansas, Montana, Rhode Island, South Carolina, Texas (calls it informal marriage), Utah.[296]

Nevertheless, all states, including those that have abolished common-law marriage, continue to recognize common-law marriages lawfully contracted in those U.S. jurisdictions that still permit this irregular contract of a marriage. In general, a common-law marriage that is validly contracted in the foreign state will be recognized as valid in US, unless the marriage is odious to the public policy of the state.[297]

In United Kingdom there is a prevalent myth that cohabiting couples are in a "common-law marriage" and that this status will offer them legal protection. But contrary to this popular belief, there is no such thing as a common-law marriage in the UK. Worryingly, two thirds of the cohabiting couples were unaware of this legality. In the eyes of the law, cohabiting couples are not recognised as anything other than two people living under the same roof.[298]

Common-law marriages were valid in England until Lord Hardwicke's Act of 1753. On the European continent, common-law marriages were frequent in the middle aged people, but their legality was abolished in the Roman Catholic countries by the Council of Trent, which required that marriages be celebrated in the presence of a priest and two witnesses. The term "common-law marriage" is frequently used in England and Wales, however such a "marriage" is not recognized in law and it does not confer any rights or obligations on the parties. "Common-law marriage" survives in England and Wales only in a few highly exceptional circumstances, where people who want to marry but are unable to do so any other way can simply declare that they are taking each other as husband and wife in front of witnesses.

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295 Pantekoek Kellie, Esq., *What is Common Law Marriage?*, (Feb. 20, 2019, 11:20 AM), https://family.findlaw.com/marriage/common-law-marriage.html.

296 Pantekoek Kellie, *Supra Note* 295.

297 Common-law marriage, New World Encyclopaedia, (April 30, 2019, 11:30 AM), https://www.newworldencyclopedia.org/entry/Common-law_marriage.

298 Moloney Tracey Solicitor, *Think You're Protected by Common Law Marriage? You're Not*, Nov. 29, 2017, (May 11, 2019, 08:20 PM), https://www.co-oplegalservices.co.uk/media-centre/articles-sep-dec-2017/think-youre-protected-by-common-law-marriage-youre-not/.

Although cohabitants do have some legal protection in several areas, cohabitation gives no general legal status to a couple, unlike marriage and civil partnership from which many legal rights and responsibilities flow. Many people are unaware that there is no specific legal status for what is often referred to as a "common law marriage". This is the case no matter how long the couple lived together and even if they had children together.[299]

A common-law relationship is legally a de-facto relationship, meaning that it must be established in each individual case, based on the facts. This is in contrast to a marriage, which is legally a de jure relationship, meaning that it has been established in law.

The requirements for a common-law marriage to be valid differ from state to state. There are many common stipulations among the states which include:

- Legal age and capable of giving consent
- Mutual consent into a marriage like relationship.
- Public recognition of the existence of the marriage
- Cohabitation for a period of time (usually a number of years but minimum is twelve consecutive years in Canada)[300]

However, the court in ***Aruna Pramod Shah v. Union of India***,[301] did not explain the meaning of "common law marriage" and the relation with a "mistress" on the basis of legal and social implication, while the court interpreted the definition "a relation in the nature of marriage" and had taken both the terms. According to the judicial interpretations "a 'relationship in the nature of marriage' is identical to a common law marriage" and they had opinion that live-in relationship under the umbrella of 'relationship in the nature of marriage' is very common only in the western countries.

According to the judgment, common law marriages do not require a formal marriage but it has to fulfil certain essentiality;

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299 Catherine Fairbaim, *Supra note* 51.

300 Accessing a common-law relationship, (April 17, 2019, 09:15 PM), https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-common.html.

301 Aruna Pramod Shah v. Union of India, 2008 (102) DRJ 543 (India).

a. The both parties engage in such relationship must hold themselves as man and wife in the society,

b. They must have the legal age to marry;

c. They must be unmarried and also not be disqualified to enter into a valid marriage,

d. They must have voluntarily enter into such non-marital cohabitation and held themselves as a man and wife to the world for a reasonable period of time.[302]

The judgment considerably delimits the scope of relations in the nature of marriage category which was highlighted by the PWDV Act. The judges state their opinion that not all live-in relationships amount to an association in the nature of marriage to avail the advantage of the Act of 2005. To avail benefits of the Act the necessary conditions mentioned above need to be fulfilled, and the same has to be this has to be proved by evidence. If a man keeps a mistress whom he maintains financially and uses mainly to meet his sexual need and/or as a servant, it would not be considered to be a relationship in the nature of marriage.

In ***Marvin v. Marvin***[303] the summary is written by the judge as, "it is holding that, adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other persons to contract respecting their earnings and property rights". Here the doctrine of "Palimony" is ruled down in common law marriages.

The concept of "Common Law" marriage is popular in western countries. It is referring as two individual persons who have lived together for a substantial period of time and who represent to the world that they are married.

There are certain factors which are considered to determine a common law marriage, for example, whether the both man and woman reside under the same roof, whether they have children from that relationship, they share names, etc. The common law marriages are recognised as valid in law. However it is considered that the existence of common law marriage in India is the "presumption in favour of marriage and against concubinage" in long term relationships.

The Indian courts have used Section 114 of Indian Evidence Act, 1872 in various past judgments, which suggests that it may be the presumption of the Courts to

302 *Supra note* 301.
303 Marvin v. Marvin, 18 Cal.3d 660 (US).

identify the existence of any fact which it thinks likely to have occurred, so consider the common course of natural events, human behaviour and public and private dealing, in their relation to the facts of the particular case to make a presumption of marriage.[304]

"Hence one can contend that the Indian legal system does not always seek strict evidence regarding the validity of a marriage in the face of other circumstantial evidence which indicates the existence of 'a relation in the nature of marriage'."[305]

It is thus assured that the status of non-marital relationships is not illegal or crime in India. They are also not covered by the laws relating to adultery as the principle of presumption of marriage prevails.

However, when one of the party or both parties are already married and having non-marital cohabitation with another person other than the spouse, then the principle of presumption of marriage will not be worked.

3.2.4 INTERPRETATION OF 'RELATIONSHIP IN THE NATURE OF MARRIAGE' THROUGH JUDGMENTS

In ***Indira Sharmah v. V.K.V.Sharmah***[306], the question had been arisen whether a "live-in relationship" would amount to a "relationship in the nature of marriage" falling within the definition of "domestic relationship" under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to "domestic violence" within the meaning of Section 3 of the PWDV Act.

In this case, the appellant and respondent were working together in a private company. The respondent, who was working as a Personal Officer of the Company, was a married person having two children and the appellant, aged 33 years, was unmarried. Constant contacts between them developed intimacy and in the year 1992, appellant left the job from the above-mentioned Company and started living with the respondent in a shared household. Appellant's family members, including her father, brother and sister, and also the wife of the respondent,

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304 The Indian Evidence Act 1872, No. 1, Acts of Parliament, 1872 (India), Section 114.

305 Flavia Agnes, Law, Justice, and Gender: Family Law and Constitutional Provisions in India, 233-238, (oxford University Press, 2011), (Note: Recounts a number of legal cases going back to early 1950s which depend on the principle of presumption of marriage.).

306 Indira Sharmah v. V.K.V.Sharmah, 2013 (14) SCALE 448: AIR 2014 SC 304 (India).

opposed that live-in-relationship. She has also maintained the stand that the respondent, in fact, started a business in her name and that they were earning from that business. After some time, the respondent shifted the business to his residence and continued the business with the help of his son, thereby depriving her right of working and earning. Both of them lived together in a shared household and, due to their relationship, appellant became pregnant on three occasions, though all resulted in abortion. Respondent, it was alleged, used to force the appellant to take contraceptive methods to avoid pregnancy. Further, it was also stated that the respondent took a sum of Rs.1, 00,000/- from the appellant stating that he would buy a land in her name, but the same was not done. Respondent also took money from the appellant to start a beauty parlour for his wife. Appellant also alleged that, during the year 2006, respondent took a loan of Rs.2, 50,000/- from her and had not returned. Further, it was also stated that the respondent, all along, was harassing the appellant by not exposing her as his wife publicly, or permitting to suffix his name after the name of the appellant. Appellant also alleged that the respondent never used to take her anywhere, either to the houses of relatives or friends or functions. Appellant also alleged that the respondent never used to accompany her to the hospital or make joint Bank account, execute documents, etc. Respondent's family constantly opposed their live-in relationship and ultimately forced him to leave the company of the appellant and it was alleged that he left the company of the appellant without maintaining her.[307]

The Hon'ble Supreme Court has in the absence of an absolute law or amendment in the existing laws clarified different issues on 'relationship in the nature of marriage' and set out certain guidelines to be followed. It is hopeful that these guidelines will observant up the purpose of bringing such relationships under the PWDV Act, 2005. The Hon'ble Apex Court exemplified almost five verities where the observation of live-in relationships can be contemplated and evidenced in the court of law. The categories or verities are as follows:

- Domestic attachment between an adult male and an adult female, when both are single. It is the most unpretentious sort of relationship.
- Domestic association between a married man and an adult unmarried woman, entered into the cohabitation with the knowledge of the fact.

[307] *Supra note* 306.

- Domestic relationship between an adult unmarried male and a married female entered into the relationship knowingly the fact such marriage. Such association can lead to a penal consequence under Indian Penal Code for the crime of adultery.

However, after the judgment of ***Joseph Shine v. Union of India***[308] there is no such risk to face any penal consequence.

- Domestic relationship between an unmarried adult woman and a married man entered unknowingly the fact of such marriage.
- Domestic association amongst matching sex partners (as in cases of gay or lesbian). The Court opined that a live-in relationship will cover within the expression "relationship in the nature of marriage" under Section 2(f) of the Protection of women Against Domestic Violence Act, 2005 and laid down certain guiding principles to get an insight of such associations. Likewise, there ought to be a close examination of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into consideration, counting the each distinct factor.[309]

In ***D. Veluswamy v. D. Pathchaimmal***[310], the respondent woman in this case filed a petition claiming maintenance u/s 125 Cr. P.C. On contrary the appellant argued that he is married with one Laxmi and had one son from her. He produced necessary documents in support of his defence. On the other hand, the respondent argued that she was married with the appellant and lived for three years before their separation. So the question, therefore, rose before the Supreme Court that what is the meaning of the expression "a relationship in the mature of marriage". The court observed that, "it is unfortunate that this expression has not been defined or demarcated in the Act. The Parliament by the aforesaid Act (Domestic Violence Act 2005) has pinched a differentiation between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either of the case the person who comes into either of this relationship is deemed to be entitled to the benefit of this Act. Henceforth, the expression 'relationship in the nature of marriage' is alike to a

308 Joseph Shine v. Union of India, 2018 SC 1676 (India).
309 *Supra note* 306.
310 D. Veluswamy v. D. Patchaiammal, AIR 2011 SC 479 (India).

common law marriage." In this case which concerned a woman seeking maintenance from an apparently already married man under Section 125, the judges observed that:

"Unfortunately, the expression "in the nature of marriage" has not been defined in the Act PWDVA, 2005. As there is no direct verdict of this Court on the interpretation of this expression, we think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required."[311]

The judgment further observes that:

"It seems to us that in the aforesaid Act of 2005 Parliament have taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe."[312]

It is the famous case ***S. Khushboo. v. Kanniaammal & Anr***,[313] where the appellant, a famous actress while giving interview to a well-known magazine, namely, India Today, in September, 2005, opined that her sex was not only concerned with the body but also concerned with the conscious. She further put forwarded her view that if a girl was seriously involved in a relationship then her parents should not object the same but to accept. She further opined that our society should leave the thinking that bride should be virgin till her marriage.

On the basis of the said interview along with the interview in 'Dhina Thanthi' a Tamil daily, a number of criminal petitions were filed in many parts of Tamil Nadu under various sections of IPC, 1860 such as 499, 500 and 505 along with section 4 and 6 of Indecent Representation of women (Prohibition) Act, 1985.

Wherein, apart from other prominent issues such as freedom of speech, etc, judges Deepak Verma and B.S Chauhan clarified the scope of criminality in consensual adult relationships when they reiterated that while it was true that the mainstream view of our society was that sexual interaction should take place only between conjugal partners, there was no statutory offence that took place when adults willingly engaged in sexual relations outside the marital setting, with the exception of 'adultery' as defined under Section 497 IPC."

311 *Supra Note* 310.
312 *Id*.
313 S. Khushboo. v. Kanniaammal & Anr, (2010) 5 SCC 600 (India).

In a Supreme Court SC judgment in 2008 thus, for example, it was suggested that the act of marriage might be presumed from the common course of ordinary natural events and the demeanour of parties as they are borne out by the facts of a particular case.[314]

The Hon'ble Apex Court further viewed that the Parliament has sketched a difference between the relationship of marriage and the relationship in the nature of marriage, and has also provided that in either of these cases the person is enabled to avail the benefits under the Domestic Violence Act,2005(PWDV). The Court replicating upon live-in relationships which now a days is being practised very frequently in India, has pointed out that no legal privileges occur by such relationship. It is clear that no maintenance is available to a concubine under any law in India. The Court ruled out that the concept of palimony which applied to such relationships was not recognized in India and even though the Domestic Violence Act recognizes the live-in relationship up to some degree, not all such relationships are entitled to avail the right to be maintained under the provisions of law in force unless they fulfils the conditions postulated by the Court in India. In the Act of 2005, the Parliament has taken notice of a new social phenomenon which has developed in our country in the form of live-in relationship. This newly develop relationship is still infrequent in our country, and rarely being practised in big urban cities of India, but very common in North American and European countries.

In ***Chanmuniya v. Virendra Kumar Kushwahaa & Another***,[315] the Supreme Court observed that the most considerably, the PWDV Act provides a very extensive interpretation to the term 'domestic relationship' as to take it outside the confines of a martial relationship, and even includes within its scope the live-in relationship resembles to those of real marriage within the definition of 'domestic relationship' under section 2(f) of the Act. Hence, a woman living in an arrangement of live-in - relationship is entitled to avail all the reliefs given in the said Act. If the pecuniary relief and damages can be awarded in cases of live-in relationship under the Act of 2005, they should also be allowed to avail the benefit under section 125 of Criminal Procedure Code, 1973. Because in the light of the continual transformation in social norms and ethos, which has been amalgamated into the progressive Act of 2005, the

314 Tulsa & Ors vs. Durghatiya & Ors, (2008) 4 SCC 520 (India).
315 Chanmuniya v. Virendra Kumar Kushwahaa & Another, SLP (Civil) No. 1571 of 2009 (India).

same needs to be contemplated with regard to Section 125 Criminal Procedure Code and consequently it needs a broad interpretation of the same."

In ***Nandaakumar v. The State of Kerala***[316], Justice A.K. Sikri and Ashok Bhushan said that, "it is sufficient to note that if both parties are major and married then validity of marriage if is in question on age of marriage and dependency then it can be ignored. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that 'live-in relationship' is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005."[317]

In ***Abheejit Bhikaseth Aouti vs State of Maharashtra & Another***[318], Bombay High Court has observed that, in the context of the definition of domestic relationship under clause (f) of Section 2, which means relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of a marriage. Live-in relationship, so far signposted, is an association which has not been socially acknowledged in India, unlike many other countries of the world.

In ***Lata Singh & another v. State of U.P.***[319] it was viewed that live-in relationship is an arrangement whereby two consenting adults of heterosexual enters into sexual cohabitation which does not amount to any offence even though it seems to be immoral. Conversely, with a view to provide a remedy under the civil laws to protect the female partners from being victimized as a result of such relationship, and to prevent the happenings of domestic violence, first time in India; the DV Act, 2005 has been enacted to cover the couple having relationship resembles to that of the nature of marriage, persons related by consanguinity, marriages etc. Moreover, there is a few other legislations which also dealt with reliefs to woman subjected to certain vulnerable situations.

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316 Nandaakumar v. The State of Kerala, (2018) 16 SCC 602, (India).

317 Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

318 Abheejit Bhikaseth Aouti vs State of Maharashtra & Another, Criminal Writ Petition No.2218 of 2007, (India).

319 Lata Singh & another v. State of U.P., AIR 2006 SC 2522, (India).

SUMMATION OF THE CHAPTER

In Hindu Personal Law, it condemns the relations outside marriage and declares marriage as a socio-religious institution, which is connected with so many religious obligations. And it is not permitted to make such relations which are immoral or against the social norms and there is no doubt that a Hindu marriage is a religious ceremony and the one prescribed to purification of the soul. However the judicial response to the live-in relationship is somehow makes it cloudy. It gives the presumption of marriage for the long durational live-in-relation unless and until it is proved contrary.

The Muslim Personal Law forbids sexual relation before or outside marriage. *Sharia* considers consensual premarital sex as *hudud* crime and requires public punishment. Islam explicitly forbids all sex outside of marriage, both premarital sex and sex outside marriage (*zina*).Beyond being a crime requiring punishment in worldly life, fornication is a sin leading to chastisement in after-life in Islam. However, there is no legal blockade to debar a couple from cohabiting together without formally solemnizing marriage but in the form of "live-in-relationship". The traditional society of India however does not approve such living arrangements. Even courts are also trying to take the live-in-relation under the presumption of marriage. It is not allowed in any judgment independently as live-in relationship.

In Christian Personal Law there is nothing illegal about sexual relations within marriage. Sexual relations outside the marriage are recognised as illegal or sin or fornication for those who engaged in. So cohabitation before marriage is also considered as sin or illegal i.e. people living together before marriage as a couple is illegal as per the Christian Personal Law. The non-marital union is described as fornication and adultery. Though it described as fornication and sin in the Bible, living together before marriage is becoming more and more common in many Christian Law dominate parts of the world.

Under Parsi Personal Law, consensual premarital sexual relationship of two single *Zoroastrians* is not considered as a grave sin though it is never permitted as a common practice. Unlike adultery as a grave sin against lawful partner, consensual premarital sexual relationship is a simple sin which can be remedied by consequent

marriage with repentance. The traditional *Zoroastrian* scriptures, do not consider it as a major sin unless and until it is with multiple partners e.g. promiscuity.

Women who are in live-in relationship can be protected and get the remedy under PWDV Act 2005. This Act intends to protect the women victims of domestic abuse of any kind in live-in relationships too. According to Section 2(f) 'domestic relationship' includes a relationship between two heterosexual persons who are living together or in the past have lived together in a shared household. On the basis of different judgments of different courts on different disputes live-in relationship is defined in different situations. The Domestic Violence Act 2005 postulates shield to the woman if the relationship resembles to those of a real marriage i.e. "in the nature of marriage". Under PWDV Act, 2005 live-in relationship is recognised as female who are living with her male counterpart in a mutually agreed relationship without formally solemnizing marriage, but which resembles to be 'in the nature of marriage', and in the eyes of the society both are living as man and wife.

CHAPTER 4

LEGAL STATUS OF LIVE-IN RELATIONSHIP IN OTHER COUNTRIES

5.1 INTRODUCTION

Live-in relationship or living together or cohabitation is becoming a popular living arrangement among young people in most of the Western European countries. According to Patrick Festy (1980), *"golden age of marriage"* popular in Western European nations from the 1950s to the early 1970s, and marriage rates have declined rapidly, the stability of relationships has decreased, and non-marital cohabitation is increasingly accepted, albeit with large differences among the countries. This living arrangement has become popular especially among divorced people. The divorcees are taking cohabitation as an alternative to marriage or as a compatibility test to remarriage. However among young people cohabitation is popular as the formation of a union.[320]

It is found in demographic studies, indicate that couples who are cohabiting have distinct characteristics that set them different from married couples-

- First, they have a higher risk of the dissolution of their relationship. Marriages that started with long term cohabitation also seem to be more prone to breaking up than marriages with no history of cohabitation.
- Cohabitation also a reason to a higher proportion of childlessness and children born outside of marriage, higher levels of educational homogeny, working more hours in paid work for women, and a higher ratio of rented dwellings.
- Cohabiting couples also experience social unacceptability in some countries where social traditions and family ideologies favour marriage in matters of social security and in the recognition of certain legal rights.

Whatever the differences between demographic and legal, the acceptance of marriage like unions across Europe needs a re-examination of ideal between cohabiting

[320] P. Festy, *On the New Context of Marriage in Western Europe*, PDR (1980).

without marriage and cohabiting with marriage, and its maintenance of family and responsibilities, and specifically of child care.[321]

The acceptance and legal status of live-in relationships are differing in different countries.

The figures are difficult to obtain as far as England is concerned. Some indication of frequency of cohabitation resulting in the birth of children may be gained from the registration of births. Total 38 percent of illegitimate births were registered on the joint application of both parents in 1966. Ten years later this figure had risen to 51 percent. These figures of course give no indication of the incidents of cohabitation without the birth of children. As far as Canada is concerned again no accurate figures are available. In1981, unmarried cohabitation presents formidable problems for the research. There is no registration to record cohabitation and in many situations no obligation to disclose such information. Although there is now a less intense social stigma attached to such relationships than in earlier times, there may be a quite understandable reluctance to disclose details of such relationships.[322]

Different stands are seen in different countries on live-in relationships. For example, in Bangladesh, the *Salishi* system of informal courts punishes the cohabitating couple after divorce. An Islamic penal code which was proposed in 2005 in Indonesia would have made cohabitation punishable with imprisonment up to two years[323]. Also in the *Sharia law* which is prevailing in Islamic countries make cohabitation without marriage is illegal. On the other side in many other developed nation states like USA up to 23 percent, Denmark, Norway, Sweden above 50 percent and Australia total 22 percent in 2003 etc., the non-marital cohabitations are very frequently run through, acknowledged and are not measured as to be against the law.[324] However the Dutch researchers have found that research participants in survey; consider cohabitation as

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321 González, et all, *Just Living Together: Implications of cohabitation for fathers' participation in child care in Western Europe*, 445-478 Demographic Research (2010).

322 Carl Haub, *Births outside marriage now in common in many Countries in Europe*, November 4, 2010, POPULATION REFERENCE BUREAU, (July 10, 2018, 11:45 PM), https://www.prb.org/birthsoutsidemarriage/.

323 Mark Duff, *Islam in Indonesia*, BBC News, 25th Oct., 2002, (Oct. 9, 2018, 11:00 PM), http://news.bbc.co.uk/2/hi/asia-pacific/2357121.stm.

324 Dr. S.D. Moharana, *Pros and Cons of Live-In Relationship in Indian Scenario*, 3(3) Research Chronicler 51 (2015).

a risk-reduction system in a country with high relationship instability.[325]As of 2014, 48.7 percent births were to unmarried women.[326]

Some countries like USA, UK, and France etc. provide a liberal view to the concept whereas, countries of the middle-east consider it a social proscribed. There is a divergence over the property rights of the living partner and legacy and succession rights of the offspring born out of such relationships. The European countries are worst affected by 'live-in relationship'. In most of the nations it is acknowledged as lawful for unmarried people to cohabit.

5.2 UNITED STATES OF AMERICA

Practice of cohabitation in the United States started during 60's. In the late 20th century it is became common in USA. According to 2002 survey report, the age from 15 to 44, about half of all women were living in intimate relationship with a partner without being married. Total of 4.85 million unmarried couples were living together as reported in 2005 survey. In 2007, it is about 6.4 million households were maintained by unmarried couples.[327] In 2012, according to the General Social Survey bring into being that only 20 percent of the populace in USA is disapproved cohabitation.[328]

The National Centre for Family and Marriage Research found that in 2011 that 66 percent of first marriages are solemnized after a successful period of cohabitation.[329] Total 58 percent of women aged from19 to 44 had live-together till 2008, but it was only 33 percent in 1987."[330]

In the state of California, the laws that recognize non-marital couples as "domestic partners", and such couples are definite as people who "have chosen to share one

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325 Sally Shreir, eds., *Women's movements of the world: an international directory and reference guide*, 254, (Oryx pr, 1988).

326 Head-König Anne-Lise, *Adultère*, 2002, (April 12, 2019, 11:12 PM), https://hls-dhs-dss.ch/fr/articles/016108/2002-06-12/.

327 Bialik Carl, *Catholics Are More Progressive than the Vatican and almost everyone else*, Five Thirty Eight, General Social Survey, 17 October 2014, (Dec.13, 2017, 02:30 PM), https://fivethirtyeight.com/features/catholics-are-more-progressive-than-the-vatican-and-almost-everyone-else/.

328 Smith Tom W., *American Sexual Behavior: Trends, Socio-Demographic Differences, and Risk Behavior*, 25 National Opinion Research Center, University of Chicago 8-12 (2006), (Jan. 20, 2019, 11:20 AM), https://www.norc.org/PDFs/Publications/AmericanSexualBehavior2006.pdf.

329 Paul Herrnson & Kathleen Weldon, *Love, Marriage, and the Vatican*, Oct. 6, 2014, Center for Public Opinion Research, (Nov. 15, 2017, 05:40 PM), https://today.uconn.edu/2014/10/love-marriage-and-the-vatican/#.

330 Cherlin Andrew, Public and Private Families, 227, (New York: McGraw Hill, 2010).

another's lives in an intimate and committed relationship of mutual caring," and comprise of a "common residence, and may be the same-sex or persons of opposite-sex if one or both of the persons are over the age of 62".[331] This acknowledgment shows the way to the formation of a Domestic Partners Registry,[332] for elderly citizens too granting them limited legal recognition and some rights similar to those of married couples. Under Section 297 of California Family Code 2005, domestic partners defines as are of two individuals who are major and have preferred to share one another's lives in an intimate and committed bond of shared caring. To establish domestic partnership in California the both persons must file a Declaration of Domestic Partnership with following essential terms and conditions:

- Neither person has a married spouse living or nor a member of another domestic relationship with somebody else which has not been ended, disband, or adjudged as void and nullity.
- The both individuals are not interrelated by blood which may prevent them from being legally wedded to each other.
- Both individuals must be minimum of 18 years of age.
- Both individuals are competent to consent to the domestic non-marital cohabitation.

The Florida legislature also voted to repeal the ban on cohabitation on March 22, 2016 and finally on 6th April 2016 the bill became a law.[333]

In the case of ***Lawrence v. Texas***[334], it was ruled that the laws, making cohabitation illegal are unconstitutional[335]. Benjamin G. Alford, North Carolina's Superior Court judge ruled that cohabitation law of North Carolina is unconstitutional.[336] However, there is no any rule/judgment from Supreme Court of North Carolina, so the state wide applicability and constitutionality of the law remains unclear.

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331 The California Family Code 2005, (US), Section 297.

332 Smith Tom W., *Supra note* 328.

333 Senate Bill 498 (2016), the Florida Senate, (Nov.25, 2016, 07:15 PM), https://www.flsenate.gov/Session/Bill/2016/0498.

334 Lawrence v. Texas, 539 U.S. 558 (2003) (US).

335 Howard Bashman, *Judge strikes down law banning cohabitation and N.C. law banning cohabitation struck down,* (March 23, 2017, 06:30 PM), https://howappealing.abovethelaw.com/2006/07/20/.

336 Wang Jim, Can I Claim a Boyfriend/Girlfriend As a Dependent on Income Taxes?" (Aug. 10, 2017, 01:23 AM), https://blog.turbotax.intuit.com/tax-deductions-and-credits-2/can-i-claim-my-girlfriend-or-boyfriend-as-a-dependent-21025/

In ***Martin v. Ziherl*** [337] the Supreme Court of Virginia had opinion that the unenforced commonwealth law that making sexual relations between unmarried persons are illegal to be unconstitutional[338]

The US Federal Court in ***Brawn v. Bohman***[339] ruled that the anti polygamy laws of Utah, which prohibit multiple cohabitation were unconstitutional, but also ordered to maintain its ban on multiple marriage licenses. In unlawful cohabitation it does not need to prove that a marriage has been solemnized with certain ceremonies.[340]

The California Supreme Court in 1976 held in ***M. Marvin v. L. Marvin***[341]**,** that the contract between cohabiting couples to share earnings received during the continuation of the time they cohabited together can be lawfully binding and can be enforceable. Thus, the common law rule applied to the situation without alteration."

However, the highest appellate court at New Jersey in ***Deavaney vs. L' Esperancie***[342] ruled that cohabitation is not alone enough to file a suit to claim palimony; rather it must be the assurance to hold up, by expressed or implied way, attached together with a matrimonial like bond, which are necessary elements to bear a valid claim for palimony. However, the State legislature of New Jersey passed the new rules on non-marital cohabiter's palimony issue in 2010; according to the rule there must be a contract on paper between the parties to claim palimony.

In ***Trimble v. Gordon***[343] case in 1977 the court by 5:4 majorities held that an Illinois statute which provided that illegitimates could inherit from their mothers but not from their fathers was unconstitutional. Here the child's paternity had been established before death, the father was supporting the child and had acknowledged her as his child. The issue of unconstitutionality on the basis of discrimination against illegitimate child has also arisen in connection with the Social Security Act,[344] various support statutes[345] and immigration laws.[346]

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337 Martin v. Ziherl, 607 S.E.2d 367 (Va. 2005) (US).

338 Grossman & Joanna, *Virginia strikes down state fornication law*, January 25, 2005, CNN.com, (April 12, 2019, 10:20 AM), http://edition.cnn.com/2005/LAW/01/25/grossman.oldlaws/.

339 Brawn v. Bohman, 14-4117 (10th Cir. 2016) (US).

340 Stack & Peggy Fletcher, *Laws on Mormon polygamists lead to win for plural marriage*, 16 December 2013, *The Salt Lake Tribune*, (April 05, 2019, 12:25 PM), https://archive.sltrib.com/article.php?id=57264020&itype=CMSID.

341 Michelle Marvin v. Lee Marvin 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815, 1976 Cal. LEXIS 377 (Cal. 1976).

342 Deavaney vs. L' Esperancie, 949 A.2d 743 (N.J. 2008) (US).

343 Trimble v. Gordon, (1977), 430U.S 762 (US).

344 Richardson v. Devis (1972) 409 U.S. 1069 (US).

In ***Braschi v. Stahl Associates***[347], the highest court of New York had opinion that the term 'family' should be interpreted broadly to understand the contemporary realities, including unmarried adult cohabiters in a committed relationship for a long-term, that shows mutual sharing of the everyday life. Since the 1980s, a growing number of states and municipalities have passed laws allowing unmarried couples, both heterosexual and homosexual, to register as domestic partners. Some cities have established a domestic partner registry, while others extend certain benefits to domestic partners even if the city does not provide a registry.

In ***Re Marriage of Lindsy***[348], and ***Lithaem v. Hennessy***[349], the Courts in United States observed with the view that the significant factors set up a gilded relationship include continuous and long cohabitation, minimum duration of the association, intention of the relationship, and the pooling of wealth and services for shared projects. It also ruled that a non-marital cohabitation required not being "long term" to be considered as meretricious relationship while a long term relationship is not a doorsill requirement, duration is a considerable factor. Further, it is also noticed by the Court that a short durative relationship may be categorized as a meretricious bonding, but must be associated with other important number of factors.

In ***Stak v. Doewden***[350], Baroness Hale, J of Richmond said: "Cohabitation draw closer in many different shapes and sizes. People embarking on their first serious relationship more commonly cohabit than to marry. Many of these relationships may be quite short durative-lived and may be childless, but most people these days cohabit before marriage." So it is evident that maximum number of couples who were cohabiting, actually keeping in mind of marriage in later days.

According to the British Household Panel Survey in 1998 found that 75 percent of current cohabitants expected to marry, although only a third had a firm plan.[351]

It is the presumption that non-marital cohabitation is much more possible to closing stages in severance than in a lawful wedding. Cohabitations which end in parting

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345 Gomez v. Parez (1973) 409 U.S. 535 (US).
346 Fiallo v. Bell (1977), 430 US 7787(US).
347 Braschi v. Stahl Associates Company, 143 A.D.2d 44 (N.Y. App. Div. 1988) (US).
348 Re Marriage of Lindsy, 101 Wn.2d 299 (1984) (US).
349 Lithaem v. Hennessy, 87 Wn.2d 550 (1976) (US).
350 Stak v. Doewden, (2007) 2 AC 432 (US).
351 John Ermisch, *Personal Relationships and Marriage Expectations*, 27 WPISE, Papers of the Institute of Social and Economic Research, (2000).

tend to last for a shorter point of time than marriages which end in divorce. But growing numbers of couples in US opt cohabitation for long periods without marrying and their reasons for doing so is varying from conscious rejection of marriage as a legal institution.[352]

5.3 CANADA

In Canada, the "common-law marriage" is the officially recognition of cohabitation. The common law couples are given the same rights as married couples in many judgements from the federal courts of Canada.[353] All common law live-in couples enjoy legal sanctity if couple have cohabited together for a minimum of twelve successive months, or they give birth or adopt a child. The laws in Canada; which recognising unmarried cohabitation designed for legal purposes are notably different in every province.[354] During last decades of the 20th century, the Family formation has been changed in Canada, but the patterns vary widely across the country. From mid 1990s, children born out of the cohabiting parents have increased, particularly in Quebec.[355] If we analyse the statistical data of 2012,

- The category of "single mothers" (defined as *never married*) is around 28.3 percent of mothers,
- The category "divorced" (mothers who were no remarried) is around 1percent,
- Around 10 percent of mothers the marital status was unknown ("did not disclose").[356]

The status of cohabitation is significantly different in every Provinces of Canada; for example in 2012,

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352 Gavin, Fiona, *Cohabitation*, 60-61, (W. Green &Sons, Edinburgh 2005).

353 Institut de la Statistique du Québec, *Proportion de naissances hors mariagel selon le rang de naissance, Québec, 1976-2014*, (Aug. 22, 2018, 9:32 PM).

354 *What does the Government of Canada consider to be a common-law relationship*? (Aug. 22, 2018, 9:45 PM), https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-common.html.

355 Benoît Laplante & Ana Laura Fostik, *Two period measures for comparing the fertility of marriage and cohabitation,* Demographic Research, 421–442 (2015), (July 02, 2018, 07:45 PM), doi:10.4054/DemRes.2015.32.14.

356 *Alberta Registries amended their Registration of Birth form in such a way that Statistics Canada can no longer determine the legal marital status of those persons in common-law marriages*, (Feb. 12, 2019, 02:15 PM), www150.statcan.gc.ca/n1/pub/84f0210x/2009000/t007-eng.htm.

- 77.8 percent of births of offspring in Nunavut were listed from sole mothers, by disparity,
- A smaller amount that 20 percent of single mothers in Ontario were listed in this group.[357]
- Latest data from the Quebec Statistical Institute explains that as of 2014, 62.9 percent of children were born to unmarried women in Quebec.[358]

Canada has been part of the worldwide trend toward cohabiting relationships, although their events vary from province to province. The 2006 Census reported that 2.8 million people e.g., 10.8 percent of the total population were referred to in Canada as common-law partners. Total of 42.5 percent of them were in their late twenties and early thirties. The fastest growing sector, however, was among people forty and older. The pattern in the province of Quebec, especially among French speakers, is unique, with cohabitation having largely replaced marriage for over half of the population. The 2006 Census reported 2,731,635 cohabitants in Canada as a whole and 12,470,400 married couple; by contrast, in Quebec there were 2,361,855 married couples and 1,221,855 cohabitants, 52 percent of all couples.

Characteristics of cohabitants in Quebec do not differ significantly from those of married persons, and their unions are more stable, longer in duration, and more likely to involve with children than elsewhere in Canada. Some Quebec's uniqueness regarding cohabitation among young people is rejected by the Catholic social doctrines on marriage and sexuality. The Canadian government has been suspected to address the legal problems of cohabitants for a long time. The Courts, legislatures the provincial law reform commissions, and the Federal Law Commission have struggled with these issues. The process of reform has been piecemeal both in its procedures and results, but it is a great deal further along the road towards making cohabitation the equivalent of marriage. Unlike in many other countries, that was not begin with the demand of same-sex couples for recognition but instead with

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357 *Alberta Registries amended their Registration of Birth form in such a way that Statistics Canada can no longer determine the legal marital status of those persons in common-law marriages*, (2003), (March 11, 2017, 11:23 AM), www150.statcan.gc.ca/n1/pub/84f0210x/2009000/t007-eng.htm.

358 David De Vaus, Lixia Qu & Ruth Weston, Family Matters, *Premarital cohabitation and subsequent marital stability*, Australian Institute of Family Studies 65 (2003).

constitutional challenges brought by opposite-sex couples under the equal rights provisions of the Canadian Charter of Rights.[359]

In Canada, family laws in regard to cohabitation are different in different provinces and thus legal issues regarding cohabitation are very complicated, which makes it very confusing to the public.[360] However, province wise the marital laws relating to status are also varies. For example, the 46.4 percent of the total inhabitants from the age of 15 years or more was legally wedded; the lowest fraction of married individuals being 35.0 percent in Northwest Territories, 29.7 percent in Nunavut, 35.4 percent in Quebec, and 37.6 percent in Yukon.[361]

The trend to recognize cohabitant's rights is on the basis of status and the duration of the relationship. Since the 1970s, a number of provinces in Canada had been gradually extending the protections under family law statutes to unmarried heterosexual couples. For example, the 1978 Family Law Reform Act in Ontario extended support rights to cohabitates on dissolution of their relationships, while excluding them from property distribution. In 1993 report, the Ontario Law Reform Commission recommended still more,-

"When two individuals have lived together in a relationship of some permanence, interdependence, and emotional importance to both of them, and that partnership comes to an end, the law should ensure a fair sharing of the assets that they acquired during the time they were together, a fair disposition of the family home and a fair consideration of support if one party is likely to suffer economic hardship as a result of participation in the relationship. The intent is to prevent the economic exploitation of one by the other. . . It is likely that one or both partners have assumed that the relationship will be permanent and that the assets they have acquired are likely to be intermingled."[362]

It further explained, "Because it was unfair for an individual partner to profit under these circulation stances and the state then be left with responsibility for taking care

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[359] Québec, Institut de la Statistique du. *Proportion de naissances hors marriage selon le rang de naissance, Québec, 1976-2016*, (June 21, 2016, 12:50 PM), *www.stat.gouv.qc.ca*.

[360] Canada, Government of Canada, *Statistics, ERROR,* (Jan. 21, 2017, 12:50 PM), *www5.statcan.gc.ca*.

[361] Alexander kazia, *4 myths about common-law relationships*, 20 March 2013, (Aug. 22, 2017, 12:20PM), https://www.cbc.ca/news/canada/4-myths-about-common-law-relationships-1.1315129.

[362] The Ontario Law Reform Commission report 1993.

of the economically weaker cohabitant…", the Commission recommended that the Ontario Family Law Act should change its definition of spouse for all purposes to include heterosexual cohabitants who had lived together for three years or had a child. The act was amended, but only to require treatment as spouses for purposes of post relationship support. Canadian courts were also confronting cohabitant's legal problems at the end of their relationships in cases brought to claim property rights equal to other common law countries, upon the doctrines of unjust enrichment and constructive trust. It also recognized both non-monetary and indirect contributions to the acquisition of property. Thus, cohabitants in Canada have more extensive property remedy under the constructive trust doctrine than they enjoy in England. It is nonetheless an onerous burden to be required to undertake the expenditure of litigation to prove the elements of a trust causing the Canadian Law Commission later to remark that it is a tool beyond the reach of many people." [363]

The 1990s were marked by a series of constitutional cases brought to challenge the exclusion of unmarried couples from the benefits received by those who were married. Section 15 of the Canadian Charter of Rights and Freedoms contains a very broad equal protection and equal benefit of the laws as provisioned that has been interpreted quite broadly by the courts. The Canadian courts look to the historical context to determine whether a discriminatory legal classification perpetuates negative stereotypes and fails to achieve its acknowledged purpose to protect and promote human dignity.[364]

In ***Miron v. Trudel***[365], a cohabitant brought a suit to challenge Section 15 to exclusion from his partner's insurance policy because they were not legally married. The couple had lived together for more than four years and had two children when he was injured in an accident. The insurance policy terms were standard terms prescribed by the Canadian Insurance Act, which the plaintiff challenged as violating section 15 of the Charter by discriminating based on marital status. The Supreme Court agreed, holding that marital status was on prohibited ground upon which to discriminate because it touched the dignity and worth of an individual in ways similar to other recognized grounds of discrimination, possessed characteristics associated with social disadvantage and prejudice, and was, though not immutable

363 *Supra note* 362.
364 Cynthia G. Bowman, *Supra note* 4 at 188.
365 Miron v. Trudel, (1995) 2 SCR 418 (Can.).

often beyond the individual's control. Under the Charter, the burden then shifted to the state to justify the law by showing its connection to an acceptable state goal. The Miron court, however was pointing to the fact that the Ontario Family Law Act imposed spousal support upon cohabitants after three years or the birth of a child. It is found that the function of the insurance legislation under challenge was clearly to support families when a member was injured and that marital status was not a good indicator of support. It therefore held that discrimination based on marital status that is the status of a couple not being married was constitutionally prohibited by Section 15 of the Charter.

Now the Quebec has its unique Civil Code and regarded as for liberal family formation. The cohabitation is a recent development, but it allows now though it had its own conservative and strongly dominating Roman Catholicism.[366] In Alberta, the new family law came into force in 2005. This Family Law Act 2005 restored the family legislations by put back the Parentage and Maintenance law, the Domestic Relations law, the law in Maintenance Order, and parts of the Provincial Court law and the Child, Youth and Family Enhancement law, which were observed as outdated.[367] The Prairies Provinces of Manitoba and Saskatchewan have regulations which support strongly common-law spouses and imposing rights and obligations on common-law couples.[368] In 1999, Nova Scotia had put an end to prejudice against illegitimate offspring with regard to inheritance.[369] If we analyse in general, today, provinces in western Canada give more rights to common-law spouses than those in Atlantic Canada and in Quebec. In British Columbia, the Family Law Act came into force in 2013 and included cohabitation.

If two persons at least a period of one year, have been leading a conjugal relationship, the relationship acquires sanctity under the name of 'common-law marriage'. In few cases, the courts have held that "the people in a normal marriage or

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366 Provincial and Territorial Government Web Sites, (Aug. 26 2018, 11: 32 PM), https://www.justice.gc.ca/eng/fl-df/pt-tp/index.html.

367 Canada Library of Parliament, Research Branch, Divorce Law in Canada / 96-3E, Ottawa : Library of Parliament, Research Branch, (1996).

368 Benoît Laplante, The *Rise of Cohabitation in Quebec: Power of Religion and Power over Religion*, CJS / Cahiers Canadiens de Sociologie 1-24 (2006), doi:10.2307/20058678.

369 *Adult Interdependent Relationships*, Canadian Legal FAQ's- A Website of The Centre for Public Legal Education Alberta, (Sept. 23, 2016, 12:10 PM), https://www.law-faqs.org/alberta-faqs/family-law/adult-interdependent-relationships/.

a common law marriage may have the same rights in case of conjugal rights of the partners and give birth of child or adoption."

Section 54 (1) of Family law Act, R.S.O. 1990 provides that when two individuals are cohabiting or plan to cohabit and who are not lawfully married to each other may come into an agreement in which they must agree on their relevant rights and responsibilities during the continuance of cohabitation, or on come to an end to cohabit or on death, that include,

- Right of ownership or distribution of property;
- Support responsibilities;
- The right to provide edification and moral training of their offspring, but not the right to guardianship or custody of or access to them".[370]

And further sub section 53 (2)[371] says that if the parties to a cohabitation contract get married each other during cohabitation, the agreement shall be deem to be a marriage agreement.

In ***M.W. vs. The Department of Community Services***[372], Gleeson, CJ, made the observations that it was acceptable in the previous judgments to pressure the disparity between living together and living together as a couple in a relationship in the nature of marriage or civil partnership. The relationship between two individuals, who live together, even if it is a sexual relationship may not, be a relationship in the nature of marriage or civil partnership. In consequence of relationships of the former kind becoming ordinary is that it may now be more difficult to infer that they have the nature of marriage or civil partnership, at least where the care and upbringing of children are not involved.

In Canada, cohabitation has same meaning as living together. Two people who are cohabiting have combined their affairs and set up their household together in one dwelling. To be considered as common-law partners, they must have cohabited for at least one year. This is the standard definition used across the federal government. It means continuous cohabitation for one year, not intermittent cohabitation adding up to one year. The continuous nature of the cohabitation is a universal understanding

370 The Family law Act, R.S.O. 1990, Section 54 (1).
371 The Family law Act, R.S.O. 1990, Section 53 (2).
372 M.W. vs. The Department of Community Services, [2008] HCA 12.

based on case law. While cohabitation means living together continuously, from time to time, one or the other partner may have left the home for work or business travel, family obligations, and so on. The separation must be temporary and short.

5.4 PHILIPPINES

The concept of cohabitation is not a new practice in Philippines. Though the lifelong cohabitation is possible in Philippines but still it is not same with the marriage institution. In the Philippines, it must note it down that the absolute number of registered marriages considerably has been declined in the last decade and it is up to 25 percent between the year 2004 and 2013, so it is certainly possible that the ratio in cohabitation has been increased.[373]

If we look back, history is indicating that non- marital cohabitation was practiced before Spanish colonization in the Philippines. The low income among Filipinos is one of the reasons to prefer cohabitation without marriage to avoid ceremonial cost or legal fees or celebration costs etc.

The traditional cohabitation no longer practiced in urban centres and capital cities due to religious interferences and westernised influences. The Filipinos are practising the modern form of cohabitation as well as old and indigenous form of cohabitation in terms of both longer term commitment and trial marriages. The women, who prefer cohabitation, are self-reporting as being married or practicing *kasalukuyang may kinakasama*, a traditional form of lifelong commitment, over identifying as a cohabiter. However the most of the cohabiters are preferring cohabitation as a compatibility test to marriage, shown by the substantial proportion of married people reporting pre-marital cohabitation with their spouse. There are certain reasons or situations which motivating to prefer non marital cohabitation in the Philippines. Cohabitation can be linked with personal involvement, for example often associated with disadvantage, absent of parents, instability, no engagement in work or education, urban residence, migration etc. Marriages are considered as ideal for women [374]to get financial empowerment. Financial reasons such as wedding reception cost, the costs of legal paperwork and pregnancy etc., parent's marital difficulties is another reason for not preferring marriage among young generation as

[373] CITE Philippines Statistics Authority, (Sept. 23, 2016, 11:10 PM), https://psa.gov.ph/article/terms-use.

[374] Franco Diana F., *Family Law in Philippines -An Overview*, (Sept. 20, 2016, 12:30 PM), http://www.funkit.com/~thaslow/articles/Family_law_in_the_Philippines_An_Overview.

there is no law for divorce in Philippines. However, the cohabitation among Filipinos are the recourse of lower income classes under financial constraint and not the practice of wealthy, educated, elite secular youths.

According to the 2000 census, 19 percent couples are cohabiting in Philippines. There are around 2.4 million people were cohabiting in 2004; the majority of individuals are between the ages of 20-24. While choosing cohabitation or marriage as their intimate relationship poverty is the main deciding factor.[375]

Under the title Property Regime of Unions without Marriage in Chapter 7 of Family Code 1987 of Republic of Philippines talks exclusively about cohabitation, as it provides, when a man and a woman who are competent to marry each other and also live exclusively with each other as married couple without the benefit of marriage or under a invalid marriage, their wages and salaries shall be owned by them in equivalent shares and the property acquired by both of them throughout their work or industry shall be administered by the rules on co-ownership.[376]

Thereafter in the nonexistence of evidence to the contrary, properties obtain while they lived together as a couple shall be presumed to have been obtained by their joint hard work, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquirement of any property by the other party, shall be considered to have contributed mutually in the acquisition of property with the condition that if the former's contribution consisted in the care, concern and maintenance of the family and of the household.[377]

However Article 148 is an extended provision of Article 147. It provides that in cases of cohabitation not falling under the previous provision, only the properties obtained by both of them through their concrete shared contribution of capital, assets, or industry shall be owned by them in common in proportion. In the lack of evidence to the divergent, their assistance and corresponding mutual contributes are presumed to be equal. The equivalent rule and assumption shall also apply to joint deposits of funds and proof of credit.[378]

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375 Yu Jia & Yu Xie, *Cohabitation in China,* PDR (2015), (April 10, 2019, 10:15 PM), https://doi.org/10.1111/j.1728-4457.2015.00087.x.

376 The Family Code, Philippines 1987, Article 147.

377 *Id*.

378 The Family Code, Philippines 1987, Article 148.

5.5 FRANCE

The concept of cohabitation or non marital intimacy may be an outcome of non legalization of divorce in France till 1884. So to avoid marriage this non cohabitation emerged as an alternative to forbid registered marriage. Interestingly the women were authorised to apply for divorce, if husband came with a concubine to his family home. The authorisation is given under Civil Code 1804 in France. However during mid of 20th century non marital cohabitation became famous in France.[379]

Outside of Scandinavia, France has the largest percentage of cohabitants in Europe. One study based on the 1994 wave of the European Community Household Panel, a large-scale longitudinal study carried out by the European Union, reported that 19.7 percent of all women aged between twenty and twenty four In France were cohabiting and so were 25.9 percent of all women aged twenty five to twenty nine. By the end of the millennium, one in six heterosexual couples in France was unmarried. One factor in this high rate of cohabitation may be the relatively high age of marriage in France as compared to many European countries and the United States, i.e., 29.7 years for men and 27.7 for women in 1998. There is a long history of the concept *unions libres*, or free unions, in France but the Napoleonic Code regarded cohabitants as legal strangers:

"They don't want law; law pays no regard to them."[380]

As in other countries, the trend to increasing rates of cohabitation started with the working class and was related to difficulty finding stable employment. As growing numbers of cohabitants faced legal problems, France dealt with those problems under the law of concubinage. Concubine, the French term for cohabitants, were opposite-sex couples sharing a sexual relationship and a common life of some stability, duration, and public acknowledgment.[381]

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379 Potarca et al., *Family Formation Trajectories in Romania, the Russian Federation and France: Towards the Second Demographic Transition?*, *EJP* 69–101 (2013), (Jan. 23, 2018, 12:20 PM), doi:10.1007/s10680- 012-9279-9.

380 Claude Martin & Irene Thery, *The PACS and marriage and cohabitation in France*, 14(3) IJLPF 26 (2001).

381 Suzanne Daley, *France Gives Legal Status to Unmarried Couples*, Oct. 14, 1999, the New York Times, (June 12, 2019, 11:20 AM), https://www.nytimes.com/1999/10/14/world/france-gives-legal-status-to-unmarried-couples.html#:~:text=The%20French%20Parliament%20passed%20a,unmarried%20couples%2C%20including%20homosexual%20unions.&text=The%20law%20allows%20couples%2C%20of,inheritance%2C%20housing%20and%20social%20welfare.

The same-sex cohabitants brought suit under the law of *concubinage* to be allowed to stay on in the lodging under these circumstances, but the Court of Cassation held in 1989 and again in 1997 that same-sex cohabitants were not included within the protections of the law of *concubinage*. The result was a campaign that culminated in passage of the *Pacte Civil de Solidarite*, or *Civil Solidarity Pact*, popularly known as the *PACS*. At the same time, the new law included *concubinage* as a separate legal status, defined as a de facto union characterized by a common life of stability and continuity, between two persons, of different sex or the same sex who live as a couple. Thus, the pre existing law governing cohabitants was both recognized as continuing to exist alongside the new status and extended to apply to same-sex couples as well. In response to issues arising when cohabitants relationships dissolved, French courts developed a jurisprudence somewhat similar to that under the constructive trust doctrine in common law countries, with causes of action based on *societe de fall*, or de facto partnership, and *enrichissement sans cause*, or unjust enrichment. Under the law pertaining to de facto partnership, a cohabitant was entitled to be reimbursed for whatever he or she had contributed to the partnership: if they had both actively involved in acquiring the property, the law then considered it to be held by the two as partners. The cause of action for unjust enrichment, on the other hand, required that one party confer a benefit upon the other that it was unjust to allow the second party to retain. Litigation brought on this basis was unlikely to yield a satisfactory result for a typical cohabitant.[382]

The well established concept of non-marital cohabitation in France occurs where two adult of heterosexual or homosexual persons can come into an agreement to living together and maintain their intimate relationship and containing the rights of a married couple in certain areas and also engage in social welfare. Such contract can be revoked by both mutually or either of the parties by giving three months earlier notice to the other party. These agreements or pacts are commonly known as "*pacte civil de solidarite*". The French National Assembly in 1999 passed the legal significance of the pact and allowed the non-marital cohabited couples to enter into agreements for a social union. The law introduced in 1999 in France makes provisions for "civil solidarity pacts".[383] It is allowing people of French to a non

[382] Jenny Gesley, *Concubinage and the Law in France*, September 20, 2018, Library of Congress, https://blogs.loc.gov/law/2018/09/concubinage-and-the-law-in-france/.

[383] Civil Solidarity Pact 1999, (PACS).

marital cohabitation or a union and can enjoy the same rights as married couples in certain areas i.e., income tax, inheritance, housing and social welfare. With proper documents, the couples can enter into such a non marital union by signing the contract before a court clerk. The contract can be revoking unilaterally or by bilaterally with a simple assertion, made in writing, which gives another partner three months' prior notice.[384] The contract can also be failed if any partner marries or if any partner dies. So in general, a pact *civil de solidarité* or a civil pact of solidarity or commonly known as a *PACS* is a written statement or written declaration of civil union between two physically adult individuals of heterosexual as well as homosexual to organise their common life. It brings rights and responsibilities similar to marriage in certain areas only. So *PACS* is a legal convention signed between the two individuals, which is stamped and registered by the clerk of the court. Since 2006, individuals who have registered a PACS are no longer considered single in terms of their marital status.

Since 1970's the marriage institution started declining in France, and the French couples got the opportunity to legitimize their union by marriage or by using this new civil contract. However French adult people have been diverted towards non marital cohabitation. Interestingly marriage is also a ground of dissolution to non marital union under *PACS.*[385] It automatically breaks the *PACS* in which one or both partners are involved. Because of easy way of dissolution with less "official" involvement, the *PACS* are preferred most and it creates a great success among heterosexual couples. In France, during 2010, nearly 200,000 *PACS* between partners of different sexes were signed, and the number of marriages was 250,000. So in total, the number of legitimization of non marital union has never been so high in France.[386]

5.6 UNITED KINGDOM

In United Kingdom, the law relating to maintenance of children are equal whether they were married, cohabited or divorced and also both parents are financially responsible for the children. Will is the only documents for non-marital cohabiters to

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384 Claude Martin & Irene Thery, *Supra note* 380.

385 Estelle Bailly & Wilfried Rault, *Are Heterosexual Couples in Civil Partnerships Different from Married Couples?* 497 Population & Societies, Feb. 2013, (May 24, 2017, 04:15 PM), https://www.ined.fr/fichier/s_rubrique/19165/population_societies_2013.497_pacs_marriage.en.pdf.

386 *Id*.

claim inheritance right to each other. However, live-in couples are not legally bound to maintain or support each other economically even though they are sharing a house or forming a family together for a long period of time.

Unlike the United States, England has been addressing the issue of cohabitant's rights for some time. A limited number of rights were extended to heterosexual couples early in the twentieth century, even before the rates of cohabitation began to soar. Between 1976 and 1998, the proportion of unmarried women under fifty who were cohabiting grew from 9 percent to 29 percent. More than tripling in about two decades by 2002, i.e., 70 percent of all first unions in England were in cohabitations, and 25 percent of all unmarried people between the ages of sixteen and fifty nine were cohabiting. Several studies of cohabitants in England have shown that the partners report a higher level of commitment to one another, comparable to that of married couples. Many more Survey reports say that a majority of respondents would favour legal reforms that would treat cohabitants as though they were married, and most cohabitants in fact believe they are already entitled to be treated as though married after some period of time, despite the fact that England has not recognized common law marriage since 1753. Common-law marriages were valid in England until Lord Hardwicke's Act of 1753; however the Act did not apply to Scotland.[387] Scotland has its own separate legal system on the cohabitants' issue. Scotland recognized common law marriage until it was abolished in the Family Law Act of 2006.[388]

Over the past decade or so, the legal rights of cohabiting couples have become a major issue in England, with British academics and the government engaging in numerous studies of cohabitation. Both the Law Society (The National Bar Association) and the Law Commission (An independent body set up by Parliament to review the law and recommended reforms) undertook studies and issued reports. However, when the Civil Partnership Act was passed in 2004, it extended all the rights of married couples to same sex couples who registered as partners but left the

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387 Lotha Gloria, *Common-law marriage*, Sept. 16 2007, Britannica, (May 12, 2019, 11:20 AM), https://www.britannica.com/topic/common-law-marriage.

388 Barlow & Probert, *Addressing the Legal Status of Cohabitation in Britain and France: Plus ça change…?*, 3 WebJCLI (1999) (June 20, 2019, 12:30 PM), https://core.ac.uk/download/pdf/12826105.pdf.

situation of heterosexual couples to future reform. It describes the historical process in which these changes and this debate have taken place.[389]

England first extended legal rights to cohabitants near the beginning of the twentieth century. As early as 1906, the Workman's Compensation Act recognized unmarried couples as a unit for compensation, setting a precedent for paying benefits to unmarried dependents of an employed person. After World War I, the government paid separation allowances to cohabitants who were being supported by a soldier, and unmarried female partners received pensions. A cohabitant's income was also taken into account when welfare benefits were calculated, based on a presumption of support by the cohabitant even in the absence of a legal obligation to provide it. In typical piece meal fashion, cohabitants were excluded from the Fatal Accidents Act of 1976 (the equivalent of state wrongful death legislation allowing suits for damages against a third party in the United States), but the Act was amended in 1982 to extend this remedy to cohabitants. When special remedies were designed for domestic violence, however, they were immediately extended to cohabitants, including the remedy of excluding the legal owner of a home from his or her own property to protect a cohabiting partner. A cohabitant, unlike a spouse, does not have a right to inherit upon his or her partner's death, but the inheritance under Provision for Family and Dependants Act of 1975 gave cohabitants who had lived with their deceased partner at least two years prior to his or her death the right to apply for financial provision if they were not adequately provided for under a will. Their claims, however, were limited to ones for reasonable maintenance.

With the exception of these benefits extended by statute, the heterosexual cohabitants in England lack most of the rights of married couples. A cohabiting father does not acquire parental responsibility for his child automatically at birth. He can acquire it by signing a parental responsibility agreement with the mother's consent, but only about 5 percent of fathers do so, upon dissolution of their relationships, cohabitants have no right to the property distribution and maintenance available to married couples on divorce. The courts have no jurisdiction to order this kind of relief on the

[389] Estelle Bailly & Wilfried Rault *Supra* 385.

breakdown of a cohabiting relationship; they have no discretion to adjust the property of cohabitants at all.[390]

The cohabitant's rights to the family home have attracted the most attention from British lawmakers, if that home is rented, cohabitants have been given rights by statute to retain the lease or to transfer a residential tenancy upon dissolution of the relationship or death of their partner, rights that can be very important for staying in subsidized council housing or continuing under rent control, in almost 60 percent of all cohabitations in England, the couple's home is owned rather than rented, with 44 percent of these homes titled in the name of only one partner, fewer than 10 percent of cohabitants draft any kind of contract governing their ownership interests in the property. In the absence of a contract of joint ownership, under British law, like American, cohabitants who separate must resort to costly litigation to have a beneficial interest, or trust, declared by the court. In England, this has typically required the non owner cohabitant to prove the existence of a valid cohabitation contract.

The formalities to enter into a live-in relationship or in cohabitation are to sign on the cohabitation agreement bilaterally. The agreement confers the rights and obligations of the partners to each other.

However LGBT communities are not given marriage rights, but can enter into a civil partnership under the Civil Partnership Act 2004. Every child born out of a valid marriage is maintained by both the parents jointly as a Parental Responsibilities. Same is not with live-in relationship. An unmarried couple must agree to be shared responsible towards their children upon a Parental Responsibilities Agreement. But for adoption of a child jointly both married as well as cohabiting couple must have to apply.

But children born out of married or unmarried couples can claim inheritance right even if there is no will. Same case is with married couple to have inheritance to each other. But in case of unmarried couple if a will was not made during the life time of a

[390] Bohmfalk & Charles, *Property Rights of Non - Marital Partners in Meretricious Cohabitation*, 13 NELR 453 (1978).

partner, then after his or her death, other partner will not get to inherit the intestate property except the share of the property that couple owned together.[391]

In considering the inheritance rights, even if there is no will, the offspring of unmarried or married parents have legal rights to inherit from both the parents and also families of both the parents.[392] If one married spouse dies without making a will, the other spouse will inherit all or some of the property whereas in case of non-marital cohabitating couples if one partner dies without leaving a will, automatically the surviving partner will not inherit anything unless and until the couple owned property together. If one partner inherits wealth or property from an unmarried partner, they will not be exempted from paying inheritance tax. So the concept of non-marital cohabitation has been acknowledged and arranged in the UK. In Britain today, nearly half of babies are born to people who are not married and in the United Kingdom total of 47.3 percent are born from unmarried couples in 2011.[393]

In ***Lynam vs. The Director-General of Social Security***[394], the Court considered whether a man and a woman living together 'as husband and wife on a bona fide domestic basis' and Fitzgerald, J. said:

"Each element of a relationship draws its colour and its significance from the other elements, some of which may point in one direction and some in the other. What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. The endless scope for differences in human attitudes and activities means that there will be an almost infinite variety of combinations of circumstances which may fall for consideration. In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated persons of the opposite sex meets the statutory test.[395]

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391 G. Frost, *Living in Sin: Cohabiting as Husband and Wife in Nineteenth-Century England*, 12, Manchester U.P. (2008).

392 The law Commission Report 157, *Illegitimacy (Family Law of England)*, 2st Report, Her Majesty's Stationary Office, London. 1986.

393 Tiziana Nazio & Chiara Saraceno, *Working Paper On The impact of cohabitation without marriage on intergenerational contacts. A test of the diffusion theory*, (2010).

394 Lynam vs. The Director-General of Social Security, (1983) 52 ALR 128.

395 Rebecca Probert, *Living in Sin*, 40-43, BBC History Magazine 2012, (March 23, 2019, 11:00 PM), http://wrap.warwick.ac.uk/73193/.

The concept of live-in relationship is gradually acknowledged in UK. In England half of the babies are born from unmarried couples. According to the 2011 census it is around 47.3 percent in England,[396] 51.3 percent in Scotland.[397] But according to 2012 survey, the highest percentage of births to unmarried mother were in North East of England at 59 percent, and in Wales at 58 percent; and the lowest in London 36 percent[398] and in Northern Ireland 42 percent.[399] A 2006 study found that the cohabiting couples, with and without children, are the fastest-growing family types in the UK. Cohabiting couples who live with their children are more common in the North of England than in the South.[400]

In the UK, in recent years, the falling marriage rates and increased births outside of marriage have become a political issue, with questions of whether the government should promote marriage (i.e. though tax benefits or public campaigns) or whether it should focus on the status of a parent, rather than that of a spouse; with the former view being endorsed by the Conservative Party, and the latter by the Labour Party and the Liberal Democrats.[401] The laws are also differences between England and Wales and Scotland, with the latter being more accepting of cohabitation.[402] While in England, there is no legal status given to a live-in couple unlike the married one. Such couples do not have the same rights as that of a married couple. According to the note given by Home Affairs Section to the House of Commons in 2010, the right of ownership for the unmarried couples is not granted on the parting away of such couples. Also, the court has no discretion to divide the property as done at the time of separation. Such couples are treated as independent individuals for the purpose of taxes. The Spouse has no inheritance right over the other's property unless supported by a will. This concept of live-in relationship is mainly covered by

396 Family Matters - Couples – Cohabitation, (Aug. 31, 2016, 12:23 PM), https://www2.gov.scot/Topics/Justice/law/17867/fm-couples-root/fm-couples-cohabitation.

397 Marriage and cohabitation: key issues for the 2010 Parliament, *UK Parliament*, (Aug. 12, 2018, 05:50PM), https://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/social-reform/marriage-and-cohabitation/.

398 In *Gow v Grant* [2012] UKSC 29.

399 Beinarovica Olga, *The Historical Development of Regulation of Non-Marital Cohabitation of Heterosexual Couples and its Effect on the Creation of Modern Family Law in Europe*, (Jan. 19, 2018, 04:25 PM), http://www12007.vu.lt/dokumentai/Admin/Doktorant%C5%B3_konferencija/Beinarovica.pdf.

400 *Id*.

401 Brian Dempsey, *Marriage by Cohabitation with Habit and Repute is Finally to be Consigned to the History Books*, JLSS, Dec. 12, 2005.

402 *Id*.

Civil Partnership Act 2004[403]. However, the rights of a child born out of such a relation are protected by law.[404]

5.7 CHINA

The Chinese traditional marriage institution has very great moral and social values. Marriage is considered as a universal institution. China also recognised early marriages as a good sign for a long healthy conjugal life. The traditional society in China doesn't recognise and strictly forbidden the premarital cohabitation as well as premarital sex. After 1978, the reform era, China became a reformed liberal country to welcome premarital-cohabitation in their family institution.

Since 1978, China has experienced the major social and institutional changes, in the areas of expansion of higher education, shift to market economy etc. Many aspects of life have been affected by these changes, including attitudes, behaviours, and life styles. The economic development and change of liberal ideas are the two major theoretical perspectives on the emergence and diffusion of cohabitation.

There was a survey of 'Happily married Chinese families', which was released on 19th November 2015 by the China Association of Marriage and Family and Zhenai.com,[405] a matchmaking website. The survey concluded that "Young married couples in China are more likely to have moved in together before marriage than their predecessors, a recent survey showed." Total 10,157 effective responses from couples were recorded, who claimed they are happily married in 2015 in 10 cities, including Beijing, Guangzhou and Chongqing. The survey report showed that 13.7 percent of respondents who were born in the 1960s were in live-in relationship before marriage. The number has increased to 44.4 percent among the ones born in 1970s and continues to surge to 59.6 percent among the younger generation born in the 1980s. Among the post-1985 generation, 57.8 percent of respondents cohabited with their live-in partners before marriage. In this regard Tong Xin, professor of sociology at Peking University stated that, "Premarital cohabitation has become more commonly accepted among the younger generation, which is a trend with the

403 The Civil Partnership Act 2004, (Aim and Object).

404 *Living together and civil partnership,* Citizen's Advice Bureau, (April 12, 2017, 09:15 PM), https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/.

405 Luo Wangshu, *More Chinese couples cohabit before marrying: survey*, China Daily, Nov. 19, 2015, (July 15, 2019, 07:20 PM), https://www.chinadaily.com.cn/china/2015-11/19/content_22485696.htm.

society's development," said "Regarding women's rights, premarital cohabitation is a double-edged sword. On one hand, it is a necessary way to understand the live-in partner before marriage. On the other hand, in a male-dominated society, it may hurt women if the relationship breaks down. However if women and men are treated equally, premarital cohabitation wouldn't even be a problem."[406]

In addition, as women's education improves, women become more economically independent of men, and their economic gain from marriage declines. Cohabitation can then become an alternative form of intimate relationship. As shown by a number of studies, high living expenses, especially in large, more developed cities, make economic resources an ever more important determinant of marriage. Cohabitation affords young adults a transitional state in which they may accumulate economic resources for marriage. While in China non-marital couples sign an agreement for cohabitation and the offspring born from such relationships benefit from the same succession and inheritance rights as similarly enjoyed by children born through marriages.[407]

In China, there is no any legal procedure required to conclude cohabitation. Children born out to wedlock have equal rights to those born to parents who are married. Contracts are made between couples in a live-in relationship. In China, First Marriage Law 1950 didn't include divorce rights to married as well as cohabiting couples. In legal point of view, it is not directly cohabitation allowed in china. But some indirect provisions relating to bigamy and divorce it is mentioned. So indirectly pre marital cohabitation is accepted in China.[408] Some provisions relating to cohabitation are discussed below.

According to Article 3, bigamy is prohibited. "Anyone who has a spouse shall be prohibited to cohabit with another person of the opposite sex."[409]

According to Article 12, "The property acquired by couples during the period of their cohabitation shall be disposed of by agreement between the parties; if they fail to reach an agreement, the People's Court shall make a judgment on the principle of

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406 *Supra note* 405.

407 New Marriage Law 1950 (PRC).

408 Jia Yu & Yu Xie, *Cohabitation in China: Trends and Determinants*, Dec. 15, 2015, (June 01, 2018, 11:10 AM), doi: 10.1111/j.1728-4457.2015.00087.x.

409 The First Marriage Law 1950, (PRC) Article 3.

giving consideration to the unerring party. With regard to the children born by the party concerned, the provisions of this Law on parents and children shall apply"[410]

According to Article 32, "In one of the following cases, divorce shall be granted if mediation fails: (1) where one party commits bigamy or cohabits with another person of the opposite sex"[411]

According to Article 46, "Where one of the following circumstances leads to divorce, the unerring party shall have the right to claim compensation: (1) bigamy is committed; (2) one party who has a spouse cohabits with another person of the opposite sex"[412]

5.8 SCOTLAND

The established Church of Scotland and Laws of Scotland especially marriage laws were the two phenomenons which made Scotland unique in other jurisdictions of United Kingdom. Scotland is the only country in Western Europe, which had the simplest form of marriage system. It is legally and acceptably valid marriage if both parties simply exchange their consent. But in same situation it will be tagged as informal or irregular unions in other part of the world. The validity of such kind of marriage in Scotland continued with primarily on mutual consents with some reservations. These reservations are that, there must be no legal bar and the proof of the consent can be established when it is so required. There is a long argument among historians that the concept of cohabitation and marriage after cohabitation is not a novel concept in the world. So by simply exchange of consent and then living together as a married couple legally; the marriage laws of Scotland significantly continuing from the medieval period through modern period.[413]

There were three forms of irregular marriages which were legally valid in Scotland. They were, marriage constituted which required 'some present interchange of consent to be thenceforth man and wife, privately or informally given (*per verba de praesenti)*, marriage which was constituted by a promise of future marriage without any present interchange of consent to be husband and wife, followed at a subsequent time by carnal intercourse (*per verba de futuro subsequente copula)* and marriage by

410 The First Marriage Law 1950, (PRC) Article 12.
411 The First Marriage Law 1950, (PRC) Article 32.
412 The First Marriage Law 1950, (PRC) Article 46.
413 Thomson J., Family Law Reform, 30 (W. Green 2006).

cohabitation with habit and repute. The latter form of marriage was often popularly defined as 'living together'.[414]

It is certainly a different form, marriage by cohabitation with habit and repute. In pre-tridentate canon law, if a couple lived together and presented themselves as married for an extended period of time, there was a presumption that they had exchanged consent.

There has been a significant growth in the number of cohabitating couples and families in the UK in recent years. The cohabiting couple family was the fastest growing family type in the UK over the 20-year period to 2017. The number of such families more than doubled -from 1.474 million cohabiting families in 1996 to 3.291 million in 2017, a growth of 123 percent. Cohabiting couple families now account for 17 percent of all families in the UK. These statistics are reflected in Scotland where, in 2011, 16 percent of families were cohabiting couples. Within the period from 2005 to 2015 alone, the number of cohabiting couple families grew by almost 30 percent.[415]

This demonstrates the significant growth in this family type since around the time of the introduction of the Family Law (Scotland) Act 2006. The Act contains a series of provisions concerning cohabitants, found principally in sections 25 - 29. The definition of cohabitant is set out in section 25-

"(1) In sections 26 to 29, "cohabitant" means either member of a couple consisting of—

(a) A man and a woman who are (or were) living together as if they were husband and wife; or (b) two persons of the same sex who are (or were) living together as if they were civil partners."

The Policy Memorandum to the Family Law (Scotland) Act states:

"The intention is to create legal safeguards for the protection of cohabitants in longstanding and enduring relationships..."

414 Cynthia Grant Bowman, *Supra note* 4 at 153.

415 Anne Barlow, *Regulation of Cohabitation, changing Family Policies and Social Attitude: A discussion of Britain Within Europe,* L & P 26 (2004).

This Act deal with the rights in certain household goods,[416] rights in certain money and property,[417] financial provision where cohabitation ends otherwise than by death[418] and provides for an application to a court by a survivor on intestacy.[419]

In 2006, the live-in relationship or non-marital cohabitation was granted legal inviolability in Scotland under Family Law Act 2006. Section 25 (2) of the Act put forward that the Court can regard an individual as a co-habitant of another individual by assessment on three factors, namely,

a. The duration of the time period throughout which they have lived together,

b. The nature of the bonding in the relationship during the continuation of the period and the nature and extent of any economic arrangements.

The status in Scotland is by and far the most clear and substantive by conferring legal aspect to the cohabitation in the year 2006.

The Section 25 (2) of the Act[420] considers the Court's discretion to regard an individual as a co-habitant of another. But Section 28 of the Act[421] gives a right in case of separation to the non-marital cohabitants to approach in to court for pecuniary support but not on death of either cohabitant. Furthermore if a partner dies intestate, the survivor cohabitant can move the court for economic support from his estate within 6 months.[422]

5.9 SWITZERLAND

Switzerland was one of the old and strong traditions follower countries in Europe. It had strong conservatism which can be summarized through its legal and social history. It was the last country in Europe, which established gender equality in marriage institution. Until 1988, the married women's rights were strictly restricted in Switzerland.[423] In 1985, certain legal reforms regarding gender equality had been approved by voters in referendum of 54.7% majority votes.[424] These legal reforms

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416 The Family Law Act 2006 (Scotland), Section 26.
417 The Family Law Act 2006 (Scotland), Section 27.
418 The Family Law Act 200 (Scotland), Section 28.
419 The Family Law Act 2006(Scotland), Section 29.
420 The Family Law Act 2006 (Scotland), Section 25 (2).
421 *Supra* at 418.
422 *Supra* at 419.
423 Sally Shreir, *Supra note* 325.
424 Markus G. Jud & Lucerne, *The Long Way to Women's Right to Vote in Switzerland: a Chronology*, (June 20, 2018, 11:20 PM), *history-switzerland.geschichte-schweiz.ch*.

are providing gender equality in marriage, abolishing the legal authority of the husband etc. Adultery was decriminalized in 1989. Until the late 20th century, most cantons were banning unmarried cohabitation of couples through regulations. However such prohibitions ended up in 1995.[425] Total 21.7 percent of children born out of unmarried women in Switzerland till 2014. Births outside marriage are most common in the French speaking part and least common in the eastern German speaking cantons. Highest percentage of cohabitation is observed in the cantons of Vaud, Neuchâtel, Geneva, Jura and lowest percentage of cohabitation is observed in the cantons of St. Gallen, Zug, Appenzell Innerrhoden, Appenzell Ausserrhoden.[426]

In ***Thompson v. Department of Social Welfare***[427], Tipping, J scheduled some positive features which are applicable to find out relationship in marriage like situation as follows:

(1) Frequency of cohabiting of the parties in the same house.

(2) Parties have a sexual intimacy.

(3) Parties give each other emotional hold up and companionship.

(4) Parties' socialization in jointly or attending activities together as a couple.

(5) Parties sharing the accountability for carry up and supporting any significant children of them.

(6) Parties sharing in-house responsibilities and other domestic everyday jobs.

(7) Parties partaking the costs and other pecuniary responsibilities by the pooling of wealth or else.

(8) Parties maintaining a regular household.

(9) Parties enjoy on vacation mutually.

(10) Parties carrying out themselves on the way to be treated by associates, relatives and others as if they were a married duo.[428]

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425 Head-König & Anne-Lise, *Supra note* 326.

426 Prof. Ingeborg Schwenzer &Tomie Keller, *NATIONAL REPORT: SWITZERLAND,* February 2015, (Oct. 27, 2016, 03:45 PM), http://ceflonline.net/wp-content/uploads/Switzerland-IR.pdf.

427 Thompson v. Department of Social Welfare, (1994) 2 SZLR 369 (HC).

428 *Id*.

Two partners living together without being married or in a registered partnership do not enjoy the same social and legal rights as a married couple unless by signing a cohabitation agreement. As cohabitation is not recognised in law, so persons living as unmarried couples are to a large extent treated as individuals and not as a married couple or as a couple in a registered partnership. When the parents are unmarried, they must make a joint declaration in order to establish joint parental authority. The parents must declare that they agree to share responsibility for the child; have agreed on residence for the child, on personal relations or each parent's share of childcare duties and on child maintenance contributions. The declaration can be made at the civil register office at the time of recognition of the child, or at a later date at the Child Protection Authority.[429]

When one partner dies, the another partner will not automatically inherit anything. There are limits on the provisions that the deceased partner must make a will because Swiss inheritance law reserves certain proportions of an individual's estate for close family members such as children and parents. Unmarried partners do not receive any widow/widower's pension from the old-age and survivor's insurance or accident insurance. Many pension schemes only offer a limited right to a survivor's pension to unmarried partners.[430]

5.10 AUSTRALIA

In Australia, it was only 16 percent cohabitation in 1975.[431] In 2005 it increased and total 22 percent of couples were cohabiting. There were 78 percent of couples who were married but had lived together before marriage in 2008.[432] As of 2013, 34 percent children were born out of unmarried women. Australia recognizes de facto relationships. The proportion of births outside marriage is different in different state. In 2009, 28 percent birth was outside marriage in Victoria, 29 percent in Australian Capital Territory, 30 percent in New South Wales, 63 percent in Northern Territory and 51 percent in Tasmania.[433]

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429 Prof. Ingeborg Schwenzer Tomie & Keller, *Supra note* 426.

430 *Id*.

431 Alan Hayes et al., *Families then and now: 1980-2010*, Australian Institute of Family Studies (Oct. 2010).

432 *Id*.

433 Births in Australia, Australian Institute of Family Studies, https://aifs.gov.au/facts-and-figures/births-in-australia.

A non-marital cohabitation is recognized as a "de facto relationship" in Australia. The Family Law (Australia) Act 1957 defining "de facto relationship" as it arises between two persons of heterosexual or homosexual to organize their conjugal relationship. Under Section 4AA of Family Law Act 1957 de facto relationship has been arisen between two persons if the couple are not legally married to each other. Section 4AA of Australian Family Law Act 1957 describe the meaning of de facto relationship between two persons if the following conditions are fulfilled-

- That the cohabiting individuals are not lawfully wedded to each other; and
- That the cohabiting persons are not correlated by family unit and;
- That with the all state of affairs of their relationship, they have a relationship as a couple and living together on an indisputable domestic basis.[434]

De Facto Relationships in Australia is a concept where cohabitation has grown rapidly as it has in other countries. Heterosexual cohabiting couples increased in Australia from 6 percent of all couples in 1986 to 12.4 percent in 2001. The rate of increase slowed a bit from 2001 to 2006, but the number of cohabitants increased by 25 percent over that period, and by 2006, de facto couples made up 15 percents of all couples. The median age of males in these de facto relationships was 35.3 percent and that of female was 33.3 percent. About 20 percent of those who inhabited between 1990 and 1994 were still together five years later. The high rates of cohabitation in Australia may be due to the fact that indigenous Australians, or Aborigines, have a long history of consensual partnerships; cohabiting is three times more common among Indigenous than among non-indigenous Australians (35.8 percent versus 11.7 percent).[435]

Australia responded relatively early to the legal problems of heterosexual cohabitants with reforms on a state-by-state basis. The Australian constitution confers jurisdiction over disputes arising out of married relationships upon the federal government but leaves relationships between unmarried couples to the states. However, jurisdiction over children both marital and non-marital lies with the

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434 The Family Law Act 1957 (Australia), Section 4AA.

435 Cynthia Grant Bowman, *Supra note* 4.

federal Family Court. So Australian cohabitants are required to knock both federal and state courts to resolve all the issues that arise at the end of their relationships.[436]

Legal reform concerning cohabitants has proceeded differently in Australia because the Australian constitution contains no bill of rights or other guarantees of equality. Thus, the constitutional litigation as a route to reform, as happened under the Canadian Charter of Rights and Freedoms, has not been available option in Australia. As a result, reforms have been carried out almost exclusively through legislation. By the same token, however, Australian legislatures have not been bound by a rigid interpretation of equality such as that developed under the equal protection clause in the United States, where courts have rejected the extension of rights to cohabitants on the grounds that they are not similarly located to married couples. In before the passage of new laws, the Australian courts, like those in other common law countries, attempted to deal with situations of injustice that arose between de facto partners under the law of trusts.[437]

In one famous 1987 case, ***Baumgartner v. Baumgartner***[438], the High Court of Australia established that property titled in the name of one cohabitant to which both had contributed to subject to a constructive trust in favour of the partner not holding title thus giving rise to what was known as a Baumpartner trust. However, in the Baumgartner case, both cohabitants had contributed financially to acquisition of the property at issue.

However, Australian law does not require proof of a common intent to create a trust: the trust is imposed as a matter of equity rather than one of presumed agreement. Australia has passed legislation dealing with the property relationships of de facto couples, with New South Wales (where Sydney is located) the first to do so. The New South Wales Law Commission undertook an investigation in 1981 that resulted in a 1983 report recommending new legislation for property division upon the termination of heterosexual de facto relationships. The result was passage of the New South Wales De Facto Relationships Act in 1984. The current version of that act defines a de facto relationship as two adults living together as a couple who are not married or related to one another and applies to maintenance as well as

436 *Supra Note* 435 at 195.
437 Catherine Caruana, *Relationship Diversity and the Law*, 63, Family Matters (2002).
438 Baumgartner v. Baumgartner, (1987) 164 CLR 137 (Aust.).

property. While cohabitation is required, a specific time period (two years) applies only to property distribution and inheritance. The cohabitants in Australia are required to establish the nature of their relationship by proof of a list of factors prescribed by the legislature. This generally requires a court determining whether parties qualify as a de facto couple to take into accounts such factors as the nature and scope of common habitation, the extent of the relationships, the existence of a sexual intimacy, the degree of economical dependency or interdependency and financial support between the cohabitants, their possessions and ownership, acquirement and make use of property, the extent of reciprocated assurance to a united life, the care and maintain of offspring, performance of conjugal responsibilities, the couples status, and other community facet of the relationship. So Australian law requires a mini-trial to establish the nature of a relationship before the partners can claim any remedies that may be available. Moreover, the factors required to be proved clearly reflect the model of heterosexual marriage. Although the De Facto Relationships Act in New South Wales began as a contribution based property distribution scheme, revisions to it have gradually expanded the rights given to de facto couples. Between 2001 and 2006, every other Australian state also passed legislation applying to de facto couples. These statutes vary both in their scope and in their definition of the group covered. While some are primarily property acts, others place qualifying cohabitants into a position similar to that of married couples upon breakdown of their relationships. The Tasmanian Relationships Act of 2003, for example, takes the following non - exclusive list of factors into account in allocating a cohabiting couples property when they separate:

- Financial and nonfinancial contributions to the acquisition, conservation, and improvement of the property
- The financial resources of both parties
- Contributions of each party, including services as a homemaker
- The nature and duration of the parties relationship[439]

Partners are not eligible for property adjustment or other remedies under this statute unless they have cohabited continuously for at least two years or have a child in common. If these requirements are satisfied, however, the partner's remedies inter se

[439] The Tasmanian Relationships Act 2003, Section 40 (1).

are comparable to those of married couples. Queensland and Western Australia are similar to Tasmania in taking future needs as well as past contributions to acquisition of property into account in allocating it at the end of a relationship. The breadth of these remedies contrasts with the more restrictive ones available in New South Wales, Victoria, and the Northern Territory where a court will only consider the parties' contributions in allocating the couples property at the point of dissolution, not their future needs or any other issues influencing their financial position. In addition, most other states provide only for property adjustment at the end of a cohabiting relationship and do not allow an award of maintenance.[440]

Maintenance is available under the Tasmanian Act at the end of a relationship if one cohabitant's earning capacity has been adversely affected by the relationship. The statute includes a long list of factors to be weighed by the judge, resembling those applied to married couples under the Family Law Act. In other states, maintenance may be unavailable or limited. In New South Wales, a party is eligible for maintenance only if unable to work because of needing to care for a child under twelve (or a handicapped child under sixteen) or has lost his or her earning capacity as a result of the relationship and is prepared to undergo training to recover it.[441] An unusual feature of the Australian system for cohabitants is the coexistence of both a status-based regime and a registration scheme for opposite sex domestic partners. In Tasmania, for example partners may evade both the durational requirement and the onerous in-court proof of qualification as a de facto couple by register in a deed of relationship. Unlike in Europe, however, the overwhelming preference in Australia is for conferring rights upon cohabitants based on status instead of registration.[442]

5.11 IRELAND

In Ireland, non-marital cohabitation is legally recognized. However, the society was strictly against enactment of a new law exclusively for cohabiters which gives legal rights to claim maintenance or to share their property with the financially dependent partners after separation. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 were enforced in 2010. This legislation is applicable to

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440 The New South Wales, De Facto Relationships Act 1984, Section 27 (1) (a) & (b).

441 Gigi Santow & Michael Bracher, *Change and Continuity in the Formation of First Marital Unions in Australia*, 48(3) Population Studies (1994), (Nov. 12, 2018, 12:28 PM), http://www.jstor.org/stable/pdf/2175096.pdf.

442 Caruana *Supra note* 437 at 60-61.

unmarried heterosexual as well as homosexual couples, if the couples have been cohabitating for at least 3 years or 2 years if they have children. Through this new-fangled legislation, Ireland endows with financial and legal safeguard to economically reliant and defenceless cohabitants in consequences of break up or death. Until a few decades ago, women who had children outside of marriage were severely stigmatized and often detained in Magdalene laundries. Cohabitation in Ireland has increased in recent years. In 2012 total 35.1 percent and in 2014 total 36.3 percent children born out of unmarried women.[443]

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 gives some rights and obligations to unmarried cohabitants, under which homosexual couples can enter into civil partnerships, and long term unmarried couples both heterosexual and homosexual who have not registered their intimate relationship. [444]

Under Section 172 of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 delineate cohabitation.

"(1) For the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.

(2) In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular shall have regard to the following:

(*a*) Their unions and length of the cohabitation;

(*b*) The foundation on which the couple live together;

(*c*) The degree of economic dependency of either adult on the other or any agreements in respect of their finances;

(*d*) The degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;

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443 Brendan Halpin & Cathal O'Donoghue, *Working Paper on Cohabitation in Ireland: Evidence from survey data*, 89-96, (May 2004), University of Limerick Department of Sociology.

444 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Ireland).

(*e*) Whether there are one or more dependent children;

(*f*) Whether one of the adults cares for and supports the children of the other; and

(*g*) The degree to which the adults present themselves to others as a couple.

(3) For the avoidance of doubt a relationship does not cease to be an intimate relationship for the purpose of this section merely because it is no longer sexual in nature.

(5) a qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period-

(*a*) Of 2 years or more, in the case where they are the parents of one or more dependent children, and

(*b*) Of 5 years or more, in any other case.

(6) Notwithstanding *subsection (5)*, an adult who would otherwise be a qualified cohabitant is not a qualified cohabitant if-

(*a*) One or both of the adults is or was, at any time during the relationship concerned, an adult who was married to someone else, and

(*b*) At the time the relationship concerned ends, each adult who is or was married has not lived apart from his or her spouse for a period or periods of at least 4 years during the previous 5 years."[445]

5.12 ITALY

In Italy, cohabitation is not as common as in other countries of Europe, because of its Roman Catholicism had a historically strong presence. However cohabitation without marriage has increased in recent years. There are significant regional differences in non marital cohabitation can be found, as non-marital unions are more common in the Northern Italy than in Southern Italy. A survey report was published in 2006, which said that "long term cohabitation was still novel to Italy, though more

[445] The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Ireland), Section 172.

common among young people."[446] In 2015, the children born outside of marriage were total of 28.7 percent which was total of 27.6 percent, in 2014. But this statics was varied in different parts of Italy as follows- Central Italy from 32.8 percent to 33.8 percent, Northeast Italy from 31.8 percent to 33.1 percent, Northwest Italy from 30.1 percent to 31.3 percent, Insular Italy from 22.4 percent to 24.2 percent, and South Italy from 19.4 percent to 20.3 percent. [447] Urban versus rural living also plays a role in cohabitation arrangements, a 2001 study described cohabitation in Italy as "still rare outside of large cities".[448] In general, couple relationships in Italy were characterized by very long engagements.

In 1975, certain fundamental improvements were done in Italian family law. These amended provisions were providing the same right to maintenance to children born out of a valid marriage (*filiazione legittima*) as well as to those born outside marriage (*filiazione naturale*). Previously, children born outside of a legal wedding had to suffer legal drawbacks. In principle, unmarried parents have the chance to accept parenthood officially. This acknowledgement ensures to the legal validity of rights and duties toward the child. So far, Italy has witnessed no real establishment of legal regulations that regard informal unions. Judgments are basically made on the basis of respective situations. As an independent field of law it has not developed yet. [449]

In any case, individuals living in informal unions have less protection compared to married couples when they are about to lose their partner, be it through separation or death. They are neither entitled to alimony, nor do they have access to the partner's old age pension. Moreover, women perceived these legal drawbacks of cohabitation in contrast to marriage. Women in some regions feared inadequate social protection in old age (e.g. in the case of illness or death of the partner) as well as inheritance regulations. Further, and more importantly, people perceived legal drawbacks of informal unions as soon as children are involved. Although not being aware of the actual regulations, rights, and obligations, women "assumed" that non-marital born children suffer less social protection. Worries about both insecure social protection in

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446 Schröder & Christin, *Cohabitation in Italy: do parents matter? (2006).Genus*. *62 (3/4):53 85. JSTOR 29789325*.

447 Statistics Report 2015, NATALITÀ E FECONDITÀ DELLA POPOLAZIONE RESIDENTE, Nov 28, 2016, (Nov. 11, 2018, 10:00 PM), https://www.istat.it/it/files/2016/11/Statistica-report-Nati.pdf

448 Christin Löffler, *Working Paper on Non-Marital Cohabitation in Italy*, University Rostock, (March 31, 2009).

449 *Id*.

old age and the perceived disadvantages for non-marital born children led women to consider entry into marriage. It is actually surprising that women had so little information about the de facto equalization of children born to married and unmarried couples despite the fact that the current regulations have been in place for more than 30 years. In general, marriage was seen as a means for ensuring a higher standard of social rights; some women married actually only in order to gain these rights.[450]

5.13 SWEDEN

Common law marriage has never been recognized in Sweden, although living together without being married has not been an uncommon social behaviour in some parts of the country, particularly in the rural districts of northern Sweden.[451]

Sweden has a long history of informal cohabitation. The practice was common among both rural and urban working class people even before the beginning of the twentieth century. The tradition appears to have been strongest in the sparsely populated north of the country. Cohabitation is still widespread. About 50 percent of all couples are unmarried in Sweden, the highest rate in all of Europe. In fact, until quite recently Swedish statistics did not even differ between married and unmarried couples. It is estimated that there were about 12 million cohabitants in Sweden in 2002, out of a population of some 8.8 million total. More than 50 percent of children are born to unmarried parents. And fully 90 percent of Swedish cohabitants consider their relationships to be comparable to marriage. In it is therefore not at all surprising that Sweden was one of the first nations to begin to adapt its system of laws to the legal problems of cohabitants. The policies were intended to increase both the rate of marriage and the birth rate. The aim was to encourage childrearing in modern egalitarian families by socializing many of its costs, while also making women economically independent of and equal to men. In pursuit of these goals, by the 1970s, the Swedish government established well-equipped and attractive child care facilities staffed by trained teachers, as well as after-school centres and vacation care for children up to the age of twelve, with the costs of the state or free. In

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450 Christin Schröder, *The influence of parents on cohabitation in Italy: Insights from two regional contexts*, 1693-1726, 19 DEMOGRAPHIC RESEARCH 48 23 SEPT. 2008 (Nov. 11, 2018, 12:10 PM), 10.4054/DemRes.2008.19.48.

451 Nozari, Fariborz, *The 1987 Swedish Family Law Reform*, 17 IJLI 3 (1989).

addition, Swedish parents are entitled to pay family leave for the first year of their child's life, and children's allowances are paid regardless of marital status.[452]

Sweden was witnessing two types of cohabitations, one was pigeonholed as ‘marriage of conscience’ and it was practiced by a grouping of intellectuals as in opposition to the fact that only cathedral wedding ceremony were authorized at that time and the next was known as ‘Stockholm marriages’.[453] The term ‘Stockholm marriage’ was denomination for underprivileged citizens who are coming to the urban areas and unable to bear marriage cost and so have a joint household under nuptials like state of affairs and under high inhabitant’s compactness. In Sweden, cohabitation without marriage was popular in cities during the post world war II. Among young population it is popular as a means of "getting to know each other". The society immediately became protective to the rights of the weaker party. Initially, the social and tax laws were amended to provide protection for a couple who lived together in marriage-like circumstances. However, in order to distinguish between a cohabitation in the nature of long lasting, stable relationship and a cohabitation of a merely temporary nature, it was decided that only when an unmarried man and an unmarried woman who cohabit and have children together and maintaining them jointly, should be legally recognised as permanent marriage like relationship similar to a valid legal marriage.[454]

The Minister of Justice stated that a new marriage code should be neutral as far as possible with respect to various forms of cohabitation and different ethical moral values. Moreover, the legislation should not create unnecessary difficulties and disadvantages for those who have children and prefer to conduct a family life without getting married. In order to evaluate the significance of the increasing frequency of cohabitation without marriage, a sociological survey was conducted. The report showed that many young people indicated a common pattern to live together for a longer or shorter period of time before marriage. Thus, cohabitation took precedence over marriage in the younger people. The report concluded that only a small group of

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452 Couples in Europe (Sweden), (Oct. 08, 2018, 11:10 PM), http://www.couples-europe.eu/en/sweden/topics/8-what-does-the-law-provide-for-the-property-of-registered-and-non-registered-partners/#:~:text=Cohabitation%20outside%20marriage%20In%20Swedish,and%20sharing%20the%20same%20household.

453 Informal relationships: SWEDEN, NATIONAL LEGISLATION: SWEDEN, (Oct. 15, 2018, 02:34 AM), http://ceflonline.net/wp-content/uploads/Sweden-IR-Legislation.pdf

454 *Id*.

couples, who had lived together for a long time, seemed to regard cohabitation as an alternative to marriage. In view of these findings, it was decided that there was no need for legislation which treated cohabitation as an alternative to marriage. The Committee said what was needed was to find a solution to practical problems and, in particular, to protect the weaker party at the time of dissolution of cohabitation.[455]

Concerning the home and the household effects that have been acquired for the common use of the cohabitants, it was suggested that the same rules as in the case of married couples could be applied. The Committee concluded that the joint home should be considered assets owned jointly by the cohabitants, and thus should be shared equally at the dissolution of cohabitation. According to the Committee, the cohabitants could provide for each other by means of a will or a beneficiary assignment when contracting for a life insurance policy. However, in order to guarantee a minimum financial security in case one of the cohabitants dies, the Committee proposed that in such a case the survivor should be entitled to a share of the joint home equal to two base amounts.[456]

In its final draft, the government decided not to include the provisions on the cohabitants' joint home in the Marriage Code. Consequently, the Committee's proposal was adopted, with certain amendments, as a separate law, "The Cohabitants Joint Home Act", which entered into force on January 1, 1988.[457] The Cohabitants Joint Home Act covers the joint residence of the couple, including its household effects. The cohabitants are defined as an unmarried woman and an unmarried man who live together in marriage-like circumstances. The provisions respecting the division of the joint home are similar to those of the division of marital home in the Marriage Code. Unlike the 1973 provisional law, having children together is no longer a principal condition for the legal recognition of cohabitation. The Act also prescribes rules restricting the right of disposition of the joint home. However, in order to give the utmost respect to the wish of the parties, the Law stipulates that the couple is free to make an agreement, signed by both parties, excluding the applicability of the Cohabitants Joint Home Act.[458]

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455 Ian Curry Sumner, *Uniform Trends in Non-Marital Registered Relationships in Europe*, (Feb. 21, 2019, 03:45 PM), http://www.iuscommune.eu/html/prize/pdf/2005_ Sumner.pdf.

456 *Id*.

457 The New Marriage Code, *Svensk Forfattnings Samling*, 232 (SFS 1987) (Sweden).

458 *Supra Note* 457.

5.14 NORWAY

Cohabitation is a common type of partnership in Norway. Cohabitants have some rights if they have joint children, or if they have lived together for five years. Cohabitants can also regulate their relationship through a cohabitation agreement.[459]

In Norway, in 2013, 55.2 percent of children were born outside of marriage. The unmarried cohabitation is certainly a living arrangement of this era. It is out of 'modernization' of family structure and behaviour, which has touched effectively in Sweden, and lately in Norway. In Norway births from non-marital cohabitation were common in various parts of the country in the 1850s. It is the general custom to begin conjugal relations before marriage in over 80 per cent of all cases. Out-of-wedlock birth rates are an often used indication of unmarried cohabitation. For many couples the formal sanction to their union from society, the marriage was not all that important and not much weight attaches as to whether the marriage happens before or after birth.[460]

The modern form of cohabitation was developed in Norway as compare to other Scandinavian countries. In recent time the differences between Scandinavian countries regarding cohabitation much smaller and cohabitation is more common than any parts of Europe. The Norwegian women aged from twenty to thirty nine are more in percentage than twice that in Britain. The changing family structure and behaviour were adopted since the late 1960's; however the major amendments in law and regulations were enacted in 1990's. According to it cohabiting couples are getting the same rights and obligation to social security, pension and taxation as their marriage counterpart if they have children born out of cohabitation together and bringing up jointly or they have been living for minimum two years.[461]

5.15 GERMANY

Germany has its long history of traditional welfare state with conservative nation on family institution. Marriage is promoted directly as it was enshrined in the

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459 Share of live births outside marriage, (Nov. 16, 2019, 11:20 PM), https://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=tps00018.

460 T. Noack, *Cohabitation in Norway: an accepted and gradually more regulated way of living*, 15(1) IJLPF 102–117 (April 2001), (May 23, 2019), 11:20 PM), https://doi.org/10.1093/lawfam/15.1.102.

461 New in Norway, Cohabitation, (Nov. 16, 2019, 9:20 PM), http://www.nyinorge.no/en/Familiegjenforening/New-in-Norway/Families-and-children-in-Norway-/Families-and-children-in-Norway/Cohabitation/.

constitution. In Germany the promotion for marriage has been with tax incentives when couples have children and mothers have left jobs as a dropout from labour forces. Marriage is the conjugal relationship which is promoted through laws relating to inheritance, property regulation and health insurance. Dual earner couples are not getting tax benefits to marriage, because tax benefits to marriage apply only to the couples where man earns significantly more than the wife. When a man and a woman are in higher tendency to marry will be less benefited from marriage, as they would be happy regardless of their marriage as compare to a man and woman is in lower tendency to marry would be more benefited with security and stability.[462]

The pattern of family structure, life etc are changed in Germany from last some decades. The social evolutions are seen from various points of family institution. There is a strong region wise difference between former West Germany and East Germany regarding non-marital long cohabitation and family formation. Declination of choosing marriage as an intimate relationship, cohabitation without marriage, divorce rates, lone parents, decrease of child bearing etc are the social issues coming up day by day. [463]

In 2012 survey, eastern Germany had recorded total 61.6 percent of births from unmarried women, while in western Germany only total 28.4 percent births were from unmarried women.[464] Due to differences in German society, a longitudinal survey found that stability in intimate relationship and couple stability are significantly higher for cohabiting mothers in eastern Germany than western Germany.[465]

5.16 RUSSIA

Russian modern young generation are choosing non-marital cohabitation as a first choice of intimate relationship before marriage. Non-marital cohabitation creates

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462 Ostner & Ilona, *Cohabitation in Germany - Rules, Reality and Public Discourses*, 15 IJLPF (2001).

463 D. Sapountzi-Krepia, *Greek mothers' perceptions of their cooperation with the obstetrician and the midwife in the delivery room*, (Oct. 12, 2017, 11:23 PM), http://www.internationaljournalofcaringsciences.org/docs/vol1_issue3_04_sapountzi.pdf.

464 Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Seventh periodic reports of States parties, Greece, (Oct. 12, 2017, 11:45 PM), http://www2.ohchr.org/English/bodies/cedaw/docs/54/CEDAW-C-GRC-7.pdf.

465 Schnor. C, *The Effect of Union Status at First Childbirth on Union Stability: Evidence from Eastern and Western Germany*, 30 (2) *EJP* 129–160 (2014), doi:10.1007/s10680-013-9304-7.

lower degree of responsibilities than marriage but also enable to get the same benefits of marriage e.g. housing, budget, and property sharing especially when cohabitation is uncertain. Religions, social and family tradition are getting less importance due to change of norms and values in the modern globalization, so people change their life according to their priorities. Thus the young, less educated, non-religious people are choosing long term cohabitation as their preferred intimate relationship as opposed to Western European countries where the highly-educated are significantly more likely to follow long term cohabitation trajectories.[466]

Non-marital cohabitation is known as 'Civil Union' in Russia though it has late popularity among young generation in the country. When a man and a woman live together and jointly share expenses for household without officially registering a marriage it's called as civil union. Russian takes Civil Union as a great opportunity for the young couple to test their compatibility, feelings towards each other to make it sure that they are ready for a family life together. A marriage becomes official when the couple receives a wedding certificate from the Civil Registry Office and gets married in a civil ceremony. In addition to the official civil ceremony, many newlyweds arrange an Orthodox wedding ceremony in the Church. However, it is the desire of many young couples to cohabit before marriage, after that they register a civil marriage which leads a large church wedding at a later stage.[467]

During 20th century, the modern and traditional views on cohabitation and non-marital child bearing in law and practice are dynamic and varied. In 1918, children born outside of a valid marriage got the equal legal status with children born out of a valid wedlock and marriage was secularised. In 1944, Family law was enacted with much more conservative way and made marriage more privileged. Before 1969, unmarried mothers were prohibited to have any legal relationship with their fathers but it was changed after 1969 amendments, and allowed the unmarried fathers and mothers to register their children together, providing them with the same rights as children of married parents.[468]

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466 The Russian Family and Marriage, (Feb. 13, 2018, 07:15 PM), http://masterrussian.com/russianculture/russian_family.htm.

467 Olga Isupova, *Trust, responsibility, and freedom: Focus-group research on contemporary patterns of union formation in Russia*, 32 Demographic Research 341–368 (2015), doi:10.4054/DemRes.2015.32.11, 2015.

468 *Supra Note* 467.

SUMMATION OF THE CHAPTER

The legal significance and bylaws regulating the non-marital relationship are not equivalent in the entire realm. It shows a discrepancy from country to country. Different nation states have different stand on non-marital cohabitation or live-in relationships. It is considered as the most liberal countries like France and Scotland for live-in relationship had enacted separate provision to regulate this non-marital relationships. An Islamic penal code which was proposed in 2005, in Indonesia that was supposed to have made cohabitation punishable by up to two years in prison, could not passed in the Parliament. According to *Sharia Law*, cohabitation is illegal in those countries where it has been exclusively practiced. On the other parts of the world, the almost all western developed countries like USA, Canada, UK, Russia, Denmark, Ireland, Italy, Norway, Netherlands, Sweden, Germany, and Australia etc. non-marital cohabitations are very commonly practiced, and it is accepted in their societies and it no more considered to be illegal. And it is true that most of the nation states are enacting laws for this new-fangled set up of social unification and given that lawful sanctity to regulate the system. The arrangement that come into sight with respect to non-marital cohabitation is not completely apparent and it is lacking a legal definition in most of the countries of the globe. The researcher has found in this chapter that there are some countries which have passed exclusive legislation to legalise the status of live-in couples similar to married couples, however some countries are amending the provision of their statutes and granting the legality to live-in couples as discussed.

CHAPTER 5

SOCIO-LEGAL OUTLOOK OF LIVE-IN RELATIONSHIP IN NEOTERIC INDIA

5.1 INTRODUCTION

It is the fact that cohabitation in the form of live-in relationship is not a fault or crime but there is no any exclusive law to regulate this kind of relationship in India. Courts are always cautious while deciding a conflicting case between marriage and live-in relationship because it may go against the public policy. Live-in relationship has been considered as a challenging phenomenon to our traditional Indian societal system. It always creates a chaos to understand the reasons behind to choose live-in relationship rather going for marriage. It may be a reason that they want to test their compatibility prior to enter into a life time commitment.

The 'Pulse of the Nation', it's a survey conducted in May 2018 by the Inshorts's poll to take the views on live-in relationship of total 1.4 lakh population of India across urban and rural areas with 80 percent being in the age group of 18-35 years.[469]

More than 80 percent population considered live-in relationships are still taboo in Indian traditional society. The live-in relationship as a way of life, more than 80 percent population were in supporting and out of them more than 47 percent citizen had opinion that marriage is a better option when to choose between marriage and lifelong live-in relationship. Another fact came over that more than 26 percent population expressed their desire to choose lifelong live-in relationship as an alternative to marriage. A fact finding result is that, 8 of out 10 women have supported the living together without formal wedding as a way of life and total 86 percent inhabitants is acknowledged that covetousness is not the only decisive factor to prefer non-marital living together and more than 45 percent citizen considered live-in relationship as a compatibility testing before marriage. The Co-founder and CEO of Inshorts said, "A Live-in relationship, even after being legally recognised by the Government, is a forbidden subject of discussion in Indian households. Our

[469] Bulbul Dhawan, *80% Indian women support live-in relationship: Inshorts poll*, 22 May 2018, (May 20, 2019, 03:27 PM), https://blog.inshorts.com/2018/05/inshorts-pulse-of-the-nation-poll-may-2018/?utm_source=inshorts&utm_medium=referral&utm_campaign=fullarticle.

current survey was focused on capturing the sentiments of our Indian youth on such delicate issues." He further added, "Over the years, Pulse of the Nation has been a sincere effort to bring to light the views of largely urban Indians, who are tech savvy, on prominent discussions of our country."[470]

So in this chapter the analysis of data of 122 samples size with different factors and further segregations are also done accordingly.

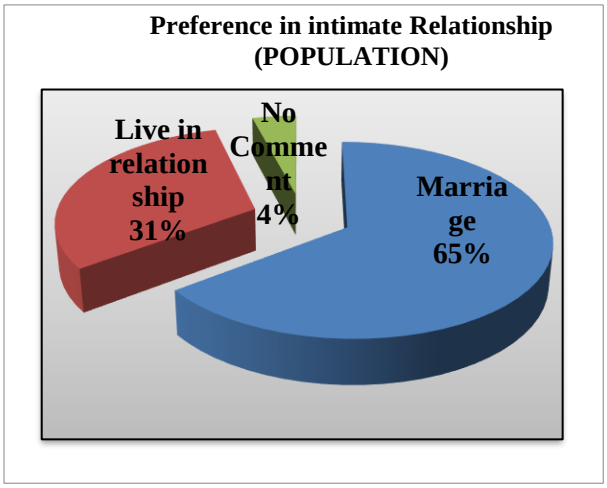
5.2. PREFERENCE IN INTIMATE RELATIONSHIPS

5.2.1Table no 1: Population basis preferences in intimate Relationships

Options Chosen	No of Respondent
Marriage	79
Live-in relationship	38
No Comment	5
Total	122

Source: Field Survey, November 2019

Figure No 1: Population basis preferences in intimate Relationships



- On the basis of total population as per the data collected from all possible sources, and further distributed in different factors, it is shown in table 1 and

[470] *Supra Note* 469

figure 1, total 65 percent of population is exclusively in favour of marriage as their personal preference of intimacy.

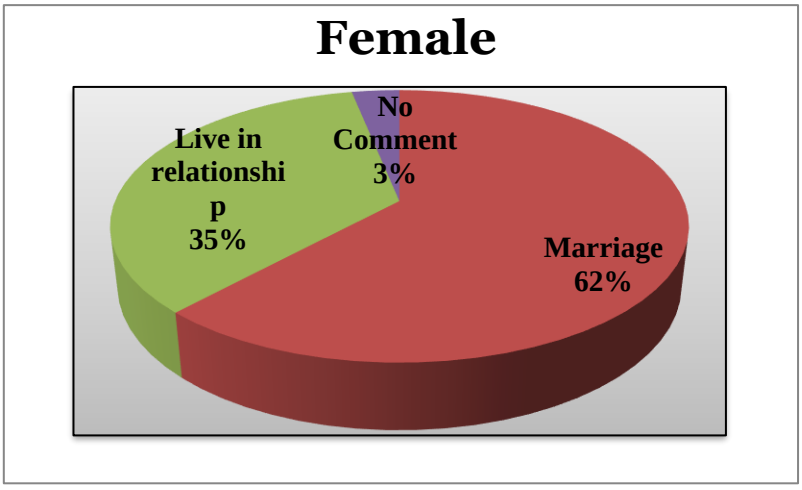
- However 31 percent of population preferring live-in relationship as their preference in intimate relationship.

5.2.2 Table No 2: Preference in intimate relationship on the basis of female respondents

Female	
Option Chosen	No of Respondent
Marriage	39
Live-in relationship	22
No Comment	2
Total	63

Source: Field Survey, November 2019

Figure 2: Preference of intimate relationship by female



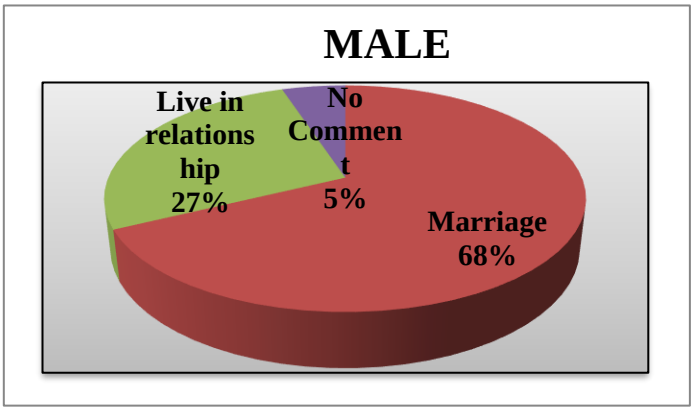
- As per the contents of the table no 2 and figure no 2, total 62 percent female is preferring exclusively marriage as their preferred intimate relationship.
- However there are 35 percent women who prefer live-in relationship as their preferred intimate relationship.

Table 3: Preference of intimate relationship by male respondent

Male	
Option Chosen	No of Respondent
Marriage	40
Live-in relationship	16
No Comment	3
Total	59

Source: Field Survey, November 2019

Figure 3: Preference of intimate relationship by male respondent



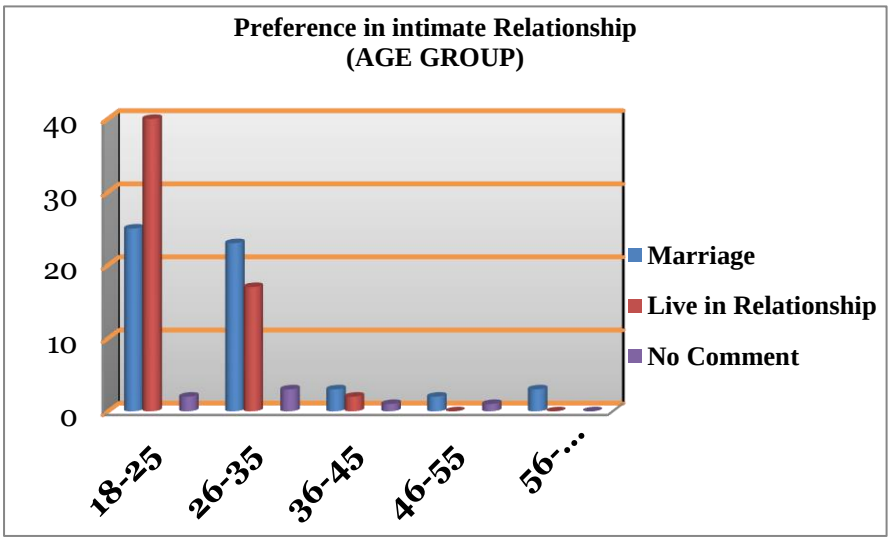
- As per the table no 3 and figure no 3 are displayed, 68 percent of total male respondents prefer marriage as their preference in intimate relationship.
- However 27 percent of total male respondents prefer live-in relationship as their preference in intimate relationship.

5.2.3 Table No 4: Preference in intimate relationship on the basis of age Group

Age Group	Marriage	Live-in relationship	No Comment
18-25	25	40	2
26-35	23	17	3
36-45	3	2	1
46-55	2	0	1
56- Above	3	0	0
Total	56	59	7

Source: Field Survey, November 2019

Figure 4: Preference in intimate Relationship according to age group



- As per the content showing in the table no 4 and figure no 4, the age group from 56-above is preferring marriage as their preferred intimate relationship.
- Same findings are reserved from the age group 46-55; marriage is preferred as their preferred intimate relationship.
- However from the age group 36-45, they preferred mostly marriage as their preferred intimate relationship, but some of this age group also chosen live-in relationship as their preferred intimate relationship.

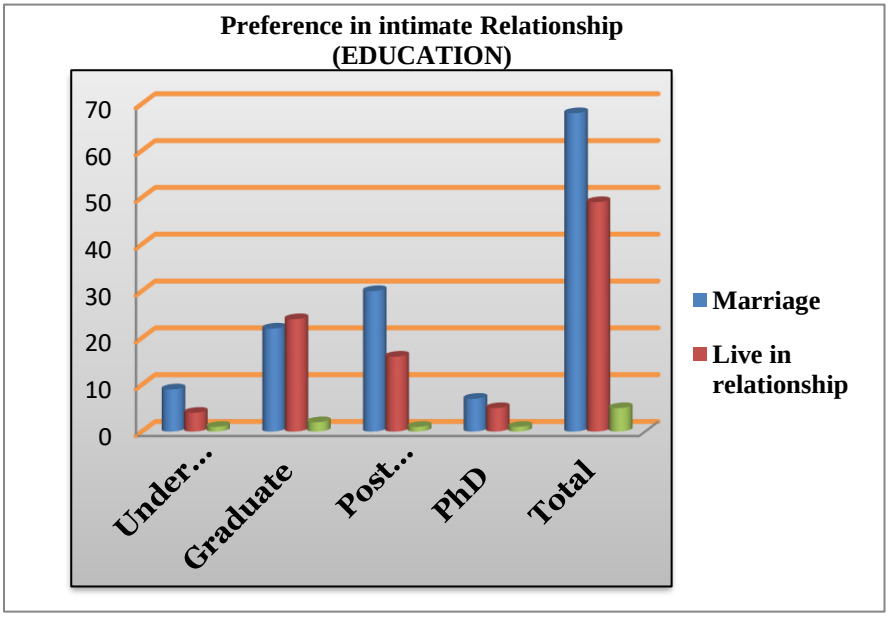
- The age group from 26-35 is mostly preferring marriage as their preferred intimate relationship as compare to live-in relationship.
- The age group from 26-35 is mostly preferring live-in relationship as their preferred intimate relationship as compare to marriage. So it is finding that the new upcoming generation is more interested to prefer live-in relationship as their preferred intimate relationship.

5.2.4.1 Table no 5: Preference in intimate relationship on the basis of education and qualification

Education	Marriage	Live-in relationship	No Comment
Under Graduate	9	4	1
Graduate	22	24	2
Post Graduate	30	16	1
PhD	7	5	1
Total	68	49	5

Source: Field Survey, November 2019

Figure 5: Preference in intimate Relationship on the basis of education and qualification



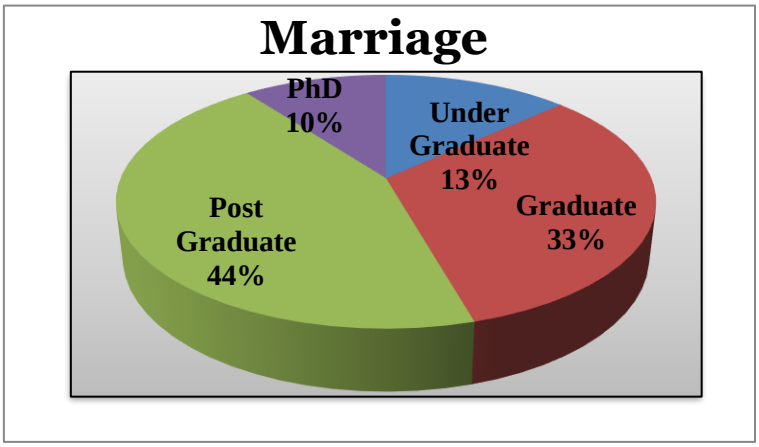
- As per the table 5, and figure 5, people with PhD degree, post graduates and under graduates mostly prefer marriage as their preferred intimate relationship as compare to live-in relationship.
- However the table also shows that the graduates prefer live-in relationship as their preferred intimate relation as contrast to marriage.

5.2.4.2 Table 6: Preference of marriage as an intimate relationship on the basis of education

Option Chosen	No of Respondent
Education	Marriage
Under Graduate	9
Graduate	22
Post Graduate	30
PhD	7
Total	68

Source: Field Survey, November 2019

Figure 6: Preference of marriage as an intimate relationship on the basis of education



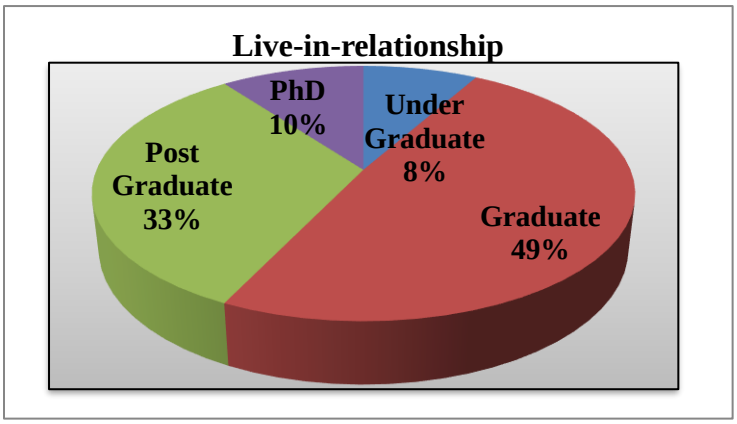
- As per the table 6 and figure no 6, on the basis of education total of 13 percent under graduates are preferring marriage.
- And total of 33 percent graduates are preferring marriage.
- Total of 44 percent post graduates are preferring marriage.
- Total of 10 percent PhD holders are preferring marriage.

5.2.4.3 Table no 7: Preference of live-in relationship as an intimate relationship on the basis of education

Option Chosen	No of Respondent
Education	Live-in relationship
Under Graduate	4
Graduate	24
Post Graduate	16
PhD	5
Total	49

Source: Field Survey, November 2019

Figure No 7: Preference of live-in relationship as an intimate relationship on the basis of education



- As per the table 7 and shown in figure 7, only 8 percent under graduates prefers live-in relationship as their preference in intimate relationship.
- Only 10 percent PhD holders prefers live-in relationship as their preference in intimate relationship.
- Total of 33 percent of post graduates prefers live-in relationship as their preference in intimate relationship.
- However, total of 49 percent of graduates prefers live-in relationship as their preference in intimate relationship.

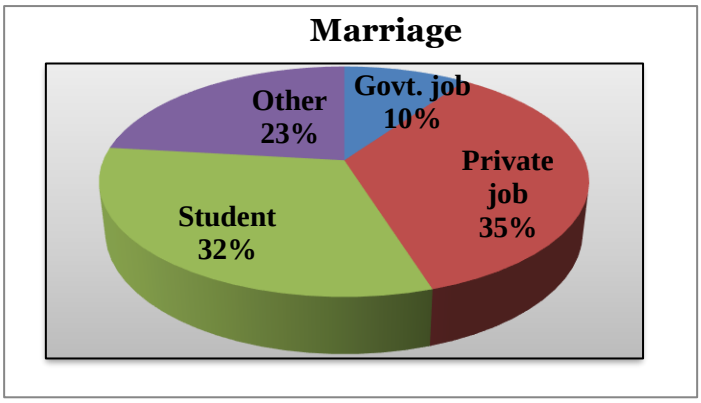
5.2.5 Table No 8: Preference in intimate Relationship on the basis of occupation (Preference of Marriage)

Option Chosen	No of Respondent
Occupation	Marriage
Govt. job	8
Private job	29
Student	26
Other	19

Source: Field Survey, November 2019

Figure No 8: Preference in intimate Relationship on the basis of occupation

(Preference of Marriage)



- As per the table no 8 and figure 9, total 35 percent respondent from private job, supporting marriage as their preferred intimate relationship.
- And total 32 percent respondent as students supporting marriage as their preferred intimate relationship.
- And total 23 percent respondent from other jobs supporting marriage as their preferred intimate relationship.
- Again 10 percent respondent from Govt. job supporting marriage as their preferred intimate relationship.

5.2.5.2 Table No 9: Preference in intimate Relationship on the basis of occupation

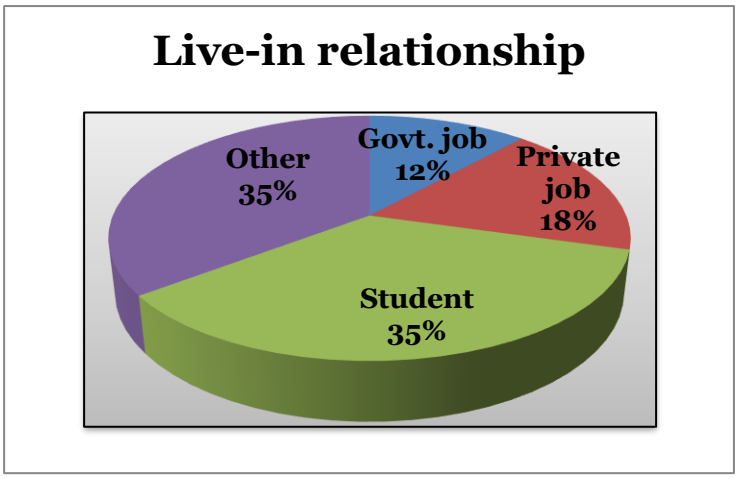
(Preference of live-in relationship)

Option Chosen	No of Respondent
Occupation	Live-in relationship
Govt. job	4
Private job	6
Student	12
Other	12

Source: Field Survey, November 2019

Figure no 9: Preference in intimate Relationship on the basis of occupation

(Preference of live-in relationship)



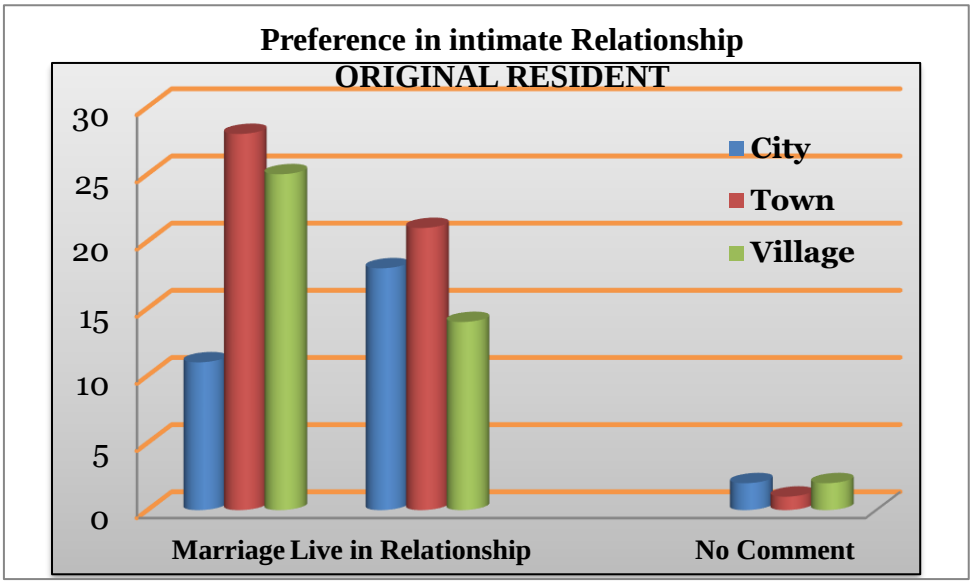
- As per the table no 9 and figure no 9, total of 12 percent of Govt. job holders are interested in live-in relationship as an intimate relationship.
- And total of 18 percent of Private job holders are interested in live-in relationship as an intimate relationship.
- And total of 35 percent of students are interested in live-in relationship as an intimate relationship.
- And total of 35 percent of other occupation holders are interested in live-in relationship as an intimate relationship.

5.2.6 Table No 10: Preference in intimate relationship on the basis of original resident

Present Resident	Marriage	Live-in relationship	No Comment	Total
City	11	18	2	31
Town	28	21	1	50
Village	25	14	2	41

Source: Field Survey, November 2019

Figure no 10: Preference in intimate relationship on the basis of present resident



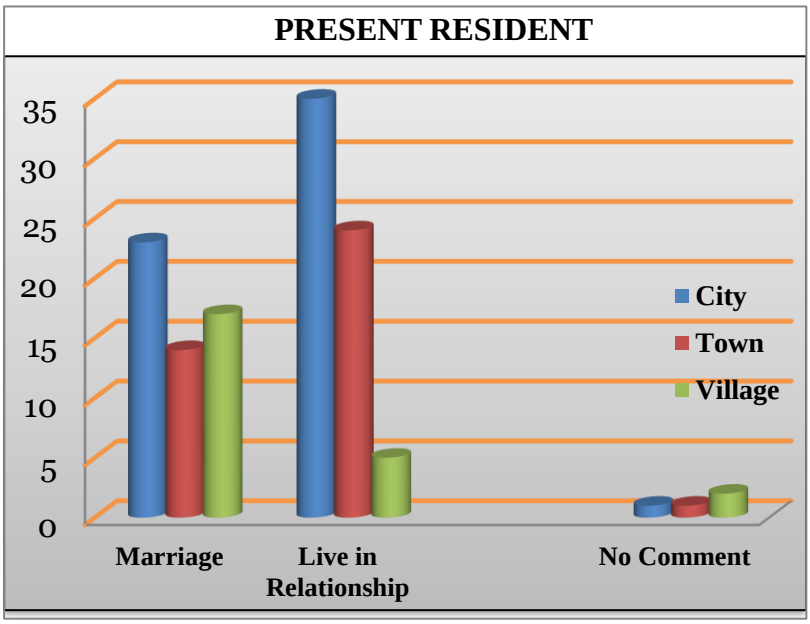
- As per the table 10 and figure no 10, respondents who are original resident of city they prefer live-in relationship as compare to marriage as a preferred intimate relationship.
- And the respondents who are original resident of town they also prefer live-in relationship as well as marriage as a preferred intimate relationship.
- And the respondents who are original resident of village, they prefer marriage as compare to live-in relationship as a preferred intimate relationship.

5.2.7 Table No 11: Preference in intimate relationship on the basis of present resident

Present Resident	Marriage	Live-in relationship	No Comment	Total
City	23	35	1	59
Town	14	24	1	39
Village	17	5	2	24

Source: Field Survey, November 2019

Figure no 11: Preference in intimate relationship on the basis of present resident



- As per the table 11 and figure no 11, respondents who are present resident of city they mostly prefer live-in relationship as compare to marriage as a preferred intimate relationship.
- And the respondents who are present resident of town they also prefer live-in relationship as compare to marriage as a preferred intimate relationship.
- And the respondents who are present resident of village, they mostly prefer marriage as compare to live-in relationship as a preferred intimate relationship.

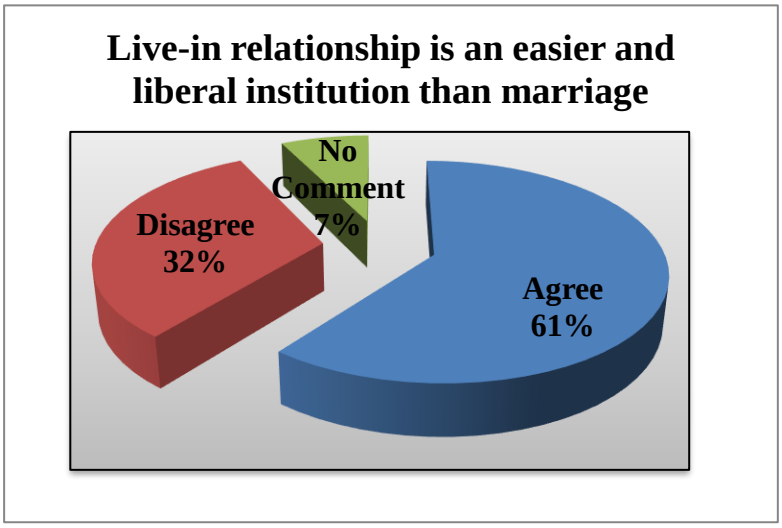
5.3 LIVE-IN RELATIONSHIP IS AN EASIER AND LIBERAL INSTITUTION THAN MARRIAGE

5.3 Table No 12: Live-in Relationship is an easier and liberal institution than marriage

Option Chosen	No of Respondent
Agree	74
Disagree	39
No Comment	9
Total	122

Source: Field Survey, November 2019

Figure 12: Live-in relationship is an easier and liberal institution than marriage



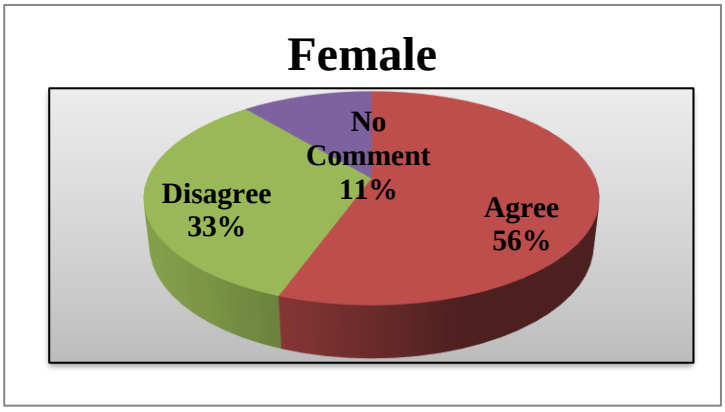
- As per the table no 12 and figure no 12, total 61 percent respondents are agreed that live-in relationship is an easier and liberal institution than marriage.
- And total 32 percent respondents are disagreed that live-in relationship is an easier and liberal institution than marriage.

5.3.2 Table No 13 Live-in relationship is a more easy and liberal institution than marriage on the basis of female respondent

Female	
Option Chosen	No of Respondent
Agree	35
Disagree	21
No Comment	7
Total	63

Source: Field Survey, November 2019

Figure no 13: Live-in relationship is easier and liberal institution than marriage on the basis of female respondent



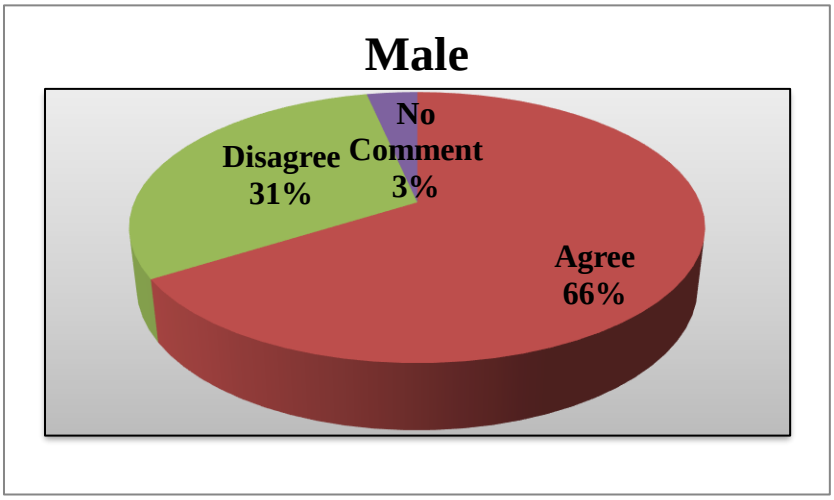
- According to table no 13 and figure no 13, total 56 percent female respondents are agreed with the argument that live-in relationship is a more easy and liberal institution than marriage.
- And 33 percent female respondents are agreed with the argument that live-in relationship is a more easy and liberal institution than marriage.

5.3.2 Table No 14: Live-in relationship is easier and liberal institution than marriage on the basis of female respondent

Male	
Option Chosen	No of respondent
Agree	39
Disagree	18
No Comment	2
Total	59

Source: Field Survey, November 2019

Figure no 14: Live-in relationship is easier and liberal institution than marriage on the basis of male respondent



- According to table no 14 and figure no 14, total 66 percent male respondents are agreed with the argument that live-in relationship is easier and liberal institution than marriage.
- And 31 percent male respondents are agreed with the argument that live-in relationship is a more easy and liberal institution than marriage.

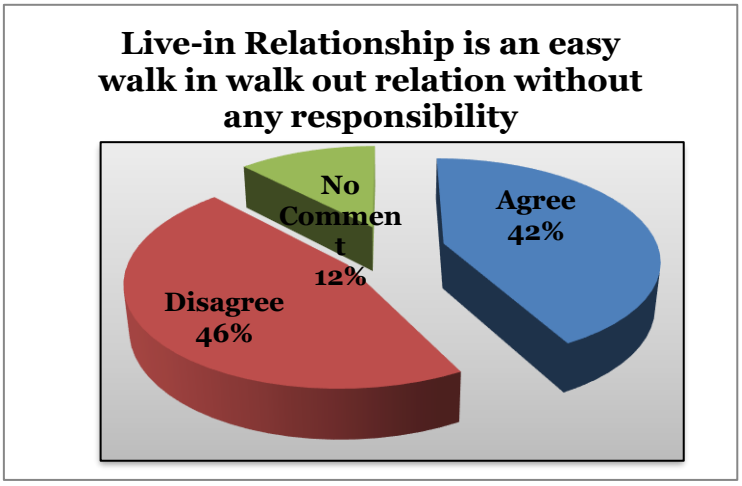
5.4 LIVE-IN RELATIONSHIP IS AN EASY WALK IN WALK OUT RELATION WITHOUT ANY RESPONSIBILITY

5.4 Table 15: Live-in relationship is an easy walk in walk out relation without any responsibility

Option Chosen	No of Respondent
Agree	62
Disagree	67
No Comment	18
Total	122

Source: Field Survey, November 2019

Figure no 15: Live-in Relationship is an easy walk in walk out relation without any responsibility



- As per the table no 13 and figure no 13, total 46 percent respondents are disagreed that live-in relationship is an easy walk in walk out relation without any responsibility.
- And total 42 percent respondents are agreed that live-in relationship is an easy walk in walk out relation without any responsibility.

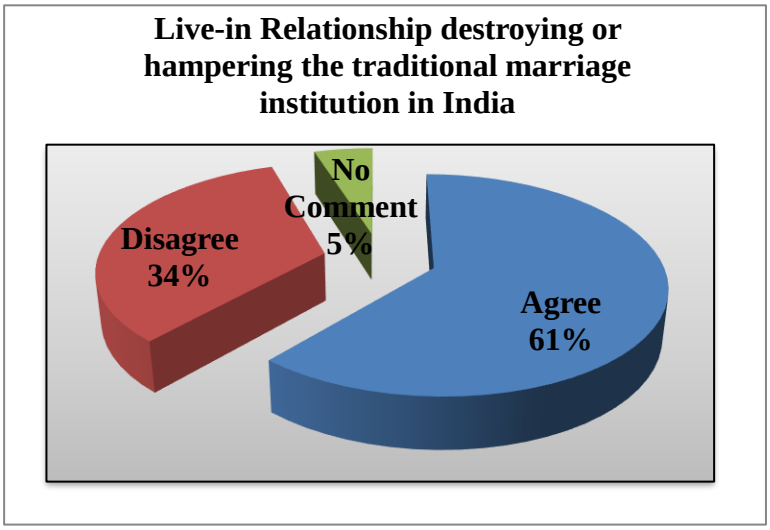
5.5 LIVE-IN RELATIONSHIP DESTROYING OR HAMPERING THE TRADITIONAL MARRIAGE INSTITUTION IN INDIA

5.5 table No 16: Live-in Relationship destroying or hampering the traditional marriage institution in India

Option Chosen	No of Respondent
Agree	75
Disagree	41
No Comment	6
Total	122

Source: Field Survey, November 2019

Figure 14: Live-in relationship destroying or hampering the traditional marriage institution in India



- As per the table no 15 and figure no 15, total 61 percent respondents are agreed that live-in relationship destroying or hampering the traditional marriage institution in India.
- And total 34 percent respondents are disagreed that live-in relationship destroying or hampering the traditional marriage institution in India.

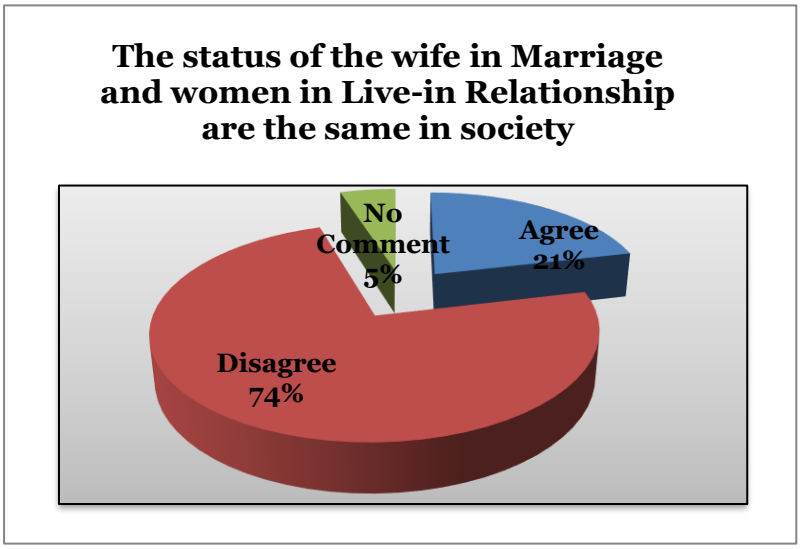
5.6 THE STATUS OF THE WIFE IN MARRIAGE AND WOMEN IN LIVE-IN RELATIONSHIP ARE THE SAME IN SOCIETY

5.6 Table 16: The status of the wife in Marriage and women in Live-in Relationship are the same in society

Option Chosen	No of Respondent
Agree	26
Disagree	96
No Comment	6
Total	122

Source: Field Survey, November 2019

Figure 16: The status of the wife in Marriage and women in Live-in relationship are the same in society



- As per the table no 16 and figure no 16, total 74 percent respondents are disagreed that the status of the wife in Marriage and women in Live-in Relationship are the same in society.
- And total 21 percent respondents are agreed that live-in relationship destroying or hampering the traditional marriage institution in India.

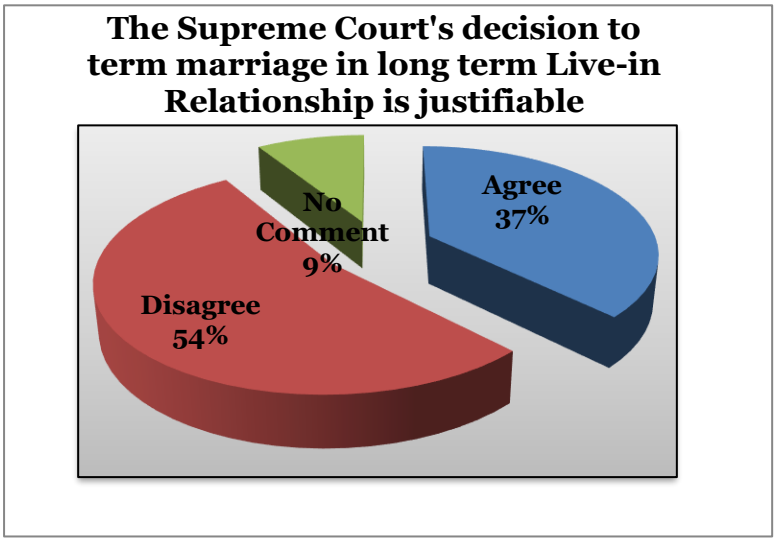
5.7 THE SUPREME COURT'S DECISION TO TERM MARRIAGE IN LONG TERM LIVE-IN RELATIONSHIP IS JUSTIFIABLE

5.7 Table 17: The Supreme Court's decision to term marriage in long term Live-in Relationship is justifiable

Option Chosen	No of Respondent
Agree	46
Disagree	66
No Comment	11
Total	122

Source: Field Survey, November 2019

Figure 16: The Supreme Court's decision to term marriage in long term Live-in Relationship is justifiable



- As per the table no 16 and figure no 16, total 37 percent respondents are agreed that the Supreme Court's decision to term marriage in long term live-in relationship is justifiable.
- And total 54 percent respondents are disagreed the Supreme Court's decision to term marriage in long term live-in relationship is justifiable.

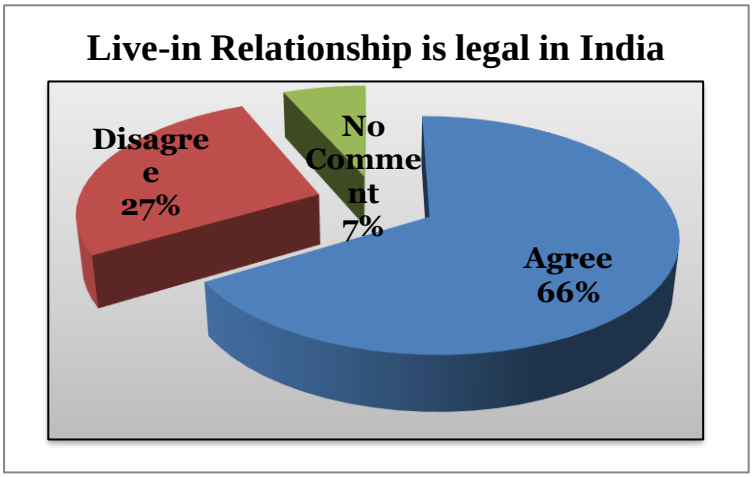
5.8 LIVE-IN RELATIONSHIP IS LEGAL IN INDIA

5.8 Table No 17: Live-in Relationship is legal in India

Option Chosen	No of Respondent
Agree	81
Disagree	33
No Comment	8
Total	122

Source: Field Survey, November 2019

Figure No 17: Live-in Relationship is legal in India



- As per the table no 17 and figure no 17, total 66 percent respondents are agreed that the live-in relationship is legal in India.
- And total 27 percent respondents are disagreed the live-in relationship is legal in India.

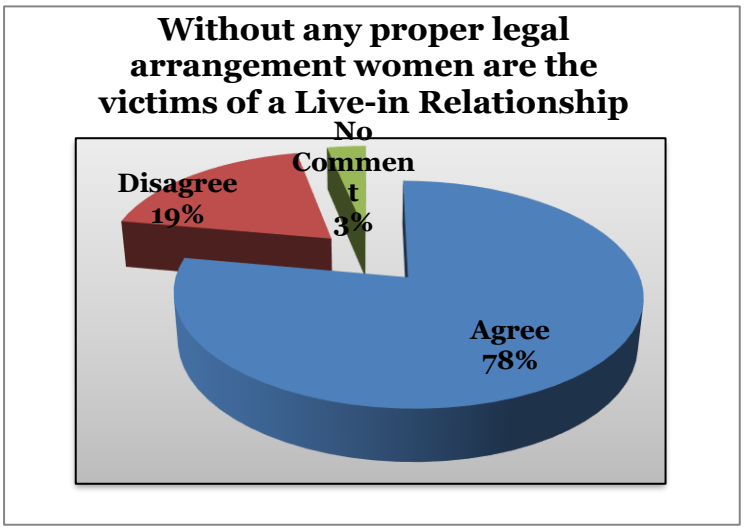
5.9 WITHOUT ANY PROPER LEGAL ARRANGEMENT WOMEN ARE THE VICTIMS OF A LIVE-IN RELATIONSHIP

5.9 Table No 18: Without any proper legal arrangement women are the victims of a live-in relationship

Option Chosen	No of Respondent
Agree	95
Disagree	23
No Comment	4
Total	122

Source: Field Survey, November 2019

Figure 18: Without any proper legal arrangement women are the victims of a Live-in Relationship



- As per the table no 18 and figure number 18, total 78 percent respondents have agreed that without any proper legal arrangement women are the victims of a live-in relationship.
- And total 19 percent respondents have disagreed that without any proper legal arrangement women are the victims of a live-in relationship.

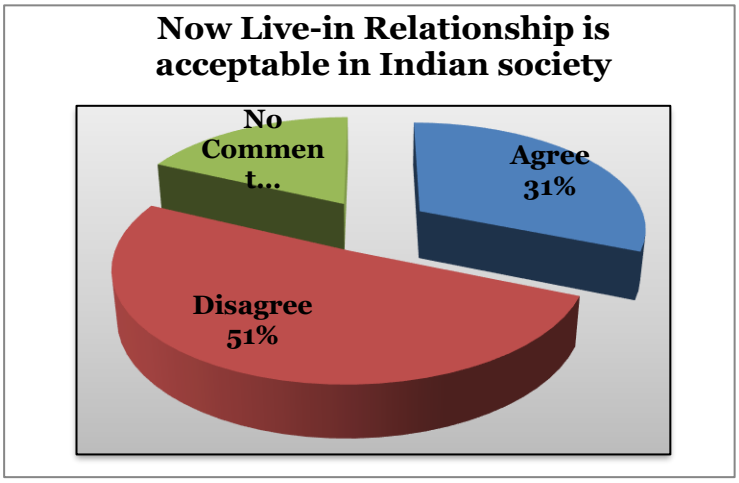
5.10 NOW LIVE-IN RELATIONSHIP IS ACCEPTABLE IN INDIAN SOCIETY

5.10 Table No 19: Now Live-in Relationship is acceptable in Indian society

Option Chosen	No of Respondent
Agree	38
Disagree	62
No Comment	22
Total	122

Source: Field Survey, November 2019

Figure No 19: Now Live-in Relationship is acceptable in Indian society



- As per the table no 19 and figure no 19, total 51 percent respondents are agreed now live-in relationship is acceptable in Indian society.
- And total 31 percent respondents are disagreed that now live-in relationship is acceptable in Indian society.

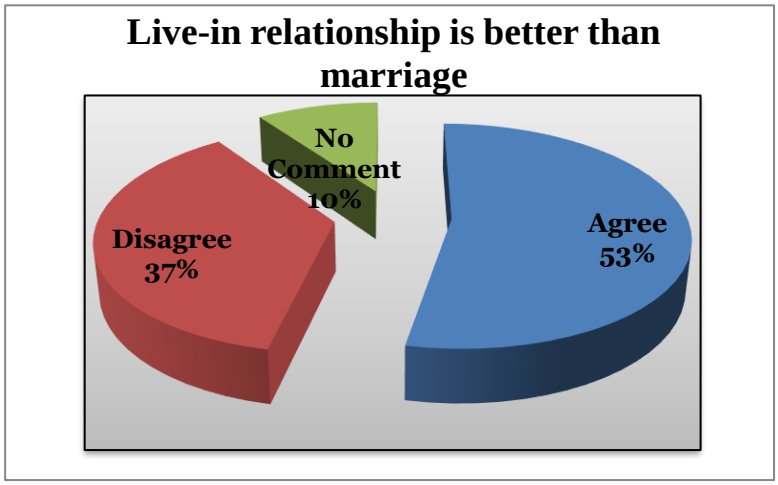
5.11 LIVE-IN RELATIONSHIP IS BETTER THAN MARRIAGE

5.11 Table 20: Live-in relationship is better than marriage

Option Chosen	No of Respondent
Agree	65
Disagree	45
No Comment	12
Total	122

Source: Field Survey, November 2019

Figure 20: Live-in Relationship is better than marriage



- As per the table no 20 and figure no 20, total 53 percent respondents are agreed live-in relationship is better than marriage.
- And total 37 percent respondents are disagreed live-in relationship is better than marriage.

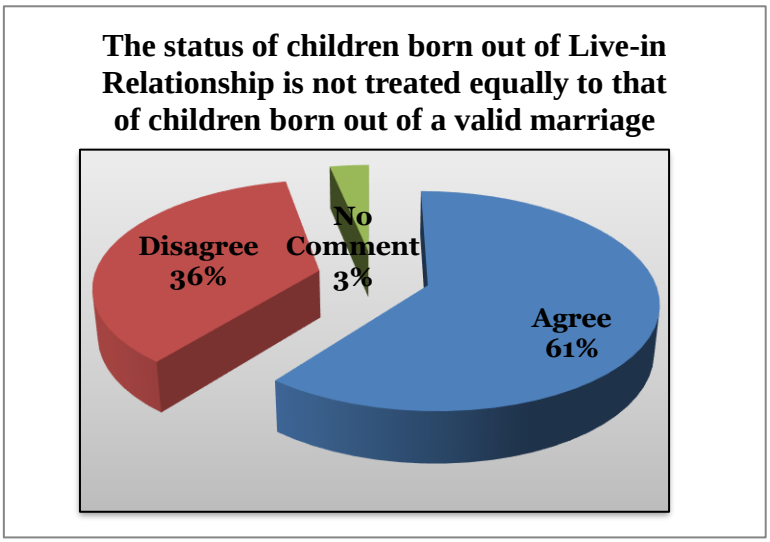
5.12 THE STATUS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP IS NOT TREATED EQUALLY TO THAT OF CHILDREN BORN OUT OF A VALID MARRIAGE

5.12 Table 21: The status of children born out of Live-in Relationship is not treated equally to that of children born out of a valid Marriage

Option Chosen	No of Respondent
Agree	74
Disagree	44
No Comment	4
Total	122

Source: Field Survey, November 2019

Figure 21: The status of children born out of Live-in relationship is not treated equally to that of children born out of a valid Marriage



- As per the table no21 and figure no 21, total 61 percent respondents are agreed that the status of children born out of live-in relationship is not treated equally to that of children born out of a valid Marriage.
- And total 36 percent respondents are disagreed that that the status of children born out of live-in relationship is not treated equally to that of children born out of a valid Marriage

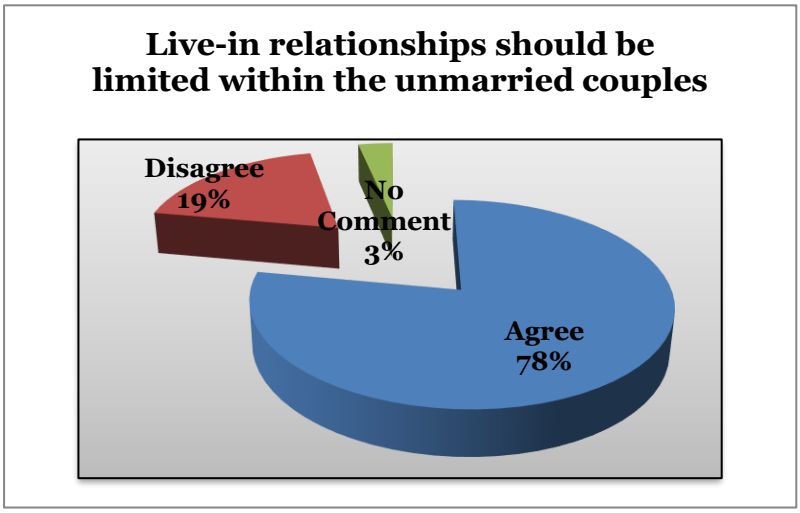
5.13 LIVE-IN RELATIONSHIPS SHOULD BE LIMITED WITHIN THE UNMARRIED COUPLES

5.13 Table 22: Live-in Relationships should be limited within the unmarried couples

Chosen Option	No of Respondent
Agree	95
Disagree	23
No Comment	4
Total	122

Source: Field Survey, November 2019

Figure No 22: Live-in relationships should be limited within the unmarried couples



- As per the table no 22 and figure no 22, total 78 percent respondents are agreed that the Live-in relationships should be limited within the unmarried couples.
- And total 19 percent respondents are disagreed that the Live-in relationships should be limited within the unmarried couples.

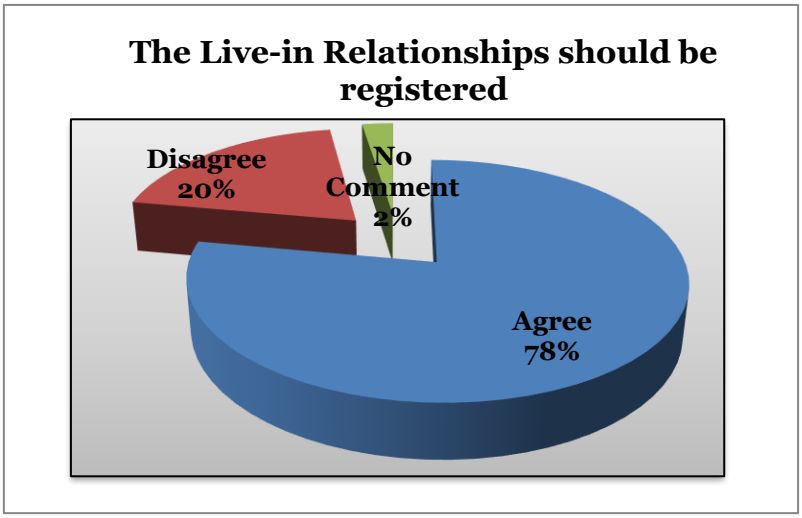
5.14 THE LIVE-IN RELATIONSHIPS SHOULD BE REGISTERED

5.14.1 Table 23: The Live-in Relationships should be registered

Option Chosen	No of Respondent
Agree	95
Disagree	24
No Comment	3
Total	122

Source: Field Survey, November 2019

Figure 23: The Live-in Relationships should be registered



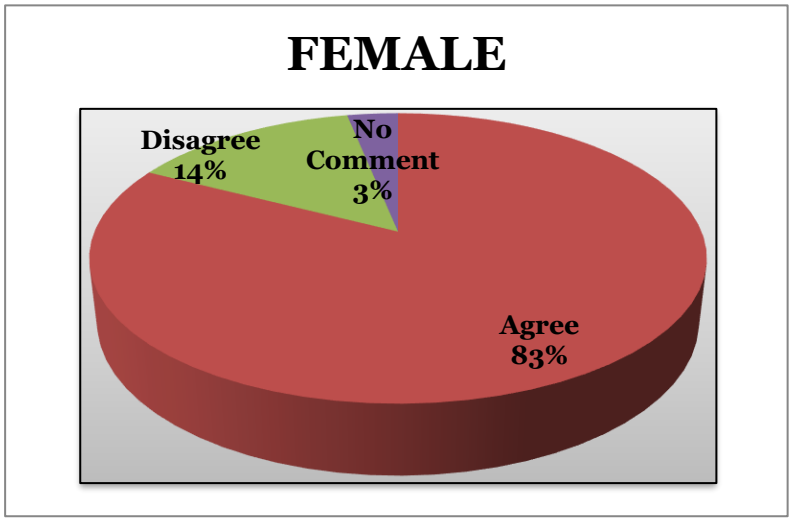
- As per the table no 23 and figure no 23, total 78 percent respondents are agreed that the live-in relationships should be registered.
- And total 20 percent respondents are disagreed that that the live-in relationships should be registered.

5.14.2 Table 24: The Live-in Relationships should be registered on the basis of female respondents

Female	
Option Chosen	No of Respondent
Agree	52
Disagree	9
No Comment	2
Total	63

Source: Field Survey, November 2019

Figure 24: The Live-in Relationships should be registered on the basis of female respondent



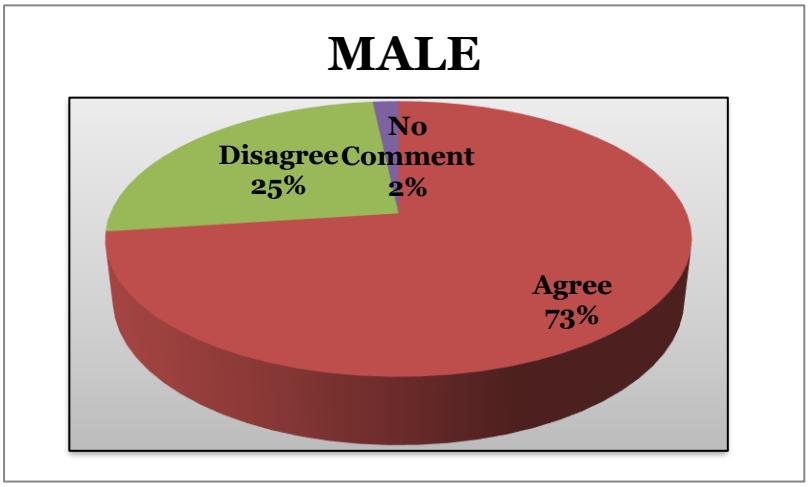
- As per the table no 24 and figure no 24, total 83 percent female respondents are agreed that the live-in relationships should be registered.
- And total 14 percent female respondents are disagreed that that the live-in relationships should be registered.

5.14.3 Table 25: The Live-in Relationships should be registered on the basis of male respondents

Male	
Option Chosen	No of Respondent
Agree	43
Disagree	15
No Comment	1
Total	59

Source: Field Survey, November 2019

Figure No 25: The Live-in Relationships should be registered on the basis of male's opinion



- As per the table no 25 and figure no 25, total 73 percent male respondents are agreed that the live-in relationships should be registered.
- And total 25 percent male respondents are disagreed that that the live-in relationships should be registered.

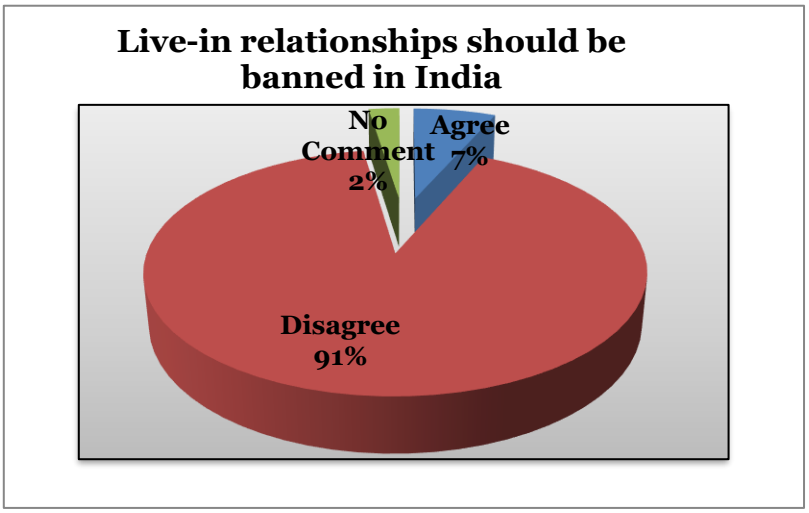
5.15 LIVE-IN RELATIONSHIPS SHOULD BE BANNED IN INDIA

5.15.1 Table No 26: Live-in relationships should be banned in India

Option Chosen	No of Respondent
Agree	8
Disagree	111
No Comment	3
Total	122

Source: Field Survey, November 2019

Figure no 26: Live-in relationships should be banned in India



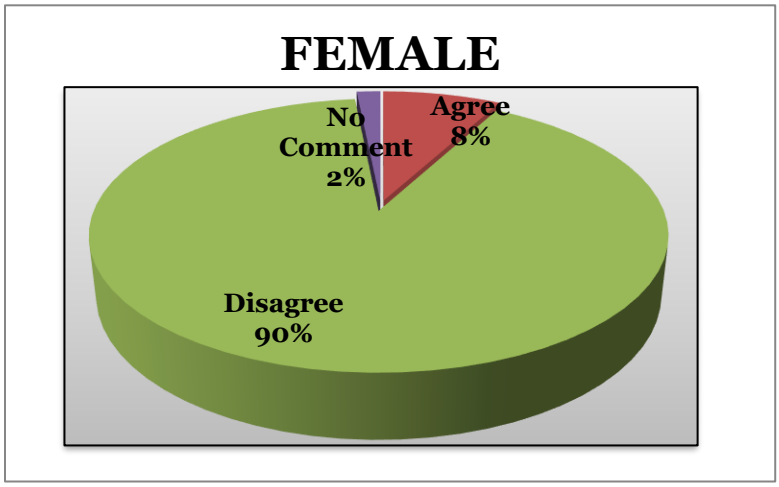
- As per the table 26 and figure 26, total 91 percent of total respondents are disagreed with the argument that live-in relationships should be banned in India.
- Again total 7 percent of total respondents are agreed with the argument that live-in relationships should be banned in India.

Table no 27: Live-in relationships should be banned in India on the basis of female respondents

Female	
Option Chosen	No of Respondent
Agree	5
Disagree	57
No Comment	1
Total	63

Source: Field Survey, November 2019

Figure No 27: Live-in relationships should be banned in India on the basis of female's opinion



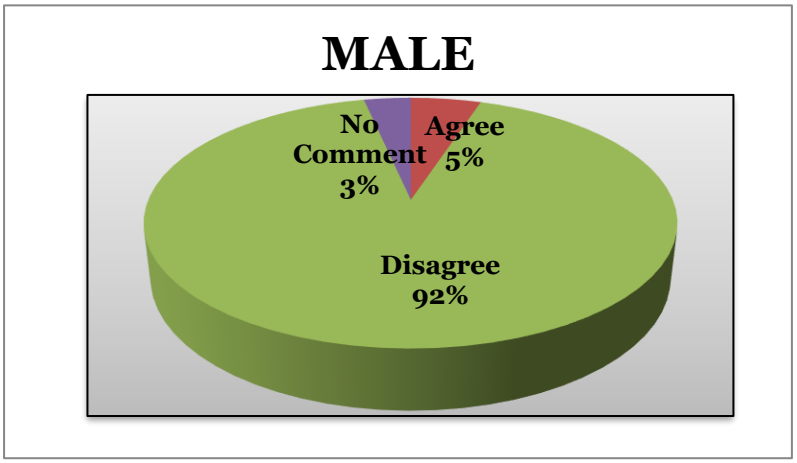
- As per the table 27 and figure 27, total 90 percent of total female respondents are disagreed with the argument that live-in relationships should be banned in India.
- Again total 8 percent of total female respondents are agreed with the argument that live-in relationships should be banned in India.

Table No 28: Live-in Relationships should be banned in India on the basis of male respondents

Male	
Option Chosen	No of Respondent
Agree	3
Disagree	54
No Comment	2
Total	59

Source: Field Survey, November 2019

Figure No 28: Live-in Relationships should be banned in India on the basis of male respondents



- As per the table 28 and figure 28, total 92 percent of total male respondents are disagreed with the argument that live-in relationships should be banned in India.
- Again total 5 percent of total male respondents are agreed with the argument that live-in relationships should be banned in India.

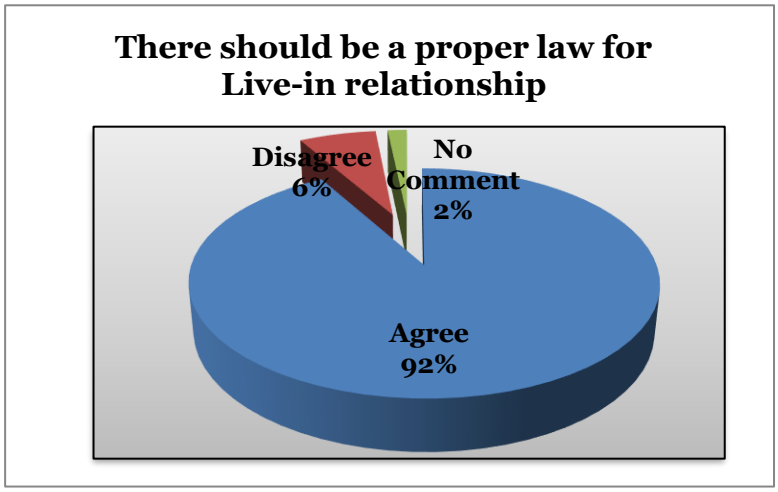
5.16 THERE SHOULD BE A PROPER LAW FOR LIVE-IN RELATIONSHIP

5.16.1 Table No 29: There should be a proper law for live-in Relationship

Option Chosen	11
Agree	2
Disagree	8
No Comment	2
Grand Total	122

Source: Field Survey, November 2019

Figure No 29: There should be a proper law for Live-in Relationship



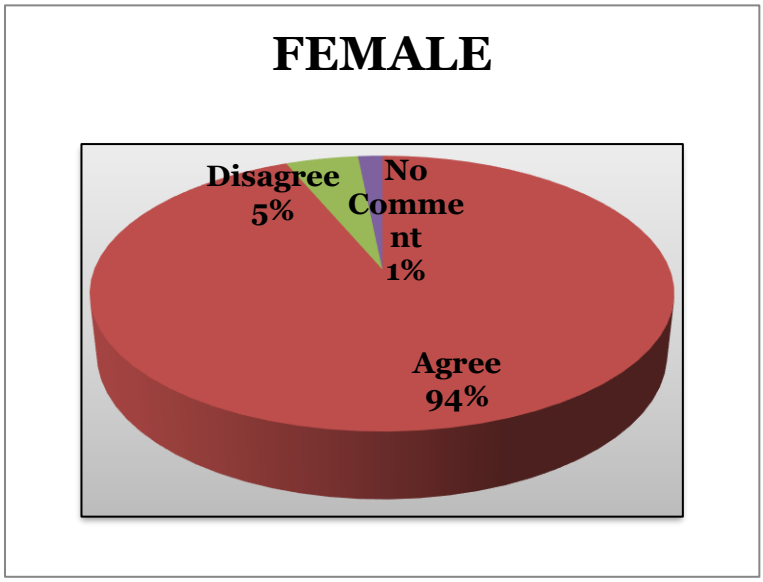
- As per the table no 29 and figure no 29, total 92 percent of total respondents are agreed that there should be a proper law for live-in relationship.
- In the table it is also showed that only 6 percent of total respondents are against of a proper law for live-in relationship.

5.16.2 Table No 30: There should be a proper law for Live-in relationship on the basis female respondents

Female	
Option Chosen	No of Respondent
Agree	59
Disagree	3
No Comment	1
Total	63

Source: Field Survey, November 2019

Figure No 30: There should be a proper law for Live-in Relationship on the basis female respondents



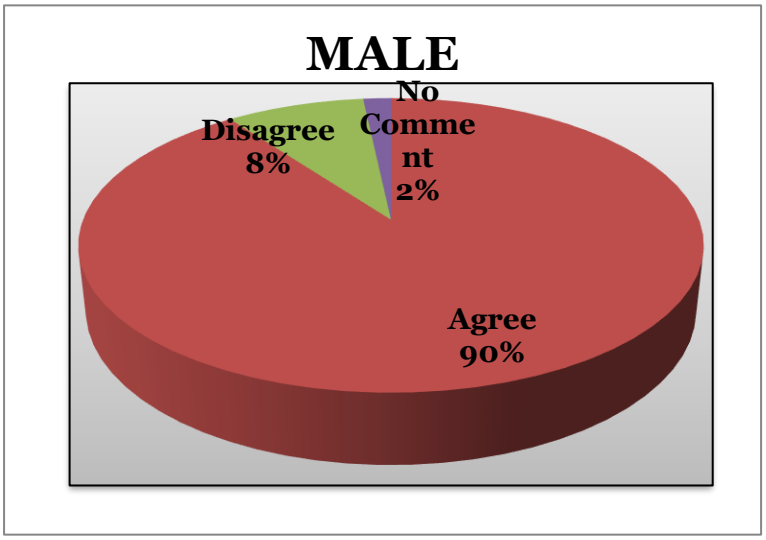
- As per the table no 30 and figure no 30, total 94 percent female respondents are agreed that there should be a proper law for live-in relationship
- In the table it is also showed that only 5 percent female respondents are against of a proper law for live-in relationship.

5.16.4 Table No 31: There should be a proper law for Live-in Relationship on the basis male respondents

Male	
Option Chosen	No of Respondent
Agree	53
Disagree	5
No Comment	1
Total	59

Source: Field Survey, November 2019

Figure No 31: There should be a proper law for Live-in Relationship on the basis male respondent



- As per the table no 31 and figure no 31, total 90 percent male respondents are agreed that there should be a proper law for live-in relationship
- In the table it is also showed that only 8 percent male respondents are against of a proper law for live-in relationship.

5.17 CASE STUDY

The case study is a method in qualitative research. The case study is an approach to research that facilitates exploration of a phenomenon within its context using a variety of data sources. This ensures that the issue is not explored through one lens, but rather a variety of lenses which allows for multiple facets of the phenomenon to be revealed and understood. A case study involves a deep understanding through multiple types of data sources. Case studies can be explanatory, exploratory, or describing an event. The present case studies for this research are sampled from the North East part of India. Total nine case studies are analysed from different factors.

CASE STUDY NO 1

Sanghamitra (name has been changed), a 29 years old young lady from upper Assam, well educated, with a convent-school background and has a management degree, working in a nationalized bank. After a relationship of 4 years her decision to marry 32 years old refinery engineer Arun (Name has been changed) is still in dreams, as both have caste differences which is completely unacceptable to her high-caste Hindu family. Sanghamitra tried her level best to find out a solution so that they can get marry. After lot of trying they finally made up mind to live together without recognition from their social institution. One morning both of them decided and moved under a common roof to fulfil their wish. Finally, both are in live-in relationship for one year and three months with a hope that things will get change in coming days. They do not have any off spring. They have not decided yet when they will announce their decisions to marry socially.

CASE STUDY NO 2

Manavi (name has been changed), a young 29 years old beautiful journalist decided to move on in March 2019 with her fiance, Ashim (name has been changed), a 30 years old project manager at Guwahati. The couple is in affair since their college days followed by fixation of marriage. As per “Hindu Kundli” the right moment for their marriage would be after one and half year. The couple decided to stay under one roof to strengthen their relation, understanding as well as to stand near to each other. The idea came to their mind when they started planning for their future days. The couple thought to save money by residing together instead of separate establishment and all expenses. They both decided to be in a single rented house to

save some money for their future marriage. But both the families are not aware of their live-in relationship. They have mutual financial set up for the household expenses and akin to the landlord and the neighbours as husband and wife.

CASE STUDY NO 3

Mayuri (name has been changed) a 35 years old divorcee, working in a software company, a Hindu by faith having an affair with her colleague Nadeem (name has been changed), an unmarried 34 years old Muslim boy. They have a relationship of two years and both of them have good understanding. Nadeem wanted to give Mayuri a legal recognition under special marriage act but Mayuri has a objection because of her social status and early relationship. She has always a concern about social status of her family and also a fear about her younger sister who has yet be married. Finally they had no other choice than to live together without any social or legal recognition. Both of them stayed in a different city outside from home. Finally they took a rented flat and started living under one roof without informing their parents and family. Mayuri has a dream that when there will not be any chance of damage to social status of her family by the reason of her re-marriage with Nadeem under Special Marriage Act then only she may get married. She believes on present rather than future. They do not have immediate plan for baby. They will think after marriage.

CASE STUDY NO 4

Minakshi Sharma (name has been changed), a 33 years old teacher of a Engineering college , living together with her long term boy friend Devid (name has been changed), a 35 years old electric engineer. They know each other since their graduation days. They studied together. They have affair of 9 years. When she talked at their home for marriage the issue of religion stood like a barrier. Minakshi belong to a traditional Hindu Brahmin family and Devid from a Christian family. The couple tried their best possible to convince their family. Minakhis father is a member of a managing committee of famous temple and also socially recognised personality. It is impossible to accept and do the *kanyadan* for the parents with Christian boy. Minakshi also not ready to quit the relationship with her boy friend with whom she likes to share her thought, idea and time and life. After several failures she decided to move to different place in the city and stay together without informing their parents.

As per plan they fixed a rented house and started living together under a common roof and to manage daily expenditure jointly. They have a plan to get formal recognition of marriage after few years. They are also planning for baby very soon.

CASE STUDY NO 5

Amrita (name has been change), a 39 years old widow from Barak Valley area of Assam living together with Ajit, a 45 years old working as Medical Representative from lower Assam. Amrita lost her husband after four years of her marriage and she also does not have any kid. She lost her husband in a road accident and could not survive in in-laws due to negative approach of their family. She had to left her in-laws and to move to her home. After 2 years she lost her parents. The real challenge came to her life when her brothers started not to support her expenses. She finally moved to city by getting an offer and started her life as an assistant of a primary school. It was very difficult to manage in city with a small amount of salary. One day she met Ajit and a relationship grown. Ajit started supporting her in getting a better job by providing information. Both of them started taking care of them and they like to spend time each other. After two years they decided to stay under one roof. Both of them started sharing their income in day to day expense. Initially now they do not have any plan to get married and also for kids. They are happy with whatever they have today.

CASE STUDY NO 6

Tamiha (name has been change) a 38 years old fashion designer from lower Assam, is having an affair with Shaminur, a 29 years old banker by profession and an actor in video films from lower Assam. Tamiha got married by the choice of family before 12 years after completing her master's degree. She did not know that she will have to face black days in her life. Her husband stayed in Australia working as an engineer. She was supposed to stay with her husband after her marriage; it was the conversation between parents of bride and groom. The marriage got fixed between parents of bride and groom. After 15 days of marriage, Tamihas husband left for Australia with a promise that he will come and take Tamiha once her visa will get clear. Tamiha was waiting for foreign visit. After two years finally Tamiha and family came to know that her husband has a wife and children in Australia. He had to follow the formalities with Tamiha because of his family pressure.

It took 2 years to stable Tamiha mentally after the incident. She moved out from home and started her career as a fashion designer in Guwahati. She met Shaminur a young, energetic banker from her same district. They build up a relation within one year and decided to live-in together in a rented house. Tamiha could not move to formal marriage because of some divorce formalities that was not done by her husband from Australia. Shaminur had a compulsion that he can not disclose the relationship because of the age difference between them. They finally decided to reside together under one roof as they have similarities in understanding, choice, likes and don't like etc. They have hope that very soon that day will come when we will be able to complete our marriage and will plan for kid.

CASE STUDY NO 7

Abi Gail (name has been changed) aged 28 and Justine (name has been changed) aged 31, are living in Guwahati, Assam for four years as a couple. They are working in a corporate set up together and both are Khasis from Ribhoi district of Meghalaya and that are the reasons their relationship had grown up faster. After one and half years they decided to cohabit under the same roof. Under the Khasi customary practices cohabitation without ceremonial marriage is allowed. However their landlord and neighbouring know that they are married. Their families are aware of their cohabitation without formal marriage. They don't have any future plane for marriage. However in near future they will think of offspring.

CASE STUDY NO 8

Radhika (name has been changed) 36 years, is working in a bank from last 7 years. Dhiraj (name has been changed) 40 years, is holding a managerial post in a company. They knew each other from childhood and both are from distant relatives also. They were again meeting when Radhika left her native village after her mother died. Her father died when she was two years old. She does not have any sibling. Dhiraj helped her a lot during her settlement. After one and half years of her job, they became so understandable and loving to each other that they decided to marry. When they informed their family and nearest relatives they all opposed their marriage and they also warned them to be ex-communicated as both are though distant but relatives. Then they decided not to marry but to move on live-in relationship. However, after knowing the status they are ex-communicated from the society. They have a four

years old baby boy. All neighbourhoods, son's school and other related people know them as husband and wife but in reality they were never legally or socially got married.

CASE STUDY NO 9

Niharika (name has been changed) 31 years old, a ladies boutique owner having an affair with Kankan (name has been changed) 33 years old, a private firm partner for four years after their MBA together from Gauhati University. Niharika is from Guwahati but Kankan is from Tezpur. Initially they had dreamed of getting married but after family's denial of marriage because of caste inequalities they have started live-in together on 14th February 2018. They both are independent financially and having their own flat in the name of Niharika by duel sharing. They are not planning for child as well as marriage in near future as both are engaged in career settlement.

CASE STUDY ANALYSIS:

From the above case study it is observed that:

- It is observed carefully after studying the case studies that maximum couples opt live-in relationship as a precursor to marriage. They have the ultimate goal to get married and to be settled and recognised as a married couple in the society.
- It is observed from the above case studies that live-in relation is a practice of choice between two adult and heterosexual persons. They have intended to test their compatibilities
- It is observed that due to different reasons as social, family, economical, religious and difference in caste, people unable to marry them so they are adopting live-in relationship.
- It is also observed that the practice of live-in relationship is adopting for some reasons and it is popular most among young generation.
- It is also observed that live-in relation is a practice between qualified, educated, financially empowered and independent people.
- It is also observed that most of the couple stay in urban area rather than remote rural area.

- Besides customary practice young generation are more interested toward corporate world. Their choice has been changed from traditional marriage to independent life. People of this generation prefer such a relationship where easy to enter and easy to departure are possible.
- It is also observed that the young generation are more focused on human value, love, affection rather than castism, and other societal issues. Due to different environment during education days they are more human centric rather than castism. When they face real world they chose easy one rather than traditional one.
- Due to strict social system many single, divorcee and widow cannot move to second relation openly though their age requires having intimate relationship. In such type of case they prefer to choose a partner and lead rest of the life with smile. In this type of situation procreation of children is not important for them.
- It is also observed that due to increase of religious differences many couple have a fear to go into marriage under the Special Marriage Act openly. They also do not want to scarify their love, affection, relationship etc. In this type of situation they prefer to opt live-in relation rather than facing trouble by different pressure group.
- It is also observed that due to corporate and MNC culture young generation start moulding themselves as independent and liberal class. They get inspired from corporate culture to hear from heart rather than traditional thought. In such case they always prefer individual satisfaction rather than social custom.
- It is also observed that many individual get inspired by western lifestyle and culture. By observing and following western culture many individual get inspire and turn into couple and share one roof.
- It is also observed that internet plays important role in connecting people from different part of world. Young generation get connected through social media platform and easily build up relationship. It is easy to find out and get connected with different people. Once after having in relationship they do not want to separate themselves due to different emotional and social issues. In that point they easily opt live-in relationship.

- It is also observed that Information, Communication, Technology (ICT) plays important role in inspiring people to get connected and come under one roof. There are different online platform where the needy one can share their profile, choice, condition etc. for heterosexual partner. In this way easily individual can get partner and without entering to difficulties one can fulfil their wishes. Lots of websites are available to be getting connected to each other from adult to old age groups.
- It is also observed that high living cost of metro cities is also encouraging many couple to stay under one roof. Due to price hiking and all it is difficult to maintain good lifestyle for average and low earner group. To reduce cost, concept of cost sharing arises and many individual turn to couple and want to share cost for survival.

SUMMATION OF THE CHAPTER

The socio-legal studies which are based on data analysis of total 122 samples collected through simple random sampling by providing structured questionnaires as emailed and face to face interview. Another six case studies are analysed by the researcher to understand the actual practice of live-in relationship in the society, its reasons, and its structure. It is found in the research that 65 percent of population is exclusively in support of marriage institute as their preference of intimacy. However 31 percent of population preferring live-in relationship as their preference in intimate relationship. It represents that though maximum population is still supporting marriage but consequently live-in relationship is also preferred as an intimate relationship. Again 78 percent respondents are agreed that the live-in Relationships should be limited within the unmarried couples. But 19 percent respondents are also there who disagreed that that the live-in Relationships should be limited within the unmarried couples.

There are total 91 percent respondents are who disagreed with the argument that live-in relationships should be banned in India and only 7 percent of total respondents are agreed with the argument that live-in relationships should be banned in India.

However total 92 percent respondents are agreed that there should be a proper law for live-in relationship and only 6 percent respondents are against of a proper law for live-in relationship.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

6.1 CONCLUSION

The concept of live-in relationship is not a new concept in India, although the name "Live-in relationship" got popularity in recent times. *Avarudh Stris, Maitri Karar, Nata Relationships, Dapa relationship, Dukha relationship,* etc.; are the concepts existing in India from the ancient period to recent period of time. There is no legal barricade or need to prevent a man and a woman cohabiting together without entering into the formal marriage in the form of marriage like relationship i.e., "live-in relationship". The traditional society of India, however, does not endorse such living arrangements as a whole. Since there is no specific law that recognizes the status of the couples in living together, therefore the law unfolding the significance of children born to the couples in non-marital cohabitation is also not very clear. The greatest importance in the protection of child rights parameter is to ascertain the status of such children in law as well as in society. The need of the hour is that it should be the primary agenda of the legislation to ensure the rights of the children born out of marriage like relationships, i.e. live-in relationship. The decisions pronounced by the Supreme Court of India hold significant assessment in dealing with the fact in issues arising to identify the significance of the off springs born out of living together in socio-legal arena. Now it is out of harm's way to conclude that the modern society while fixing the debated issue turns into the well being of the legal circumstances; as a result the child born from a marriage like relationship is bound to face requirement of clarity of legal status in life, the origin and subsequent rights etc. This can lead to instability and insecurity in the child's life both mentally and emotionally. Legalizing live in the relationship means that a totally new set of laws are required to govern the relationship including protection in case of desertion, cheating, maintenance, inheritance, etc. Even courts are also trying to take the live-in-relationship under the presumption of marriage. It is not recognised in any judgment independently as live-in relationship. The impairment will happen to a lawfully married wife and her offspring and promotion of bigamy is two main arguments opposed to wholly legalize the live-in relationships in India. To avoid these circumstances, a set of clear laws should be legislated and amendments to the

existing ambiguous terms in present laws must be granted clarity on the status and rights of children born in a non-marital cohabitation. This will secure the regularity, maintenance and protection to ascertain the developments in terms of emotional, psychological and physical to such a child and woman.

In the first stage of this research it is found that there is no any legal definition of live-in relationship in India, but according to accepted definition of live-in relationship, it is "a relationship with an informal arrangement between two heterosexual persons to live together without entering into the formal institution like marriage." The lacking of legal definition of live-in relationship is creating inadequate legal or statutory protection to the live-in partners. When live-in relationship is chosen to test the compatibility of the partners before marriage then it actually promotes pre-marital or non-marital intimacy between the partners and that concept is against the traditional and moral values of Indian society. The word live-in relationship has other identical words in different places and situations, e.g., cohabitation or living together or de-facto-relationship or marriage like relationship or relationship in the nature of marriage etc. However, in the study of these synonymous words with live-in relationship it is found that these terms are the representatives of different cultures and socio-legal status of different countries.

If we take the recent position, live-in relationship in India is adopting more and more especially in metro cities and while without a definite definition of the relationship is not established then within the legal ambit it will not be working in a systematic way and this may be a gross injustice to women and children who are under the umbrella of this relationship.

After reviewing the existing limited literature, the researcher has prepared the hypothesis as the concept of live-in-relationship has been partially recognised in law by declaring as neither a crime or nor a sin but socially unacceptable. However, due to lack of any exclusive legislation or any amendment to the existing personal laws to recognise live-in relationship, it is the need of the hour to settle the issue with meaningful solution.

In the research, the evolution and contemporary existence of live-in relationship, finds that in different parts of the globe have deferent choices of cohabitation. In many other countries non-marital cohabitation originated in different circumstances

and it always depends upon the socio-legal, socio-cultural and socio-economic conditions of a particular state. In India practice of non-marital relationships continue living from ancient times. The practice of *Maitry Karar, Nata relationship,* Cohabitation among *Khasis, Dhuku marriages* among tribes in Jharkhand, *Dapa* agreement among *Gharasia tribes* of Rajasthan etc, are prevailed in ancient as well as in today's India.

These practices might be included in the definition of 'relationship in the nature of marriage' because there is no any legal imposition as they were not under the 'solemnization of marriage' category to evolve under legal protection of marriage. However, if in a particular society when couples are practising non-marital cohabitation then their legal rights and status is protected in that society according to their socio-legal values and set ups.

We must understand that women and children are the most vulnerable members of the society. Indian judicial system tried really well in certain cases where the aggrieved women are protected under the definition of 'relationship in the nature of marriage' but under this notion sometimes the concept becomes ambiguous and conflicting, however the intention of the judiciary is always to protect the women and children within their limitations. There is no any exclusive law through which this legal issue can be settled down amicably. The reason behind the lacking of legal force in live-in relationship is that, the concept is not defined in Indian legal system, but somehow judiciary is trying to interpret the concept under the category of 'relationship in the nature of marriage' which is also creating a huge ambiguity in application. Again this ambiguity encourages the pre-marital and non-marital relationships as against the Indian value system. Thus these relationships have adverse impacts on marriage and family institutions in India. It is clear from the studies that though Indian society does not want to recognise live-in relationship as a whole but it is neither a sin nor a crime. Again law does not oppose the relationship by declaring it as illegal. So the hypothesis of the research is hence proved as correct and effective.

This is also important to analyze the impact of live-in relationship on children when they are born out of this relationship. Only women are not vulnerable in live-in relationship, children are also need to be protected in this relationship. Because of absence of a proper law, no any definite rights for the live-in female partner and

children are provided. Under Personal laws children born out of a valid or voidable or void marriage are recognised as legitimate, but children born form live-in relationship are not from any voidable or void marriage; so does not recognise as legitimate. However under Section 125 of CrPC all children are recognised as legitimate irrespective of their ambiguous status. Indian courts initially did not consider such kind of relationship as important as it is now. So now it is protecting the most vulnerable sections of the society and also increases the application of other existing laws as an extension for non-marital relationships to protect women and children in living together. For example as a right to life under Article 21 of the Constitution of India, right to maintenance and protection from any kind of abuse or domestic violence under Protection of Domestic Violence Act 2005, maintenance rights of children under Section 125 of CrPC, termination of pregnancy under Medical Termination of Pregnancy Act 1971 are also available to live-in female partner and children born out of this relationship.

Another study of status of live-in relationship with Personal laws of India is analysed. However live-in relationship as a presumption of marriage under personal laws are not recognised and when there is no marriage at all then the right to divorce is also not generated under personal laws and rights like maintenance rights, property rights reproductive rights etc., of female live-in partners as well as children from such relationships are also not considered under personal laws of Hindus, Muslims, Christians and Parsis in India.

In the study of fifteen different countries of the globe, the different scenario has emerged. Regarding acceptability of non-marital cohabitation depends upon to the facts and situations, socio-economic and socio-legal pattern are observed and analysed accordingly. Many western countries are adopting non-marital cohabitation according to their social norms and legal system, e.g., registration of non-marital cohabitation, rights and obligation of non-marital couples, for example maintenance rights, property rights, succession right, parental rights of the children born out of the non-marital relationship, protection from domestic violence in the shared household, custodial rights, right to be separated with by following proper procedure etc, are very much attractive and effective establishments for non-marital cohabitation to secure the rights of the parties and rights of the children. These rights and

establishments are provided in other countries can be adopted also in India according to the needs of the couples and society together.

Whenever we talk about impacts of live-in relationship we take the status of younger generation. The new trends of young people to choose live-in relationship as their preference in intimate relationship without thinking about future is actually a negative impression because live-in relationship is not something without responsibility or just for enjoyment. In reality it is an ultimate freedom to choose your preferred intimate relationship, but it should not be a walk in walk out relationship. But same thing is not true about elderly person's choice to choose live-in relationship as their preferred intimate relationship. It is a recreational companionship for elderly persons because unlike marriage, without any hurdle live-in relationship makes them happy to share their loneliness in old age. Many cases are found about lack of care by the children or relatives to the elderly persons and they suffer in their old age as neglected, depressed, and loneliness etc., so live-in relationship might be a relief of loneliness and depression for them.

It is found that an old age home runner previously worked as banker, Mr. Arvind Godbole thought of relief of loneliness suffered by old people residing in his old age home. So he advised them to get into live-in relationship with other opposite sex fellow elder and like a miracle it became successful experiments. Now these group of elderly persons established an organisation as *Jyeistha Nagarik live-in relationship Mandaal* in Pune and helping others to find their partners in old age as a second chance of their life. Similar organisations like *Vinaa Mulyaa Aamulya Seva* a charitable trust for elderly persons, *Happy Seniors*, *Adhar Marriage Bureau* are also working to meet up old age couples to get rid of their old age loneliness and frustration. The *Vinaa Mulyaa Aamulya Seva* had organised '*Senior Citizen live-in relationship Sanmeelan"* to make them choose other elderly persons as their live-in partners. This study makes the researcher to understand the impact of live-in relationship on the old age people too.

The two broad categories of live-in relationship i.e., 'by choice' and 'by circumstances' are discussed. However on the basis of rapid growth of non-marital relationship in India it can be reasoned in two possibilities, e.g., live-in relationship as a precursor to marriage and live-in relationship as an alternative to marriage. It is in the research found that maximum numbers of live-in relationships are in the first

category, where the couples living in such relationship have marriage plan in future so their relationship is a kind of compatibility test for the same. Another kind of live-in relationship is there in the same category that the couples live together without having any marital plan in near future, but intended to experience the conjugal life. In this category two conclusion can be drown, the live-in relationship may be turn into a marriage if they have successfully understand their compatibility or it may be an end with lots of negative outcome and which is actually happening in today's generation. But it is true that live-in relationship which has commitments and long lasting is similar to marriage.

The concept of live-in relationships is now a widely known arrangement and also partially recognised in law. Though it is criticised in public forum but with positive effect, certain recommendations and opinions are impending up from assortment of authorities and Commissions to furthermore revise the existing rules or else to take preventive measures. It is worth focused that there have been no amendments to the existing personal laws of India relating to live-in relationship inclusion. It is thus, necessary to study and scrutinize whether live-in relationships can or not come across to be set in Personal laws of the country with more stability and betterments to the intimate relationship. Promotion of bigamy and harm caused to a "lawfully wedded wife" and the children born from a valid marriage; are two main points of view which are opposed to legalization of live-in relationships in India. So it is submitted that if any attempt to protect live-ins under the personal laws must be concentrated on these two issues strictly and carefully.

The judiciary has held that long-term live-in relationships are as good as a marriage. These decisions in a way, actually upholding the rights of the female live-in partners but another way it contradicts with the law on bigamy. Except for Muslim men when bigamy is illegal in India then it is ambiguous and indistinct phenomenon that if one live-in partner is already married and has a living spouse, in what sense a live-in relationship can be equivalent into matrimonial status. So this ambiguity is in reality allowing a married man or married woman without divorce to be in an extra-marital relation without being a matter to be sanctioned for bigamy. However, more importantly now adultery is no more a crime under Indian Penal Code as Supreme Court of India had declared unconstitutional in the case of ***Joseph Shine v. Union of India*** (2018 SC 1676). Section 497 was unconstitutional on the basis for criminalising

adultery as the assumption that a woman is considered as the property of the husband and cannot have relations outside of marriage. The same restrictions, however, did not apply in case of the husband. A five Judge Bench of the Supreme Court unanimously struck down Section 497 of the Indian Penal Code as being violative of Articles 14, 15 & 21 of the Constitution.

So if any man is in live-in relationship with a married woman it is no more an offence either. The laws relating to marriage and its incidental rights under personal laws are diverse in different communities on similar and dissimilar matters and to include live-ins into these laws surely be a confusing, difficult, ambiguous and complex exercises.

It is somewhat confusing that cohabitation for a practical and reasonable period of time. The Supreme Court of India, in a number of cases has asserted positively that, the couple shall be presumed that they are primarily living a married life and shall enjoy such rights without any doubt. However, the Honourable Supreme Court of India does not define how much time should be reasonable time to grant the status of being married on such couples. It is now cleared that unlike marriage institution the base of live-in relationship is informal in nature. Therefore it is in immediate need to give attention by the legislators to legislate a suitable legislation to turn out those deficiencies as created.

It may create a fear in the traditional minds that if live-ins are conferred an equal status to marriage it would be just an additional room to live-in partners with all marital rights and that might be a destruction of the “institution of a marriage”.

If registration of live-in partner will be compulsory it might be of some form of recognition to live-in relationship and it is a thriving experimentation in western European Countries. However, same procedure of registration as in developed nations may not be idyllic for India, where numerous live-in partners are also found living “by circumstance”.

So it is found in the studies that if live-in partners are conferred the status as equivalent to married couple then only live-in relationship may fit into personal laws of the country and that may be another conflicting out rages.

So on the basis of analysis and discussions as provided in the previous chapters, this research work has been concluded by first testing the hypotheses followed by

highlighting the contemporary issues relating to the status of live-in relationship and other non-marital relationships in India as well as other parts of the globe as being an alternative institute of marriage and finally concluding the research with some important and practical suggestions.

6.2 SUGGESTION

After a vigilant study and analysis the concept and status of women in live-in relationship in the light of legal and judicial responses along with socio-legal studies as in the contemporary scenario the researcher tries to protect the rights of women and children by remedial suggestions, and first of all there should be an exclusive legislation for live-in relationship, where the following suggestive points need to be included:

1. Definition of live-in relationship

It is found in the research that there is no statutory definition of the term 'live-in relationship' in India, and most of the chaos has been created because of lacking of a proper definition. If the term 'lack of proper definition of live-in relationship' will not be fixed then the confusion in concept of live-in relationship will remain in chaos and problematic as it is creating like, extra-marital affairs and other non-marital temporary relationship under the concept of live-in relationship in the society.

For the purpose of common understanding among the people researcher is suggesting the definition as, *"it is a live-in relationship when two heterosexual unmarried persons who have attained the majority and of sound mind leading an intimate relationship and reside together in a shared household for a minimum of two years."*

Minimum of two years living together is suggesting as per the pre-condition for adoption of a child by live-in partner to consider them as stable family by General Adoption Resource Authority, Ministry of Women and Child Development, Government of India.

Minimum two years of cohabitation is necessary to access the rights available to the live-in partners which are similar to the legally wedded couples.

2. Declaration by the parties

Before the registration of live-in relationship the parties should sign a declaration form where they must specify that they are willing to be governed under the

exclusive legislation for live-in couples. Under Section 5 of the Muslim Women (Protection of Rights on Divorce) Act 1986, the divorced woman and her former husband must have to declare in writing through a declaration form that they would prefer to be governed either by the provision of this Act or by the provisions of Sections 125-128 of CrPC. Under Section 11 of Special Marriage Act 1954, a written declaration by the parties for their special marriage is necessary.

After the declaration the next procedure should be registration and registration date should be counted from the date of declaration. Date of registration is important to count the duration of the cohabitation of the live-in couples i.e. minimum two years of cohabitation, to get them access to their rights which may be similar to the married couples.

3. Registration of live-in relationship

The model of registration for a non-marital cohabitation as provisioned under the Civil Code of Quebec (Canada) can be adopted in India too. The Civil Code of Quebec provides the duration of cohabitating period between the couple which will be counted from the date of registration and if the couples later decide to get married then their marriage will be counted from the date of the registration of cohabitation. It is important that the registration procedure should be enforced through a proper specific law where some other pre-conditions for the registration should be considered. They are as follows-

- The duration of cohabitation of the live-in partners shall be at least for two years from the date of registration to entitle the rights available for the live-in couples.
- The common residence for both the partners in live-in relationship should be fixed.
- Both the partners in live-in relationship should not be within the prohibited Degrees of relationships.
- The rights and duties of live-in couples should be in content as a pre-condition.
- The termination terms of live-in relationships must be expressed in written for a hassle free separation.

4. Property rights to the live-in partners

The Philippine Civil Code may be a solution in regard of property rights of live-in couples in India also. So to protect the property interests of the live-in partners, the researcher is suggesting as provisioned under Article 147 of the Philippine Civil Code, that the property acquired jointly or separately by both the cohabiting partners during the cohabitation, should be divided accordingly, i.e. on the basis of rules on co-ownership and equal shares, unless proved otherwise.

5. Succession rights to the live-in partners

The Scottish Family Law relating to intestate succession, governing the couples who are in non-marital cohabitation may be adopted in India. So if a partner dies without leaving a Will, their estate shall be distributed according to the rules of intestacy. Surviving partner shall not automatically inherit unless, as a couple, they owned property jointly. Surviving partner shall be allowed to apply to court for a share in deceased partner's estate. When a partner dies intestate, the survivor can move the court for financial support from his/her estate within 6 months. This provision can be inserted in the exclusive legislation for live-in partners in India too.

6. Amendment of the Protection of Women from Domestic Violence Act 2005 under Section 2(f)

By taking the source of the decisions by Supreme Court in two respective cases namely ***Veluswamy v. D. Patchaaiamm*** **(**AIR 2011 SC 479) and ***Indiraa Sharamah v. V.K.V. Sharmah*** (2013 (14) SCALE 448; AIR 2014 SC 304), certain recommendations were made to the Parliament as, to widen up the meaning of domestic relation underneath to the Section 2(f) of the PWDV Act 2005, with a view to include the aggrieved women who are or were cohabiting with the accused partner in an unlawful bonding and who are pitiable, uneducated and also their children who are born out of such relationships and who do not have any resource of earnings of their own. However, the PWDV Act 2005 prevents all kinds of abuses e.g. physical, mental, sexual and economic abuses to women who are in relationship in the nature of marriage also. It is suggested that in addition to the above recommendations, the Parliament should legislate a new legislation with the observation of Supreme Court in its guidelines provided in two judgements. The researcher has further suggestion to amend Section 2(f) of the Act by inserting three words "Unmarried domestic partnership" under the term "relationship in the nature of marriage."

7. Amendment of Criminal Procedure Code 1973 under Section 125

The Researcher gives the suggestion to amend the Section 125 of Criminal Procedure Code by including an unmarried woman in a live-in relationship where she stayed with her male unmarried partner at least for two years separately by putting "or" after the definition of 'wife'. The Malimath Committee Report 2003 also recommended by suggesting to include the women in live-in relationship under the definition of 'wife' in Section 125 of Criminal Procedure Code 1973. By amending the Section 125 of the Criminal Procedure Code, it would bring a uniform law for all.

8. Amendment of the Indian Evidence Act 1872 under Section 112

The provision of Section 112 of the Indian Evidence Act 1872 provides that a child can only be legitimate when it is proved that the child is born all over the continuance of a legally valid marriage between his natal mother and any man. So it is true that a child is born out of non-marital relationship recognized as illegitimate in the eyes of law. Muslim law strictly recognizes those offspring of a married couple is only legitimate. However the Supreme Court of India in the case of ***Revanaasiddappa v. Mallikarjuna***, **[**(2011) 11SCC 1; (2011) 3 SCC (Civ) 58] stated that, it is justified, when delivery of a child out of non-marital relationship has viewed independently, regardless of the status of relationship connecting both the parents.

Another way in any situation children should be considered as the paramount consideration of the society to protect his or her rights, so it is the duty of the state to protect and secure the child born out of such relationship as an innocent in the complex legal situation and makes it sure to be entitled all the rights as it is available to the children born out of lawful weddings.

So the provision of Section 112 of Indian Evidence Act is suggested to amend as, "any person was born during the continuance of a valid marriage between his mother and any man or a live-in relationship of minimum two years between his unmarried mother and any unmarried man or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man.."

9. Cruelty in live-in relationship under Section 498A of IPC

It is an offence when during continuance of a lawful wedding if husband treats his wife with cruelty of physical or mental or both. So Indian Penal Code 1860 provisioned for the prevention of cruelty against women under Section 498A. However it will not be justified if male cohabitant commits cruelty against his female cohabitant partner and law could not punished him on the ground that she is not recognised as his legal wife.

That is why researcher is suggesting after going through the provision of section 498 A, (as inserted by Act 46 of 1983) and effectual explanation of the Courts through judgments to comprise the words "Unmarried male live-in Partner" followed by the word 'husband' in Section 498A of Indian Penal Code 1860.

6.3 CONCLUDING REMARKS:

According to the recent new generational trend, Indians and Indian cultures are drastically moved on in the way of their relationship status. New society is much more opened up about pre-marital sex, live-in relationship and other non-marital intimacies. This openness is not coming in one day; freedom, right to privacy, dynamic professions, education and globalization etc. are the reasons behind such acceptability.

In a positive note, it is not actually escaping from responsibilities but a way to understand his/her partner in case of compatibility before a lifelong commitment. Though it involves continuous living together but there are no any legal or social responsibilities or obligations towards each other. Law is not responsibly tying the partners together, so either of the partners can move out of the relationship whenever they wish.

Cohabitation without marriage between two unmarried adult heterosexual couple is the simplest form of live-in relationship. However entering mutually into the non-marital cohabitation by a married man and an adult unmarried woman or a married women and an adult unmarried man or if both the partners in live-in relationship are married to another man or woman are the most complicated live-in relationship to recognize legally in India. Because already married couples are governed under their respective personal laws and entitled to all marital rights and responsibilities. But if married man or married woman is cohabiting with another unmarried or married

woman or man then it will surely promote bigamy and also an injury to the legally wedded wife or husband.

The researcher is suggesting an exclusive legislation for the unmarried couples who are in live-in relationship or who wish to get into such non-marital cohabitation. Because it is not possible to include live-in relationship under the umbrella of personal laws of Hindu, Muslim, Christian and Parsi through any amendment. It will be an illegal, irresponsible and unethical status projection towards the legally wedded couples to be equated with unmarried live-in couples who are without being governed under any personal law of the country. In matrimonial relationships, recognition of the status and right to inheritance are the matters associated directly with Personal Law. So it is need of the hour that the issues relating to live-in relationship in India should be dealt with carefully. So it will be a meaningful and resolvable suggestion to legislate a new law exclusively for non-marital cohabiting couples. It is also essential that the exclusive law for live-in couples must be for unmarried adult heterosexual couples.

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