



Judicial approach to live-in relationship: Protection and other related issues

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Abstract

There can be nothing more human than the desire to find an individual to share their life. Indian culture recognizes and validates this desire in the form of institute of marriage. With globalization and modernization, a new concept of live-in relation has emerged which includes cohabitation without being married. However, India still doesn't have a clear stand on the matter, and it's the Judiciary that has to intervene to fill the void in the absence of a legal system. There are a great deal of issues that are associated with this institution, specifically in the area of property, finances, etc. Recent occurrences are shifting towards the protection of individuals under Article 21 of the Indian Constitution. The article attempts to highlight the societal perceptions and judicial responses towards live-in relations in India. At the same time, it looks into the international prospect of live-in relationships and the responses of different countries on the matter. Lastly, it brings into highlight some of the recent happenings and issues in India on the matter.

Keywords: marriage, live-in relations, India, international, recent trends, article 21, judiciary, society, legal system

Introduction

“*Conjunctio mariti et faminae est de jure natura*”- The union of a man and a woman is of the law of nature. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife^[1]. Marriage is a sacrament and the acceptable holy union of a man and a woman in the society.

Live-in relations on other hand are described as the choice of man/women to voluntarily live together, unmarried, for a long period or a lifetime. Live-in relations are not recognized under any law nor are accepted in Indian society. The concept of live-in relations is not new and can be seen on various occasions and forms in Indian history. Out of the eight types of marriages recognised in the Vedas, one such is the *Gandharva* type, wherein a man and a woman jointly consent to be married. This type of arrangement does not require the consent of the parents of the couple or certain specific rituals or processes to formalize the marriage. The Nawabs, princes, and wealthy men in India not only had several wives, but also several live-in women in their *Zenanas*.

Though these forms of arrangement between couples were acceptable but still were always frowned upon by society. Particularly if we talk about the position of a woman in these arrangements. The women at that time were solely dependent on their male counterparts and usually had to go through harsh treatment from society as well as financially. The origin of live-in relationships, as it is known today, can be traced to western culture. Common law marriages or de facto marriages are the terms that are used. Even though the concept of live-in has originated from western culture, still there are very few jurisdictions that recognize the status of these arrangements and set up a legal system to regulate them.

Youth of the world are more inclined towards the concept of live-in relations over marriage due to various reasons. Some

of them are-

- To test the compatibility before entering into marriage;
- Marriage not supported by family or society due to inter-religion, same-sex, etc;
- Due to the increasing rate of divorces;
- Maintain single status for financial reasons;
- Couple wants to focus on their careers rather than take responsibility for their spouses and their family;
- To escape the loneliness in their lives senior citizens have started preferring to live in relationships.

A group of senior citizens under the banner of 'Jyeshtha Nagrik Live-In Relationship Mandal' Nagpur, led by a former banker Arvind Godbole has formed an organization for helping those seeking a partner at the far end of their lives^[2]. Vina Mulya Amulya Seva (VMAS) Ahmedabad, the charitable trust which had organized this 'Senior Citizen Live-in Relationship Samellan', seven couples who met at this alliance meet have decided to enter into a live-in relationship^[3].

Irrespective of the fact that numerous people are opting for live-in relationships, still there is a lack in the legal system of rights to them. Due to this situation, there are a number of issues that have become a topic of discussion.

Social perception of live-in relationships: A dive into reality

Indian society continues to be conservative in the sense that marriage is considered to be an indisputable part of one's life and any kind of pre-marital sexual relationships are shunned upon. Therefore, live-in relationships have been resented by the people of India. A large part of the society considers pre-marital cohabitation as a threat to the Indian culture as according to them, it destroys the idea of marriage and should be treated as immoral.

Many people in India believe that live-in relationships are just a way to fulfill sexual desires and hence it is the same as prostitution^[4]. A woman is expected to be a virgin at the

time of marriage and the very idea of live-in relationships goes against this notion. Moreover, the Indian tradition and culture lean towards arranged marriages where the family of those wishing to get married enter into an arrangement, and oftentimes, particularly in rural areas, the bride and groom meet only on the day of marriage.

However, there has been an increase in the influence of Western or European culture on Indian society due to globalization and thus, a shift can be observed from traditional values. Earlier, marriage was considered necessary as part of one's religious duty and the fact that women were economically dependent on men. In recent years, the values of loyalty, duty, and self-sacrifice in marriage have been replaced by companionship, equality between spouses, economic independence, and compatibility, at least among the upper classes^[5].

This change in the value system has also supported the cause of live-in relationships. It has been a growing trend among the younger generation of metro cities to be a part of various relationships to satisfy their physical, mental, emotional, and financial needs without the constraints of marriage^[6]. It also allows them to explore compatibility with their partner before entering into marriage. Women in such an arrangement get to retain their individual identity and are not reduced to being a wife or a domestic partner.

As the cases of divorce for lack of understanding or companionship between the spouses is on the rise, the youth considers it as an important pre-marital step in order to reduce the chances of divorce in the future, if they ever decide to enter into wedlock. If not, they can simply decide to go their separate ways without any kind of drama and legal interventions.

A study^[7] conducted in one of the districts in Andhra Pradesh between 20-25 year olds found that the majority of males and around 40% of females were in support of the fact that live-in relationships lead to better understanding before marriage. However, a majority of them were also of the view that a live-in relationship would have a negative effect on relationships with their parents.

Even though the cases of separation and divorce are on the rise and live-in relationships offer a lucrative solution to this growing problem, the relationship continues to be treated as a stigma by society. It is described as something to be "kept in the dark" and should not be disclosed to others. Most couples do not disclose their relationships to their parents or family members in the fear of it being considered taboo by them^[8]. Consequently, the couple finds it difficult to adjust in the society and are often faced with residential issues. The residential buildings refuse to offer them any accommodation and even if they do find one, they are repeatedly looked upon by other people, which prevents them from living a peaceful life.

The legal scheme concerning live-in relations: international and national scenario

Every country has a different outlook and stand when it comes to live-in relations. The countries might protect these relationships through various legal mechanisms dealing with finances, properties, housing rights, rights of children, etc. of the couple. These countries, though provide some form of protection but still discourage attempts of live-in relationships.

Status of Live-in relationships and International conventions

The standing of a live-in relationship has not been literally defined under the international conventions relating to human rights. Few provisions can be interpreted to protect individuals who are in a live-in relationship.

Article 23(1) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that 'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.' The term family that has been used should not be used in a restrictive or traditional sense and must be given a liberal interpretation to include relations that are developing with time. When two individuals decide to live together under the same roof and take care of each other emotionally, physically, financially, and of their children, they are considered as family. The modern era that we live in will include live-in relations within the purview of the Family as mentioned under Article 23(1) of ICCPR.

Article 16(3) of the Universal Declaration of Human Rights, 1948 is a replica of the above provision and includes within its protection live-in relations as well.

Status of Live-in Relationships in other countries

1. United Kingdom: Three concepts of marriage, civil partnership, and cohabitation, need to be set clear to understand the status of Live-in relations in the UK.

a. Marriage: This concept of marriage is widely accepted and has a similar stand in different countries. Requirements are- should be of legal age, should not be related, give notice of intention to get married to the local register office, etc.

b. Civil Partnership: This was introduced through Civil Partnership Act 2004. This Act was passed to give recognition to same-sex couples however the Act doesn't bar heterosexual couples to enter into a civil partnership.

A civil partnership is a registered relationship between two individuals similar to that of a marriage. Though there are a lot of similarities between marriage and civil partnership, there are certain prominent differences. These differences are-

1. Civil partners cannot call themselves 'married' for legal purposes;
2. Marriage is formed by vows, whereas a civil partnership is formed by signing the civil partnership document^[9];
3. Marriages are ended by divorce, whereas civil partnerships are ended by dissolution, although the process is fundamentally the same;
4. The grounds to separate in case of marriage are much wider as compared to a civil partnership.

Except for the above differences, all-other responsibilities and rights are similar to that of a marriage.

c. Common-law marriage: Cohabitation/Common law marriage/ Live-in relations all these are synonyms to each other. In this, two individuals move in together to cohabit without registering as married or civil partners. Many couples who move in together in the UK think that the common law marriage is legally recognized and automatically provides them rights similar to married couples however the reality is far from it. Common-law marriage is not recognized in the

UK and the couples can not claim any property rights, inheritance, right to a State pension, or right of Bereavement allowances. Only the rights of children begotten from these relations are recognized. The couple can simply move out of this relationship whenever they want without any legal procedure. The couple can however enter into a Cohabitation Agreement to recognize the rights and responsibilities of each partner in this relationship.

From the above discussion, it becomes clear that Live-in Partners do not enjoy the legal benefits or status of a married couple or civil partners. The only protection that they can get is if they enter into a cohabitation agreement and set their terms for this relation. However, all cohabitation agreements have to stand the test of legality to be effective.

2. **United States of America:** In the USA the concept of 'cohabitation agreement' exists in order to protect individuals who have decided to live together. Cohabitation was illegal in the United States prior to 1970 but went on to gain status as common law, subject to certain requirements^[10]. The word 'palimony' was coined in the USA. Palimony is the combination of the word 'pal' and 'alimony', it means the 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 case relating to palimony was *Marvin v. Marvin*^[11], the case was relating to actor Lee Marvin and one lady Michelle who was living with him without marrying him. When he deserted her, she went to the court to ask for alimony as they were living together for many years and sharing the house like a married couple. The court granted her the same. Another prominent case that needs to be mentioned here is *Taylor v. Fields*^[12] the facts were that the plaintiff Taylor had a relationship with a married man Leo. After Leo died Taylor sued his widow asking for maintenance of Taylor financially. The Court pointed out that the relationship alleged was that of a married man and a mistress. There was no sign of a stable and significant cohabitation between the two. The Courts in the USA have recognized cohabitation in various cases and provided a certain amount of protection. Occasionally, there are instances where the State has passed law against cohabitation. Though the Courts have recognized live-in relations, the States still draws a sharp distinction between marriage and cohabitation, giving importance to the former and condoning the latter. The stand of cohabitation agreement in the USA is similar to that in the UK and there are no marital rights or liabilities that arise from it. A couple who are cohabitating in a home have to draw up a cohabitation agreement in order to deal with their financial and property matters. The partners are not entitled to any inheritance, insurance benefits, pension rights, or social security survivors' benefits.
3. **Scotland:** After the Scottish reform of 1560, the matters relating to family and marriages were under Church discipline. Any kind of illegitimate relations like adultery, fornication, clandestine marriage, etc was condoned and punished. However, marriage by cohabitation and repute was understood as a legitimate - albeit irregular - form of marriage in Scotland until

2006^[13].

Family Law (Scotland) Act, 2006 introduced a new right defining cohabitation. According to Section 25(1) of the Act, Cohabitation means-

- 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.

Section 25(2) of the Act provides the condition to determine the existence of cohabitation. These conditions are-

- a. the length of the period during which couple have been living together ;
- b. the nature of their relationship during that period; and
- c. the nature and extent of any financial arrangements subsisting.

If the above conditions are fulfilled it is considered that the couple is in cohabitation and are governed under this Act. Section 28 of the Act provides for financial provision where cohabitation ends otherwise than by death i.e., separation. If a partner dies intestate, the survivor can move the court for financial support from his estate within 6 months^[14].

4. **Canada:** Canada has recognized Live-in relations as common-law marriages. The Family Law Act 2006 RSO 1990 deals with cohabitation agreements under Section 53 and 54 of the Act. Section 53(1) of the Act describes what is cohabitation agreement. It says, Two persons who are cohabiting or intend to cohabit without marriage, may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or on ceasing to cohabit or on death, including,
 - a. ownership in or division of property;
 - b. support obligations;
 - c. the right to direct the education and moral training of their children, but not the right to decision-making responsibility or parenting time with respect to their children; and
 - d. any other matter in the settlement of their affairs.

Section 53(2) says that if the cohabitating partners decide to get married, the cohabitation agreement will be considered as a marriage contract. Although a cohabitation agreement has been recognized under Canadian law still the status is not the same as a married couple. The property regime under the Act however will only be applicable to the married partners.

The rights that a cohabiting partner gets on separation are-

- a. Right to constructive trust when the partner doesn't get any right in the property;
- b. Spousal support if the couple has stayed together for 3 years;
- c. Same right as a married spouse in the case of children.
- d.

5. **France:** During the 1980s there were huge concerns due to AIDS and homosexuality. France was not ready to accept same-sex couples and limited the status of marriage to heterosexual couples. Even the heterosexual couples who were cohabitating without marriage were not given any rights. On 15 November 1999, PACS was promulgated (*Loi sur le concubinage et le pacte civil de solidarité*), after a passionate debate in the National Assembly and the media.

The Civil Solidarity Pacts known as “*pacte civil de solidarite*” (PACS) allow the couple to enter into a union in front of a Court clerk. The union is formed to organize their joint life, mainly 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.

Status of Live-in Relationships in India

The law that specifically deals with Live-in relations in India is still absent, nor is there any mention of such relations under the family law of this country. Due to the cultural background of this country, it would be difficult to introduce or add provisions regarding the live-in relations in the legal system of this country.

Though the term, live-in relation, is not specifically mentioned, there are few instances and laws which might protect the partners in this kind of relationship. Let's have a look at them.

1. The Protection of Women from Domestic Violence

Act 2005: Though the term live-in has not been defined under the Act, it protects a female living with a male which resembles the nature of marriage. Section 2 (f) defines Domestic Relationship, it states “couple 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.” The Court has time and again interpreted the Section to include live-in relations in order to provide them some form of protection. Under Section 2(a) an aggrieved person has been defined and the word “women” has been used rather than a wife.

2. Committee on Reforms of Criminal Justice System, 2003

^[15]: Malimath Committee provided numerous recommendations in regards to offenses against women. One such recommendation was to amend the word ‘wife’ in Section 125 of the Criminal Procedure Code with ‘women’. This was done to provide some form of protection to women who were in live-in relations for a reasonable period. In 2008, Maharashtra Government accepted the recommendation and application was extended in the State. To this alteration, Section 125 CrPC was previously incorporated to avoid vagrancy and destitution for a wife/minor child/old age parents, but the same has now been extended to partners of a live-in relationship by judicial interpretation ^[16].

3. The Indian Evidence Act, 1872:

Section 114 of the Indian Evidence Act states that the Court may presume the existence of any fact which it thinks is likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The section is applied in the case of live-in relation and if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section that they live as husband and wife and the children born to them will not be illegitimate ^[17].

However, due to lack of a specific law in this regard, it is the courts that were entrusted with the responsibility to deal

with the same.

Response of Indian judiciary to live-in relation: judicial stand and its effect

With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”

— Honourable Justice A.K Ganguly ^[18].

The status of live-in relation still lacks legal backing. The Indian Judiciary has taken the responsibility to fill the gap between the little law that we have and the rights that must be provided to the couple and children born. The process was a lengthy one that took years of cases to reach the status that we have today.

Section 114 of the Indian Evidence Act raises a presumption of marriage for a couple who has been living together for a long period of time. This presumption was recognized by the courts even during the pre-independence period by the Privy Council stating that “where a man and a woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage.” ^[19] A similar view was held by the Council in *Mohabhat Ali v. Md. Ibrahim Khan* ^[20].

This presumption is rebuttable but the burden lies heavily on the person who seeks to prove that there is no legal basis to the relationship and that no marriage has taken place. In *Badri Prasad v. Dy. Director of Consolidation*, the court while presuming that a couple who had lived together for a period of around 50 years to be a married couple, stated that, “Law leans in favour of legitimacy and frowns upon a bastard.”

Madan Mohan Singh & Ors. v. Rajni Kant & Anr. ^[21], the facts of the case were that Chandra Deo Singh and Smt. Shakuntala was living together for a long time (1960-1979). Their relationship as husband and wife had been accepted by the society. The respondents asked for their share in the property of the father which was being objected to by the appellant on the ground that there was no official marriage ceremony performed between Chandra Deo and Shakuntala. The Court said ‘the live-in- relationship, if continued for such a long time, cannot be termed as a “walk in and walk out” relationship and there is a presumption of marriage between them which the appellants failed to rebut’ ^[22].

The Special Bench of the Supreme Court of India consisting of K.G. Balakrishnan, Deepak Verma, B.S. Chauhan in *S. Khushboo v. Kanniammal & Anr* ^[23], while talking about live-in relations, remarked- ‘While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view’ ^[24]. The court also said that there is no statutory offense when two adults decide to live together or indulge in sexual relations willingly, obviously exempting adultery ^[25]. The case was in regards to an opinion presented by actress S. Khushboo on premarital sex and live-in relations.

The next case is *Alok Kumar v. State* ^[26], this case specifically related to live-in relations. The facts of the case were that the complainant started live-in relation with the petitioner, who had not even divorced his wife. Later on, the petitioner gets a divorce and gets engaged to some other women and was about to leave India with her. The complainant stopped him at the airport where harsh methods were used by the parties against each other, and the

petitioner was stopped from boarding the flight. Justice S.N. Dhingra tagged the nature of such a relationship as a walk-in and walk-out relationship and there are no strings attached to this relationship, neither this relationship creates any legal bond between the parties, which otherwise is created in marriage.

The Court also noted that these relations are a kind of contract that renews each day at the will of parties and it should not be a shock when one party decides to move out of it. The complainant being an educated woman was not naïve to understand the status of the relationship.

It was in the case of *D. Velusamy v. D. Patchaiamma* ^[27] that the Supreme Court interpreted the provisions of the Prevention of Women Against Domestic Violence Act, 2005 (hereinafter referred to as “the Act”) to include women in live-in relationships. Section 2(f) of the Act which defines domestic relationships also includes two people living together through a relationship in the nature of marriage. The expression, however, has nowhere been defined in the Act, and therefore, the court took it upon itself to interpret the same. It was of the opinion that the Parliament by using the expression ‘relationship in the nature of marriage’ has done so with the intention of including the growing social phenomenon of live-in relationships. The court considered such relationships in India to be similar to common law marriages in other countries, which are also known as de facto or informal marriages. In such a kind of marriage, relationships are recognized as marriages even though no legal ceremony is performed or civil marriage contract is entered into. Thus, the court, recognizing the essentials for a civil law marriage observed that these apply to relationships in the nature of marriage or live-in relationships in India. They are:

- a. The couple must hold themselves out to society as being akin to spouses.
- b. The couple must be of legal age to enter into a marriage.
- c. They must have been in cohabitation voluntarily for a significant period of time and society must think of them as spouses.

In addition to fulfilling the above conditions, the couple must also be living in a ‘shared household’ as defined under Section 2(s) of the Act, and living together for a few days or weekends or one night stand would not be covered under domestic relationships.

Another issue before the courts was determining the legitimacy of children born out of such relationships. In *Revanasiddappa & Anr. v. Mallikarjun & Ors.*, the Supreme Court remarked that the child born out of a couple living in pre-marital cohabitation would be considered as legitimate and would be entitled to all the rights and privileges that are available to a child born out of valid marriages. However, such a child may be allowed as a successor in the inheritance of his parent’s property but cannot stake any claim in the ancestral property as a coparcener. (*Bhaasthamatha & Ors. v R. Vijaya Renganathan & Ors.*)

The next two cases are quite prominent cases as not only do they define the boundaries of live-in relation but also provide *sine qua non* of these relationships.

In *Velusamy v. D. Patchaiamma* ^[28], the Supreme Court set the prerequisites for live-in relations to be considered valid. The court deduced that marriage-like relations in the 2005 PWDV Act must fulfill certain criteria. They are-

- a. the couple must be of legal age to marry or should be qualified to enter into a legal marriage;
- b. the couple must have voluntarily cohabited and held themselves out to the world as being akin to spouses;
- c. spending a week together or a one-night stand would not make it a household relationship ^[29].

It additionally held that if a man has a “keep” whom he maintains financially and uses principally for sexual reasons or potentially as a slave then it would not be considered, as a relationship like marriage.

In *Indra Sarma v. V.K.V. Sarma* ^[30] the two-Judge Bench of the Supreme Court held that when the woman is aware of the fact that the man with whom she is having live-in relation is already having a wife and children, won’t be provided relief under the PWDV Act, 2005. However, the Court also noted that denial of any protection would amount to a great injustice to victims of illegal relationships who are poor, illiterate and also to their children who are born out of such relationships and have no source of income of their own ^[31]. Therefore, the Court remarked that there is a burning need to expand the connotation of Sec. 2 (f) of the PWDV Act, 2005.

During the course of the case, the Supreme Court came up with the guidelines to deal with the matters of Live-in relations. These are-

1. Duration of relationship: Section 2(f) of the DV Act has used the expression “at any point of time”, which means a reasonable period to maintain and continue a relationship which may vary from case to case, depending upon the factual situation.
2. Shared household: The expression has been defined under Section 2(s) of the DV Act and, hence, needs no further elaboration.
3. Pooling of Resources and Financial Arrangements supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long-standing relationship, maybe a guiding factor.
4. Domestic Arrangements: Entrusting the responsibility, especially on the woman to run the home, do household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.
5. Sexual Relationship: Marriage-like relationship refers to a sexual relationship, not just for pleasure, but for an emotional and intimate relationship, for the procreation of children, so as to give emotional support, companionship, and also marital affection, caring, etc.
6. 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 and socializing with friends, relations, and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.
8. Intention and conduct of the parties: Common intention of parties as to what their relationship is and to involve and as to their respective roles and responsibilities, primarily determines the nature of that relationship.” ^[32]

These guidelines were recommended for the Parliament to base a legal system on them, to protect the parties of live-in relations.

The current status of live-in relationship: recent cases

The notion of live-in relationships has increasingly been accepted by the younger generation, particularly in metro cities. However, the families of the couple consider this act to be immoral and often resort to honour-based crimes. They believe that cohabitation prior to marriage is a way of insulting the honour of the family in the society. The actions which generally lead to such honour-based crimes are ^[32]:

1. Loss of virginity outside marriage
2. Pre-marital pregnancy
3. Infidelity
4. Having unapproved relationships
5. Refusing an arranged marriage
6. Leaving family or marital home without permission
7. Causing scandal or gossip in the community

Recently, there have been instances wherein the live-in couple had to approach the courts for seeking protection from their own family members. This is because the police refuse to grant them such protection, the relationship being considered a taboo in the society. The general practice adopted by the courts has been to grant such protection to the couple, however, recently there have been instances where the High Courts have taken an opposing view. The Punjab and Haryana High Court has in some of its recent judgments questioned the morality of live-in relationship. In *Gulza Kumari & Anr. v. State of Punjab & Ors* ^[33], the bench observed that, "the petitioners in the garb of filing the present petition are seeking seal of approval on their live-in-relationship, which is morally and socially not acceptable and no protection order in the petition can be passed" This order was quickly overturned by the Supreme Court. Another instance was in the case of *Ujjwal & Anr. v. State of Haryana & Ors.* ^[34], the judge while denying the protection held that the grant of protection would be against the social fabric of the society.

In *Ajay Kumar Berwa & Anr. v. State of Rajasthan & Ors.* ^[35], The Rajasthan high court remarked that protection under Article 21 is mandatory and must be provided at all costs. Immoral and unsocial relations between two major individuals cannot be the reason to deny the protection to the couple.

In *Malarkodi @ Malar v. The Chief Internal Audit Office* ^[36], the question was raised- whether a woman in a Live-in relationship is entitled to pensionary benefits? The single-judge bench has referred the question to a larger Bench. However, Justice S Vaidhyanathan pointed that the second wife attains the deeming status of a wife from the date of demise of the first wife, in case, the husband is alive on the date of demise of the first wife. Also, when the unknown relationship comes to be known after the demise of the husband, such woman may not be entitled to any relief, unless Personal Law permits more than one marriage or a declaration is obtained from the competent Judicial Forum with regard to her legal status, after making the first wife as a party, if she is alive."

Conclusion and suggestions

The concept of live-in relationship is no longer considered as something 'new' in the Indian society. It is gradually

gaining momentum, especially amongst the youth of metro cities, even though it continues to be perceived as something immoral or taboo by a majority of the population. It has allowed the couples to be responsible and also be in a relationship wherein they can have shared physical, mental and emotional needs with economic independence. The women in such a relationship are not expected to commit to the pious obligations which are generally expected from a wife towards her husband and in-laws.

However, it is wrong to believe that any kind of premarital cohabitation would destroy the institution of marriage or family. Infact, it should be a welcome step in society, seeing the increase in the number of separation or divorce cases after marriages. This would allow the couple to understand and check their compatibility before committing themselves to a more permanent form of relationship, such as marriage. It is imperative that the law changes with the change in society. Some of the countries in their jurisdictions have provided recognition to live in relationships in one form or another, laying down their rights and liabilities that can arise from such relationships.

But in India, there is no specific law in this regard and the lawmakers are hesitant to give recognition to a relationship which promotes premarital sexual relationships in India. However, they cannot deny the reality for long and must accept the growing existence of such relationships in the future. This is because in the event of a lack of a proper legislation in this regard, the burden has been put on the judiciary to deal with the individual cases of live-in relationships, to interpret their rights and responsibilities and other incidental issues. The couples approach the courts particularly for the grant of protection from their own family members who find it difficult to accept their relationships and consider it an insult to their reputation in the society. Consequently, the couples are harassed, and often face a threat of being murdered by their own family.

The courts are already overburdened and this lack of recognition of live in relationships by the lawmakers, only further burdens the courts and also makes the couples vulnerable to various atrocities for an act which is not illegal.

Thus, the following suggestions may be taken into consideration to bring out the solutions to this persistent problem:

1. The courts have time and again held that a relationship would be presumed to be a marriage if the couple has been living together for a long period of time. However, what constitutes a 'significant period of time' continues to be undefined. Since the courts decide the same on their own discretion, it has the possibility of being misused. Thus, there is a need to lay down a specific period within which a couple in cohabitation would be treated as a marriage, to remove any kind of arbitrariness and confusion.
2. Sometimes, it is the law that can bring about a change in the society and not the other way around. Thus, the legislature may either introduce a new enactment specifically dealing with live in relationships so that the rights and obligations of such couple are pre defined or make amendments to existing laws.
3. The following amendments may be made in this regards:
 - a. Amendment in definition of wife under Section 125 to include women involved in relationships similar to

- marriage who have been in cohabitation for a long period of time.
- b. Amendment in Hindu Marriage Act to make a child born out of such a relationship to have a right in the ancestral property of the parents.
 4. Cohabitation in furtherance of an agreement in the nature of recognition of the right and liabilities of the parties should be given due recognition as is being done in France.

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