

# Legal Rights of Women and Children in Live in Relationship

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## **ABSTRACT:**

Live-in relationships are emerging as a new trend and are viewed as an alternative to marriage with fewer legal obligations. This arrangement is often preferred by young people who wish to test compatibility before committing to a long-term relationship, and by those whose job requirements do not accommodate the commitments of marriage. Despite its growing popularity, Indian society often views live-in relationships as immoral and inappropriate. However, the legal system has started to recognize and validate such unions. There is currently no specific law governing live-in relationships or prescribing protections for women and children involved in them. This article examines the rights of women and child in live-in relationships and the legal provisions available to protect them from abuse and harassment. It also explores the status and rights of children born outside of marriage and proposes measures to regulate and recognize live-in relationships.

**Keywords:** Live-in Relationship , protection of women, rights of children, recognition of live-in relationships

## **Introduction**

A man and a woman living together as husband and wife in a relationship without getting married is picking up its pace among youngsters especially in metro cities. By taking the burden of responsibility off their shoulders, both partners find living together easier than getting committed in marriage. Being involved in such volatile relationship, women are often the aggrieved party in the relationship and along with the women the child who is born out of such kind of living arrangement i.e. Live in relationship also become victim because in our Indian statutes there is a lack of specific legislation which can deal with the legal rights of both female live in partner as well as of that child.

This is one of the major drawback of our Indian Judiciary that we don't have adequate laws on the issue of live in relationship which can discuss about the legal definition of live in relationship and can laid down penal provisions for the accused who cause any sort of harm or damage to live in partner in India and not even the legal rights of women and child under live in relationship has been defined anywhere in any Indian statute. Only through various judgements of the courts certain rights have been given to female and child born out of live in relationship.

So , basically under this article author is trying to discuss the legal rights of women and child under live in relationship in detail

## RIGHT OF MAINTENANCE OF A WOMAN

Right of Maintenance: In a general sense, maintenance means providing financial assistance by paying monthly amount for someone's daily expenses.

According to oxford dictionary, maintenance in legal term means "the amount paid to the dependent wife, child, or parents to maintain themselves." Either a lump sum payment or monthly instalments may be used to pay the amount.

LIVE IN RELATIONSHIP & SECTION 125 CRPC, 1973

## RIGHT TO MAINTENANCE

Maintenance is an amount which is made payable by the husband to his wife either monthly or annually who is unable to maintain herself out of her own assets either during the subsistence of marriage or upon separation or divorce.

There are mainly two type of Maintenance

1. Temporary Maintenance
2. Permanent Maintenance

In cases of divorce or judicial separation, the court may give temporary/ interim maintenance where the case is still pending. In accordance with Section 24 of the Hindu Marriage Act of 1955, any spouse may claim relief from the court if the court is satisfied with the fact that husband is refusing to provide maintenance and it is being proved in the court of law that the aggrieved does not have sufficient independent source of income to support herself.

A petition can be made under Section 24 of the Hindu Marriage Act despite of receiving maintenance under Section 18 of the Hindu Adoption and Maintenance Act. The only restriction is that when granting an order under Section 24 of the Hindu Marriage Act, the maintenance granted under Section 18 of the Hindu Adoption and Maintenance Act must be taken into consideration.

After the divorce or separation case has been permanently resolved and permanent maintenance is provided. According to Section 25 of the Hindu Marriage Act of 1955, the applicant is entitled to receive support from his or her spouse in the form of a gross amount, a monthly or periodic sum, or both, for a period of time that does not exceed the applicant's lifetime or until the applicant remarries or remains celibate.

Maintenance to Wife:

Section 144(1)(a) lays down the law for maintaining one's wife. Explanation (b) of this section defines "wife" as a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. This broad definition aims to safeguard women and prevent husbands from making easy divorces under personal law.

So, as per this section, even an ex-wife is entitled to claim maintenance from her husband. However, there are certain exceptions to the wife's right to claim maintenance. A wife cannot claim maintenance if:

She is living in adultery.

She has been living separately from her husband without sufficient reason. Suppose the husband offers to maintain his wife on condition of her living with him and she refuses to do the same. In that case, the magistrate may consider her grounds for such refusal and make an order notwithstanding the husband's offer if he is satisfied that there is just ground for doing so. If a husband contracts marriage with another woman or keeps a mistress, it is considered to be just grounds for his wife's refusal to live with him.

both spouses are living separately by mutual consent.

If the wife remarries after the declaration of divorce, she also loses her right to be maintained by her former husband. The husband has a legal obligation to provide for his wife's maintenance, but apart from making sure that the husband has sufficient means to provide maintenance to the wife, the court also needs to determine whether the wife is capable of maintaining herself after separation.

The judicial magistrate also has the power to cancel an order made under this section in case of proof of the wife in whose favour an order has been made under this section living in adultery or refusing to live with her husband without any sufficient cause or the prove of the couple living separately by mutual consent..

All kind of live-in relationships are not covered by the domestic violence act 2005, section 2(f) which talks about the relationship in nature of marriage. According to the Supreme Court, certain requirements must be fulfilled for a relationship to qualify as a live-in relationship:

- The pair must have attained the legal age to marry;
- qualify for a legal marriage;
- and have lived together willingly for a significant period of time before getting married.

If a woman enters in a live-in relationship while knowing that she is already married and has children, she should not be given protection or remedy under the Protection of Women from Domestic Violence Act of 2005. However, when women are the victims of illicit relationship ;even have children born out of such relationships, estranged without any financial support and in order to protect such women, the Supreme Court has laid down some guidelines on the basis of which a live-in relationship can be given the status of marriage. The guidelines are as follows:

1. **Duration of Relationship** – As there is no specific time duration has been defined anywhere under any Indian law for those couple who are indulged in a Live- in a relationship therefore they talked of reasonable period 'at any point of time that's why this kind of relationship can be given the status of Marriage and both the live in partners will be considered as husband and wife .
2. **Shared Household** – If the Live-in couple live together in a one house under a same roof and they share all the things of that house.
3. **Pooling of resources and finances** – The couple should support each other financially by sharing bank accounts, acquiring immovable properties together and having joint shares in assets etc.
4. **Domestic arrangement** – Under domestic living arrangement when a female performs all household chores such as cooking, cleaning, washing clothes etc .then it can be said that that female is living as wife and playing a similar role to that of a wife like as in a married relationship .
5. **Sexual relationship** – when the Live in couple relationship extends to intimate, emotional which also includes procreation of children so as to give emotional support, companionship and affection, caring etc. creating a sexual relationship is one of the essential ingredient to get the status of marriage .
6. **Upbringing of children** – The couple's planning to have children then their mutual support in raising them is a strong indication of having a long-term relationship.
7. **Socialization** – Socializing yourself in a public as a couple and socializing with friends and relatives and others close relations as if they are husband and wife is a strong proof that their relationship is in the nature of marriage.

8. **Conduct of both parties** – The intention and conduct of the parties about what their relationship is and to be, their involvement, their roles and responsibilities determines the nature of their relationship.

Such a relationship cannot be deemed to be of the character of marriage if the man has a concubine to whom he provides financial support and employs her primarily for sexual purposes and/or as a servant. The National Center for Women advocated that female live-in partners be included within the purview of Section 125, Cr.P.C. in order to establish their rights and grant them the right to maintenance.

### **Law and Live-in-Relationships in India :**

There is no law that explicitly acknowledges a live-in relationship. The two actions made by each government First, the Maharashtra government attempted to amend Section 125 of the Criminal Procedure Code (hereinafter referred to as the Cr.P.C.) in 2008. The amendment was intended to broaden the definition of the term "wife" in Section 125 Cr.P.C. by including a woman who has been living with a man "like his wife" for a significant amount of time. As a result of this initiative, the Malimath Committee's (2003) recommendations are now being presented.

In *Abhijit Bhikaseh Auti V. State of Maharashtra and others* case, Supreme Court held that it is not essential for a woman to strongly prove the existence of marriage between the parties to claim the amount of maintenance. Under Section 125 of Cr.P.C., a woman who was living in live-in relationship may also claim maintenance under this section.

In *Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr.*, In this case the Court held that maintenance cannot be denied where solid evidence were present which shows that the parties were living together in a live-in relationship.

According to a 2018 Supreme Court judgment, live-in partners can claim maintenance in case of disunity. In the landmark case of *Indra Sarma vs. V. K. V. Sarma*, the Hon'ble Apex Court held that if a woman is having a live-in relationship with a married man she still be entitled to get maintenance amount. If a couple lives together for a reasonable longer period of time, they will be treated as a married couple in the eyes of law. In another case, it was held that maintenance cannot be denied where there was evidence of the parties living together.

The sections says as follows :

The monetary relief which is provided under section 20 of Protection of women from domestic violence act 2005, provides that the monetary relief which is provided under this provision must be sufficient, fair, reasonable, and compatible with the aggrieved person's usual level of life. In accordance with the nature and circumstances of the case, the Magistrate may award a suitable lump sum payment or monthly maintenance amount.

A compensation order under Section 22 of the PWDA 2005 is another relief or remedy which is provided by the court to the aggrieved women. In addition to other reliefs permitted by this Act, the Magistrate may, upon the aggrieved person's application, issue an order requiring the respondent to pay damages and compensation for injuries, including mental agony and emotional distress.

However, in case of *Chanmuniya v. Virendra Kumar Singh Kushwaha* where the appellant argued that she was married off to the husband's younger brother after his death in accordance with Katha and Sindur local tradition. The appellant said that she and the respondent were cohabitating as husband and wife and had fulfilled all of their obligations under the marriage contract. The appellant further argued that the respondent began tormenting her and harassing her after a while, ceased to fulfil his marital

duties, and also refused to pay her support. She is not his lawfully married wife, he claimed. The High Court ruled that the appellant wife was not entitled to support in this case on the grounds that only women who are legally married may do so under Section 125 of Crpc must be considered in the light of Section 26 of the Protection of Women from Domestic Violence Act, 2005”.

## 2. Right to Life :

Right to life is a basic and very important fundamental right available to all people. In recent years people witnessed judicial activism especially in the interpretation of Article 21 of Indian Constitution. The Hon’ble Supreme Court has included live in relationship and premarital sex within the scope of fundamental right to life which is guaranteed under Indian Constitution, 1950. one more important right that is included under right to life is right to choose which means every individual in the society has a right to choose his or her life partner with whom he /she wants to live their life.

- Unmarried couples holds a right that they can check in a hotel together provided that both couples should be above 18 years of age and possess a valid identity proof with them.
- No law forbids unmarried couples to take a house on rent in India.
- The constitution of India or any other Indian statute does not restrict unmarried couples to sit in a public place and enjoying their personal space.
- The police authorities can not unnecessarily harass any unmarried couples who are living together under same roof and are indulged in consensual sex in private places.

‘The court observed that when an adult man and a woman living together without getting married and sharing the same house cannot be treated as an offence. When two people out of their own free will if they want to live together, it is not considered as an offence .

According to the Supreme Court, there is no law that prohibits live-in relationships or premarital sex. The court has directly stated that living together is a fundamental right to life, as protected by Article 21 of the Constitution, which guarantees the right to life and personal liberty.

In present Indian society more emphasis is given to an individual freedom. A married woman was permitted to live with her lover by the Rajasthan High Court while dismissing a habeas corpus petition brought by the woman's husband . A woman should not be viewed as a consumer good. An adult woman has the freedom to choose with whom she wants to live with, at the end of the day. She can't be forced against her will to accompany her husband .

If the law permits two adults of the same sex or of opposite sex to live together peacefully then neither any individual nor any family member not even State can raise any objection as to the relationship of two adult individuals who out of their own sweet free will are living together. When an individual attains the age of majority they holds a decision making power to live with an individual of his/her own choice which is a right of an individual and when this right is infringed it would cause breach of the fundamental right that is right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined under Article 21 of the Indian Constitution .

Every person has been provided the constitutional right to choose his or her life partner, and if this right is violated then it would directly affect their right to life and personal liberty, as protected by Article 21 of the Indian Constitution. As per the rules under the Protection of Women from Domestic Violence Act, 2005, a relationship in the nature of marriage is slightly different from a relationship emerging out of marriage and it can be said as a couple living together without legally getting married. Recently, in the case of Union of India v. Shakti Vahini, the Supreme Court of India ruled that the act of selecting a life partner is considered a fundamental freedom of choice, protected by Article 21 of the Indian



Constitution. The court interpreted that the freedom to marry the person of one's choice is a fundamental right, encompassing Articles 21, 19(1)(a), and 14 of the Constitution. The court emphasized that the freedom of speech and expression is closely intertwined with the right to life and personal liberty, including the right to choose one's life partner. However, it's important to note that reasonable restrictions may be imposed on an individual's fundamental rights, taking into account societal considerations, irrespective of personal moral or social beliefs .

In the case of NandaKumar vs. State of Kerala ,

The Hon'ble court decided that the couples who have achieved the age of majority may cohabit together without the guardian's consent . In this way court legalised the concept of Live –in in India .

In the case of Gian Devi v Superintendent, NariNiketan, ,The court ruled that once a couple turns 18 years, no restrictions can be placed on his/ her ability to choose her place of residence or her soul mate. Another recent case of a three Judge Bench in Soni Gerry v. Gerry Douglas It is correctly stated that reaching at the age of majority has its own importance in a person's life and it doesn't require particular emphasis. She/he has the right to make a decision of his own . As long as the option is still available, the court cannot act as a *parens patriae*.

### **3. Woman's Right to Reside in shared Household**

If an aggrieved women who was living in a live-in relationship that is similar to the concept of marriage has a right to get a shared home during this time. In the matter of Abhijit Bhikaseeth Auti v. State of Maharashtra , it was held that : The non obstante clause at the beginning of Section 17 Subsection (1) supersedes all other statutes. Every woman in a domestic relationship has the right to live in a shared house , regardless of whether she has any rights, titles, or beneficial interests therein, according to the sub-section .

Protection of Women from Domestic Violence Act, 2005, Section 17 provides right to reside in a shared household.

1. Regardless of any other existing law, every woman involved in a domestic relationship has the entitlement to live in the shared household, irrespective of whether she has any legal ownership or beneficial interest in it.
2. The respondent is not permitted to force the aggrieved person to leave the shared house or any part of it, unless it is done in accordance with the established legal procedure.
3. In the case of a relationship similar to marriage, the aggrieved woman can also seek a court order for residence. This right extends to the joint family house of the respondent.

### **4. Right to Protection of women under the Medical Termination of Pregnancy Act, 1971**

Earlier the provisions of this act that is Medical Termination of Pregnancy Act of 1971 was applicable only to married women, later on the Indian judiciary has expanded the scope and applicability of this act which now also provide protection to live-in couples. In a PIL, the Bombay High Court ruled that a provision under the Medical Termination of Pregnancy Act, 1971, which currently doesn't apply to live-in relationships, should be presumed to be applicable also to couples who are in live-in a relationship "in the nature of marriage." Own Motion v. State of Maharashtra . The Medical Termination of Pregnancy Act of 1971 gives women the choice to end their pre

gnancies. This privilege is being extended to such women, who live with their partner without performing marriage. The decision is advantageous to women who have never been married but live

with a man in a relationship that resembles marriage; therefore, a need to provide protective regulations to such live-in females who become pregnant during the continuation of live-in relationship and the extent to which such partnerships are resembling marriage such cases are growing now a days .

**IN THE SUPREME COURT OF INDIA DR. D.Y. CHANDRACHUD; J., SURYA KANT; J., A.S. BOPANNA; J. Petition(s) for Special Leave to Appeal (C) No(s).12612/2022; 21-07-2022**  
**X versus THE PRINCIPAL SECRETARY HEALTH AND FAMILY WELFARE DEPARTMENT & ANR.**

The Supreme Court has issued an interim order allowing unmarried women to terminate pregnancies of up to 24 weeks resulting from consensual relationships. The court has prima facie observed that such cases fall under Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971.

The effect of the 2021 amendment to the Act indicates the parliamentary intent to include unmarried women as well. The amendment substituted the term "married woman" with "any woman" and "husband" with "partner." This clearly demonstrates that the beneficial provisions of the MTP Act are not limited to situations involving a marital relationship.

## **5. RIGHT TO PROTECTION OF FEMALE UNDER SECTION 63 AND 77 OF BNS,2024**

The number of live-in relationships are increasing day by day in India , especially in metropolitan cities where 80% of young people are involved in a live-in relationship, both parties move in together after first falling in love and share a home, a bed, a living space, and other amenities. On the basis of the promise of marriage, it is typically assumed by the male partner that a girl has impliedly given the permission to have a sexual intercourse which is not correct thing to be presumed .

If a girl has entered into a live in relationship by her own sweet will by inducing her or by giving her a false promise of doing a marriage with her later on, then it does not means that she agreed for sexual relations it is completely unacceptable. Unfortunately, when a disagreement emerges between spouses, they are forced to part ways because live-in partners are not subject to any form of social or legal duties. On sometimes, it is discovered that a fraudulent promise was made. And later on a male partner force her to create unwanted physical relations otherwise he threat her to expose her private photos and videos with her close friends and relatives due to which under pressure she do all those things which is she is not supposed to do .

The term Rape has been defined under section 63 of BNS,2024 which is as follows :

Rape .—"A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following de-scriptions:—

First — Against her will.

Secondly —Without her consent.

Thirdly – With her consent, when her consent has been secured by instilling fear of harm or death in her or any other person in whom she has expressed interest.

Fourthly —With her consent, knowing that he is not her husband, and that she is giving her assent because she thinks he is another man to whom she is or thinks she is legally wed

Fifthly — With her consent if, at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent due to mental incapacity, intoxication, or the administration by him personally or through another of any stupefying or unwholesome substance.

Sixthly , When she is under the age of sixteen, with or without her agreement. Explanation.— The sexual contact required for the crime of rape is only required to penetrate.

The Allahabad High Court stressed the need for regulations to deal with cases in which people engage in sexual activity with a lady while pretending to be married.

Even though it is more prevalent, living together is less crucial than being married. When live-in relationships end in failure, women are increasingly accusing males of rape, according to an analysis of the Supreme Court's current cases. The most frequent charge in FIRs is that the man coerced the woman into a sexual connection by making fictitious marriage promises.

The fourth clause of Section 375 of the Indian Penal Code includes live-in partnerships. A man is deemed to have committed "rape" under the law if he has sex with a woman with her consent while knowing that she is not his wife and that she is providing her consent because she believes he is another man.

It is reasonable to assume that a couple that lives together would have given their agreement to engage in sexual activity while viewing themselves as husband and wife. In accordance with Section 90 of the IPC, which stipulates that sexual activity consent must be given voluntarily and without fear of reprisal or duress. It will be easier to distinguish between rape and consensual sex in a live-in relationship according to a number of Supreme Court rulings.

In *Punjab vs Gurmit Singh*, According to the SC, rape is a most heinous offence which is more than just a physical assault because it completely destroys the victim's psyche and destroys her mentally. A murderer causes damage to the victim's physical body, whereas a rapist shatters her spirit.

The SC strongly defended its sensitivity to sexual assault victims in *Gurmit's* judgement and commanded the courts to treat rape survivors with particular sanctity. It also provides a bird's eye perspective of a developing pattern in which women in unsuccessful live-in relationships accuse males of rape.

On November 22, 2018, the Supreme Court emphasised a crucial distinction between sexual assault and consensual sex between live-in spouses in its decision in the case of *Dhruvaram Muralidhar Sonar*. It was asserted that there is a clear distinction between rape and consenting to sex. In these cases, the court must carefully consider whether the man intentionally lied to that effect in order to sate his libido because doing so would be cheating or fraud.

Section 354c of IPC defines the offence of voyeurism as follows:

Any man who witnesses or makes the photographs of a woman performing a private act in an environment where she normally expects to go unnoticed by the offender or by anybody acting under their direction, or any person who distributes/ disseminates such private photos to other persons.

Basically this section under IPC was introduced through 2013 Criminal Law Amendment Act. The advancement of information technology has led to an increase in cybercrimes like voyeurism, stalking discussed under section 354D of IPC which is treated as a serious offence against women's modesty that is committed by anyone who takes private photos of a girl or her female companion and distributes them to outsiders.

When a woman gets engaged in intimate activities while ostensibly going unnoticed, like while using the restroom or having sex, it is a serious violation of her right to personal and individual privacy, as stated in the section above. This has an impact on article 21 of the Indian Constitution from 1950, which talks about the right to life and personal liberty, which includes the right to privacy.

Similar to this, it may be said to place someone in a position where you determine whether or not to display their body parts or personal activities, which is not only repulsive but also causes the female victim mental anguish. For instance, installing cameras in courtrooms or distributing recordings or



pictures against the victim's consent and preference, which includes posting nude or semi-naked photos online.

There came a landmark Judgement upon this issue :

R V Jarvis

The facts of the above case are as follows Jarvis was a school teacher in the school of London, Ontario. He taught the students of 14 to 18 years of age group and Jarvis was recording female students through a pen which was having camera fitted inside and the videos were made without the consent of the students.

Nobody gave him the permission to do so later on the complaint was filed and it was found that there were 17 active videos of 30 female students at the School. The focus of the audio and video footage was on females' chest areas. Jarvis was charged under section 162(1) (c) of the Criminal Code of Canada for committing the offence of voyeurism.

Another instance that was found was of Union minister Smriti Irani noticed a camera pointed towards the changing rooms in a Goa store . Union minister noticed a camera pointing towards the changing rooms in a Fab India store and raised an alarm. Subsequently, she lodged a complaint under Sections 509 (outraging the modesty of a woman) and 354C (voyeurism) of the Indian Penal Code. following the 2012 Delhi gang rape, the union government constituted the Justice J S Verma committee to make laws dealing with sexual offences more stringent.

In this 21st century we are moving towards westernisation where we have seen majority of youth is enjoying live in relationships where girls and boys are enjoying company of each other but unfortunately at some point of time they both get separated or got breakup then male partner of live in relationship try to threaten his female counterpart by disclosing her private images / videos publically on any social media platform with the intention of causing mental agony, annoyance , Insulting modesty of women etc. This offence directly damage the reputation of female live in partner.

In a situation of COVID-19 , a rapid increase in the number of cases especially cases related to online harassment of various kinds including child pornography, sextortion, online blackmailing etc. has been witnessed worldwide. According to a survey, eight out of 10 people in India have experienced some form of online harassment, with 41% of women have experienced sexual harassment in cyberspace . Data which was published in Forbes mentions that the search for the word “nudes” alongside the term “Coronavirus” has seen a tremendous rise.

The first question which comes to mind is can these photos be leaked in this manner? There can be two answers to this question:

- First, the photos were stored in your phone and you became a victim of some cybercrime due to which it was leaked.
- Secondly, the photos which you have shared with someone you were in a relationship with or someone whom you trusted.

## **ii. RIGHTS OF A CHILD UNDER LIVE IN – RELATIONSHIP**

One of a person's most crucial rights is the right to property. An individual may purchase the property or inherit it from his or her ancestors, forebears, and partners.

The recent judicial decisions on the succession rights of partners in live-in relationships in India signify a notable change in the courts' perspective towards the institution of marriage.

**Succession Rights** : uccession Rights in India:

### Legitimacy of the Child:

The Supreme Court of India has ruled that a child born from a live-in relationship cannot be treated as illegitimate, provided the parents lived together in a relationship that was stable and long-term.

Case: *Tulsa & Ors v. Durghatiya & Ors* (2008) – the Court held that children born from long-term cohabitation are to be considered legitimate.

### Right to Inherit from Parents:

From the Mother: Children born out of any relationship (including live-in) have an undisputed right to inherit the mother's property under the Hindu Succession Act, 1956 or other personal laws.

From the Father: If the father acknowledges the child or there is clear evidence of paternity, the child may inherit the father's property.

Under Hindu law, courts have leaned toward granting inheritance rights to such children from self-acquired property of the father, not necessarily ancestral property, unless the relationship is proven as akin to marriage.

### Right to Inherit Ancestral Property:

This remains controversial and restricted. Courts may deny this right unless the couple is treated as husband and wife in the eyes of society, or if the child is deemed legitimate.

### Personal Laws:

Hindus: As per Section 16 of the Hindu Marriage Act, children born of void or voidable marriages are considered legitimate.

Muslims: Inheritance rights depend on whether the child is legitimate under Islamic law.

Christians and Parsis: Personal succession laws do not provide for children born outside wedlock unless legitimized by marriage or acknowledgment.

### Maintenance and Welfare:

Under the Protection of Women from Domestic Violence Act, 2005, a woman in a live-in relationship and her children have rights to maintenance and residence.

The Juvenile Justice Act, 2015 ensures all children, regardless of parentage, are protected under child welfare laws.

## INHERITANCE RIGHTS :

Live-in relationships are not deemed illegal or offensive under Indian law. The Indian Evidence Act of 1872 establishes a rebuttable presumption of marriage in favor of such relationships. However, due to the absence of a specific legal framework governing live-in relationships, the legal stance on inheritance rights remains unclear. Nonetheless, children born from such relationships retain the right to inherit property from their parents. Courts have ruled that children born from live-in relationships, not recognized as legally valid marriages, should be considered legitimate. However, it is crucial for the live in couples to have resided together in a shared household for a substantial period. Society must consider them as a married couple, and their relationship should not resemble a transient or casual arrangement.

Section 16 of the Hindu Marriage Act creates a legal fiction that allows children of such marriages to inherit their parents' wealth. It must be kept in mind, nevertheless, that in order for section 16 of the Hindu Marriage Act of 1956 to be in effect, there must already be a de jure or de facto marriage in place; if these requirements are violated by sections 11 or 12 of the HMA, they become either void or voidable.

The nature of a live-in relationship makes it obvious that no rituals or customs must be observed in order to begin one.

In the case of *Ramkali v. MahilaShyamwati*

A de facto marriage occurs when a couple resides together for a considerable period, assuming the roles of husband and wife. However, establishing evidence of such a relationship is necessary to confer legitimacy on the offspring of such unions. Therefore, a live-in relationship shares similarities with a de facto union.

In the case of a child born within a live-in relationship, legitimacy can be granted under Section 16 of the Hindu Marriage Act (HMA) if it is deemed necessary for the child to inherit the parents' assets. However, only assets acquired by the parents themselves can be inherited, while assets obtained by their ancestors are excluded. Section 16(3) of the HMA explicitly states that children may only inherit property from their parents and not from any other sources.

However, the Supreme Court in *Revansidapa v. Malikarjun* In a specific court ruling, it was established that a child born as a result of a void or voidable marriage is entitled to claim a portion of self-acquired property rather than inheriting ancestral coparcenary property. The current legal system allows anyone to be named as a beneficiary in a will. However, it's important to note that a will can only be created for an individual's self-acquired property.

The Apex court, in the case of *Vidyadhari v. Sukharna Bai*, Since the deceased partner nominated the other partner, the live-in partner in this instance received a succession certificate. According to the law, a person may make a will in favour of one or more others to distribute property after death.

A testator's will may be revoked at any time during their lifetime. Anyone who meets the requirements for legal capacity under the Indian Contract Act of 1872 may create a will, and anyone who is able to own property may thereafter become a legatee under a will.

A live-in partner might also inherit property under the Transfer of Property Act of 1882. However, in order to transfer immovable property through a gift, a person must register the gift deed. in a cohabitation arrangement. It is important to draw separate laws that will deal with both the inheritance rights of live-in couples and other legal issues .

There are no specific legal measures/ provisions of any act at this time that which can grant couples Inheritance rights . who are living in a live in relationship Numerous rulings on the legality of live-in relationship have been made by Indian courts, but the additional rights and obligations of the live-in couples have not yet been taken into account. The majority of judges have recognized such a committed relationship as a type of marriage while granting no rights. Under the current legal system, inheritance through a will or gift is the simplest way to transfer a property while cohabitating .

First of all, it dilutes the purpose and essence of a live-in relationship, which is to enjoy each other's company free from social pressure or obligations. A sacred bond that unites two adults of the same sex or a different sex for all time is the union.

Second, a partnership with the characteristics of marriage entails a set of responsibilities. It is very challenging to determine any rights of live in couples in case of absence of any law relating to live-in relationships. The courts have recognized women's maintenance rights as well as children's inheritance rights. Only women and children are mentioned in Section 125 of the Criminal Procedure Code. Imagine a situation where a couple is living together and the lady leaves the man, who is unable to support her.

Thirdly, because a live-in relationship is equated with marriage, the law assumes that both same sex and opposite sex can engage into one. Currently, both LGBT partnerships and marriage are legal in India.

Our nation's personal laws only permit weddings between heterosexual couples. Even though living together is not against the law, society nonetheless views it negatively. A person in a live-in relationship cannot defend its interest in the absence of legislation to regulate such relationships.

Identification of partners in a live-in relationship has the potential to shape the behavior of society as well. Giving legal recognition to such relationships will help in the transition of the ideology of society which restricts them to accept any modern idea of a relationship.

For a child born out of such live-in relationship, four rights are very essential which are as follows :

- Right to Legitimacy
- Right to Maintenance
- Right to Property
- Right to Custody

**Right to Legitimacy :** The first and the foremost right for a child born out of live-in relationship is the right to legitimacy. In the case of *SPS Balasubramanyam v. Sruttayan*, the SC laid down that "If a man and woman are living under the same roof and cohabiting together for a reasonable period of time, it will be a presumption under Section 114 of the Indian Evidence Act that they live as husband and wife and the children born to them will be legitimate." This one was the landmark case where the supreme court for the first time upheld the legitimacy of the children born out of a live-in relationship.

In the case of *Tulsa v Durghatiya* it was determined that a child born from such a relationship should no longer be considered illegitimate. The Supreme Court's ruling in *Madan Mohan Singh and Ors v. Rajni Kant & Anr* in 2010 established that for a child born out of a live-in relationship to be deemed legitimate, the parents must have resided together and cohabited for a significant period. It is necessary for society to recognize them as husband and wife, and their relationship should not be transient or casual. Indian courts have emphasized that no child should be stigmatized as "bastardized" through no fault of their own.

It has been seen in the case of *Bharata Matha & Ors. V.R. Vijaya Renganathan & Ors*. In this instance, the Supreme Court had ruled that a child born inside a live-in relationship may be permitted to inherit the parents' property, if any, and thereafter be awarded legal legitimacy.

### **Right to Maintenance**

Maintenance is often defined as the obligation which is imposed on husband/ father to pay to his divorced wife or to his or her legitimate minor child when claimed by the aggrieved. It plays a very important role in the case of a child born out of a live-in relationship. The Indian judiciary aims to achieve the ends of social justice in the landmark case of *Dimple Gupta v Rajiv Gupta*. In a significant Supreme Court ruling, it was determined that an illegitimate child born from an illicit relationship is eligible to receive maintenance under Section 125 of the CrPC (Code of Criminal Procedure, 1973). This provision ensures that children, irrespective of their legal status, are entitled to maintenance while they are minors and even after reaching adulthood if they are unable to support themselves. While some instances have interpreted the legislation broadly to include female live-in partners as "legally wedded wives," there have been cases where the maintenance rights of live-in partners have been safeguarded.

However, in the case of *Savitaben Somabhai Bhatiya v State of Gujarat* under this case second wife was not granted any maintenance, whereas the child born out of the said relationship was granted maintenance. If a child born out of live in relationship is not provided maintenance then aggrieved can approach under Article 32 of the Constitution of India which amounts to a violation of the fundamental

rights which guarantees under Article 21 which provides for the Right to Life and Personal Liberty. Such a denial can deprive an individual of his/her right to lead his/her life with dignity, this has been upheld by the Kerala High Court in *PV Susheela v Komalavally*.

If it is found that an unequal treatment is being done between a child born out of a live-in relationship and the child born out of a marriage it can amount to a violation of Article 14 which promises Equality before Law. So we can say that the maintenance of a child born out of a live-in relationship is a very sensitive and a complex topic.

### Right to Property

The inheritance rights of children are referred to as property rights. A genuine child, including both a son and a daughter, constitutes the Class-I heirs under the Joint Family Property under the Hindu Succession Act, 1956. However, according to Hindu Law, an illegitimate kid solely gets the assets of his or her mother, not those of the purported father.

Hindu law has traditionally required legitimacy as a prerequisite for inheritance rights. Thus, in accordance with Article 39(f) of the Indian Constitution, the Courts have always made sure that no kid born from a live-in relationship lasting a reasonable amount of time should be denied the right to inherit. The Supreme Court in **Vidyadhari v Sukhrana Bai** Rendered a precedent-setting decision in which the Court defined the concept of "legal heirs" and gave the right of inheritance to children born out of live-in relationships.

*Bharata Matha* case was criticized by Justice Ganguly. He stated that the legislature has used the word "property" in Section 16(3) of the HMA, 1955 and is actually silent on whether such a property will be treated as an ancestral or a self-acquired property and in light of such an uncertainty, the concerned child's right to property cannot be arbitrarily denied.

The Supreme Court has held that under the Hindu Marriage Act (HMA), illegitimate children are entitled to all rights in the property of their parents, both self-acquired and ancestral.

A Bench of Justices G.S. Singhvi and A.K. Ganguly, hearing an appeal by *Revanasiddappa*, differed with earlier judgments in interpreting Section 16 (3) of the HMA that "such children are only entitled to the property of their parents and not of any other relation."

Given the laws of equity and the ambiguity surrounding the relevant sections of the mentioned statutes, the researcher believes it more plausible that children born into such unions will have all rights in the property of parents, whether they were self-acquired or inherited.

### Right to Custody

In Comparison to married couples, those who are in a live-in relationship have to face more legal hurdle related to the custody issues. It is simple to enter into a live-in relationship, but quite difficult to leave because there is no appropriate legal framework to regulate such kind of relationships.

Due to the lack of specific laws on the issue of Live in Relationship the custody disputes involving the children born out of a live-in relationship typically occur when both live-in partners decide to get separated.

Under the Hindu Minority and Guardianship Act, 1956 it has been clearly stated that in Section 6 the father is the natural guardian of his minor legitimate children as it has been laid down in the case of **Gita Hariharan v Reserve Bank of India**. The mother becomes the natural guardian in the absence of the father which means when the father is not capable of acting as the child's guardian.



However, Section 6(b) of the same act seems to deal with live-in relationship in an indirect manner as it grants the custodial rights to the mother in case of child is born out of illegitimate relations.

in the case of **Shyam Rao MarotiKorwate v Deepak Kisan Rao Tekam**, the court further elaborated that in the matter of guardianship, the welfare and development of the child, as under Section 13 of the Guardianship Act, is the primary concern and appointment of the guardian must take place accordingly. Therefore, it can be concluded that in live-in relationships, guardianship and custody is a subjective matter and is implemented on a case to case basis. Ancillary Rights

Consequently, if we make a positive interpretation of the law, it can be concluded that in the case of a break-up between the live-in the partner by being the natural guardian of a legitimate child, the father will acquire the custodial rights of the concerned child.

## CONCLUSION

While society is constantly fighting for rights and freedoms, it often suppresses the younger generation that seeks to exercise these liberties in their relationships. The choice to marry, remain unmarried, or engage in a heterosexual relationship is a deeply personal matter and an individual's right. Recent rulings have upheld that neither parents nor society can compel an adult child to live according to their terms. Furthermore, partners in live-in relationships cannot be separated through a writ of Habeas Corpus.

The court must respect an adult's right to stay in a live-in relationship, even if this choice is unpalatable to more conservative sections of society. Despite numerous landmark judgments by courts interpreting legal provisions, live-in relationships remain largely unacceptable to many in Indian society, who view them as immoral and contrary to traditional customs and values.

Society tends to prefer children born within the confines of legal marriage, viewing them as legitimate. These beliefs are deeply ingrained, with traditions being followed unquestioningly through generations. As a result, societal pressure often dictates personal choices regardless of individual desires.

Nevertheless, live-in relationships have seen steady growth, driven by evolving mindsets and greater awareness of personal rights. The core principle of the Constitution, which serves as the grundnorm, is to balance societal interests with individual rights, necessitating practical and meaningful solutions.

The judiciary has recognized live-in relationships, a concept relatively new to Indian cultural beliefs. However, it is crucial to analyze their impact on existing matrimonial provisions and related issues. This is a sensitive area with numerous pros and cons. For instance, granting a woman in a live-in relationship the legal status of a wife could lead to bigamy, while denying her such status might result in vagrancy in some cases.

Indian courts have adopted varied stances on live-in relationships. In some cases, they have stated that live-in relationships should involve no obligations between partners, as the primary criterion is the absence of binding commitments. In other instances, courts have held that if cohabitation continues for a sufficiently long period, a presumption of marriage arises, conferring all associated rights and liabilities. Thus, the courts must take a practical approach to live-in relationships. There cannot be a one-size-fits-all guideline because the reasons for choosing to live together are subjective. Some may opt for a live-in relationship to avoid societal pressures, while others may do so to test compatibility before marriage.

In conclusion, while the judiciary has recognized live-in relationships, societal acceptance remains elusive.