

JUDICIAL PERSPECTIVE ON 'LIVE-IN -RELATIONSHIP' IN INDIA AND MAINTENANCE RIGHTS OF WOMEN

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ABSTRACT

Marriage is often described as one of the basic civil rights of man or women, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. In a fast changing world, there are bewildering variety of human relationship getting normalized. Live – in –relationship or cohabitation occurs when two people, men and women decides to live together in a sexually intimate relationship as though married but without completing marriage formalities legally. Live-in-relationship is neither recognized by the Hindu Marriage Act, 1955 nor by the Cr.P.C., 1973; or the Special Marriage Act, 1954. Though live-in-relationship is recognized under Protection of Women from Domestic Violence Act, 2005 under Sec 2 (f) as relationships in the nature of marriage. This paper traces the Indian judicial perspective on live-in-relationship.

Keywords: Civil Solidarity Pacts, inheritance of property, intestate succession, live-in relationship, Malimath Committee, Protection of Women from Domestic Violence Act, succession.

INTRODUCTION

"Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society, law cannot afford to remain static. If one looks at the history of development of Hindu law, it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different times. With changing social norms of legitimacy in every society, what was illegitimate in the past may be legitimate today".

Hon'ble Justice A.K.Ganguly & G.S.Shinghvi ¹

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Marriage is necessarily the basis of social foundation from which important legal rights and obligations emerge. Marriage is considered to be a sacred social institution.² Marriage according to the Hindu law is a holy union for the performance of religious duties. It is not a contract but it is a *sanskar* or sacrament. For a Hindu, marriage is mandatory so that he can discharge his debt to his ancestor, the debt of begetting offspring.

Marriage is often described as one of the basic civil rights of man or women, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are:

1. Agreement to be married
2. Living together as husband and wife
3. Holding out to the public that they are married

Sharing a common household and duty to live together to form part of the "*Consortium Omnis vitae*" which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship as per law, in the matter of inheritance of property, successionship etc. Marriage, therefore involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

Marriage, as a concept is nationally and internationally recognized. O' Regan, J, in *Dawood and Anr . vs. Minister of Home Affairs and Ors*³, noted as follows:

Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationship with others. Entering into marriage therefore is to enter into relationship that has public significance as well.

The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of marriage. The legal obligations perform an important social function. This importance is symbolically acknowledged in part of the fact that marriage is celebrated generally in a public ceremony often before family and close friends.

INTERNATIONAL PERSPECTIVE

Article 23 of the International Covenant on Civil and Political Rights, 1996 (ICCPR) provides that:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States/ Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 16 of the Universal Declaration of Human Rights, 1948 provides that:

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

DEFINITION

The meaning, concept and interpretation of relationships have undergone change during the current wave of modernization. A new dimension has been added to marital relationships by recognizing and endorsing live-in-relationship both by the Law⁴ and also by the court.⁵

The relationships where two people cohabit outside marriage without any legal obligations towards each other are known as Live-In-Relationship.⁶

Live-in-relationship or cohabitation occurs when two people, men and women decide to live together in a sexually intimate relationship as though married but without completing legal marriage formalities.⁷ This is a relationship in the nature of marriage but unlike a marriage. This concept has slowly paved its way in the Indian scenario as well. However, such relationships are considered a taboo in the Indian socio-cultural milieu.

Live-In-Relationship is still in a penumbral zone and judges are likely to be confronted with enigmatic situations in times to come. Despite all the talks of modernization, societal acceptance of a relationship sans formal solemnization by rites and ceremonies- religious or customary- may not be as easy.

JUDICIAL PERSPECTIVE ON LIVE-IN-RELATIONSHIP

Live-in-relationship is neither recognized by the Hindu Marriage Act, 1955 nor by the Cr.P.C. 1973, Special Marriage Act, 1954 etc. Though live-in-relationship is recognized under Protection of Women from Domestic Violence Act, 2005 under Sec 2 (f), as the relationship falls in the nature of marriage. Judicial perspective of live-in-relationship can be traced by going through the various judgments of the High Courts and the Supreme Court.

1. *Mohabbat Ali Khan vs. Muhammad Ibrahim Khar*⁸

In this case, Privy Council stuck to their position that when a man and a women cohabitated continuously for a number of years, the law presumes that they are a married couple and aren't in a state of concubinage.

2. *A. Dinohamy vs. W.L Blahamy*⁹

The Privy Council in this case has laid down the principle that where a man and a woman are proved to have lived together as husband and wife, the law will presume, unless the contrary be clearly proved that they were living together in consequence of a valid marriage and not in a state of concubinage.

3. *Badri Prasad vs. Dy. Director of Consolidation*¹⁰

This was the first case in which Supreme Court of India recognized live-in-relationship and interpreted it as a valid marriage. In this case, the court gave legal validity to a 50 year live-in-relationship of a couple. It was held by Justice Krishna Iyer that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favor of legitimacy and frowns upon bastardy.

4. *Gokal Chand vs. Pravin Kumar*¹¹

In this case, Court observed that continuous cohabitation of man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long co-habitation is rebuttable and if there are circumstances which weaken and destroy that presumption. The court cannot ignore them. Before 2000, no Courts in the country ever uttered the word *live-in-relationship*. "Live-in-relationship" is an extra-legal concept which already secured its stand in society and it is initiated in law by way of various rulings passed by the Superior Courts.

5. *Payal Sharma vs.. Superintendent, Nari Niketen Kalindri Vihar, Agra*¹²

Justice M. Katju and Justice R.B.Misra held that a man and a woman even without getting married can live together if they wish. This may be regarded immoral by society but it is not illegal.

6. *Alok Kumar vs. State*¹³

Justice Shiv Narayan Dhingra held that Live-in-relationship is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates

any legal bond between the parties. It is a contract of living together which is renewed everyday by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at his/her will at any time.

Those, who do not want to enter into this kind of relationship walk-in – walk-out .They may enter into a relationship of marriage, where the bond between the parties has legal implications and obligations and cannot be broken by either party at their own will. Thus, people who chose to have “live-in-relationship” cannot complain of infidelity or immorality as live-in-relationship are also known to have being between married man and unmarried women or between a married woman and unmarried man.

7. *Patel and others case*¹⁴

The S.C observed that the two adults are not criminal offenders who are bound to “live-in-relationship” without a formal marriage. No legislation has ever been enacted by Indian Parliament who denounces any “live-in-relationship” as illegal.

8. *S. Khushboo vs. Kanniammal & others*¹⁵

It was observed that a live-in-relationship between two consenting adults of heterogenic sex does not amount to any offence [with the obvious exception of adultery], even though it may be perceived as immoral. In this case the Supreme Court specifically clarified the legal status of live-in-relationships. The court had convened to hear a petition filed by the famous south Indian actress Khushboo to quash 22 FIR filled by a Tamil activist group, who claimed that her comments on pre-marital sex in an interview in 2005 would have a negative influence over the youth of the country, while holding that her views were entirely personal and did not constitute an offence , the court also observed that for a man and woman to be in love and living together, is a part of the Right to Life as guaranteed under Art. 21 of our Constitution and is not a criminal offence.

This case legally recognized the existence of live-in-relationship in India and unequivocally decriminalized them in accordance with the provisions of Art. 21 of the Constitution.

9. *Indra Sarma vs. V.K.V Sarma*¹⁶

In this case, J.K.S. Panicker Radhakrishnan held that live-in-relationship or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

The court has cut out some guidelines for testing under what circumstances; a live-in-relationship will fall within the expression “relationship in the nature of marriage” under section 2(f) of the D.V Act. The guidelines, of course, are not exhaustive but definitely give some insight to such relationships:

1. *Duration of Period of Relationship:* Section 2 (f) of the D.V Act has used the expression “at any point of time” which means a reasonable period of time to maintain and continue a relationship which may vary from case to case depending upon the fact and situation.
2. *Share household:* Has been defined under section 2(s) of the DV Act.

3. *Pooling of Resources & Financial Arrangements*: Supporting each other, or any one of them financially, sharing bank account, acquiring immovable properties in joint names or in the name of the women, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be guiding factor.
4. *Domestic Agreement*: Entrusting the responsibility, especially on the women to run the home, do the house-hold activities like cleaning, cooking, maintaining or upkeeping the house etc. is an indication of a relationship in the nature of marriage.
5. *Sexual Relationship*: Marriage like relationship refers to sexual relationship, not just pleasure but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.
6. *Children*: Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.
7. *Socialization in Public*: Holding out to the public & socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship in the nature of marriage.
8. *Intention and conduct of the parties*: Common Intention of parties as to what their relationships is to be and to involve as to their respective roles and responsibilities primarily determines the nature of that relationship.

1. *D. Velusamy vs. D. Patchaiamma*¹⁷

In this case, Court consider what is common law marriage which is sometimes called *de-facto* marriage, or informal marriage and so “relationship in the nature of marriage” is akin to a common law marriage. Common law marriages require that although not being formally married,

- a) The couple must hold themselves out to society as being akin to spouses;
- b) They must be of legal age to marry;
- c) They must be otherwise qualified to enter into a legal marriage, including being unmarried;
- d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In order to provide a remedy in civil law for protection of women , from being victims of such relationship and to prevent the occurrence of domestic violence in the society, for the first time in India, the Domestic Violence Act has been enacted to cover the couple having relationship in the nature of marriage , persons related by consanguinity , marriage etc. For the first time, through the DV Act, the Parliament has recognized a “relationship in the nature of marriage” and not directly a live-in –relationship.

Whether a relationship will fall within the expression "relationship in the nature of marriage" within the meaning of section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facts of the interpersonal relationship need to be taken into account. We cannot isolate individual factors because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances, which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests evolved judicially?

COMPARISON WITH OTHER COUNTRIES

1. **Scotland:** The Family Law (Scotland) Act, 2006 introduced new rights and an obligation concerning cohabiting couples (The live in relation). Section 25 (2) of the Act postulates that a court of law can consider a person as a co-habitant of another by checking on three parameters; (a) the length of the period during which they lived together, (b) the nature of the relationship during that period and (c) the nature and extent of any financial arrangements, subsisting or which subsisted during that period. In case of breakdown of such relationship, under Section 28 of the Act, a cohabitant has the right to apply in court for financial provision on the termination of the cohabitation —otherwise by reason of death – i.e. separation. If a partner dies intestate, the survivor can move the court for financial support from his estate within 6 months.¹⁸

Thus it can be seen that Scotland recognizes live-in-relationship and has legalized it and on breakdown of relationship, the rights of parties are also protected.

2. **UK:** In UK it is just a lucrative alternative to avoid shackles of marriage. On the whole this concept of live-in-relationship is popular in UK but it is seen that it is not treated seriously as marriage there and couples in live-in-relationship are more likely to split than in marriages.
3. **Sweden:** Sweden is the first country to create a statute for regulation of property rights of cohabitants. The statute was known as Cohabitees [Joint Homes] Act, 1987 and is now replaced by Cohabitees Act, 2003. The Act defines the cohabitees as two people living together as couple on permanent basis i.e. the relationship should be of long duration and should include sexual relation between them and they must share household. The Act does not apply if any of Cohabitees is married or registered partner. There is a division of property if the Cohabitees separate but there is no right of inheritance to surviving Cohabitate unless mentioned in the will.
4. **Philippines:** Live-in-relationship is recognized, and it governs the property relations by the rules on equal co-ownership, under Chapter- 4 "*Conjugal Partnership of Gains*", Article 147 (Family Code).¹⁹ Philippines provide that where a man and a woman who are capacitated to marry each other, live exclusively with each other just like a husband and wife, but without the benefit of marriage (or when the marriage is void). In such a situation, property acquired by both the spouses through their work, their wages and salaries shall

be owned by them in equal shares which shall be governed by equal co-ownership rule. It is seen that the Family code of Philippines legalizes the live-in relationship and gives right to the couple.

5. **USA:** There is no legal definition to the term “cohabitation” in USA and as a result of this on the dissolution of the relationship, the cohabitants do not get rights and financial safeguards as given to legally wedded spouses. Thus the unmarried partners in USA may face financial loss unless and until protected by a written agreement.

In USA the expression ‘palimony’ was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him. The first decision on palimony was the well-known decision of the California Superior Court in *Marvin vs. Marvin*. This case relates to the famous film actor Lee Marvin, with whom a lady Michelle lived for many years without marrying him, and was then deserted by him and she claimed palimony. Subsequently in many decisions of the Courts in USA, the concept of palimony has been considered and developed. The US Supreme Court has not given any decision on whether there is a legal right to palimony, but there are several decisions of the Courts in various states in USA. These Courts in USA have taken divergent views, some granting palimony, some denying it altogether, and some granting it on certain conditions. Hence in USA the law is still in a state of evolution on the right to palimony.²⁰

Although there is no statutory basis for grant of palimony in the US, the Courts there have granted it on a contractual basis. Some Courts in the US have held that there must be a written or oral agreement between the man and woman that if they separate, the man will give palimony to the woman; while other Courts have held that if a man and woman have lived together for a substantially long period without getting married, it would be deemed to be an implied or constructive contract that palimony will be given on their separation.²¹

In *Taylor vs. Fields* (1986) [224 Cal. Rpr. 186], the facts were that the plaintiff Taylor had a relationship with a married man Leo. After Leo died Taylor sued his widow alleging breach of an implied agreement to take care of Taylor financially and she claimed maintenance from the estate of Leo. The Court of Appeals in California held that the relationship alleged by Taylor was nothing more than that of a married man and his mistress. It was held that the alleged contract rested on meretricious consideration and hence was invalid and unenforceable. The Court of Appeals relied on the fact that Taylor did not live together with Leo but only occasionally spent weekends with him. There was no sign of a stable and significant cohabitation between the two.²²

1. **Canada:** Legal recognition of unmarried couple began in Canada in late 1970's. Recognition took place and resulted into drawing unmarried opposite sex cohabitants into family. The Law extended the statutory definition of “Spouse” to include partners who have been cohabiting for certain period ranging from one to three years and also shorter period if couple had children.
2. **France:** Civil Solidarity Pacts known as “*pacte civil de solidarite*” passed by the French Parliament in November 1999 that allows couples to enter into a union by signing before a court clerk. It is a contractual form which binds “two adults of

different sexes or of the same sex, in order to organize their joint life" and allows them to enjoy the rights accorded to married couples in the areas of income tax, housing and social welfare. The contract can be revoked unilaterally or bilaterally after giving the partner three months notice in writing. As of 2013, PACS remains available to both same and opposite sex couples after marriage and adoption rights were made legal for same-sex couples.²³

3. Australia: *De-facto* marriages are common in Australia. Couples are not legally married but meet the civil requirement of marriage. *De-facto* Relationships Act, 1984 was introduced for the first time in Australia by New South Wales legislature. It was made to deal with the unmarried heterosexual relationships known as *de-facto relationships*. A new section 4AA of the Family Law Amendment Act, 2008 defines *de-facto relationship* as:

- A person is in *de-facto* relationship with another person if:
 - The persons are not legally married to each other;
 - The person are not related by family;
 - Having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Section 4 (2) of the New Property (Relationships) Act (NSW) 1984 list the circumstances to be taken into consideration to determine whether the couple are in *de-facto* relationship. The list includes:

- a. The duration of the relationship;
- b. The nature and extent of common residence;
- c. Whether or not sexual relationship exists;
- d. The degree of financial dependence or inter-dependence and any arrangements for financial support, between the parties;
- e. The ownership, use and acquisition of property;
- f. The degree of mutual commitment to shared life;
- g. The care and support of children;
- h. The performance of household duties;
- i. The reputation and public aspects of the relations.

Thus it is seen that the laws of Australia recognize live- in- relationships in the name of *de-facto* relationships. It is not uncommon and it is getting socially and legally recognized. *De-facto* marriages are also recognized in various states in USA and such unions are known as domestic partnerships.

So, there is a different stand of countries on live –in- relationships. In countries like Bangladesh and Indonesia, the law has made the cohabitation punishable while in UK couples do not enjoy legal sanction. USA on other hand does not prohibit cohabitation but couples are

not provided with same rights as married. Countries like Canada, Australia, France, Scotland, Philippines are very clear on laws relating to live- in- relationship and appear liberal.

In some countries, legislation is passed while some are granting legal sanction by implied provisions. If we see the situation in India it is in somewhere middle on the path to gain acceptance. Socially it is not acceptable in India and there is no legal status to such relations but judiciary is actively giving decision in favor of live –in- relation and asking legislature to frame laws to protect the interest of partner and children born through such relations. The cases are increasing and the legal progress is not in the same pace, so the law needs to speed up with respect to live- in- relationship.

MAINTENANCE RIGHTS

The right of maintenance, which is a right of subsistence and survival for woman and children, is very important especially in cases of live- in- relations. Sec. 24 and 25 deals with the question of interim and permanent maintenance for Hindu spouses. Sec 18 of HAMA, 1956 deals with the right of a Hindu wife to be maintained by her husband during her lifetime. Sec 125 of the Cr P.C provides maintenance of a wife which also includes a divorced woman, but none of these legislations recognize maintenance for partners in live- in- relationship. The *Protection of Woman from Domestic Violence Act, 2005* is the first legislation which can be interpreted to include live- in- relationships as it makes provisions for women in “relationship in the nature of marriage”, but the protection under this Act does not qualify live- in- partners to get the same benefit under Personal Law.

MAINTENANCE RIGHTS OF WOMEN

Judiciary has been providing maintenance for informal relationships also in prolonged cohabitation and presumption of marriage. From 1929 Privy Council in *Mohabhat Ali vs. Md. Ibrahim Khar*²⁴, then *Mohammed Ameen vs. Vakil Ahmed* – the law presumes in favor of marriage and against concubinage when a man and woman have cohabited continuously for a number of years.

In leading case of *Badri Prasad vs. Dy. Director of Consolidation*²⁵, the Court held that if a man and woman have lived as husband and wife for about fifty years, under sec 114 of the IEA, a strong presumption arises in favor of wedlock. Although this presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

In *Ramesh Chandra Daga vs. Rameshwari Daga*²⁶ case, the court had accepted that Hindu Marriages have continued to be bigamous despite the enactment of the HMA, 1995. The court had commented that though such marriages are illegal as per the provision of the Act, they are not “immoral” and hence a financially dependent woman cannot be denied maintenance on this ground. On the basis of this judgment the woman who is in live -in -relationship should be given maintenance.

The Supreme Court in *D. Velusamy vs. Patchaiamma*²⁷, case decided to grant maintenance

to wife. In this case court has laid down the guidelines that what all are to be included in the term "relationship in the nature of marriage". The court observed that it would exclude many women from the benefit of the DV Act, who had been in a live-in- relationship. This case has constrained the scope of PWDVA by holding that "mistresses", "keeps", and "maids" with whom a married man may had sexual relationship are not entitled to maintenance.

MAINTENANCE ISSUES RELATING TO CHILDREN

The HMA, 1955 grants the status of legitimacy to every child irrespective of his birth out of a void, voidable or a legal marriage, but there is no specific law that raises any presumption of legitimacy in favor of children of live-in- partners. The future of children of live-in- partners becomes very insecure in case the partners step out of their relationship. There come the requirements of a strong provision to safeguard the rights of such children. There must be provision to secure the future of the child and also entitling the children to a share in the property of both the parents.

The Supreme Court in the case of *Dhannlal vs. Ganeshram*²⁸, while dealing with the issue whether the person would have rights over the inheritance of property even though she was not legally married but was in a live-in- relationship; observed that when the parties have cohabited with each other for a long time then there would be presumption of marriage which could be rebutted. It was also observed that the law prefers marriage against concubinage. It then went on to deal with the question regarding the status of the child born in such relationship and it was observed that such child would not be considered illegitimate. With regards to the issue of property, it was held that child should have the rights over the property of the parents.

So it could be said that though there is no specific legislation with respect to the status of the live-in- relationships, the SC through its various judgments has recognized it and also accords the parties to such a relationship the same rights as that for the parties to a marriage. However, a caveat must be sounded that the recognition of such relationships has been only when they have been in such relationships for a sufficiently long period of time and it is of the nature of marriage. So, for the parties in a live-in- relationship; to get the benefits of a marriage the relationship should be of such a character that it must be of the nature of a marriage. In the absence of a specific legislation, the Supreme Court of India took the initiative to safeguard the interest of women / of children of live-in couples. In case of *Bharat Matha vs. V. R. Vijaya Ranganathan*²⁹ and others; the SC has held that child born out of a live-in- relationship may be allowed to succeed in inheritance in the property of the parents if any, but not have any claims as against Hindu ancestral coparcenary property.

CONCLUSION AND SUGGESTIONS

The Fundamental Rights under Art.21 of the Constitution of India grants all its citizens "right to life and personal liberty" which means that one is free to live the way one wants without infringing others right.

The legal status of live-in-relationship in India has been evolving and determined by the Supreme Court in its various judgments. The right time has come that efforts should be made to enact a law on live-in-relationship having clear provisions with regard to the time span required to give status to the relationship, registration and rights of parties and children born out of it. As stated by *Aristotle* "For Man perfected, is the best of animals; but when separated from law and justice, he is worst of all".³⁰

Though the concept of live-in-relationship is considered immoral by the society, but is definitely not illegal in the eyes of the law. The court has also tried to improve the condition of the women and children born out of live-in-relationship by defining their status under the PWDVA 2005, if the relationship is proved to be "relationship in the nature of marriage." The guidelines which has been cut out in the case of *Indra Sarma vs. V.K.V. Sarma*³¹ relating to what all should be included in the expression relationship in the nature of marriage should be incorporated under section 2(f) of the D.V. Act.

The Courts should make it mandatory for the couple to get married if the child is born out of such relationship so that the child do not suffer because of the steps taken by the parents.

The wide interpretation of the term "wife" which is discussed in the case of *Chanmuniya vs. Virendra Kumar Singh Kushwaha*³² by Justice G.S. Singhvi and Justice A.K. Ganguly should be made applicable in the cases of live-in-relationship which is as follows:

"A broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonable long period of time and strict proof of marriage should not be a pre-condition for maintenance under Sec 125 of the Cr. P.C. so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Sec 125".

The recommendation of Justice Malimath Committee should be incorporated which says that definition of "Wife" under Section 125 of the Cr.P.C. should be amended and it should include female partner who are living with male partner for a long period as his wife while the first marriage of man is still subsisting. Same should be interpreted for female partner in live-in-relationship if female is unaware of married status of man.

It was suggested that the benefits awarded to live-in-relationships under the PWDVA should be extended to woman claiming maintenance under Sec 125 of the Cr. P.C as such an interpretation would be a just application of the principles enshrined on our Constitution.

For determining the rights of women in relationships in the nature of marriage given in PWDV Act 2005, the guidelines issued by the Court of South Africa should be incorporated in PWDV Act 2005. Those are as follows:

1. The commitments of the parties to the shared household;
2. The existence of a significant period of cohabitation;
3. The existence of financial and other dependency between the parties including significant mutual financial arrangements vis-à-vis the household ;
4. The existence of children of the relationship; and

5. The role of the partners in maintaining the household and the children.

Live-in-relationship in India still considered a taboo and not accepted by the majority of people and considered immoral but we can't ignore such relationship as it is rapidly growing in metro cities. Therefore there is an urgent and dire need to recognize such relationship through specific legislation defining the rights of spouse and children without hampering the institution of marriage.

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30. Aristotle, *Politics* Translated by Benjamin Jowett. Available at <https://ebooks.adelaide.edu.au/a/aristotle/a8po/>

31. Supra note 16

32. (2011) 1 SCC 141