

LIVE-IN-RELATIONSHIP CAUGHT IN BETWEEN SOCIAL STIGMA

Muneeza Hamid & Neelakshi
Assistant Professor, Lloyd Law College

ABSTRACT

This paper examines the complex phenomenon of live-in relationships from various angles, including its historical background, cultural repercussions, effect on the LGBTQ+ community, legal applicability under the Domestic Violence Act of 2005, constitutional protection for women in such relationships, international considerations, socio-legal complexities, and critical analysis. The emergence of live-in relationships marks a shift from conventional ideas of marriage, as more people choose to cohabit before committing to a marriage. The LGBTQ+ community has also found comfort in live-in relationships since they give people a way to demonstrate their love and commitment in the absence of same-sex marriage's legal recognition or widespread social acceptance.

Examining the legality of live-in relationships, complexities arise due to the absence of specific legislation governing such arrangements. Therefore, the legal status of live-in relationships varies across jurisdictions, with some recognizing them as akin to marriage, while others consider them as mere cohabitation. Within the purview of the Domestic Violence Act, 2005, the nature of the relationship in a live-in arrangement determines the protection available to partners. The Act acknowledges women's rights in live-in relationships, extending constitutional protections to safeguard their physical, emotional, and economic well-being.

Socio-legal complexities surrounding live-in relationships emerge from societal prejudices, family dynamics, property rights, and inheritance issues. These complexities often contribute to the stigmatization and discrimination to individuals in live-in relationships, impacting their rights and well-being. A critical analysis of live-in relationships reveals the need for a comprehensive legal framework that addresses the rights, responsibilities, and protections of individuals involved. Balancing cultural shifts, societal attitudes, and the evolving concept of family, legal reforms should aim to provide clarity, equality, and protection for all parties.

Keywords- Live-in-relationships, Domestic Violence Act, 2005, LGBTQ+, social stigma, morality, recognition, marriage, Indian Penal Code, 1860, Indian Constitution, 1950, society, culture, and sexual intercourse etc.

“A living together becomes a living apart, when the pineal gland has not been able to create a luster of spiritual togetherness and emotional attachment.”²

INTRODUCTION-

Our society's constant obsession towards relationships is so disappointing that it came up with the phenomenon which shows complexities of couples in their relationship as corruption. Lon

L. Fuller emphasized on the concept of Natural law rather than individualism. His contention was that the very essence of law is the inner values of man and law which is without morality, is incapable of execution.³ Law and morality are construed by the Indian legal system in accordance with Fuller's ideas. When it comes to extramarital affairs, such as meretricious relationships between men and women, Indian legal society is distinct. Laws in India, don't recognize any arbitrary notion or norms which gives comprehensive justification for the existence of live-in-relationship because it is supposedly against morality. There is no such legal definition to the term ‘live-in-relationship’. According to Oxford Dictionary “live- together means to share a home and have a sexual relationship without being married”.⁴ It may also be defined as “Continuous cohabitation for a significant period of time, between partners who are not married to each other in a legally acceptable way and are sharing common household.”⁵ Live-in-relationships are yet to get approval from Indian society, which is unlike few other countries. Earlier there was the concept of ‘Maitray Kararas’ or ‘Maitray Sambandh’, where a married man, after some formalities on stamp paper, could take a woman and live with her, without being married. Post-

independence, various laws pertaining to women's rights were introduced which were again called to be inconsistent with morality. The practice of *Maitray Sambandh* also got abolished and various provisions like bigamy and adultery were introduced. From the ancient period till now, if we look into development *per se* there have been many laws made but when it comes to meretricious or live-in- relationship between men and women, there is no act other than the Domestic Violence Act, 2005 (hereinafter referred as "DV Act, 2005") which has recognized and tried to provide certain rights to women in such relationships.

In cluster approach, this paper is divided into four sections: the first being the cultural approach towards live-in-relationship and how it is rooted within the legal applicability. Secondly, the paper talks about scope of live-in-relationship and evolution of its legal status. In the third section, this paper puts forward a layout on the judgment as per the nature, issue of maintenance, and constitutional validity of live-in relationships, nationally and internationally. Lastly, this paper puts emphasis on socio-legal complexities, criticism and is finally concluded by the authors' perspective.

² Erik Pevernagie, *Words of Wisdom*, GOOD READS, https://www.goodreads.com/author/quotes/14170911.Erik_Pevernagie (last visited May 18, 2023).

³ 40 LON L. FULLER, MORALITY OF LAW 192 (Indian Law Journal, 1969).

⁴ Oxford Learner's Dictionary, 2023 Oxford University Press, <https://www.oxfordlearnersdictionaries.com/definition/english/live-with> (last visited May 18, 2023)

⁵ Chaudhary Laxmi Narayan ET AL, *Live-in relationship in India-Legal and Psychological Implications*, (Volume 3) (Issue 1) SAGE JOURNALS, (2021).

CULTURAL SHIFT AND THE CONCEPT OF COHABITATION BEFORE MARRIAGE -

In ancient times, there was a myth about adultery and bigamy regarding live-in-relationship but with the change of time, in modern period it is considered as more of an individual choice to cohabit before marriage. Marriage, divorce and separation is no longer a family's choice and has become more of an individual decision. Micheal Foucault in his concept of cohabitation has divided individualism into Governmentality and biopolitics. By biopolitics he means power over life, power to oppress the natural desire. He says that natural desires are based on dominance, submission and subjugation which is an individual's power to live together and socio-legal dimension of cohabitation.⁶

Religion permits cohabitation solely to have offsprings within the bounds of marriage. There have been instances where there was the concept of '*Gandharva Vivah*' in Hindus,⁷ and '*Muta Marriage*' in Muslims. On the other hand, there is no such recognition of live-in- relationship in Hindu scriptures and in Muslims it is Zina,⁸ i.e. punishment for extramarital relations, which more or less reflects the misogynistic mindset. In the Bible too, "*physical unity has been connected to spiritual unity and should be in the context of marriage because marriage is spiritual union*". Jenkins' belief that sexes without lifelong commitment is a sin and also violates the inner morality of a human being. On the other hand, Buddhism does not propagate any idea about the same and there is no restriction on cohabitation before marriage, be it a heterosexual couple or a homosexual couple.¹⁰ According to Buddhist philosophy, the term relationship refers to an enduring association between two people and it refers to what goes between two people like a process of giving and receiving physically, spiritually and emotionally as a choice of an individual.¹¹

LIVE-IN-RELATIONSHIP AND LGBTQ+ COMMUNITY-

Non-recognition and non-acceptance are the word which can suitably describe the consideration of this community in India. It was in 2015 when in *Obergefell v. Hodges*¹², United States of America gave recognition for same sex marriage. Even though, Indian history revolves around theories of sex, sexuality and gender,

International Journal of Applied Engineering & Technology

marriage as an association for LGBTQ+ community could never get acceptance. In 1860, when Indian Penal Code was drafted, it included a Section which read as ‘*whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall*

⁶ MICHEAL FAUCAULT, THE HISTORY OF SEXUALITY (FRENCH-L’HISTOIRE DE LA SEXUALITE), (Editions

Gallimard: Paris, 1976).

⁷ In Manu Smriti, eight types of marriage (Vivah) are defined including Gandharva Vivah. Gandharva Vivah was a form of marriage where the boy and the girl can start living together once they find each other suitable without the need of anyone else’s consent.

⁸ Qur’an, Sura 17 (Al-Isra), Ayat 32.

⁹ Bible, Genesis 2:24.

¹⁰ G.K. Goswami & Siddharth Goswami, *Live-in-relationships: Social Myths, Legal Realities and the way forward*, ISSN (3039-3951) Volume 7 SCC Online, (2021).

¹¹ Smt. Umadevi, S. Kanavi, *A Study Interpersonal Relationship of Buddhism to Improving in India*, ISSN (2320-2882) Volume 11 Issue 2 IJCRT, (2023).

¹² 576 US 644(2015).

also be liable for fine’.¹³ This particular section was challenged in Delhi High Court in *Naz Foundation v. Government of NCT of Delhi*¹⁴ in 2009, and after a decade, the said section was decriminalized in *Navtej Singh Johar & Ors. v. Union of India through Secretary Ministry of Law and Justice* (2018)¹⁵ as the reason being violation of Articles 14, 15, 19 and 21 of the Indian Constitution. It almost took more than 150 years to legalize homosexuality but same sex marriage is still in question. In a recent judgment, Justice Sharad Kumar Sharma observed: “...even if the parties, who are living together though they are belonging the same gender; they are not competent to enter into a wedlock, but still they have got a right to live together even outside the wedlock”.¹⁶ In a country where it is a sin for a male and a female to be in a live-in-relationship, the condition of other genders is worse, making it more difficult for people belonging to LGBTQ+ community to survive in live-in relationships. The right to live with dignity, privacy, and the way they want to live is not given equally. Where the judiciary is trying to fulfill the requirements of the Indian Constitution and trying to make balance between morality and law, the society is still failing to sympathize and accept the changes and discretions around.

SOCIAL STIGMA CLOUDS LEGAL APPLICABILITY-

On 20th August 2017, Rajasthan Human Rights panel Chief Justice Prakash Tatia in one of his speeches made a remark that “*women in live-in-relationship are legally vulnerable and it is a kind of social terrorism*”. There is an existing view that live-in-relationship is the concept of western culture and Indian society scrutinizes this just because in marriage, there is a validation and bundle of rights attached to it. In the case of *Babri Prasad v. Director of Consolidation*¹⁷, in 1978, it took a lot of time to give validation to a live-in-relationship of 50 years. A relationship where two people consensually have spent half of their lives are sure that further too, they want to share the life together. The only problem they have to face is the social scrutiny owing to the fact that they are not married. The social trauma which is faced by the parties in live-in-relationship is not only limited to the validation but extends to problem of rent refusals, sexual assault and rape as well. It is quite difficult for women in live-in-relationship to prove they were assaulted or even raped by their partner. There is a very thin line between live-in-relationship and marriage but the bundle of rights attached to them is different and therefore, the void still exists.

International Journal of Applied Engineering & Technology

The Preamble of the Constitution has always focused upon the welfare of the society and social justice. Whenever legislation lacks to address any cause in social context, adjudication through interpretation of particular provisions of statutes; the Court is supposed to remedy the mischief and bridge the gap between the law and society and provisions of domestic violence would fall into the same.¹⁸ As far as social justice to the woman in an extra marital relationship is concerned, the DV Act, 2005 solely addresses the plight of destitute women; provided such relationship is in the nature of marriage and fulfills other essentials laid down by the court.¹⁹

¹³ INDIAN PENAL CODE, 1860, § 377, No.45 of 1860(India).

¹⁴ (2016) 15 SCC 619.

¹⁵ AIR 2018 SC 4321.

¹⁶ Soni Gerry v. Gerry Douglas, AIR 2018 SC 346.

¹⁷ 1989 SC 1872 (4).

¹⁸ Badshah v. Urmila Badshah Godse & Anr., AIR 2014 SC 869.

¹⁹ Indra Sarma v. V. K.V. Sarma, AIR 2014 SC 309.

LIVE-IN-RELATIONSHIP WITHIN THE PURVIEW OF DOMESTIC VIOLENCE ACT, 2005 -

Domestic violence has many forms and a number of aspects. It can be physical, psychological, sexual and or social sometimes. There is no measure as such to know the severity of the offence, neither is there any specific term to define the same. It is often referred to with words like ‘wife beating’, ‘man beating’, ‘husband battering’, ‘relationship violence’, ‘domestic abuse’, ‘spousal abuse’, ‘family violence’, etc. If we go through different pedestal of different human civilization, we will see that woman and womanhood was respected in Vedic periods, the feminine energy was recognized as the essence of Goddesses but moving further, when we talk about the modern era, we have an array of luminaries who have fought for the rights of women as there is a global consensus on the need of protection of women and their rights from all kinds of violence and discrimination they are facing. There have been different theories about the reasoning of domestic violence but no approach can completely find out the main hypothesis behind the same. In *A. Dinohamy v. W.L. Balahamy*²⁰, the Privy Council, laid down that if men and women are living together for a considerate period of time without valid marriage, all law shall presume in favour of their marriage, unless proved that they were living in concubinage and the same principle was reiterated in *Mohabbat Ali Khan v. Muhammad Ibrahim Khan and others*²¹.

Indian legal panorama was unable to establish any recognition for meretricious relationship. There have been no legal rights except women being called concubines or mistresses. Today, live-in-relationship is not prohibited but is socially condemned. Prior to DV Act, 2005, there had been no law which gave protection and rights to aggrieved unmarried women. Indian Legislature came up with provisions in The Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”), Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Indian Penal Code, 1860 etc. for married women but lacked in any law relating to women in live-in- relationships. The DV Act, 2005 came with the view to better safeguard the rights guaranteed under Articles 14²², 15²³ and 21²⁴ of the Constitution to women, who suffer from violence of any type that occur in the family and issues related to it²⁵. The DV Act not only covers protection of women for mother, wife, widow or women in any lawful wedlock but it also covers sisters, women or partners living in the shared household and are maintainable for the harm and loss caused to them²⁶.

LEGALITY OF LIVE-IN-RELATIONSHIPS-

Indian Law does not consider a live-in relationship between two consenting adults to be illegal. In 2006, in the case of *Lata Singh v. State of U.P.*, the Court held that despite being seen as immoral, a live-in relationship

International Journal of Applied Engineering & Technology

between two consenting adults of opposite sex, is not an offence. Even though the society views a live-in relationship to be sinful and immoral, it is undoubtedly legitimate in terms of the law, as the Supreme Court stated in the remarkable case of *Khushboo v. Kanaimmal and another*,²⁷ that living together is a right to life and cannot be regarded as illegal.

²⁰ AIR 1927 PC 135.

²¹ AIR 1929 PC 185.

²² INDIA CONST., art. 14.

²³ INDIA CONST., art. 15.

²⁴ INDIA CONST., art. 21.

²⁵ DR. SURINDER MEDIRATTA, COMMENTARY ON PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE 21 (Delhi Law House).

²⁶ *Surya Prakash v. Smt. Rachna*, 2018 Cri LJ 2545 MP.

If a live-in couple continue to live together for a considerably long period of time and project to the society as being husband and wife, they get the recognition as being legally wedded. As far back as 1978, the Court observed in *Badri Prasad v. Deputy Director, Consolidation and another*²⁸ that few would succeed if a man and woman who are lawfully married and lead a married life had to prove through eyewitness testimony that they were lawfully married for fifty years prior. There is a substantial presumption in favor of marriage when the couple has cohabited as husband and wife for a significant period of time. The burden of proof mostly rests with the individual seeking to deprive the relationship of its legal basis, even when the presumption is refutable. The law discourages illegitimacy and encourages legitimacy. A similar ruling was made in *SPS Balasubramanian v. Suruttayan*²⁹, where the Court decided that if a man and a woman cohabit for a long time, the law will assume that they are legally married unless evidence to the contrary can be presented. As a result, any children born into such a relationship are entitled to inherit parents' possessions. The privileges of a legal marriage would not be available to partners in a live-in relationship just for sexual purposes. Another landmark judgment on the issue of live-in relationship which focused on different kinds of relationships was '*Indra Sarma v. VKV Sarma*'³⁰ and held that relationships between unmarried individuals who consent to live together are not illegal.

Prior to 2018, Section 497 of the IPC defined adultery as domestic cohabitation between a married or unmarried man and another married woman but it was considered as an offence only for the man. However, the Supreme Court of India struck down this law in the '*Joseph Shine*' case in September 2018 after finding that it was violative of Article 14 of the Indian Constitution. This clause was discriminated for the reason being that it was discriminative against only men and women cannot be charged with adultery. Furthermore, only the woman's husband had the authority to bring charges against the perpetrator of the offence; the wife was not permitted to do so. Adultery is not an offence now but cohabitation with any married man or woman may be a subject of civil issues constituting a reason for divorce.

The fact that laws of our country are flexible and dynamic, our judiciary took a step further and legitimized live-in-relationship. It was in 1950, the Supreme Court of India in *Gokal Chand v. Pravin Kumari*³¹, looked into the principle which was given by the Privy Council earlier in Mohabbat Ali Khan Case with an extended version and stated that "*continuous cohabitation of man and woman as husband and wife and such treatment for a number of years may raise presumption of marriage*"³² but if the presumption drawn is proved otherwise the court has no option but to discard the right given. Moving further in case *Badri Prasad v. Dy. Director of Consolidation and Others*³³, the court came to the same conclusion that the presumption of wedlock is more if a man and woman

International Journal of Applied Engineering & Technology

have lived together for a longer period but it can be proved otherwise. The court also held in this case that the burden lies on the one who wants to

²⁷ (2010) 5 SCC 600.

²⁸ AIR 1978 SC 1557.

²⁹ (AIR 1992 SC 756).

³⁰ AIR 2014 SC 309.

³¹ AIR 1952 SC 231.

³² Nikhil Gupta & Aditya Gogna, *The Conundrum of Live-in-relationship*, 1 RACOB LEGAL JOURNAL.

³³ AIR 1978 SC 1557.

deprive the relationship. Further when it came to interpretation of S. 50³⁴ and S. 114³⁵ of Indian Evidence Act, 1872, the Hon'ble Supreme Court revisited the decision made in *Gokul Chand and Babri Prasad Case in Tulsa v. Durghatiya*³⁶ and held that when a man and woman live together for a long period of time, it is presumed that they are married in order to protect the rights of women. Since then, the same principle is being followed by all the courts in India. Even in one of the cases of Allahabad High Court, *Payal Katara v. Superintendent*³⁷ it was held that it is up to the will of man and woman, whether they want to live together with or without marriage, and such a relationship may face social infirmities but is not wrong in the eyes of law.

NATURE OF RELATIONSHIP AS PER D.V. ACT, 2005 -

Section 2(f) of DV Act, 2005 lays down the interpretation of the term '*live-in-relationship*' by including it in the '*nature of the marriage*'. This particular section states that "*domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family*"³⁸. The term shared household has been also extensionally explained in section 2(s) of the Act. "*It implies that household where the aggrieved person lives or had lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and included such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household*"³⁹.

In *Manmohan Attavor v. Neelam Manmohan Attavor*⁴⁰, it was held that S. 17 of 2005 Act creates entitlement of all women living in shared households irrespective of the fact that whether they are having legal interest in the same or not. Also, the court held that there has to be proof that domestic violence has happened in the shared household beyond all reasonable doubt. The Apex Court in case *D. Veluswamy v. D. Patchaiammal*⁴¹, held that to consider at par with common law marriage to bring it under the scope of '*relationship in the nature of marriage*'. Further in *Indra Sarma v. V.K.V Sarma*⁴², the Hon'ble High Court laid down certain conditions that are important to meet up as to consider live-in-relationship under the nature of marriage and they are:

i) that, both parties are living or have lived together for a reasonable period of time with common intention to maintain and continue the relationship;

³⁴ Indian Evidence Act, 1872, § 50, No. 1 of 1872.

³⁵ Indian Evidence Act, 1872, § 114, No. 1 of 1872.

³⁶ (2008) 4 SCC 520.

³⁷ AIR 2001 All 254.

³⁸ Domestic Violence Act, 2005, § 2(f), No.43, Acts of Parliament, 2005 (India).

³⁹ Domestic Violence Act, 2005, § 2(s), Acts of Parliament, 2005 (India).

⁴⁰ AIR 2017 SC 3345: 2017 Cri LJ 4315: (2017) S8 SCC 550.

⁴¹ (2010) 10 SCC 469.

⁴² AIR 2014 SC 309.

- ii) that, they are living or have lived in a shared household with their volition or woman had been concerned therefore;
- iii) that, they have or had strong belief that their relationship would never end;
- iv) that, they have acquired property jointly or otherwise for their safe future, so as to have a long-standing relationship;
- v) that, they are doing all necessary domestic arrangements at their end to strengthen their relationship;
- vi) that, they have sexual relationship for emotional and intimate relationship, for procreation of children, to give emotional support, companionship and also material affection, caring etc and is not only bounded and called as sexual relationship;
- vii) that, they are sharing the responsibility for bringing up and supporting them;
- viii) that, they have socialized their relationship;
- ix) that, during or after termination of relationship the woman and children, if any have no other source of survival.⁴³

Court was of the view that if these conditions are fulfilled, the women would be entitled for any granted claim for the palimony, residential rights, share in the property acquired jointly or otherwise and protection against all forms of violence. The Court has tried to protect the rights of women and give recognition to the relationships like these which are under the confining boundaries. In a recent case of *Malarkodi @ Malar v. The Chief Internal Audit Officer*⁴⁴, court again adopted a wide interpretation of section 2(f) and included live-in-relationship in the purview of '*relationship in the nature of marriage*'.

LIVE-IN-RELATIONSHIP AND ISSUE OF MAINTENANCE-

The term '*palimony*' is used in the US to grant a form of relief for live-in partnerships. The phrase '*palimony*' was created during the infamous *Marvin vs. Marvin*⁴⁵ celebrity divorce case in California, US. In this instance, the complainant had been living with the man in a live-in relationship for a considerable amount of time when she decided to seek monetary damages from him after their relationship ended. '*Palimony*' is a term formed by combining the words '*pal*' and '*alimony*'. Despite the fact that the specific lawsuit was lost, the courts determined that "*in the absence of an express agreement, courts may look to a variety of other remedies to divide property equitably*". It was noted that the court may consider awarding alimony if the couple had a cohabitation agreement before relocating together.

International Journal of Applied Engineering & Technology

In India, Malimath Committee on Criminal Justice first recognised the need for such relief and suggested changes to extending the definition of 'wife' in Section 125 of the Criminal Procedure Code to cover women who have been living with a man as his wife for a significant amount of time. According to Section 125 of the Criminal Procedure Code (Cr. P.C.), wives, children, and parents may demand maintenance from a person from whom they are dependent

⁴³ DR. SURINDER MEDIRATTA, COMMENTARY ON PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE 20

(Delhi Law House).

⁴⁴ W.P. NO. 5706 of 2021.

⁴⁵ 557 P.2d 106 (1976).

and unable to support themselves. Such ties were included in the definition of a domestic relationship even if the amendment was not included in the Cr. P.C. The Supreme Court took into account the PDV Act, 2005's application to live-in relationships when it heard the *Lalita Toppo v. State of Jharkhand*⁴⁶ case.

The victim, i.e., the divorced wife or live-in partner would get relief under the Act in a shared household, it was decided. The court granted alimony to a woman in a live-in relationship under the DV Act, 2005, citing this report in *Ajay Bhardwaj v. Jyotsna*⁴⁷. However, the DV Act of 2005 limits who can request maintenance to women alone. Male partners who live together cannot get relief under the PDV Act, 2005. In this regard, the Hon'ble Court stated that "*a live-in relationship is invariably initiated and sustained by men*" in the case of *Khushboo v. Kanniamal*.⁴⁸

The first question which arises in the case of women in live-in-relationship is whether the presumption that it comes in the nature of marriage can solely give the right of maintenance to them? In *Jagjit Kaur v. Jashwant Singh*⁴⁹, Court held that CrPC gives the right of maintenance to women and children for the purpose of social justice. Making the literal interpretation of S. 125 CrPC Apex Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*⁵⁰ said that man entering into a live-in-relationship despite already being married, the right of maintenance is not given to the other woman in that case and the same was followed in case *Malti v. State of U.P.*⁵¹ stating that "*Ignorance of man's marriage is no excuse*". Even the principle of estoppel won't be material to defeat the provision of Section 125 of the Code, but an exception to that is that the second wife is eligible to claim maintenance under Hindu Adoption and Maintenance Act, 1956. The Malimath Committee Report suggested that the word "wife" in Section 125 of the Code be amended to include those women who are "living in " with a man for a 'reasonable period'⁵². The presumption of maintenance is also given when a man and woman cohabit for a long time and are treated as husband and wife in the eyes of society which somehow extend the scope of judiciary⁵³. Moreover, the same ambit is included in the definition of 'domestic relationship' under section 2(f) of PWDVA but The Hindu Succession Act, 1956 restricts the same and doesn't give any inherent right to the partner in live-in- relationship.

CONSTITUTIONAL PROTECTION TO WOMEN IN LIVE-IN-RELATIONSHIP -

The sexual choice of man and woman is wholly dependent on them. Being rendered the immunity of not being prosecuted is of no use because it is still not acceptable by the society. India is a country where solemnization of marriage is considered as part of human beings' life and cohabitation before marriage is considered as evil. Morality and law go hand in hand but morality and criminality never coexist. Imposing restriction on pre-marital sex or live-in- relationship not only violates right to life but moreover right to privacy recognized under article

⁴⁶ (2019) 13 SCC 796.

⁴⁷ CrI. Revision No. (F) 166 of 2015 (O & M).

⁴⁸ (2010) 5 SCC 600.

⁴⁹ AIR 1963 SC 152.

⁵⁰ 1988 SCR (2) 809.

⁵¹ 2000 Cri LJ 4170.

⁵² Rampratapji Daga v. Rameshwari Rameshchandra Doga, AIR 2005 SC 422.

⁵³ Sumitra Devi v. Bhikan Choudhary, (1985) 1 SCC 637.

21 of the constitution. Even in *S. Khushboo v. Kanniammal*⁵⁴, live-in-relationship was considered as the right to life under Article 21 and court also held that two major living together cannot be considered as illegal or unlawful. Moreover, in cases like *Lata Singh v. State of*

*U.P.*⁵⁵ and *Payal Sharma v. Dupdt., Nari Niketan Kalindri Vihar, Agra*⁵⁶, live-in-relationship

between two heterogenic sex was declared completely legal. The court said live-in-relationship can be immoral but it can never be illegal as it comes under the ambit of Article and fundamental right of a person cannot be ignored and violated.

INTERNATIONAL ASPECT OF LIVE-IN-RELATIONSHIP -

In the United Kingdom the act of man and woman living together in a sexual relationship is governed by Civil Partnership Act, 2004 and are considered as legal spouses.⁵⁷ Till 2019, only relationships of the same sex were given the right to be called as legal spouses if they intend for live-in-relationship but later after 2019 the scope of the same expanded for everyone.⁵⁸ In the United States few states have recognized the same and few have banned the concept of live- in-relationship. Like California has new law which recognizes live-in-relationship and has given few rights same as domestic partners whereas Mississippi opposes the law of cohabitation before marriage. In Scotland over 15000 couples were given recognition for live- in-relationship through the Family Law (Scotland) Act, 2006. The family law act of Australia provides that a de facto relationship can exist between couples of same or different sex. There are few more countries which have recognized conjugal relationship if there is a considerate period of time as same as marriage and the central or common law is being applicable on them in regards to their right but here in India the judiciary has given it recognition but the social recognition is still in dilemma.

SOCIAL-LEGAL COMPLEXITIES -

The belief of society is deeply rooted in the concept that marriage is the best institution to start a family because live-in-relationship hampers women's individuality. They don't get recognition as much as in the institution of marriage. In marriage, the right of adoption, right of succession, right of inheritance as well dissolution of marriage comes altogether but in live- in-relationship there is no such right available to either party and the parties need not to separate themselves without any legal formalities. The most and utmost fear of live-in-relationship is the child born out of it. The legitimacy of the child remains questionable all their life. They feel insecure, neglected and exploited on various accounts. The spectrum of life to have a family is always missing because of live-in-relationship being criticized in the society which unfortunately makes their child also suffer the same. Beside these sexual aggression and injuries are most like to be found in these relationships and sometimes even the allegation of the adult male is also false as there is very much possibility of converting the consensual sex into

International Journal of Applied Engineering & Technology

rape. There is always fear of social insecurities and complexities. Delhi High Court has observed that persons entering into such a relationship are expected to not complain of

⁵⁴ (2010) 5 SCC 600.

⁵⁵ AIR 2006 SC 2522.

⁵⁶ AIR 2001 All 254.

⁵⁷ Civil Partnership Act, 2004, <https://www.legislation.gov.uk/ukpga/2004/33/contents>.

⁵⁸ Civil Partnership, Marriages and Deaths (Registration etc) Act, 2019.

infidelity or immorality of the other partner.⁵⁹ In the recent case of Shraddha Walkar & Aftab Poonawala where the girl's body was chopped into pieces which led people to believe that live-in-relationship is a bogus concept and not only risks the life of female individuals but also beyond the culture of our society.

CRITICAL ANALYSIS OF LIVE-IN-RELATIONSHIP-

Our country is an amalgamation of culture, religion and traditions which are preached in India and respected and adored all over the world. The basic structure of India is stuck in an unusual dichotomy, the principles which are deeply rooted in our society versus the overarching urge to reform backlogged thinking in a manner which aligns with today's liberal and modern perspective.⁶⁰ The ideology difference in the society makes the youth suffer but live-in-relationship has brought economic, social and legal issues into picture. On a wider aspect if we see, live-in-relationships has been problematic to married life as sometimes it may also lead to adultery⁶¹ and if vulnerability increases it may lead to bigamy⁶² too. Moreover, the child born out of live-in-relationship would have no right as compared to that of child born of lawful wedlock neither he/she would have an aware entity. The fundamental paradox exists between live-in-relationship and the society but eventually the social fabric of the society needs a change.

CONCLUSION-

In this paper, the authors explore the cultural, legal, and social aspects of live-in relationships in India. The paper begins by discussing the societal perspective on relationships and how live-in relationships are often seen as immoral and corrupt. It highlights the influence of Lon L. Fuller's concept of natural law and the connection between law and morality in the Indian legal system. The lack of legal recognition and definition for live-in relationships in India is noted, with only The Protection of Women from Domestic Violence Act, 2005 providing some rights to women in such relationships.

The paper then delves into the cultural shift and acceptance of cohabitation before marriage. It examines different religious perspectives on live-in relationships, ranging from Hindu and Muslim traditions to Christian and Buddhist beliefs. The discussion also includes the challenges faced by the LGBTQ+ community, with non-recognition and non-acceptance still prevailing in Indian society, despite the decriminalization of homosexuality.

The social stigma surrounding live-in relationships is explored, highlighting the prejudices and discrimination faced by individuals in such relationships. The paper mentions instances of social scrutiny, rent refusals, and difficulties in proving assault or rape within live-in relationships. It emphasizes the need for bridging the gap between societal views and legal protection to ensure the dignity and rights of individuals in live-in relationships.

The legal applicability of live-in relationships is examined, with the paper stating that Indian law does not deem a live-in relationship between consenting adults as illegal. The Supreme Court has recognized the right to live together as a part of the right to life. The paper also

⁵⁹ Alok Kumar v. State, 2010 SCC Online Del 2645.

⁶⁰ Rashmi Shukla, *Legal aspect of Live-in-relationship in India*, LIVELAW (January 1, 2016).

⁶¹ INDIAN PENAL CODE, 1860, § 497, No.45 of 1860(India).

⁶² INDIAN PENAL CODE, 1860, § 494, No.45 of 1860(India).

discusses the presumption of marriage that can arise from long-term cohabitation and the burden of proof to challenge such presumption. The repeal of Section 497 of the Indian Penal Code, which considered adultery as a crime only for men, is highlighted as a step towards gender neutrality. Overall, the paper underscores the need for legal recognition, protection, and societal acceptance of live-in relationships in India. It points out the gaps in legislation and societal attitudes, while also acknowledging the efforts made by the judiciary to address these issues. The conclusion reflects the authors' perspective on the socio-legal complexities surrounding live-in relationships and calls for a more inclusive and progressive approach in Indian society.