



## A Socio-Legal Study of Live in Relationships and its Impact on the Institution of Marriage

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### **1.1 Introduction:**

A live in relationship refers to a practice of mutual co existence wherein heterosexual couples decide to live together without entering into the formal institution of marriage. It is also popularly known as mutual cohabitation however it does not necessarily include sexual relationship<sup>1</sup>. It is generally informal in nature however some countries do offer registration of such couples as well .There can be a number of reasons for entering into a live in relationship such as to test compatibility or to avoid the hassles of marriage ceremonies and lengthy divorce procedures if later on the couple decided part ways<sup>2</sup>. Another reason can be that they see no benefit or value offered by a formal marriage or their financial condition averts them from it. The culture of live in relationship has been common in the western countries since a long time however lately; this practice has also acquired prevalence in the Indian society<sup>3</sup>. The growing prominence of nuclear families, changing priorities and

mind set of the youth and the hassle free nature of such relations are the prime reasons for which even in a traditional society like India, where the institution of marriage is “sacred”, an increasing number of couples choose a live-in relationship, sometimes even as a permanent arrangement over marriage. However with these changing scenarios several social and legal challenges have also arisen. These issues and challenges need to dealt with much caution and care, in order to ensure that the sanctity of relations remain intact and at the same time; injustice is also not meted out to anyone in exercise of their own choice and free will.

Fundamentally speaking a live in relationship can be of two kinds ‘relationship of choice’ and ‘relationship by circumstances’. A relationship of choice is one in which the couple voluntarily decides to live in together. It may exist even when one or both the partners are already legally married to someone else and still they decide to live enter into such a relationship as a matter of preference<sup>5</sup>. However there may be other couples who are not married to somebody else but still they don’t want to enter into a formal marriage with each other and are happy to continue as live in partners. In metros like Delhi and Mumbai it is extremely difficult for bachelors and spinsters to get accommodation who are working in multinational companies or

<sup>1</sup>[<sup>2</sup>Dholam, S. N. Socio-legal dimensions of ‘live-In relationship’ in India.](https://www.enotes.com/everyday-law-encyclopedia/cohabitation%20on%20 by Keth Lee, accessed on 19<sup>th</sup> July’ 17 at 18:00 pm.</a></p>
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<sup>3</sup>Duff, J., & Truitt, G. C. (1992). *The Spousal Equivalent Handbook: A Legal and Financial Guide to Living Together*. NAL Trade.

<sup>4</sup>Benefit, F. W., Solot, D., & Miller, M. (2008).

Taking Government Out of the Marriage Business. *Marriage Proposals: Questioning a Legal Status*, 70.

<sup>5</sup>Boaz, D. (1997). Privatize Marriage. *Slate*, April, 25.



corporate houses<sup>6</sup>. In such a situation young people often get into an agreement with the opposite sex for the sake of accommodation and live together. Though their relation is neither real nor fake in the eyes of law and they don't share any intimate relationship, however with passage of time they may begin to nurture feelings for each other. On the other hand a 'relationship of circumstance' is one in which both the partners are mistaken that a valid marriage exists between them or they are into a misconception that they had validly divorced their previous partners or they cannot afford to enter into a formal marriage institution owing to their financial constraints. Such a case may occur where a man or woman is led to believe that the man or woman whom they are to marry is unmarried, divorced or widowed and married him or her when in reality this is not the case<sup>7</sup>. Even if all the rituals of marriage are readily followed; still the marriage won't be valid in the eyes of the law; if either of the parties has a husband or wife living at that time, whom they have not divorced formally. Such a live in relationship is thus involuntarily entered into and the government and law makers need to take special measures to protect socio- economic and legal interest of people who are caught in circumstantial live in relations<sup>8</sup>.

### 1.2 Objective of the Research:

<sup>6</sup>Samuels, M. D. (1995). You Don't Have to Be Married to Be Legal. *Compleat Law.*, 12, 46.

<sup>7</sup>Hardaway, C. L. (1999). Family Law Preventive Issues. *Preventive L. Rep.*, 18, 15.

<sup>8</sup>Yadav, A. K., & Yadav, S. (2011). Live-in Relationship: The Legality of Unconventional Relationship in India. In *ims* (p. 23).

There are several legal concerns associated with live in relations as well such as those pertaining to issues of maintenance and succession. Further if the rights of wife and live in partner become equivalent then it would promote bigamy. Hence it is very essential to wisely consider all the pros and cons and try to institute a legal framework that would ensure a balance in the society in respect of the valid societal concerns as well as the rights and liberties of the couples in live in relations. Hence the main object or purpose of this research project is 'Toconduct a socio-legal study of live-in relationships and its impact on the institution of marriage'.

### 1.3 Research Questions:

The researcher aims to achieve the objective of this research by investigating and trying to acquire satisfactory answers for the following research questions:

1. How the Indian Legal system has evolved in the last two decades while adjudicating on cases pertaining to live in relationship?
2. What are the rights of female partners in a live in relation under the Indian law with respect to maintenance and protection from domestic violence?
3. What is the status of children born out of live in relationships under the Indian legal system?
4. Has society's perspective towards live in relationship changed in a positive manner or there is still no progress?

### 2. Differentiation between Live in Relationship and Other Forms of Co-habitation:



Often society and even the judiciary tend to meddle with the difference between live in relationship and other forms of mutual cohabitation. However there is still a subtle and prominent distinction between them which needs to be accorded clarity in order to ensure protection of rights and interests of the genuine stakeholders.

a) A “mistress” also known as paramour or lover refers to a man’s long term companion and sexual partner with whom he shares an intimate relation, despite being married to someone else. There may be instances where the man the man may provide for his partner’s expenses and other facilities; however the two don’t live together like in case of live in relationship. Moreover the status of such relationships is mostly semi permanent only and it’s generally secretive. However there is no clear cut division with respect to the rights of the parties in both the cases as many a times it’s seen that the court grants similar rights to a mistress as to a live in partner<sup>9</sup>.

b) A “concubine” refers to a woman who co habits with a man in addition to his official wife. The practice of keeping concubines is an age old practice mostly followed by Asian, Arab and European rulers. The status of such woman is lower than the official wife and thus they enjoy limited rights. Moreover it may be regarded as a form of sexual slavery and

under Hindu law these women are known as ‘Avarudha Stris’. Such a relationship is distinct from a live in relation because a woman generally enters into a live in relationship voluntarily however that may not be the case with concubines. Furthermore the purpose of entering a live in relationship might not solely be sexual pleasure, however the sole purpose of relationship with a concubine is sexual intimacy<sup>10</sup>.

### 3.1 Status of Live in Relationships in India:

The custom of men and women living together without marriage has been observed since time in memorial. In ancient times especially during the period of royalty the kings and nawabs not only had multiple wives but they also lived with several live in partners<sup>11</sup>. In fact in those days it was not at all considered immoral for men to have live in partners outside their marriage. However with changing times as royalty slowly vanished from India and society progressed we became more sensitive towards the causes and concerns of women<sup>12</sup>. Thereafter post independence when bigamy became prohibited under the law and women became more empowered and aware of their rights; this practice almost died out. However once again the society is under a phase of transition but fortunately this change is not against the rights and interests of any one

<sup>9</sup>Singh, D. (1996). Cohabitation relationships revisited: Is it not time for acceptance?. *Comparative and International Law Journal of Southern Africa*, 29(3), 317-328.

<sup>10</sup> Ibid pp. 334-347.

<sup>11</sup>Singh, D. (1996). Cohabitation relationships revisited: Is it not time for acceptance?. *Comparative and International Law Journal of Southern Africa*, 29(3), 317-328.

<sup>12</sup>Blumberg, G. G. (1982). Marriage and Cohabitation in Contemporary Societies: Areas of Legal, Social and Ethical Change.



particular gender neither it is biased and unjust. This change has come with the changing mentality of the people especially the educated sections living in the bigger towns and cities<sup>13</sup>.

The new generation concept of live in relationship does not involve multiple cohabitations as the practice in the ancient times however it involves the male and female partner living together like a husband and wife without actually being married formally<sup>14</sup>. But the problem that emerges is that the traditional Indian society prohibits such relations as being against our values and culture<sup>15</sup>. Moreover the institution of marriage is revered in our country and live in relations are considered to be dismantling and dishonouring the piousness of marriage. Thereafter women in our society are expected to remain virgin till they get married however the concept of live in relationship contradicts this idea as well. To add to it as earlier women were considered to be financially dependent on men, so the instability of live in relation tended to make women all the more subservient to men in regard of their social and economic status<sup>16</sup>. However with changing times as women are becoming financially independent there is no threat to their economic status due to their personal status as they are no longer subservient and dependent on men for their financial needs. Moreover, mostly the girls opting for live in relations are those who

come from financially sound background and are also well educated and job oriented. So the question of the instability associated with live in relations making women all the more vulnerable becomes immaterial to a great extent<sup>17</sup>.

Hence the main problem still remains the patriarchal and tradition oriented nature of the Indian society; and its belief of live in relationship harming the sanctity of marriage; that creates the major impediment for live in relations acquiring social acceptance in India<sup>18</sup>. In fact initially the idea was considered to be so morally and legally abhorrent that neither common people nor the courts were even willing to give a fore thought to these ideas<sup>19</sup>. Hence needless to say such relations remained mostly secretive for a long time at least till the late 1990s<sup>20</sup>. In 1988 the honourable Supreme Court of India in **Yamunabai Vs. Anant Rao**<sup>21</sup> held that where a man married for the second time while his first marriage was still subsisting, the second wife was not entitled to maintenance under **Section 125 of Cr.P.C** even if she was unaware of the first marriage. The Supreme Court refused to consider that the two had lived together even if the marriage was void and the

<sup>13</sup> Supra note 8 pp. 217-223.

<sup>14</sup>Richardson, D. G. (1992). Family Rights for Unmarried Couples. *Kan. JL & Pub. Pol'y*, 2, 117.

<sup>15</sup>Le Riverend-Brusone, E. (1955). Anomalous Marriages. *Miami LQ*, 10, 481.

<sup>16</sup>Hardaway, C. L. (1999). Family Law Preventive Issues. *Preventive L. Rep.*, 18, 15.

<sup>17</sup>Metz, H. (1993). Branching Out. *Student Law.*, 22, 23.

<sup>18</sup>Emerson, S. (1993). Legal Approaches to Protecting the Rights of Cohabiting Couples. *Tex. F. on CL & CR*, 1, 19.

<sup>19</sup>Bernstein, B. E. (1977). Legal problems of cohabitation. *Family Coordinator*, 361-366.

<sup>20</sup>Garrison, M., & Scott, E. S. (Eds.).

(2012). *Marriage at the crossroads: law, policy, and the brave new world of twenty-first-century families*. Cambridge University Press.

<sup>21</sup>1988 AIR 644, 1988 SCR (2) 809.



husband was allowed to take benefit of his own mistake. Even though he had acted fraudulently but still he was in fact allowed to take advantage of this fact. Even in the year 2000 the Allahabad High Court in **Malti Vs. State of Uttar Pradesh**<sup>22</sup> held that a woman living with a man without marriage cannot be equated as his wife. In this case the woman was a cook at the man's place and shared an intimate relationship with him. However the court denied including a live in partner within the ambit of the expression 'wife' under **Section 125 of Cr.P.C** and accord to her maintenance rights<sup>23</sup>. Thereafter in **Mohabbat Ali vs. Imran Khan**<sup>24</sup> the apex court held that *living together for a long time does not make a relationship legally valid.*

However there have also been instances where the judiciary has given some protection and recognition to these relations as well. In **Dinohamy v. WL Blahamy**<sup>25</sup> the Supreme Court held that where two people have been proven to be living together like a husband and wife presumption will be of a valid marriage subsisting between them unless it can be reasonably proven otherwise. Thereafter again in **Gokal Chand v. Pravin Kumari**<sup>26</sup> the honourable Supreme Court reiterated the same principle of **Dinohamy Vs. Blahamy**<sup>27</sup> however it even notified that couple will not be granted legitimacy if the evidences are able to disapprove the presumption and prove

beyond reasonable doubt that in fact no valid marriage subsists between the couple.

### **3.2 Position of Live in relationships in Foreign Countries:**

In order to closely understand and evaluate the rate of progress in our laws it is essential to know the status of live in relationships in foreign countries and also the laws in respect of the same.

**Scotland:** The Family Law (Scotland) Act, 2006 recognised live in relationship for the first time and thereby accorded legal status to 1500000 live in couples of the country<sup>28</sup>. The Act has also laid down certain guidelines for determining the legal validity of the relationship such as length of period for which the parties have stayed together, the kind of relation shared by them and the type of financial arrangement between them<sup>29</sup>.

**France:** In France Live in relationships are covered under and governed by the Civil Solidarity Pact of 'pacte civil de solidarite'<sup>30</sup>. This Act was passed by the French National Assembly in October 1999. The pact defines the relationship to be a contract and states that for the contract to be valid the contracting parties must not be bound by any other agreement of marriage or siblings or lineage<sup>31</sup>.

<sup>22</sup>2000 CriLJ 4170, I (2001) DMC 204.

<sup>23</sup> Kusum Family Law Lectures, 1<sup>st</sup> Edn, 2003, LexisNexis, New Delhi, pp. 224-225

<sup>24</sup> AIR 1929 PC 135

<sup>25</sup> AIR 1927 P.C. 185.

<sup>26</sup>1952 AIR 231, 1952 SCR 825.

<sup>27</sup> Supra note 24.

<sup>28</sup>Mickovikj, D., & Ristov, A. (2012). Legal Regulation of Nonmarital Cohabitation in Scottish Family Law. *Int'l Surv. Fam. L.*, 181.

<sup>29</sup>Bosse, A. N. (1978). Nonmarital Relationships: A Fair Termination is Possible. *Loy. L. Rev.*, 24, 128.

<sup>30</sup>Hareven, T. K. (1986). French families in transition: historical perspectives on change.

<sup>31</sup>Martin, C., Cherlin, A., & Cross-Barnet, C. (2011). Living Together Apart: Vivre ensemble séparés Une



**United Kingdom:** In England live in relationships are covered under the Civil Partnership Act, 2005. However the couples under a live in relation have no right on each other's property<sup>32</sup>. This means that if a live in couple separates then they shall have no claim on each other's property and even the court shall not have the power to override this restriction in terms of property and divide the same as in case of divorce<sup>33</sup>.

**United States of America:** In the U.S.A live in relationships were not recognised for a long period of time after which 1970 due to a lot of need and pressure legislation was passed to recognise live in relations<sup>34</sup>. Hence it was granted the status of common law which would be subject to certain requirements<sup>35</sup>. Later on the State institutionalised live in relations by granting such couples the same rights as those

enjoyed by married couples, as it exists in Sweden and Denmark<sup>36</sup>.

**Canada:** In Canada living together is recognised as a form of common law marriage. This relationship gets legal sanctity subject to a few conditions<sup>37</sup>. These conditions include the couple has been living in a conjugal relationship for at least 12 continuous months, or the couple should be the parents of a child by birth or adoption, or one of the persons should have custody and control of the child and the child is suppose to be wholly dependent on that person for support.

#### 4.1 The Changing Judicial Perspective in India:

Though the outlook of the judiciary towards validity of live in relations has remained confusing since the inception of this debate however still it remains undeniable that lately we have been trying to be more liberal and open towards live in relations, both socially and legally.

comparaison France-États-Unis. *Population*, 66(3), 647-669.

<sup>32</sup>Sonenblick, J., & Sowerwine, M. (1981). *The legality of love*. Jove Pubns.

<sup>33</sup>Emerson, S. (1993). Legal Approaches to Protecting the Rights of Cohabiting Couples. *Tex. F. on CL & CR*, 1, 19.

<sup>34</sup>Gierveld, J. D. J. (2015). Intra-couple caregiving of older adults Living Apart Together: Commitment and independence. *Canadian Journal on Aging/La Revue canadienne du vieillissement*, 34(3), 356-365.

<sup>35</sup>Meyer, C. (2003). REFLECTING ON THE LEGAL ISSUES OF OUR TIMES NEW YORK LAW SCHOOL FACULTY PRESENTATION DAY: VI: PORTRAITS OF GRIEF: REFLECTING ON THE NEW YORK TIMES 9/11 OBITUARIES THROUGH A LEGAL LENS: WHO CARES?: REFLECTIONS ON LAW, LOSS, AND FAMILY VALUES IN THE WAKE OF 9/11. *NYL Sch. J. Hum. Rts.*, 19, 283-969.

It was the 1978 case of **Badri Prasad vs. Dy. Director of Consolidation**<sup>38</sup>, when the court recognised live in relationship for the first time and held it to be a valid form of marriage. The Court gave legal recognition and validity to the live in relation of a fifty year old couple.

<sup>36</sup>Meyer, C. (2003). Who Cares: Reflections on Law, Loss, and Family Values in the Wake of 9/11. *NYL Sch. J. Int'l & Comp. L.*, 22, 283.

<sup>37</sup>Funk, L. M., & Kobayashi, K. M. (2016). From motivations to accounts: An interpretive analysis of "Living Apart Together" relationships in mid-to later-life couples. *Journal of Family Issues*, 37(8), 1101-1122.

<sup>38</sup>1978 AIR 1557, 1979 SCR (1).



Thereafter in **Payal Katara Vs. Superintendent Nari Niketan and Ors.**<sup>39</sup> the Allahabad High court held that live in relationship is not illegal. A man and woman can live together without getting married. It may be considered to be immoral by the society but it is certainly not unlawful.

Thereafter in **Tulsa and Ors. Vs. Durghatiya and Ors.**<sup>40</sup> the Supreme Court provided legal status to children born out of live in relationships. The court laid down a pre condition that while giving legal status to the child it must be considered that the couple must have been living and cohabiting under the same roof for a considerably long period of time and it should not be a mere walk in and walk out relation. Hence this decision also granted property rights to children of live in couples.

After that the judgement in **D. Velusamy Vs. T. Patchaiammal**<sup>41</sup> evaluated the pre requisites for a live in relationship to be considered to be valid in the eyes of law. It was held that the couple must hold themselves out as husband and wife and must fulfil all the essential pre conditions of a valid marriage including that of being unmarried. In fact they should also be of the legally marriageable age and should be voluntarily co habiting. It was further held that if these conditions are fulfilled then the relationship will be equivalent to marriage and will also get the benefits of **Prevention of Domestic Violence Act, 2005**. In this case the court while delivering its decision relied on the concept of 'palimony' which was

<sup>39</sup>AIR 2001 All. 254.

<sup>40</sup>[(2008) 4 SCC 520].

<sup>41</sup> (2010) 10 SCC 469.

used by the California Supreme Court in the landmark judgement of **Michelle Marvin Vs. Lee Marvin**<sup>42</sup> for the grant of maintenance in live in relationships<sup>43</sup>.

Thereafter in the case of **Gokul Chand Vs. Pravin Kumari**<sup>44</sup> also the Supreme Court held that there will be a presumption of marriage if there has been a continuous co habitation between the parties for a reasonably long period of time.

Further in the case of **S. Khushboo vs. Kanniammal & Anr**<sup>45</sup> the Supreme Court recognised living together as an essential component of Right to life guaranteed under Article 21 of Indian Constitution. The apex court held that live in relationships is not illegal even if they may be considered immoral by the society.

Thereafter in the landmark 2013 judgement of **Indra Sharma Vs. V.K.V Sharma**<sup>46</sup> the Supreme Court has laid down different categories of live in relationships that can be considered and proven in a court of law.

1. First the relationship between an adult unmarried man and an adult unmarried woman which is the most uncomplicated form of relationship.
2. The relationship between a adult married male and an adult unmarried female which has been entered knowingly by both parties.

<sup>42</sup> 18 Cal. 3d 660.

<sup>43</sup>Chambers, D. L. (2001). For the Best of Friends and for Lovers of all Sorts, a Status Other than Marriage (Symposium: Unmarried Partners and the Legacy of Marvin v. Marvin).

<sup>44</sup>AIR 1952 SC 231.

<sup>45</sup>AIR. 1998 SC 128].

<sup>46</sup> AIR 2014 SC 309.



3. *The relationship between an adult unmarried male and an adult married female. However the man here can be convicted for adultery under Section 499 of I.P.C.*
4. *Domestic relationship of same sex individuals (gay or lesbian).*

*Further the Court also stated that a live in relationship shall fall under the preview of the expression “relationship in the nature of marriage” under Section 2(f) of the Protection of Women Against Domestic Violence Act, 2005.*

#### **4.2 Rights of Women under Live in Relationship:**

*The rights of women under a live in relationship has been ambiguous and unprotected to a great extent except for Protection of Women Against Domestic Violence Act, 2005 according some protection to them by including within its ambit relationship similar to marriage or in other words, live in relationships<sup>47</sup>. However in the recent years the recommendations by various NGOs and committees have awakened the conscience of the government to be more considerate towards the cause of such women. However while providing protection for the women who genuinely deserve it, the more important factor that needs to be seen is that the undeserving ones are not brought within its ambit as that would mean misuse of the legal provisions and it will also be unjust towards the couples who genuinely*

*deserve such protection and recognition<sup>48</sup>. For this reason itself the Supreme Court in D. Veluswami v D. Patchaimmal<sup>49</sup> has held that the woman needs to fulfil certain criteria’s in order to be eligible for maintenance under Section 125 Cr.P.C. The apex court noted that merely spending weekends with each other or a one night stand shall not be considered as a domestic relationship in the eyes of law<sup>50</sup>.*

The National Centre for Women made certain recommendations to the Ministry of Women and Child Development to include females under a live in relationship within the scope of Section 125 Cr.P.C and provide them the same maintenance rights as those enjoyed by a married female. The Supreme Court has also in the case of **Abhijit Auti v. State of Maharashtra**<sup>51</sup> supported the recommendation made by the above committee. a Furthermore the legislature has also started changing its perceptives towards such relations as the Maharashtra government accepted the Malimath committee report and also the Law Commission of India Report which stated that if a live in relationship has existed for a reasonably long period of time then she is entitled to maintenance under **Section 125 Cr.P.C.** Thereafter even in the landmark judgement of **Chanmuniya Vs. Virendra Kumar**<sup>52</sup> the court held that the term wife needs to be given a broad

<sup>47</sup>Tyagi, A. (2015). JUDICIAL PERSPECTIVE ON ‘LIVE-IN-RELATIONSHIP’ IN INDIA AND MAINTENANCE RIGHTS OF WOMEN. *JOURNAL OF INDIAN RESEARCH*, 3(4), 130-143.

<sup>48</sup> Paras Diwan and Peeyushi Diwan, “Family Law”, 7th ed. 2005, Allahabad Law Agency, Allahabad.

<sup>49</sup> Supra note 37.

<sup>50</sup>DAVID, S. R. (2012). Family Law and Its Application to the Global Community.

<sup>51</sup>. AIR 2003 Bom 304.

<sup>52</sup>(2011) 1 SCC 141.



interpretation to include even those women within its meaning who have been living with their male partners for a reasonably long period of time. Moreover the ceremonies for a valid marriage under **Section 7 of HMA** should not be an essential pre requisite for grant of maintenance under **Section 125 of Cr.P.C.** Further the Delhi High court in **Varsha Kapoor Vs. Union of India and Ors.**<sup>53</sup> has held that females living in a live in relationship akin to marriage have right to file complaint not only against their male partners, but also against his relatives.

#### **4.3 Rights of Children Born out of Live in Relationship:**

The first right accorded by Supreme Court of India to children born out of live in relationships is right to legitimacy. The apex court in the case of **SPS Balasubramanyam v. Sruttayan**<sup>54</sup> held that if a couple has been cohabiting under the same roof for a reasonable period of time then as per **Section 114 of Indian Evidence Act** the presumption will be of them being a legally married couple unless proven otherwise and so the children born out of such cohabitation will be legitimate<sup>55</sup>. The court also interpreted that legitimacy of children born out of live in relations is also a part of **Directive Principles of State Policy under Article 39 (f) of the Constitution** wherein duty is casted upon the state to provide propitious conditions for the development of

children<sup>56</sup>. Further the only pre condition for the legitimacy of such children will be that he must not be born out of a mere walk in and walk out relationship as stated in **Madan Mohan Singh and Ors v Rajni Kant & Anr**<sup>57</sup>. Hence the court has continued to remain considerate in its approach in order to ensure that the children born out of such relations are not made to suffer for no fault of theirs as it has been seen in the case of **Bharata Matha & Ors. V.R. Vijaya Renganathan & Ors**<sup>58</sup>. In this case the Supreme Court held that children born out of live in relationships will have inheritance and succession rights in the self acquired property of their parents.

#### **5.1 Pros and Cons of live in Relationship:**

The legal status accorded by the Supreme Court of India to live in relationships has sparked a lot of debate across the country. A number of sociologists feel that this can give rise to under age pregnancy, drug abuse, violence and juvenile crimes. In this way the new generation can be more spoilt and rebellious in nature<sup>59</sup>. They may disobey their parents without any reasonable reason and more importantly there is no guarantee that the partner in such a relation will turn out to be loyal and will not leave the other and run away without any prior notice. Further there is another contention that it may actually be harmful for the sanctity of the institution of marriage in our society as it may encourage adultery or extra marital

<sup>53</sup>170(2010) DLT166(DB).

<sup>54</sup>AIR 1992 SC 756, 1992 Supp (2) SCC 304.

<sup>55</sup>Mercer, J. (2009). CHILD CUSTODY EVALUATIONS, ATTACHMENT THEORY, AND AN ATTACHMENT MEASURE: THE SCIENCE REMAINS LIMITED. *Scientific Review of Mental Health Practice*, 7(1).

<sup>56</sup>Flavia Agnes, Family Law: Marriage, Divorce, and Matrimonial Litigation, Volume 2, Oxford University Press.

<sup>57</sup>AIR 2010 SC 2933.

<sup>58</sup> AIR 2010 SC 2685.

<sup>59</sup>Bernstein, B. E. (1977). Legal problems of cohabitation. *Family Coordinator*, 361-366.



*affairs. This may lead to an increase in marital disputes or divorce rates in the country*<sup>60</sup>. As in **Alok Kumar Vs. State of Delhi**<sup>61</sup> the High Court held that live in relationship is a kind of walk in and walk out relationship based on a contract that needs to be renewed every day and it can also be terminated by either of the parties whenever they wish to walk out of such a relationship.

*However the importance of live in relationship emanates from the fact that it informs the principle of individual freedom. Further it reduces the complications of marriage and gives more opportunities to a person to comfortably explore a relation. Further even if things don't go well in long run then coming out of a live in relationship is any day easier than coming out of a marriage. Furthermore the youth in today's time especially the girls have become more aware and empowered. In the words of Jayanti Mishra a Delhi based author the youth of today's time has become more pragmatic because they are not afraid to follow their preferences and live their life according to their wish. Moreover the bigger advantage is that they know what they are doing and they have the power to bear the consequences of their own decisions.*

### 5.2 Suggestions for a Healthier Legal and Societal Approach:

Certain important suggestions in order to make our legal system and society more

liberal in their approach better equipped to deal with the issue of live in relationships and protect the rights and dignity of the live in partners as well as their children are as follows. These suggestions not only intend to afford protection to genuine live in partners but it also intends to prevent the misuse of law by those who try to undermine our social and legal values in the name of their rights<sup>62</sup>.

1. A separate legislation needs to be drafted on the subject of live in relationship to make the law clear and do away with all kinds of confusion. This shall also help the courts in better adjudicatory exercise, when they determine the rights and claims of partners in a live in relation and also of the children born out of these relations<sup>63</sup>.
2. People entering in a live in relationship while having a living spouse should be convicted for bigamy<sup>64</sup>.
3. Further the sooner the society accepts these relations with an open mind and heart, there will be better chances of the legislator passing a separate legislation in this regard<sup>65</sup>.

### 6. Conclusion:

After the April 2014 judgement of Justice MY Iqbal and Justice Amita Roy, it remains an undeniable fact that live in relations are fast acquiring pace in the metros of India. This historic verdict by the court that couples in a live in relationship shall be presumed to be married unless proven

<sup>60</sup>Garrison, M., & Scott, E. S. (Eds.).

(2012). *Marriage at the crossroads: law, policy, and the brave new world of twenty-first-century families*. Cambridge University Press.

<sup>61</sup> AIR 2014 SCC 398.

<sup>62</sup>McDonnell, R. F. (2009). Principles, Judgment, and Action: The Role of Civic Virtue in Law and Policy. *Regent JL & Pub. Pol'y*, 1, 113.

<sup>63</sup>Koetter, M., & Schuppert, G. F. Rule of Law in India: An Overview.

<sup>64</sup> Ibid pp. 24-25.

<sup>65</sup>Supra note 55 pp. 13-14.

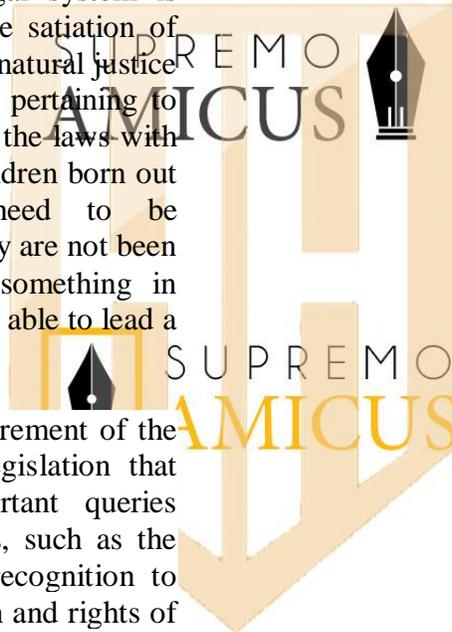


otherwise is certainly proving instrumental in changing society's perception towards couples in live in relations; however there is still a long way to be covered in this regard. Despite all these changes and progress it is still considered a taboo in the major parts of the country<sup>66</sup>. Moreover such relationships not only lack societal acceptance but also proper legal recognition. Though the law makers have begun to identify the need to protect the rights and interest of partners in a live in relationship, however there is still a long way to go before we can affirmatively proclaim; that the Indian legal system is completely equipped to ensure satiation of the common law principles of natural justice while adjudicating on matters pertaining to live in relationships<sup>67</sup>. Further the laws with respect to the rights of the children born out of such relations also need to be strengthened to ensure that they are not been made to bear the brunt of something in which they had no role and are able to lead a life of dignity and quality<sup>68</sup>.

Hence the most cardinal requirement of the hour is to enact a formal legislation that would clarify several important queries associated with such relations, such as the time required to give legal recognition to these relationships, registration and rights of the parties and most importantly the rights of the children born out of such relations; in

order to provide them a dignified and secure future<sup>69</sup>.

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<sup>66</sup>Dhavan, R. (2016). 04\_Promises, Promises: Human Rights in India.

<sup>67</sup> Supra note 12, pp. 156-158.

<sup>68</sup>[http://articles.timesofindia.indiatimes.com/2008-07-09/man-woman/27949685\\_1\\_live-in-relationship-recommendations-live-in-partners](http://articles.timesofindia.indiatimes.com/2008-07-09/man-woman/27949685_1_live-in-relationship-recommendations-live-in-partners) by N Shubhankar, accessed on 19th August'17 at 21:00 pm.

<sup>69</sup> Supra note 23, pp. 213-215.