A Comparative Analysis of Law Relating to Live-in Relationships in Different Countries: How Justified Is It To Recognize Live-In Relationships In India Also?

Kumud Mehra[1], Dr. Ashish Verma[2], Dr. ShaliniSaxena[3]

[1]Research Scholar, School of Law, IMS Unison University, Dehradun; kumud.mehra@gmail.com.

[2]Supervisor of the Research scholar & Dean, School of Law, IMS Unison University, Dehradun.

[3]Co-Supervisor of the Research Scholar; Assistant Professor, School of Law, IMS Unison University, Dehradun.

ABSTRACT

The prime focus of the present research is to comparatively analyze the legal position of Live-in relationships in different countries approving unmarried cohabitations of heterosexual couples. The study is conducted by taking demographic profile of different countries based upon their diversecultural values, traditions and social circumstances into consideration and Indian societal standards are then compared to these profiles in order to do a comparative analysis.India is compared to the United States of America, Canada, United Kingdom, France, and the Philippines in order to assess the laws governing unmarried cohabitation in each of these jurisdictions and to identify potential future adoption opportunities for the legal frameworks these nations use to control such couplings.

Keywords: Unmarried Cohabitation, Common Law Marriage and Domestic Partnership, Civil Partnership.

DOI Number: 10.14704/nq.2022.20.9.NQ44660 **Neuro Quantology 2022; 20(9):5658-5670**

1.0 INTRODUCTION

The unmarried conjugation of heterosexual individuals is now a regular occurrence in Indian society, where it has also found its own place within the society and is progressively advancing toward social acceptance. Living together in an unmarried partnership is no longer stigmatized and is widely being viewed in diverse locations, particularly in metropolitan areas.In India, unmarried unions are becoming popular in the name of *"Live-in relationships"*. Although, criticism still exists in India when it comes to unmarried heterosexual unions and pre marital sexual relationships among conservative clans of the society but slowly and gradually with the changing time the people of our country are becoming morefamiliar and opening up their minds towards the idea of live-in relationship and unmarried sexual intercourse.[1]

When it comes to the union of unrelated heterosexual couples, marriage has historically been considered the most venerated and socially acceptable institution in India, while the traditional members of Indian society have always frowned upon the unmarried unification of heterosexual couples.It was always believed by the Indian cultural sects that marriage gives rise to a family that serves in the formation of a socially civilized society while live-in relationships promote boorish and unsophisticated relationships that disturb the social fabric of society; but now with the changing time this old perception is changing and being replaced.

[1]Saha, Priyanka, Vanshika, "Live-In Relationship: What was Illegitimate in the Past can be Legitimate Today" Acclaims, Vol 11, 2020

Younger generations are increasingly choosing live-in relationships over marriage for a variety of reasons, including testing their compatibility beforehand to prevent future conflicts, an increase in career-oriented thinking that prioritizes work over marriage, to avoid the hassles of marriage such as having to share responsibilities with one's spouse and one's family, and also due to forbidden relationships like being sapindas to one another. Apart from these there are still so many reasons that encourages the young as well as mid aged couples to choose live-in relationships over marriage that includes disapproval from there families, coupling after divorce, living in a misconceived relationship under which either of the partner is mislead about the marital status of the other partner and where one partner is already married and not divorced.

Indian lawshavealways favoured marriage over live-in relationships and thus we have no proper legislation so far to deal with this increasing trend of unmarried cohabitation apart from The Protection of Women from Domestic Violence Act, 2005,which too deals vaguely with the concept of live in relationships in India. However, the Indian judiciary has also offered a plethora of guidelines to control the erratic situation that results from unresolved issues between unmarried couples. Nonetheless, these guidelines could not be universally applied because live-in relationships are not recognized legally in India, and each case that comes before the court is handled individually based on the merits of the specific case in question.Thus, the absence of any law for the regulation of this dynamically evolving living arrangement is giving birth to uncertainty and ruffling the issues arising from it in a more intense way, which resultantly is putting the basic rights of many couples at stake both collectively and individually.

On the other hand, the concept of unmarried cohabitation or live-in relationships is approached differently in different cultures. Some countries have made the concept of unmarried cohabitation legal within their borders under a variety of names and sets of regulations, depending on the country's unique socioeconomic circumstances. In the current study, the United States of America, China, France, and the Philippines, are thoroughly compared in order to highlight the stark differences in how these countries treat unmarried cohabitation legally and to determine how closely Indian society can be compared to those systems. In addition, the researchers would like to clarify whether it is appropriate to legalize live-in relationships in India and whether there is a chance that the legal frameworks these nations employ to oversee these unions may one day be embraced in India as well.

2.0 LEGAL TREATMENT OF LIVE-IN RELATIONSHIPS IN INDIA

As discussed above India is not equipped with a uniform law with regard to live-in relationships between heterosexual couples. However, The Protection of Women from Domestic Violence Act, of 2005 gives acknowledgment of the same, and in the light of various judgments given by the humble judiciary of India, these relationships are being treated on a legal footing.Also, the fundamental rights given under the Indian Constitution provides freedom to Indian citizens to live in a live-in relationship without being offended. Though live-in relationships are not legally recognized and neither of the Indian Law such as Hindu Marriage Act, 1955, Special Marriage Act, 1958, The Indian Evidence Act, 1872, Code of Criminal Procedure, 1973 etc. provides for any provisions with regard to live-in relationships, but still living in unmarried relationships are not prohibited and punished in India.

2.1 Live-in Relationship: No Offence In India

Art 21[2] of the Indian Constitution covers live-in relationship and pre-marital sex within the scope of fundamental right guaranteed under Indian Constitution. The court stated that it is not illegal for a man and a woman to cohabitate without getting married. What is the offence when two persons wish to live together? Does that qualify as an offence? Cohabitation is not illegal. It cannot constitute a crime. According to the Supreme Court, there is no rule that forbids premarital sex or live-in relationships. The Supreme Court declared that the right to cohabitation is a fundamental right, apparently

[2] The Constitution Of India 1950, Article 21(Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.)

quoting Article 21, which establishes the right to life and liberty as fundamental rights.[3]In *S. Khushboo v. Kanniammal&Anr.*, the Supreme Court cited its ruling in *Lata Singh v. State of U.P*[4]. and reaffirmed that a live-in relationship between two consenting adults of heterogenic sex didn't constitute an offence, despite the fact that it might be viewed as improper and immoral in the eyes of the conservative section of the community.The court in *Ramdev Food Products (P) Ltd. v. ArvindbhaiRambhai Patel*[5] also stated that two people who live together but are not legally married are not criminals. Therefore, it is acceptable to live in a live-in relationship in India and it does not amount to any offence.

2.2Indian Judicial Stance UponLive-In Relationships

It was held in the case of *Madan Mohan Singh* v. *Rajni Kant*[6]that, the live-in relationship if continued for long time, would come under the protection of relationship in the nature of marriage and hence it cannot be termed as a "walk-in and walk-out" relationship and that there is a presumption of marriage between the parties.[7]Such a presumption of marriage would be drawn on the prima facie evidence and cannot be rebutted unless contrary is proved, by giving unquestionable proof, and to that a substantial weight lies on a party who looks to deny the relationship of lawful origin. Also in *Lata Singh vs. State of U.P*[8]it was held by the honorable Supreme Court that live-in relationship is permissible only in unmarried major persons of heterosexual nature.

In India live-in relationships are not legally recognized but they are also not regarded as an offence. Though it may be immoral in the eyes of many sections of the society who prefer marriage as a sole institution for the union of an adult male and female as intimate partners in the name of husband and wife; but it is not yet declared as a legal wrong. Non-marital living arrangement is now growing as an absolute form of unison for those people who wish to stay together without involving them in the formality of marriage. But it is not as beautiful as it seems to be, it also involves number of issues, same as like marriage and unfortunately those issues remain unaddressed due to lack of any legislation as unlike in case of marriage, which is a secured institution with many laws guaranteeing the protection of rights to both husband and wife.

Indian judiciary has tried to provide limited recognition to some live-in relationships with a view to grant them validity as a legal marriage thereby allowing the live-in partners various benefits of marriage and left many such relationships outside the purview of marriage aiming to preserve the sanctity of marriage and Indian cultural heritage. All non-marital intimate relationships cannot be termed as relationship in the nature of marriage. Relationships that are kept only for sexual enjoyments for example keeping a mistress for sexual pleasure while being already married to another woman and helping the mistress financially, or occasional one night stands are excluded from the sphere of relationship in the nature of marriage; as continuous cohabitation in a shared household cannot be established from such kind of relationships.

In *A. Dinohamy vs. W.L. Balahamy*[9]the Privy Council has given recognition to a live-in couple by laying down a principle –

"Where a man and a woman are proved to have lived together as a 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."

The same principle was reiterated in the caseof*Mohabhat Ali v. Mohammad Ibrahim Khan.*[10]In *Gokul Chand v. ParvinKumari*[11]the court forewarned, that the couple would not get authenticity, if the proof of them living

[3] "Live-in Relationship—A Right to Life" (2010) PL May 8, available at: http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=16 506
[4](2006) 5 SCC 475; (2006) 2 SCC (Cri) 478.
[5](2006) 8 SCC 726
[6](2010) 9 SCC 209
[7] Astha Saxena "Live-in Relationship and Indian Judiciary", available at https://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/
[8]*Supra* note 7.
[9]AIR 1927 PC 185; (1928) 1 MLJ 388.
[10]AIR 1929 PC 135
[11] AIR 1952 SC 231

respectively was rebuttable.[12] The Supreme court in *S.P.S. Balasubramanyam v. Suruttayan*[13]held that if a man and lady are living under the same roof and living together for number of years, there will be an assumption under Section 114 of the Indian Evidence Act, 1872 that they live as a couple and children destined to them won't be ill-conceived.

In *Vidyadhari&Ors vs. Sukhrana Bai &Ors*[14]the Supreme Court in synchronization with Article 39(f)[15] of the Indian Constitution of India, 1950 has passed a milestone judgment wherein the Court allowed legacy to the kids conceived from the live-in relationship being referred to and credited them the status of "lawful beneficiaries"[16].

Further in *BharathaMatha&Ors. Vs. R. VijayaRenganathan&Ors.*[17] and *Revanasiddappa vs. Mallikarjun* [18] Honorable Supreme Court stated that the birth of a child out of live-in relationship must be seen separate from the relationship of the parents. It is as plain and clear as daylight that a youngster resulting from such relationship is totally blameless and is qualified for all the rights and benefits open to kids conceived out of marital relationships.[19] However, Section 16[20] of the Hindu Marriage Act, 1955 which talks about legitimacy of children of void and voidable marriages deals absurdly with regard to children born out of non-marital cohabitation if compared to those children who are conceived out of wedlock. Even after acquiring legitimate status similar like those children from marriages they are denied the right to claim from ancestral property and can only claim a share in the parent's self-gained property.

The inconsistent treatment of a youngster conceived out of a live-in relationship and a kid resulting from a conjugal relationship despite the fact that both are legitimate according to lawcan add up to an infringement of Article 14[21] of the Constitution of India, which guarantees Equality under the steady gaze of Law.[22]

The vital pre-conditions for a child conceived from live-in relationship to be not rewarded as ill-conceived are that the live-in partners probably lived under one rooftop and co-habited for a significantly lengthy timespan for society to remember them as a couple and "it must not be a "walk in and walk-out" relationship, as the court called attention to in its 2010 judgment in *Madan Mohan Singh v Rajni Kant.*[23]

3.0 LEGISLATION DEALING WITH LIVE-IN RELATIONSHIPS IN INDIA

3.1 The Protection of Women from Domestic Violence Act, 2005(DV, Act, 2005)

The term live-in relationship is not specifically defined underthe Protection of Women from Domestic Violence Act, 2005. It can be said that the Act gives partial recognition to this kind of living arrangement with the sole aim to protect the women who live with their partners in

[12] Gurdial Singh v. Bhagat Singh, AIR 1934 Lah 517;Chockalingam Pillai v. Sami Bhattar, AIR 1925 Mad 426; Gokal Chand v. Parvin Kumari, AIR 1952 SC 231; A. Dinohamy v. W. L. Balahamy, AIR 1927 PC 185

[13]1992 Supp (2) SCC 304

[14] AIR 2008 SC 1420

[15]The Constitution of India, art.39 (f) states that the State shall, in particular, direct its policies towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

[16] Enakshi Jha "Live-In Relationship: An Emerging Concept",
Available at: http://www.legalservicesindia.com/article/1622/Status-of-Children-born-in-Live-in-Relationships.html

[17]AIR 2010 SC 2685

[18]AIR 2011 SC (Supp) 155

[19]*Supra* note 20.

[20] The Hindu Marriage Act, 1955 (Act 25 of 1955), sec 16: Legitimacy of children of void and voidable marriages- Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

[21] The Constitution of India, art. 14: Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

[22] Rebecca Furtado 'Rights of Child Born Out of A Live-in Relationship', available at https://blog.ipleaders.in/rights-child-born-live-relationship/live-relationship/

[23](2010) 9 SCC 209

unmarried cohabitations. Though,the Act does not define live-in relationships but it surely provides who could be the causalities that could beprotected and under what circumstances.

According to the provisions of the DV Act,a woman who could seek protection under the act is called as an aggrieved person. Under section 2(a) of the act an aggrieved person means-

"Aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent"

Section 2(f) of the Act, defines domestic relationship as-

"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."

The definition of domestic relationship mentioned above uses the term *"relationship in the nature of marriage"*which indicates the application of the act in those cases as well where no legal marriage has taken place, but still the heterosexual partners are living in such a way which is no less than a marriage. Thus, it would not be incorrect to say that the Act applies to the people living in live-in relationships in India. But the Act confines itself only to the extent of giving protection to females living in an abusive state in a relationship which is in the nature of marriage, it nowhere provides what all relationships which might look like a marriage would be accepted in order to provide protection to the women, as in India there are number of unifications that seems like a marriage but actually are not.

Therefore, to remove this confusion the protection under the immediate Act is subject to the adherence of certain guidelinesand principles, laid by the honorable Supreme Court in the cases of *D Patchaiammal v. D Velusamy*[24] and *IndraSarma v. V.K.V. Sarma*[25]. Under the Protection of Women from Domestic Violence Act of 2005, women in these relationships must meet certain requirements mentioned in *Velusamy*case, they are:

1. **Marriageable Age**- The couple must be of marriageable age and must be major in the eyes of Indian law.A lady of 21 years old has the freedom to go anywhere, and any man and woman, even if they are not married, may live together if they so choose, according to the Allahabad High Court's ruling in *PayalKatara vs. Superintendent NariNiketanKandriVihar Agra and Ors*. Although the Kerala High Court recently found that an adult couple might be in a live-in relationship even if they had not reached the relevant legal ages for marriage in *Nandakumar vs. The State of Kerala*. The man in question was under age 21, which is the minimum age for men to get married.

2. Considerable Period of Time- The phrase "*at any point of time"* under section 2(f) of the DV Act, 2005 refers to a significant or relevant period of time the couple must have stayed together in a shared household.[26] As discussed above in the case of *Madan Mohan Singh* v. *Rajni Kant*[27]the live-in relationship if continued for long time, would come under the protection of relationship in the nature of marriage and hence it cannot be termed as a "walk-in and walk-out" relationship and that there is a presumption of marriage between the parties. Also, in *Badri Prasad v. Dy. Director of Consolidation and Others* [28] the Apex Court held that a solid

[24]AIR 2011 SC 479

[25]Crl. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448 9 2001 SCC OnLine All 332.

[26] The Protection of Women from Domestic Violence Act, 2005, [Sec: 2(s) –"shared household" means a household where the person aggrieved lives or at any stage has 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 includes 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.]

[27]*Supra* note 9.

[28]1978 AIR 1557, 1979 SCR (1) 1

assumption emerges for wedlock where the live-in partners have lived respectively for a long spell as a couple. In this case The Supreme Court recognized a live-in relationship for the first time. It upheld the legal legitimacy of a couple's fifty-year live-in relationship.

3. Intentional Cohabitation- Independent decision of the couple with a common intention to cohabit is an essential criterion of a live-inrelationship. It includes supporting each other, sharing their respective roles and responsibilities, financialarrangements, socialization in public and so on to prove the loyalty and endurance of their relationship.Suppose a man uses his 'keep' primarily for sexual purposes or perhaps as a maid/slave and financially supportsher. In that case, this is not considered a marital or equal marriage relationship.

In the context of the Domestic violence Act, the court in *velusamy* held after surveying the protection accorded to women in such relationship in other jurisdictions, that 'relationship in the nature of marriage' is akin to common law marriage, which expression is, as per the court, synonymous to '*de facto* marriage' and 'informal marriage'. The court then proceeded for laying down the essentials of a 'common law marriage' such as-

a) Holding out to society as being akin to spouses.
b) Legal age to marry.
c) Otherwise qualified to marry, including being unmarried, and
d) Must have cohabited or held out to society for a significant period of time.

The court held that apart from these four criteria for a common law marriage 'a shared household' is necessary for a particular relationship to come within the purview of the Domestic Violence Act.[29]

Certainly, on account of the view taken by the Court in the above-discussed parameters, it would bar numerous ladies who have had a live in relationship from the advantage of the DV Act, 2005, yet then it isn't for this Court to administer or change the law. Parliament has utilized the articulation "relationship in the nature of marriage" and not live-in relationship. The Court in the get of understanding can't change or alter the language of the law.

However, in order to simplify the situation,Honorable Supreme Court in *IndraSarma v. V.K.V. Sarma*[30]has shown five classes where live-in relationship can be demonstrated in the courtroom:

a) Relationship between an adult male and an adult female both unmarried.
b) Married man and an adult unmarried woman entered knowingly.
c) An adult unmarried man and a married woman entered knowingly.
d) An adult unmarried female and a married male entered knowingly.
e) Relationship between same sex partners.

*Sarma*case revolve around the category "b" under which an unmarried woman entered into a non-marital cohabitation consciously with a married male and stayed together for a long spell of time. When things turned sour between them, the lady claimed maintenance under the DV Act, 2005, to which the Apex court stated:

"The appellant's status was that of a mistress, who is in distress"[31] and "if any direction is given to the respondent to pay maintenance or monetary consideration to the appellant, that would be at the cost of the legally wedded wife and children of the respondent".

The Supreme Court in '*Velusamy'* and '*Indira Sarma'*has attempted to law down test for determing the expanse of 'relationship in the nature of marriage' or what a quasi marriage is. The Apex court has attempted to balance between rights of a woman on the one hand and public policy consideration on the other. [32]

3.2 The Indian Evidence Act, 1872

Under section 114[33] of the Indian Evidence Act, 1872,where a man and woman are proved to

[29] Goel, Anupama, Supreme Court and The Domestic Violence Act: "A Critical Comment on Indira Sarma v. V.K.V Sarma", J*ournal of the Indian Law Institute*Vol. 56, No. 3 (JULY-SEPTEMBER 2014)

[30] *Supra* note 28

[31] Judgment delivered by K.S.P Radhakrishnan and Pinaki Chandra Ghose, JJ; In*Indira Sarma v. V.K.V Sarma* (2013) 15 SCC 755

[32] *Supra* note 32

[33] The Indian Evidence Act, 1872, Section 114 [Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the

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 concubinage state.

A combined reading of section 50[34]and section 114[35]of the Indian Evidence Act, 1872, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they were borne out by the facts of a particular case. A number of judicial pronouncements have been made on this aspect of the matter. In the case of Tulsa vs. Durghatia, the Honorable Supreme court saw that constant living together of lady and a man as a couple and their treatment as such for various years might raise the presumption of marriage, yet the presumption which might be drawn from long dwelling together is rebuttable and in the event that there are conditions which incapacitate and obliterate that presumption, the court can't neglect them.

3.3 The Code of Criminal Procedure, 1973

There is no provision under Criminal Procedure Code, 1973, which promotes or laysdown rights for those living in an unmarried cohabitation. However, recommendations were made by Justice Malimath committee[36] (Committee on Reforms of Criminal Justice System, 2003) to amend the law in order alter the definition and widen the scope of the term 'wife' under section 125 of the code, so to includewithin the ambit of the term wife,those women who are living with a man as his wife for a reasonably long period of time, during the subsistence of the first marriage.[37]The extended definition of "wife" is thus clearly set against the backdrop of secondary relationships of already married men and is not directed at taking cognizance of what may be regarded as emergent forms of non-marital cohabitation. Providing an explanation for its recommendation, the report argues:

"A woman in a second marriage of a man is not entitled to claim maintenance as in law a second marriage during the subsistence of the first marriage is not legal and valid. Such a woman though she is de facto the wife of the man, in law she is not his wife. Quite often the man marries the second wife suppressing the earlier marriage. In such a situation the second wife cannot claim the benefit of section 125 for no fault of her. The husband is absolved of his responsibility of maintaining his second wife. This is manifestly unfair and unreasonable. The man should not be allowed to take advantage of his own illegal acts. Laws should not be insensitive to the suffering of such Women"

It is quite evident from the above that the object of focus here is not all non-marital adult heterosexual relationships but only that between a married man and his second wife, particularly one who has been cheated into believing that she is married and marrying an unmarried man. By adding the clause "during the subsistence of the first marriage", the report has left little room for any speculation regarding the objective of the recommendation.[38]

In 2008, Maharashtra, following the recommendations of the Malimath committee report, initiated an aborted attempt to amend section 125 of the Code of Criminal Procedure,1973, which brought the issue of legal status of live-in relations into the public gaze. The move was construed as an attempt to confer legal status on secondary unions of men as well as legalize live-in relationships of the modern kind in which young men and women choose to enter non-marital heterosexual relations prior to entering a long-term committed marriage tie.[39]

common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.]

[34]The Indian Evidence Act, 1872, Section 50[Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).]

[35]*Supra* note 36

[36] Malimath Committee was headed by Justice V.S. Malimath, former Chief Justice of the Karnataka and Kerala High Courts

[37] Agrawal, Anuja. "law and 'live-in' relationships in india." *Economic and political weekly*, vol. 47, no. 39, 2012, pp. 52, available at: http://www.jstor.org/stable/41720191. Accessed 23 Sep. 2022.

[38]*Ibid*.

[39]*Supra* note 40.

In *Chanmuniya v. Vijender Kumar Singh Kushwaha*[40]the Supreme Court observed that in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loophole by enjoying the advantage of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance under section 125 is meant to prevent.[41]

However a problem may arise if any long-term live in relationship is considered to be in nature of marriage because there may be other bars to such marriage under the personal laws or other legislations. Where a Hindu male was already married starts living in a live in relationship with someone for a long time, a presumption of marriage cannot be made, as it will legalize a subsequent marriage that is barred under Hindu marriage act.[42]

Therefore, in *Chanmuniya v.Vijender Kumar Singh Kushwaha*[43] the division bench of Supreme Court referred certain questions to be decided by the larger bench which are yet to be decided they are as under:

1. If a couple's long-term cohabitation as husband and wife would give rise to the presumption that their union is legal and whether such a presumption would entitle the woman to maintenance under Section 125 of the Code of Criminal Procedure, 1973?
2. Considering the provisions of the 2005 Domestic Violence Act, is stringent proof of marriage required for a claim of maintenance under section 125?
3. Would a customary marriage that did not strictly adhere to the requirements of section 7(1) of the Hindu marriage act of 1955 or any other personal law entitle the woman to maintenance under section 125 of the Code of Criminal Procedure?

Thereafter the Supreme Court to some extent clarified the legal position in the landmark judgement of *IndraSarma v. V.K.V Sarma* held that "when the woman is aware of the fact that the man with whom she is in a live-in relationship is already legally married to another lady and have children as well, is not entitled to various reliefs available to a legally wedded wife and also to those who enter into a relationship in the nature of marriage"as per provisions of the protection of women from domestic violence act, 2005. But in this case, the Supreme Court felt that denial to any protection would amount to a great in justice to victims of illegal relationships. Thus, the Supreme Court emphasized that there is a great needto extend section 2(f) which defines domestic relationships in the Protection of Women from Domestic Violence Act, 2005, so as to include victims of illegal relationships who are poor, illiterate along with their children who were born out of such relationships and who do not have any source of income. Further, Supreme Court requested Parliament to enact a new legislation based on certain guidelines given by it so that the victims can be given protection from any societal wrong caused from such relationship.[44]

4.0 LAW RELATING TO LIVE-RELATIONSHIPS IN OTHER COUNTRIES

The concept of live-in relationship is popular known by different names and legally dealt by different laws worldwide. 'Cohabitation' is the term used for live-in relationships in various countries. It is treated synonymous to non-marital cohabitation. Non-marital cohabitation is an arrangement where two people who are not married, live together in an intimate relationship, particularly an emotionally and/or sexually intimate one, on a long-term or permanent basis. Earlier, the law at one time prohibited unmarried cohabitation. The so-called 'concubinage' was part of Penal Codes in various countries. Many of its proponents emphasized the need to protect women and children and so unmarried cohabitation was treated as undesirable and illegal also.[45]

[40] 2011 1SCC 141
[41]*Ibid.*
[42]*Ibid.*
[43](2011) 1 SCC 141

[44]Agarwal Jigyasa "Live-in Relationship: With Judiciary Recognition", available at: legalserviceindia.com/legal/article-2993-live-in-relationship-legal-status-with-judiciary-recognition.html
[45]Shashi Bhushan, " Socio-Legal Status of Live-In Relationship: A Comparative Study of France,

Live-in relationship in various regions of the world or in different countries is either recognized as it exists or it is seeking recognition via implied provisions of different statutes that protect property rights and housing rights. Cohabitation contracts have been provided in many countries in which partners can determine their legal rights. However, when it comes to the rights of women and children born under such relationship lack of uniform and specific law in various countries excludes protecting their rights, thereby, discouraging attempts of non-marital live-in relationships. The meaning of cohabitation and its role in family systems differ considerably from country to country and subgroups within countries. Non-marital cohabitation has become more prevalent globally in recent decades. In Western countries it has come to resemble marriage.[46]

4.1 United States of America

The American legal history is witness to several consensual sex legislations and common law marriage doctrine, which facilitated the way for living together contracts and the 'prenuptial agreements'[47]In United States of America there exists the concept of 'cohabitation agreements'[48]comprising the specific mention of rights and liabilities under such agreements.

In *Fenton v. Reeds*[49] case, court applied the common law marriage doctrine and recognizes a long term cohabitation as marriage. 'California Supreme Court in *Marvin v. Marvin*[50]held that unmarried couples may enter into written and oral contracts that cover rights often associated with marriage. In United States of America the expression 'palimony' was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him. The first decision on palimony i.e*Marvin v. Marvin* was the well known decision.' "Subsequently in many decisions of the Courts in United States of America, the concept of palimony has been considered and developed.

The United States Supreme Court has not given any decision on whether there is a legal right to palimony.Although there is no statutory basis for grant of palimony in United States of America, the Courts there have granted it on a contractual basis. Some Courts in United States of America have held that there must be a written or oral agreement between the man and woman that if they separate, the man will give palimony to the woman; while other Courts have held that if a man and woman have lived together for a substantially long period without getting married, there would be deemed to be an implied or constructive contract that palimony will be given on their separation."

It is clear from the approach of the Courts in USA that cohabitation relationships and rights of the cohabitants have been recognized if the cohabitants have formed cohabitation agreements and if have not formed any such agreement can be covered under the doctrine of common law marriage. However it is worth notice here that common law doctrine is not recognized in all states of United States of America.[51]

Philippines, Scotland and India",Ph.D. Thesis, Punjab University, Chandigarh.

[46]Jia Yu & Yu Xie, "Cohabitation In China: Trends And Determinants" 41(4) Population And Development Review 607 (2015) available at: https://scholar.princeton.edu/sites/default/files/yuxie/files/pdr414.yu_.pp607-628.pdf

[47] Note: (A prenuptial agreement is a contract entered into by two people who are about to marry. A prenuptial agreement often called a prenup or prenupt is used to specify how property index will be divided in the event of a break up.)

[48] Note: (cohabitation agreement is a form of legal agreement reached between a couple who have chosen to live together. Unmarried couples who are living together have the option of creating a number of legal documents often called cohabitation agreements that can help protect their rights as a couple while at the same atthe sametime safeguarding their individual interests and assets. Since unmarried couple, who live together may one day split up, especially outside of the legal bonds and social institution of marriage. The legal requirements for a valid cohabitation contracts or much like the requirements for any valid contract.)

[49] 4 Johns.52(N.Y.Sup.ct.1809)

[50] Marvin v. Marvin 18Cal.3d660(1976)

[51] Lawrence W. Waggoner "With Marriage on the Decline and Cohabitation on the Rise, What about Marital Rights for Unmarried Partners?", at 51, University of Michigan Law School available at: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2761&context=articles, See also Demographic Intelligence, a consulting firm that claims that its demographic forecasts are 99% accurate, predicts: "The United State marriage rate . . . is poised to go lower . . .

4.2 Canada

Living together in an unmarried union is recognized as "Common law relationship" in Canada. However, to acquire legal sanctity for their relationship the couple must abide to the requirement of living together in the same household for a minimum duration of 12 months without any interval. It is recognized by Section 53 of Family law Act, R.S.O. 1990 under clause (1), that- Two persons who are cohabiting or intend to cohabit and who are not married to each other 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 custody of or access to their children; and

(d) Any other matter in the settlement of theiraffairs.[52]

Moreover under Section 53(2) the cohabitation agreement becomes a marriage contract if the partners marry each other.[53]Also in most of the cases a common law partner enjoys the same rights as married partners as provided under central law of the country.[54]

4.3 United Kingdom

In United Kingdom a couple living in an unmarried union constantly are regarded as 'Common Law Spouses',which is governed by Civil Partnership Act, 2004. For a couple to be called as a Common Law Spouses following pre-conditions are need to be fulfilled-

The parties must be above the age of sixteen (16) Years.

They should not already be living in another civil partnership or marriage.

They should not be within the prohibited degrees of relationship.

The said Act of 2004covered the parties from the same sex till 2019 but with the amendment act, 2019 it included couples of heterosexual nature as well to seek the protection under the act by registering themselves and to form a civil partnership.[55]

4.4 France

France has introduced equal treatment of married and unmarried couples in its legislation.On October 13, 1999 the French National Assembly passed the Bill amending French Civil Code by inserting provisions for Civil Solidarity Pacts. Live-in relationship is governed by civil solidarity pact in France known as '*pacte civil de solidarite*', which defines cohabitation as stable and continuous of a couple of different sexes who stays together[56]and permits a couple to enter into a union by signing a contract before a court clerk. The contract binds 'two adults of different sexes or of the same sex, in order to organize their common life' and permits them to enjoy the rights given to married couples in the sphere of income tax, housing and social welfare.[57]One partner or both after giving the partner, three months' notice in writing, can cancel this contract.

4.5 ThePhilippines

The Philippines is unique because non-marital cohabitation is not an entirely new phenomenon. The absolute number of registered marriages in the Philippines has declined considerably in the last decade by nearly 25% between 2004 and 2013 (CITE Philippines Statistics Authority), it is possible that this decline has been offset by increase in non-marital cohabitation.

." U.S. Marriage Rate Lowest Ever Recorded, But Headed Down Slower, PRWEB, at 1 (May 19, 2015), http://www.prweb.com/pdfdownload/12729717.pdf [hereinafter DEMOGRAPHIC INTELLIGENCE].

[52] Law Document English View(Ontario 14 April 1, 2015) available at: https://www.ontario.ca/laws/statue/90f03#BK62.

[53]*Ibid*.

[54]Pandey, Aishwarya A comparative Study of Live-in Relationship In India with other Countries, *IJLMH*, Vol. 4, Issue 1, 2021, pp. 266-267.

[55] Civil Partnership, Marriage and Death (Registration etc.) Act, 2019, available at http://www.legislation.gov.uk/ukpga/2019/12/enacted

[56] Cohabitation defined by Civil Solidarity Pact- "de facto stable & continuous relationship between two persons of different sexes living together as couple".

[57] Civil Code(France), 1999 (Act no 99-944), Article 515-1[A civil covenanat of solidarity is a contract entered into by two natural persons of age, of different sexes or of a same sex, to organize their common life.]

In Philippines, live-in relationship is recognized and it governs the property relations by the rule on equal ownership, under chapter of '*Conjugal Partnership of Gains'*, Article 147 of Family Code Philippines provides that where a man and a woman who are capacitated to marry each other, live exclusively with each other just like a husband and wife, but without the benefit of marriage or when the marriage is void. In such a situation, property acquired by both the spouses through their work, wages and salaries, shall be owned by them in equal share, which shall be governed by equal co-ownership rule.[58]

5.0Discourse

In comparison to India, the aforementioned nations have entirely different legal frameworks to address the idea of unmarried cohabitation within their respective jurisdictions. This disparity in the legal system of India and other nations exists due to the stark cultural differences between them.The majority of Indians live a traditional lifestyle, which is in line with Indian culture. One thing that Indians have in common over the years is their commitment to tradition.

In India, marriage is viewed as a traditional institution, and any deviation from this is deemed sinful. On the other hand the western cultural perspective is different altogether. Despite the fact that both cultures are distinctive in their own ways, Indian culture places a strong emphasis on the creation of familial ties, in contrast to the western approach, which is more individualistic.Western nations do not see living in an unmarried partnership or having sex before marriage as taboo or sinful; rather, they see it as a normal part of daily life.If the aforementioned nations are taken into account, it is very likely that they have established an appropriate regulatory framework for managing and controlling unmarried cohabitation within their respective jurisdictions by clearly defining such a relationship and imposing universal standards in order to provide justice to its full extent. However, it is also true that due to the completely different sociocultural structures of other countries from India, only those countries are able to form these forms of legislation. Contrary to other countries, India is a place of many different religions with unique cultures and traditions, which carry different notions with regard to unmarried cohabitation and non-marital sex; In such circumstances, reaching an amicable consensus on legalizing live-in relationships in India could result in a significant backlash that could worsen polarization among the society's intolerant and open-minded segment.

But at the same time, this fact can also not be denied that India is slowly opening its doors and welcoming western culture by which the dynamics of the Indian society are changing constantly.And although India has a very long and rich traditional history, and during that time there was a structured social framework that was seen evaluating societal rules from the beginning, such a design cannot be carried forward to accomplish the same without modifications.Thus, to the rapid social and economic change in India, it is accurate to state here "what used to be felony in the past is not a sin today."[59]

One big example is the decriminalization of section 377 of the Indian penal code, 1860, which criminalizes same-sex relations and intercourse. [60] The decriminalization of the same-sex intercourse is a big step towards legalizing and paving way for same-sex marriages in India as well. In such a way, why there cannot be a law that legalize and recognize Live in relationships in India as well.

It is always said that law is an instrument of social change, law changes itself according to the needs of the society; presently the issue of legalizing living relationships in India is at the forefront, and it can be perceived that the imposition of a well-organized law that defines live in relationships exhaustively and provides well oriented regulatory structure clearly demarcating the ambit of those relationships which are in the nature of a marriage may attract unanimous consent of the Indian society.

6.0 Conclusion

[58] Abhang, Sonali "Judicial Approach to 'Live- In-Relationship' In India- Its Impact on Other Related Statutes", 19(12) IOSR-JHSS 34 (2014); available at: http://iosrjournals.org/iosr-jhss/papers/Vol19-issue12/Version-4/F0191242838.pdf

[59] Revanasiddappa & Anr vs Mallikarjun & Ors 2011 AIR(SCW) 2447

[60] Navtej Singh Johar v. Union of India AIR 2018 SC 4321

In light of the comparative analysis discussed above, it is clear that in India, the issue of live-in relationships is not appropriately addressed due to a lack of suitable legislation and considering the popularity that has caused a sharp increase in the number of live-in relationships in Indian culturea legislation is required for dealing this issue properly.

Our society needs to open up their minds towards this new concept of living together with the changing needs of the society.In contrast to France and the United Kingdom, which both have laws governing live-in partner's property rights, the Philippines, according to the analysis, does not permit the registration of non-marital relationships. The live-in relationship is recognized legally in the United States of America.

To make live-in relationships legal in India, the mentality of Indian society must be modified in accordance with the rapidly expanding society in order for it to become an accepted part of our social standards. This is similar to how laws change or develop as society changes.Unmarried couples and their relationships are largely not recognized by Indian Law, and the Indian judiciary is working to make these relationships more compliant with the law,but that is not the need of the hour as this may lead to more discrepancies, what is required is the formation of a separate legislation which could capacitate couples living in Live in relationships.

Accepting a behavior like a live-in relationship in a culture where pre-marital sex is stigmatized is a significant step in the right direction. It is therefore vital in the present to compare the socio-legal characteristics of the other nations that have recognized live-in relationships.

6.1 Suggestions

The concept of a live-in relationship needs to be clarified, and there needs to be legislation created specifically to address the rights and responsibilities of a live-in couple. This would lessen instances of abuse against women in these kinds of relationships. India should take those countries into consideration that have formally recognized the concept of live-in relationships within their borders by providing the process of registration for live-in couples therebyrecognizing their rights,in order to formulate a legislation which could define live in relationships in Indian society and lay down a criteria with regard to duration of live in relationship, rights of the parties, issues related to the legitimacy of the children born from a live-in relationship and their inheritance rights and children's custody rights.

7.0 References

Journal Articles

- Aishwarya Pandey, A comparative Study of Live-in Relationship In India with other Countries, *IJLMH,* Vol. 4, Issue 1, 2021
- Anuja Agarwal "law and 'live-in' relationships in india." Economic and political weekly, vol. 47, no. 39, 2012,
- AsthaSaxena "Live-in Relationship and Indian Judiciary" Law Audience Journal, vol.2, Issue 4, 2021.
- Jia Yu & Yu Xie, "Cohabitation In China: Trends And Determinants" 41(4) Population And Development Review 607, 2015
- PriyankaSaha, Vanshika, "Live-In Relationship: What was Illegitimate in the Past can be Legitimate Today" Acclaims, Vol 11, 2020.
- Abhang, Sonali "Judicial Approach to 'Live-In-Relationship' In India- Its Impact on Other Related Statutes", 19(12) IOSR-JHSS, 2014.
- AnupamaGoel, Supreme Court and The Domestic Violence Act: "A Critical Comment on Indira Sarma v. V.K.V Sarma", Journal of the Indian Law Institute Vol. 56, No. 3, 2014.
- Rajesh Hittanagi, "Live-in- Relationship and Indian Judiciary", Legal Services India, December 14, 2012
- Dr. YuvrajDilipPatil, "Socio-Legal Perspective of Live-in Relationship in India", Social Science Research Network, September 12, 2011.
- N.T Satish, "Living in Relationship - An Indian Perspective", International Journal of Health Sciences and Research, 2014.
- Caesar Roy, 'Emerging trend of Live-in Relationship in India – A critical analysis', Criminal Law Journal, 2012.
- Dr. (Mrs.) S. AmbikaKumari, Senior Lecturer in Law, 'Effect of westernization on Indian Marriages', Madras Law Journal, 2004.

Books

- Dr. Diwan, Paras '*Family Law',* (Allahabad Law Agency)
- Ghosh, Jayant '*Live in Relationship & Hindu Marriage: A Critical Legal Analysis'*, (LAP LAMBERT Academic Public House, Germany, June 2015)

Legislations

- Civil Code (France), (1999) (Act no 99-944)
- Civil Partnership Act, (2004)
- Civil Partnership, Marriages and Deaths (Registration etc.) Act, (2019)
- Family Code of Philippines, (1987)
- Hindu Marriage Act, 1955, (Act 25 of 1955)
- "Senate Bill 2016 – the Florida Senate" 498
- The code of Criminal Procedure, 1973 (Act No 2 of 1974)
- The Constitution of India, (1950)
- The Family Law (Scotland) Act, (2006)
- The Indian Evidence Act, 1872 (Act No 1 of 1872)
- The Protection of Women from Domestic Violence Act, 2005

Case Laws

- A. Dinohamy vs. W.L. BalahamyAIR 1927 PC 185
- BharathaMatha&Ors. Vs. R. VijayaRenganathan&OrsAIR 2010 SC 2685
- Badri Prasad v. Dy. Director of Consolidation and Others1978 AIR 1557, 1979 SCR (1) 1
- Chanmuniya v. Vijender Kumar Singh Kushwaha(2011) 1 SCC 141
- Chockalingam Pillai v. Sami Bhattar, AIR 1925 Mad 426
- Fenton v. Reeds 4 Johns.52(N.Y.Sup.ct.1809)
- Gokul Chand v. ParvinKumariAIR 1952 SC 231
- Gurdial Singh v. Bhagat Singh, AIR 1934Lah 517
- IndraSarma v. V.K.V. Sarma(2013) 15 SCC 755
- Lata Singh v. State of U.P (2006) 5 SCC 475; (2006) 2 SCC (Cri) 478.
- Madan Mohan Singh v. Rajni Kant(2010) 9 SCC 209
- Marvin v. Marvin18Cal.3d660(1976)
- Mohabhat Ali v. Mohammad Ibrahim KhanAIR 1929 PC 135
- Navtej Singh Johar v. Union of India AIR 2018 SC 4321
- PayalKatara vs. Superintendent NariNiketanKandriVihar Agra and Ors.AIR 2001 All 254
- Ramdev Food Products (P) Ltd. v. ArvindbhaiRambhai Patel(2006) 8 SCC 726
- Revanasiddappa vs. Mallikarjun2011 AIR(SCW) 2447
- S.P.S. Balasubramanyam v. SuruttayanAIR 1992 SC 756
- S. Khushboo v. Kanniammal&Anr(2010) 5 SCC 600
- Vidyadhari&Ors vs. Sukhrana Bai &OrsAIR 2008 SC 1420

Committee Report

- Justice Malimath Committee Report 2008
- Law commission of India Report 2009