CHAPTER-IV

RIGHTS AND LIABILITIES OF LIVE-IN PARTNERS IN INDIA

4.1 INTRODUCTION

Whether live in partners can claim matrimonial reliefs against each other like married couples? Whether female partners will have right to maintenance after break up of such relations? Whether other partner will have any relief if deserted? Whether partners can claim right of succession over the individual property of other partner and what are the rights over their joint property after break up? All these questions are of utmost importance to be answered to understand the legal status of live-in partners in India and also important from the point of view the study of rights available and the duties and liabilities attached with live-in relationships. Thus the study of rights, responsibilities and liabilities is itself required for the better understanding of the legal status of the live-in relations in India.

There is no legal hurdle in India which prevents a man and a woman to live together, without formally entering into relationship of marriage, as live-in partners. Live-in relationships in India have still not received the consent of the majority of people. The Indian society disapproves such relations for various reasons. First, society cherished the institution of marriage. Secondly, in small towns and cities, there is much social condemnation and stigma attached to such live-in-relationships. Third, living together without marriage is still considered a taboo to the Indian society and majority of the people consider it as an immoral and an improper relationship. This social stigma and criticism forces live-in couples to remain largely secretive. At present there is no specific legislation that deals with concept of live-in relation and the rights of the live-in partners and the children of the live-in partners.¹

Cohabitors are observed as not wanting to take responsibility for their partner and do not feel the same sense of obligation towards their partner that married couples

do. Marriage involves a deep bond and a sense of commitment and economic support. It teaches tolerance and provides stability to the family life whereas in a cohabiting relation, the option of walking out anytime impacts the psyche of a person negatively giving a sense of insecurity, albeit unconscious. Live-in relationship is a relationship free from responsibilities. The reason why more and more youth are deciding to live-together rather than marriage i.e. the reason of increasing phenomena of non-marital cohabitation is freedom from responsibilities attached with the relationship of marriage. As it is very much clear from the concept of marriage and concept of live-in relationship that non-marital cohabitation though not illegal but has not been statutorily recognized in India. Neither rights nor responsibilities of such relationships are clear. It seems justified that a relationship, which had its emergence due to relationship without responsibilities, has not been regularized by law. As we know that law is not only a mean to facilitate law and order in the society, but it is also the mechanism of providing social justice. Law is not for law sake. Law is a mechanism of social control. We are also acquainted with the fact that law does not operate in vacuum. It operates in society, which is itself influenced by various factors such as social structure and values.

Non-marital cohabiting couples have no guidance as to their legal rights in such areas as property ownership, responsibility for joint debts, custody of child, access to health care and other public services. Law should have a recognizable stance with respect to live-in relationships and the after-effects of such relations. There are number of such cases pending before courts. Marriage is necessarily the basis of social foundation from which important legal rights and obligations emerge. In ancient times, divinity was associated with marriage and it was believed to be decided by the God. It is appraised to be a sacred social institution. Marriage according to the Hindus is a holy union for the performance of religious duties. It is not a contract but

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it is a *samskar* or sacrament.\(^4\) Hindu Marriage Act protects a woman by guaranteeing her legal rights for legitimacy of the children, relief in case of cruelty, adultery, impotency, claim of maintenance and alimony etc. Live-in relationships in India are often considered a taboo and a sin. Presently in India, marriage as a lifelong social bond is being questioned as there are increasing tendencies to divorce and entering in non-marital relationships instead of marriage that promotes conjugal disloyalty and distress.\(^5\)

The live-in relationship is a living arrangement whereby an unmarried couple agrees to live-together in a long-term relationship that resembles a marriage. In general expression, it is cohabitation without marriage. Live-in relationship or cohabitation sometimes called consensual union or de facto marriage, and refers to unmarried heterosexual couples living together in an intimate relationship. Non-marital cohabitation is said to be a situation in which man and woman live together outside the institution of marriage, and the couple holds themselves out to society as being akin to husband and wife.\(^6\) Live-in relationship is not recognized by Indian law e.g. The Hindu Marriage Act, 1955, The Code of Criminal Procedure, 1973, or by The Indian Succession Act 1925.

Rights and responsibilities, or better still, freedom and morality are not contradictory at all. On the contrary, one makes the other: it is the exercise of freedom, and the exercise of freedom alone, which makes us truly responsible individuals, conscious of and engaged with the consequences of our actions. State should be the referee between individual liberties and social duties. However with the increasing instances of live-in partners approaching the courts with their matters relating to maintenance, property, children, domestic violence, it is imperative for us to explore the regime of rights, responsibilities and duties which exist under law and which have been highlighted by judiciary. As already stated that in India there exist no legislation with regard to rights, responsibilities and other matters of live-in

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\(^6\) *Id. at 29*
partners, so in the light of existing provisions of law researcher have tried in this Chapter to explore the scope of right, responsibilities and duties which can be levied on or availed by live-in partners. Researcher has tried to amass the judicial pronouncements made by courts to protect live-in partners and their children and relate them to the rights which could be availed by live-in partners under the existing legislations in India.

4.2 Rights and Liabilities of Live-in Partners

4.2.1 Right to Life

Right to life is a fundamental right available to all. In recent decades we have witnessed judicial activism especially in the interpretation of Article 21 of Indian Constitution. One of the instances, which is relevant to non-marital relations is, where Supreme Court included live in relationship and premarital sex within the scope of fundamental right to life guaranteed under Indian Constitution. ‘The court observed that a man and a woman living together without marriage cannot be construed as an offence. When two people want to live together, what is the offence? Does it amount to offence? Living together is not an offence. It cannot be an offence. The Supreme Court said there was no law which prohibits live-in relationship or premarital sex. Living together is a right to life, the Supreme Court said ostensibly referring to Article 21, which guarantees the right to life and liberty as a fundamental right’. 8 ‘The Supreme Court made the observation while reserving its judgment on a special leave petition filed by noted south indian actress Khushboo, seeking to quash twenty-two criminal cases filed against her after she allegedly endorsed premarital sex in interview. The section advocating freedom for choosing live-in relationship has hailed it as a pragmatic move. The recent observation, as they see, should be welcomed because it lays emphasis on individual freedom’. 9

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7 The Constitution of India 1949, 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.]
9 Ibid.
While dismissing a habeas corpus petition filed by woman’s husband the Rajasthan High Court allowed a married woman to live with her lover. “It is improper to pass an order to hand over any unwilling married woman to her husband with whom she does not want to stay. Nobody should consider an adult woman as a consumer product.” the Court said. At the end of the day an adult woman has a right to decide whom she wants to live with. She can’t be forced to go with her husband against her will.10

4.2.2 Right to Maintenance

Right of maintenance to wives has been provided under the personal laws of all religions, be it Hinduism, Islam or Christianity. The concept of non-marital relationship has not been recognized under any of these religions. Instead, an unmarried woman living with a man is considered unchaste. In absence of any remedy available under personal laws to women engaged in a long term non-marital relationship, Courts have extended the scope of application of remedy available under Criminal Procedure Code. Section 12511 of the Criminal Procedure Code accords a


11 The Code of Criminal Procedure, 1973, Section 125 [Order for maintenance of wives, children and parents-
(1) If any person having sufficient means neglects or refuses to maintain-
(a) his wife, unable to maintain herself, or
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.-
(a) ” minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875 ); is deemed not to have attained his majority;
(b) ” wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.
(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.
legal right to maintenance to wives. It has been asserted that marriage in a strict form need not be shown to claim maintenance.\textsuperscript{12}

In India provisions for maintenance are contained in Hindu Marriage Act 1956, Hindu Adoption and Maintenance Act, 1956, Section 125 of Code of Criminal Procedure and Protection of Women from Domestic Violence Act 2005. To claim maintenance under Hindu Marriage Act the proof of valid marriage is prerequisite and hence there is no scope of application of this Act to woman under live-in-relationship. However there are cases where woman in live-in-relationship approached court for maintenance under Section 125 of Code of Criminal Procedure, Hindu Adoption and Maintenance Act and Protection of Women from Domestic Violence Act. So it is apparent to discuss such judicial pronouncements and the scope of maintenance to woman in live-in-relationship under Code of Criminal Procedure, Hindu Adoption and Maintenance Act and Protection of Women from Domestic Violence Act; and that is as follow:

\textbf{4.2.2.1 Maintenance under Section 125 of Code of Criminal Procedure, 1973}

Section 125 of Code of Criminal Procedure, 1973, provides for maintenance to wife, children and parents, who cannot maintain themselves. As of now maintenance can only be claimed by a woman who is a wife, has either been divorced or has obtained a divorce, or is legally separated and is not remarried. In case of Yamunabai

\text{(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife’s refusal to live with him.}

\text{(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.}

\text{(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.]}\text{\textsuperscript{12}}

Anantrao Adhav v. Anantrao Shivram Adhav\(^{13}\), where the appellant Smt. Yamunabai was factually married to respondent Anantrao Shivram Adhav by observance of rites under Hindu Law in June, 1974. Anantrao had earlier married one Smt. Lilabai who was alive and the marriage was subsisting in 1974. The appellant lived with the respondent for a week and there after left the house alleging ill-treatment. She made an application for maintenance in 1976. The Supreme Court held that where a man having a living lawfully wedded wife, marries another woman, his second ‘wife’ had no claim to maintenance under Section 125 of the Code of Criminal Procedure, 1973, even though she might had no knowledge of his earlier marriage. The Court refused to give any recognition to the fact that they had lived together even if their marriage was void.\(^{14}\) Thus the court made it clear that it would not grant any rights to the woman in such a live-in relationship of circumstance. Although it was the man who had failed to disclose his earlier marriage, still he was allowed to take advantage of this.\(^{15}\)

Further, in case of Malti v. State of UP\(^{16}\) where a woman was working in a house as a cook and in the process an intimacy developed between her and owner of house. They started living together as husband and wife due to the aforesaid relationship. She initially was married to one Devi Das and from his house she had eloped while working became intimate with the applicant. Failing in getting maintenance under Section 125 of Code of Criminal Procedure, a revision petition was filed. While dismissing such petition Court held that to get benefits of Section 125 of Code of Criminal Procedure, there ought to be a legally valid marriage according to religion or customs prevalent amongst their community. A marriage carries a legal, social or religious sanction behind it. It can be broken only in the manner prescribed either by law, religion or custom prevalent amongst the parties to any such marriage. It provides a guarantee and also a sense of security especially to the woman who enters into such nuptial bondage.\(^{17}\) Thus in this case court refused to extend the meaning of the word ‘wife’ to include live-in partner’s maintenance claims.

\(^{13}\) 1988 SCR(2) 809

\(^{14}\) Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, 1988 SCR(2) 809 at para 1, 7 and 8, available at: https://indiankanoon.org/doc/663395/ (Last visited on August 27, 2016)

\(^{15}\) Prof. Vijender Kumar, “Live-In Relationship: Impact on Marriage and Family Institutions” 2012(4) SCC J-19

\(^{16}\) 2000 CriLJ 4170(All)

In Savitaben Somabhai Bhatiya v. State of Gujarat\textsuperscript{18} the Supreme Court went further to the extent of observing that the fact that the respondent was treating the appellant as his wife is really inconsequential because it is the objective of the legislation which is relevant and not the attitude of the party. Even the plea that the appellant was not informed about the respondent’s earlier marriage, when she married him, was of no avail. The Court granted maintenance to the child and not to the second wife. Under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under Section 125, Code of Criminal Procedure. The court observed:

“The legislature considered it necessary to include within the scope of Section 125 an illegitimate child but it has not done so with respect to woman, not lawfully married. As such, however, desirable it may be to take note of the plight of the unfortunate woman, who unwittingly enters into wedlock with a married man the legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression ‘wife’. This may be an inadequacy in law, which only the legislature can undo.”\textsuperscript{19}

Thus, as per the wording of provisions of Section 125 presently there appears no escape from the conclusion that the expression ‘wife’ refers only to the ‘legally wedded wife’. Under this provision term wife does not include live-in partner and hence no scope of getting maintenance is there to woman living in such relation or deserted by her live-in partner. However in some cases courts have showed its concern regarding the narrow scope of term wife under Section 125 of Code of Criminal Procedure 1973.

\textsuperscript{18} AIR 2005 SC 1809

However, in case of Chanmuniya v. Virendra Kumar Singh Kushwaha\textsuperscript{20} where appellant contended that after the death of her husband, she was married off to the younger brother of the husband in accordance with the local custom of \textit{Katha and Sindur}. The appellant contended that she and the respondent were living together as husband and wife and had discharged all marital obligations towards each other. The appellant further contended that after some time the respondent started harassing and torturing the appellant, stopped to discharge his marital obligations towards her and also refused her maintenance. He contended that she is not his legally wedded wife. In this case, the High Court held that the appellant wife was not entitled to maintenance on the ground that only legally married woman can claim maintenance under Section 125 of Code of Criminal Procedure 1973. But the Supreme Court turned down the judgment delivered by the High Court and awarded maintenance to the appellant saying that provisions of Section 125 of Code of Criminal Procedure must be considered in the light of Section 26\textsuperscript{21} of the Protection of Women from Domestic Violence Act, 2005. In brief, the Supreme Court held that women in long term unmarried relationships are equally entitled to all the reliefs which are available to wife.\textsuperscript{22} Thus it was made clear that protection can be available to a non married live-in partner without conferment of status of wife also. The court stated:

\begin{quote}
"On the question of presumption of marriage, we may usefully refer to a decision of the House of Lords rendered in the case of Lousia Adelaide Piers & Florence A.M. De Kerriguen v. Sir Henry Samuel Piers"
\end{quote}

\textsuperscript{20} Chanmuniya v. Virendra Kumar Singh Kushwaha, JT 2010 (11) SC 132

\textsuperscript{21} Protection of Women from Domestic Violence Act, 2005, Section 26 [Relief in other suits and legal proceedings.-(1) Any relief available under sections 18(Protection Orders), 19(Residence Orders), 20(Monetary Reliefs), 21(Custody Orders) and 22(Compensation Orders) may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. 
(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. 
(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.]

\textsuperscript{22} Chanmuniya v. Virendra Kumar Singh Kushwaha, JT 2010 (11) SC 132 at Para 42, 43 available at: https://indiankanoon.org/doc/1949767/ (Last visited on August 29, 2016)
[(1849) II HLC 331], in which their Lordships observed that the question of validity of a marriage cannot be tried like any other issue of fact independent of presumption. The Court held that law will presume in favour of marriage and such presumption could only be rebutted by strong and satisfactory evidence.”

The Supreme Court further observed:

“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 loopholes by enjoying the advantages 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 in Section 125 is meant to prevent.”

“We believe that in light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act of 2005, the same needs to be considered with respect to Section 125 of Code of Criminal Procedure and accordingly, a broad interpretation of the same should be taken.”

Further, in Ajay Bhardwaj v. Jyotsna, where the parties resided together in live-in relationship since year 2008 out of which relationship two children were born. Man and woman both had their living married spouses when they start living together. The man had held himself out to be a divorcee whereas the female was undergoing a

23 Chanmuniya v. Virendra Kumar Singh Kushwaha, JT 2010 (11) SC 132 at Para 12
24 Chanmuniya v. Virendra Kumar Singh Kushwaha, JT 2010 (11) SC 132 at Para 26
25 Chanmuniya v. Virendra Kumar Singh Kushwaha, JT 2010 (11) SC 132 at Para 44
process of getting divorce from her husband, which divorce was finalized in August 2011. Before the said divorce, twins were born in March 2011 to her from live-in partner. On refusal of the live-in partner to marry, the differences arose leading to the filing of a petition under Section 125, Code of Criminal Procedure, claiming maintenance. The question that needs to be determined by court was to whether the woman was entitled to maintenance under Section 125, on account of live in relationship, not being a wife. There was no valid marriage between the parties as on the date the petition was preferred. While upheld the order of maintenance to woman the High Court observed that Court cannot lose sight of the fact that twins were born out of this relationship which would be of some indication that the couple had gone for this relationship to give it some permanence and that can entitle to claim interim maintenance. Court further took note that ‘Section 125, Code of Criminal Procedure was incorporated in order to avoid vagrancy and destitution for a wife/minor children/old age parents, and the same has now been extended by judicial interpretation to partners of a live-in relationship and the Apex court has also opined that the nature of the live in relationship has to be looked into while determining the entitlement.’ Thus it is clear from the observations of the court that it is the nature of the relationship i.e. the presence of two children which lead the court to grant maintenance to the woman.

Thus it is clear that a broad and expansive interpretation needed to be given to the term ‘wife’ to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Code of Criminal Procedure, so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125 of Code of Criminal Procedure. Such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual. It has been mentioned earlier that the National Commission for Women in June, 2008, under its recommendations to Ministry of

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27 Ibid.
28 Ibid.
Women and Child Development, and in 2003, the Malimath Committee in its ‘Report on Reforms in the Criminal Justice System’ has suggested an amendment of the word ‘wife’ in Section 125 of the Code of Criminal Procedure, to include a woman who is ‘living-in’ with a man for a ‘reasonable period’. The increasing incidents of live-in relationships, especially those which occur by circumstance, however ensured that the need for reforms is recognized.

4.2.2.2 Maintenance under Protection of Women from Domestic Violence Act, 2005

The female partner in a live-in relationship was first time accorded protection by the Protection of Women from Domestic Violence Act, 2005, which considers females who are not formally married, but are living with a male person in a relationship akin to husband and wife, in a relationship in nature of marriage. Though the protection under this Act does not qualify all live-in relationships to get the same benefits that are guaranteed to wife under personal law, however, the Protection of Women from Domestic Violence Act, 2005, became the first statute to give non-married couple the same reliefs as married couples.

Under the Protection of Women from Domestic Violence Act, 2005, 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 has been termed as ‘aggrieved person’. The Protection of Women from Domestic Violence Act further states that ‘domestic relationship’ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The Protection of Women from Domestic Violence Act also states that ‘shared household’ means a household where the person aggrieved lives or at any

29 Supra note 1 at 5
30 Protection of Women from Domestic Violence Act, 2005, Section 2(a) ["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.]
31 Protection of Women from Domestic Violence Act, 2005, Section 2(f) ["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.]
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.\textsuperscript{32} Thus, domestic relationship includes not only the relationship of marriage but also a relationship ‘in the nature of marriage’ and where a couple is living in a shared household in a relationship in nature of marriage then this relationship is covered under term domestic relationship and woman in such relationship will be an aggrieved person if she seeks protection under any of the provisions of the Protection of Women from Domestic Violence Act, 2005. It has been commented upon by Court in \textit{S. Khushboo v. Kanniammal & Another} \textsuperscript{33}:

\begin{quote}
"it seems that in the Protection of Women from Domestic Violence Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe."
\end{quote}

Further, in the case of \textit{M. Palani v. Meenakshi} \textsuperscript{35}, the respondent had filed a claim for maintenance of ten thousand rupees for food, clothes, shelter and other basic necessities from the plaintiff, who had been in a live-in relationship with her. The said

\begin{footnotes}
\item \textsuperscript{32} Protection of Women from Domestic Violence Act, 2005, Section 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.]

\item \textsuperscript{33} (2010)5 SCC 600

\item \textsuperscript{34} S. Khushboo v. Kanniammal & Anr., (2010) 5 SCC 600 at para 31

\item \textsuperscript{35} AIR 2008 Mad 162
\end{footnotes}
application was filed under Section 20 read with Section 26 of Protection of Women from Domestic Violence Act, 2005. The petitioner contended that the respondent was not entitled to any maintenance since they had not lived together at any point of time. They had only indulged in consensual sexual intercourse sometimes as friends, without any thought of marriage. He hence contended that mere proximity at some time for the sake of mutual pleasure could not be called a ‘domestic relationship’ to invite the application of the Protection of Women from Domestic Violence Act, 2005. However the Madras High Court looked into the definition of ‘domestic relationship’ as given in Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, and stated:

“Thus the averments made in the plaint as well as in the counter affidavit will make it very clear that the petitioner and the respondent had a close relationship and had sex. The Act does not contemplate that the petitioner and the respondent should live or have lived together for a particular period or for few days. From the averments made one can infer that both of them seem to have shared household and lived together at least at the time having sex by them.”

The Court observed that Protection of Women from Domestic Violence Act, 2005 does not consider that the petitioner and the respondent should live or have lived together for a reasonably long period or for few days; the relief for maintenance was allowed.

However, the landmark judgement of Hon'ble Supreme Court came in case of D.Velusamy v. D.Patchaiammal, where D. Velusamy had challenged an order of the Madras High Court directing him to pay maintenance of rupees five hundred per month to his 'second wife' D. Patchaiammal Velusamy allegedly married D. Velusamy when his first marriage was still intact, further long-term relationship valid to claim alimony. While allowing appeal in this case hon’ble Supreme Court took

36 AIR 2008 Mad 162 at para 2
37 AIR 2008 Mad 162 at para 13
38 AIR 2011 SC 479
note of Savitaben Somabhat Bhatiya v. State of Gujarat and others\textsuperscript{39}, and observed that where a man has established a relationship with a woman by concealing his first marriage and however desirable it may be to take note of the condition of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of 'wife', however this inadequacy in law can be amended only by the Legislature. The Bench decided that the question has also to be examined from the point of view of provisions of Protection of Women from Domestic Violence Act, 2005.\textsuperscript{40} Hon’ble court further observed:

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“Having noted the relevant provisions in The Protection of Women from Domestic Violence Act, 2005, court pointed out that the expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'in the nature of marriage'. The question, therefore, arises as to what is the meaning of the expression 'a relationship in the nature of marriage'. Unfortunately this expression has not been defined in the Act. Since there was no direct decision of the Court on the interpretation of this expression Court think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required.’’\textsuperscript{41}
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The Court opined:

‘Relationship in the nature of marriage’ is akin to a common law marriage. Common law marriages require that although not being formally married :-

\textsuperscript{39} AIR 2005 SC 1809
\textsuperscript{40} D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479 at para 14 and 16
\textsuperscript{41} AIR 2011 SC 479 at para 20
(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

‘Relationship in the nature of marriage’ under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a ‘shared household’ as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’.

The Court further opined:

Not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by court above must be satisfied, and this has to be proved by evidence. If a man has a 'keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage.

The Court also opined that:

No doubt the view taken by court would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the

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42 AIR 2011 SC 479 at para 33
43 AIR 2011 SC 479 at para 34
expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute.\textsuperscript{44}

However, this landmark judgment is quite elaborative in itself; we need not to interpret it beyond its words. Hon'ble Supreme Court has repeatedly emphasized the difference between 'relationship in nature of marriage' and other unmarried live-in together relationships. This judgment is self explanatory about its reasons for giving requirements to explain any relationship in the pretext of the Protection of Women from Domestic Violence Act, 2005.

In the case of \textit{Indra Sarma v. V.K.V. Sarma}\textsuperscript{45} where the appellant, who had knowledge of the married status of the respondent, entered in an intimate relationship of live-in relation and thereafter claimed monetary relief and maintenance under Section 20 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005, it was held that when the woman is aware of the fact that the man with whom she is having living-in-relationship already has a legally-wedded wife and two children, 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 Protection of Women from Domestic Violence Act, 2005. While interpreting term ‘relationship in the nature of marriage’ under Section 2(f) of Protection of Women from Domestic Violence Act, 2005 Supreme Court in this case differentiated between live-in-relationship in nature of marriage and live-in-relationship not in nature of marriage. Supreme Court took note of \textit{D.Velusamy v. D.Patchaiammal}\textsuperscript{46} i.e. to make a ‘live-in relation’ a ‘relationship in nature of marriage’ the couple must hold themselves out to society as being akin to spouses; they must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried; and they must have voluntarily cohabited for a significant period of time. Apex Court ruled that only ‘relationship in nature of marriage’ is covered under the definition of domestic relationship, and women under relationship not in nature of

\textsuperscript{44} AIR 2011 SC 479 at para 35
\textsuperscript{45} AIR 2014 SC 309
\textsuperscript{46} AIR 2011 SC 479
marriage are not entitled to reliefs provided under Protection of Women from Domestic Violence Act, 2005, in the following words:

“We have, on facts, found that the appellant’s status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. We are conscious of the fact that 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.”  

However, in the case of D. Veluswamy v. D. Patchaiammal court felt that:

“No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression ‘relationship in the nature of marriage’ and not ‘live in relationship’.”

Thus it is felt that denial of any protection would amount to a great injustice, to innocent women under illegal relationships who are indigent and uneducated, and also to their offspring who are born out of such relationship and has no independent economic resources of their own. Therefore, there is a burning need to expand the connotation of Section 2(f) which defines ‘domestic relationship’ in Protection of Women from Domestic Violence Act, 2005 with a view to cover there in victims of illegal relationship who are poor, illiterate along with their children who are born out of such relationship and who do not have any source of income.

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48 AIR 2011 SC 479  
4.2.2.3 Maintenance under Personal Laws

Law of maintenance is personal as well as legal in character and arises from the very existence of relationship between the parties. Law of maintenance with no doubts is inclined towards the females in both the structures whether it be Hindu law or Muslim law. According to the Hindu Marriage Act, 1955, second marriage is illegal and only wife legally wedded as per the law can claim maintenance. Similar is the case with Muslim law that only legally wedded wife can claim maintenance. There is no provision for maintenance to live-in partner. There is distinction between the legality and morality of relationships. The current application of statutory laws will definitely declare bigamous marriage illegal because it contravenes the provisions of the Hindu Marriage Act, 1955, but shouldn’t it be said to be immoral so as to deny even the right of alimony or maintenance to woman involved in that marriage. In case of Narinder Pal Kaur Chawla v. Manjeet Singh Chawla50 the question that arose for consideration was, as to whether the respondent can take advantage of his own wrong by not disclosing to the appellant the factum of his first marriage; marrying the appellant and then maintaining the relationship of husband and wife for a long period of fourteen years. The Court took a liberal view and stated that the second wife has a right to claim maintenance under the Hindu Adoptions and Maintenance Act, 1956. In this case the husband had not disclosed the facts of his first marriage and married the appellant and maintained a relationship with her for fourteen years as husband and wife. The Court held that if we do not give maintenance to the second wife it would amount to giving premium to the respondent for defrauding the appellant.51 Thus it is utmost importance here to conclude that a long term relationship which has all the attributes of a relationship in nature of marriage with a married person without knowledge of his being already married may give rise to liability of maintenance, if court presumes that long term relation in nature of marriage is a defraud on the aggrieved party.

Thus, maintenance to live-in female partner is available under the Protection of Women from Domestic Violence Act, 2005 only if it is a relationship in nature of

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50 AIR 2008 Del 7
51 Narinder Pal Kaur Chawla v. Manjeet Singh Chawla, AIR 2008 Del 7 at para 18 and 20
marriage. All live-in relations do not qualify to avail the protection of the Act as per the judgement of *Indra Sarma*\(^{52}\) Case. Law presumes in favour of marriage and against concubinage. ‘If a man and a woman are residing together for a long time and have been accepted by the society as husband and wife, a presumption could be drawn that of their marriage.’ Hence a valid marriage gives the status of wife to female and it can be presumed that she can avail the provisions of Section 125 of Code of Criminal Procedure. So far as Hindu Adoptions and Maintenance Act, 1956, is concerned we have discussed a judgement where maintenance was granted to second wife, but we cannot overlook the fact that it was due to concealment of first marriage by the husband. However, in the absence of any direct provision with regard to live-in relations, we can conclude that it differs from case to case and depends upon the facts of the each case whether maintenance will be available to such a female live-in partner or not.

4.2.3 Protection of Women under Live-in Relation from Harassment for Dowry and Other Forms of Domestic Violence

As already stated, there is no special law to deal with the issues related to live-in relations and issues related therewith in India. However judiciary has extended the protection of law to live-in couples. There are recent incidents, coming into light in the society of harassment for dowry of live-in female partner, and other forms of domestic violence. ‘Domestic violence is a human rights violence which knows no class, caste or religion; it crosses geographic, ethnic and racial borders. Domestic violence seems to be an increasing practice among live-in couples also. Women in cohabiting relationships are not less likely to be abused than wives. Ahead of race, age, education and housing conditions, marital status is the strongest predictor of domestic abuse.\(^{53}\)

Such cases of domestic abuse are now coming out in open and women living in such relations are approaching counseling centre for relief. These cases get reported only when some well wisher take the initiative to report it formally or informally. In most of cases women are afraid that they will be blamed for the failure of the

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\(^{52}\) *Indra Sarma v. V.K.V. Sarma, AIR 2014 SC 309*

\(^{53}\) *Sanjay Gaur, Live-in-Relationship* 10 (Yking Books, Jaipur)
relationship."\(^{54}\) In India there are special legislations to deal with the menace of dowry and domestic violence. The Dowry Prohibition Act, 1961, along with Section 498A\(^{55}\) read with Section 304B\(^{56}\) of Indian Penal Code, 1860, and Protection of Women from Domestic Violence Act, 2005, are the relevant statutes.

The definition of the expression ‘dowry’ contained in Section 2\(^{57}\) of the Dowry Prohibition Act, 1961, cannot be restricted only to the ‘demand of money, property or valuable security’ made at or after the performance of marriage. The legislature has in its wisdom while providing for the definition of ‘dowry’ emphasized that any money, property or valuable security given, as a consideration for marriage, ‘before, at or after’ the marriage would be covered by the expression ‘dowry’.\(^{58}\)

The concept of ‘dowry’ is intermittently linked with a marriage and the provisions of the Dowry Prohibition Act apply in relation to marriages. If the validity of the marriage itself is under legal scrutiny, the demand of dowry cannot be legally


\(^{55}\) Indian Penal Code, 1860, Section 498A [Husband or relative of husband of a woman subjecting her to cruelty—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

\(^{56}\) Indian Penal Code, 1860, Section 304B [Dowry death—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

\(^{57}\) Dowry Prohibition Act, 1961, Section 2 [Definition of ‘dowry’—In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—(a) by one party to a marriage to the other party to the marriage; or (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.]

\(^{58}\) Ibid.
recognized. The purpose of Sections 498A and 304B of Indian Penal Code, 1860, and Section 113B\(^{59}\) of the Indian Evidence Act, 1872, cannot be overlooked. However it has been held that law presumes in favour of marriage and against concubinage but situations may get worst if male partner had entered in a relationship concealing his status of being married. In such situations second marriage will not be valid and woman will not get the status of wife. If it is a live-in relationship not in nature of marriage then court will not be able to presume it a valid marriage. And in both situations woman will not get the status of legal wife and legal technicalities will be an obstacle in her claims. Legislations enacted with the policy to check and eradicate particular public evil prevailing in society and to put into force a definite social purpose or benefit necessarily requires to be construed with determined element of realism also and not merely hyper and precise technicality.

The obvious objective of the Dowry Prohibition Act was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person, who harasses a woman for dowry, be left unpunished only because of the invalidity of marriage? Such technicalities should not destroy the objective to be achieved through provisions. Such loopholes and technical interpretations would definitely encourage other to harassment woman over demand of money. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A of Indian Penal Code, 1860. If restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money. Similar situation arose in *Koppisetty Subbharao Subramaniam v. State of A.P.*\(^{60}\) where the defendant used to harass his live-in partner for dowry. She was not aware of his being married earlier. In court he took the contention that as petitioner was not his legal wife

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\(^{59}\) The Indian Evidence Act, 1872, Section 113B [Presumption as to dowry death—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code.]

\(^{60}\) Koppisetty Subbharao Subramaniam v. State of A.P., AIR 2009 SC 2684
petition under Section 498A is not maintainable. Justice Arjit Pasayat and Justice A.K. Ganguly while denying the contention of defendant that Section 498A does not apply to him since he was not married to his live-in partner observed:

“The nomenclature ‘dowry’ does not have any magical charm written over it. It is just a label given to a demand of money in relation to a marital relationship.”\textsuperscript{61}

The court further opined:

\textit{It would be appropriate to construe the expression ‘husband’ to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions - Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of ‘husband’ to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as ‘husband’ is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.}\textsuperscript{62}

Thus a person who enters into a marriage like relationship cannot be permitted to ambush behind the invalidity of marriage over the question of dowry in such

\textsuperscript{61} Koppisetti Subbharao Subramaniam v. State of A.P., AIR 2009 SC 2684 at para 17

\textsuperscript{62} Koppisetti Subbharao Subramaniam v. State of A.P., AIR 2009 SC 2684 at para 17
relationships. The Apex Court extended the provision of Section 498A Indian Penal Code, 1860, to protect the live-in female partner from harassment for dowry.

In India we have Protection of Women from Domestic Violence Act, 2005, to protect women from domestic violence. However it is required that purpose of the Act should be served i.e. to stop domestic violence against women irrespective of legal status of her relationship. Under the Domestic Violence Act much stress has been given to marital relation and relationship in nature of marriage overlooking that domestic violence affects women irrespective of whether she is in ‘marital relationship’ or ‘live-in-relationship’, ‘relationship in nature of marriage’ or ‘relationship not in nature of marriage’, or in any other adulterous relationship. With the increasing number of live-in relations and the instances of domestic violence in such relations it is imperative to give emphasis for the protection of female live in partner.

In India the Protection of Women from Domestic Violence Act, 2005, defines ‘domestic violence’ \(^63\) as any act, omission or commission or conduct of the

\(^63\) Protection of Women from Domestic Violence Act, 2005, Section 3 [Definition of Domestic Violence]. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case if-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.- For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
respondent shall constitute domestic violence in case it harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned earlier; or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.64

Violence in the domestic sphere is generally inflicted by males; husband, boyfriend, father, fathers-in-law, stepfather, brother, uncle, son, or other relatives, who are or who have been in positions of trust and intimacy and power.65 Marriage brings with it not just a change in the legal status of the couple, but also a change in the whole set of social expectations and assumptions regarding the couple. The marriage ceremony transforms a private relationship into a public one in which social norms more closely govern the behavior of the couple.66 Theoretically, cohabiting couples might be expected to have lower rates of violence than married couples. Since they are not legally bound to their relationship, they may be more likely to leave an unsatisfactory situation. The prediction of lower violence among cohabiters is appropriate if the ideological basis of their relationship includes rejecting the traditional rules and rights of marriage, such as male leadership, the right to hit and so on.67

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

64 Ibid.
67 Id. at 340
The extension of the Protection of Women from Domestic Violence Act to the live-in relationship itself makes it evident that the live-in relationship does not protect anyone from the domestic abuse by a partner. Rather it excels in the premises of the live-in relationship. It is a matter of grave consideration how the live-in relationship can be affected by domestic violence, because we recognize this course of life to be selected by people who denounce the existing social evils and accept the equality of men and women, though it is a matter of examination and inspection that how these advocates of individualism cannot get away from the relationship when they experience domestic violence.68

Similar to the portrayal of intimate relationships outside of marriage and family in cinema, the ‘Special Cell for Women and Children, Mumbai’ also receives cases of violence in various kinds of relationships. There are married women, unmarried women, women facing violence from parents, siblings, neighbours, employers, intimate partners, husbands, in-laws; the profile of women approaching the Mumbai Cell is myriad, as are the relationships in which they face violence. The Special Cell Mumbai is a psycho-socio-legal service made available, at police stations for survivors of all kinds of violence faced in private and public, to report, register and take help of trained social workers who facilitate a process towards a violence free life. Over a period of time, the social workers have observed an increasing number of survivors who are in self-arranged and non-marital intimate relationships approaching them. 69 Discussion of this trend took place in one of the monthly meetings of the Mumbai Cell workers in which emerging trends in violence against women and learning while intervening in cases are shared by all the Mumbai Cell workers. In their experience, clients had stated that after a long period of intimacy and, in many cases, after promise of marriage, the male partner had refused to get married to them. Several Mumbai Cell workers also discussed that the survivors were articulating their experience of violence within the legal framework of ‘rape’ as, according to them, they had engaged in sexual intercourse with the promise of

68 Supra note 53 at 33
marriage and their trust was breached when the man refused to get married to them. During discussions of such cases with Mumbai Cell workers, a notable obstacle faced was naming these relationships. All the Mumbai Cell workers were clear that the relationship was self-arranged, non-marital and intimate in nature.  

While articulating and asserting their rights and talking about their experiences of violence, women survivors of violence in love relationships have used sexual relations to explain and/or legitimize the existence of the said relationship. In our society, sex is legitimized only within the framework of marriage and it is constructed within very patriarchal and hence oppressive, structures. The fact that consent for it within marriage is not thought of is probably the reason behind underreporting of sexual violence in marriage. But, the picture changes when one indulges in sexual activity without marriage. Reaffirming the experiences and the analysis of the Mumbai Cell workers, in most of the cases of violence in love relationships, women have complained of sexual violence at the time of registration of their case. To talk about sexual violence might be more acceptable within the context of refusal to marriage, as sex outside the framework of marriage is not accepted and hence, the violence then becomes all the more intense and the complaint becomes more severe. Probably, it is this unacceptability that makes it easier for the survivor to talk about such violence in the language of rights and violence.  

"We come across women who are educated, who have opted for live-in relationships, suffer domestic violence and yet, hesitate to complain about it," says K. Anuradha, voluntary counsellor, Andhra Pradesh Coalition of Gender Justice (APCGJ). Many of the domestic violence cases get reported only when some well-wishers step-in to report it formally or informally to an NGO. Why don't these women who were once fearless enough to disdain legal and formal marriage, break away from their abusers? In most of the cases, women are scared that they will be blamed for the failure of the relationship. Generally, the counsellors tell the women to stop blaming themselves and encourage them to approach protection officers so that they can take

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70 Ibid.  
71 Id. at 8  
72 Supra note 54
their case to the court. In the cases that have come to NGOs, the women partners preferred to terminate the relationship rather than approach the court for help.73

There is lack of family and legal support for the violated woman that leads to further alienation and emotional abuse. The difference between violence in 'love' relationships and marital relationships is that in a ‘love’ relationship the woman, more often than not, finds herself alone, isolated and nowhere to go. In such cases, blaming the victim is more common as the woman herself has decided to enter into a relationship which is breaking patriarchal boundaries and is not considered ‘legitimate’ and the violence within it will not even be recognized.74

Women are usually blamed for entering into a relationship which has not culminated into marriage, and the focus rarely shifts from blaming the violated woman for being in a consensual intimate relationship to the violence that she is facing within it. The shame and stigma attached to the relationship becomes greater than the violence. One of the social workers has mentioned that, violence in domestic relationships is not perceived as shame whereas in these cases they have the added burden of shame which makes them more vulnerable. This adds to the pain and stress as one of the attempts made by the woman to step outside of societal boundaries has failed as the relationship is not and will not be recognized by society.75

Many of the clients, according to the Mumbai Cell workers, do not get the much required support from their natal family. The woman or the man in the relationship does not necessarily consider caste, class, religion as factors which influence their decision regarding the relationship. The fact that the man and the woman have met outside their physical communities, also means that most of these relationships might be developing clandestinely. Keeping the relationship secretive further alienates the woman if and when she faces violence as then there is lack of family support.76

In marital relationships, financial violence stems from demand for dowry, not giving enough money to cover the household or medical expenses or taking away the woman’s streedhan. As love relationships do not fit under the institution of marriage,

73 Ibid.
74 Supra note 69 at 11
75 Ibid.
76 Ibid.
the method of abusing the woman financially changes. Also, in love relationships, there is blurring of responsibilities. As husband and wife you have a socially ascribed set of responsibilities. But in cases of love relationships because there are no norms, no rules, the roles are also not defined. Thus, unlike marital relationships the man does not necessarily take the responsibility of the financial expenditures and as there is no paternal household, there are all material goods bought together by the couple and because of the ‘marriage like’ relationship finances are exchanged. Data shows that 51.6 percent of the women who were in intimate partner relationship were financially abused.\(^{77}\) As most of the women were financially independent, it was easier for the man to ask for money and easier for the woman to give it.

There is no doubt that intimate, self-arranged, non-marital, non-cohabiting relationships are unconventional. Women are definitely pushing societal norms and boundaries by forging such relationships. This nudging, pushing and crossing of the 'laxman rekha' makes one susceptible to violence from the rest of the society as well and causes a lot of emotional violence. The emotional violence in such relationships is different from the emotional violence in a marriage as in these relationships the violated woman does not only face violence from the partner, but also faces violence from the larger society for consensually entering into a relationship which is unconventional.\(^ {78}\) According to a Mumbai Cell worker, the violated woman, through various attempts tries to keep the relationship intact as she is aware of the shaming that she will have to face if the relationship does not get 'validated' with marriage. She gets more and more emotionally involved in the relationship, agrees to sexual relations with her partner, provides financial support to him - all in the hope that he would marry her in the future.\(^ {79}\)

Most of the counsellors believe that the reasons for domestic violence in live-in relationships are identical to those that married women face.\(^ {80}\) Professional jealousy is one of the causes of violence when the couple works in the same company or shared approximately the similar responsibilities. There is no one single factor to explain the violence perpetrated against women. Several intricate and interlinked

\(^ {77}\) Id. at 9
\(^ {78}\) Id. at 10
\(^ {79}\) Ibid.
\(^ {80}\) Supra note 54
institutionalized social and cultural factors have kept women particularly vulnerable
to the violence directed at them, all of them expression of historically unequal power
relations between men and women. The elements contributing to these unequal power
relations include: socioeconomic forces, the family institution where power relations
are enforced, fear of and control over female sexuality, belief in the inherent
superiority of males, and legislation and cultural sanctions that have traditionally
denied women an independent legal and social status.\textsuperscript{81}

In \textit{Varsha Kapoor v. Union of India & Ors.},\textsuperscript{82} the Delhi High Court while
interpreting Section 2(q)\textsuperscript{83} of Protection of Women from Domestic Violence Act,
2005, and examining the constitutional validity of proviso to Section 2(q), took note
of the object and reasons of enactment of Act, i.e. to enact a law keeping in view the
rights guaranteed under Articles 14\textsuperscript{84}, 15\textsuperscript{85} and 21\textsuperscript{86} of the Constitution of India to
arrange for a remedy under civil law, which is designed to protect the women from
being victims of domestic violence and to prevent the occurrence of domestic
violence in the society. The court observed:

\begin{quote}
\textit{“Domestic violence is undoubtedly a human rights issue
and serious deterrent to development. The Vienna
Accord of 1994 and Beijing Declaration and Platform
for Action (1955) have acknowledged this. The United
Nations Committee on Convention on Elimination of All
Forms of Discrimination in its General
}
\end{quote}

\begin{flushleft}
\textsuperscript{81} \textit{Ibid.}
\textsuperscript{82} Varsha Kapoor v. Union of India & Ors., 170(2010) DLT166(DB) available at:
http://lobis.nic.in/ddir/dhc/AKS/judgement/04-06-2010/AKS03062010CRLW6382010.pdf (Last
visited on Sep. 25, 2016)
\textsuperscript{83} Protection of Women from Domestic Violence Act, 2005, Section 2(q) ['respondent’ means any
adult male person who is, or has been, in a domestic relationship with the aggrieved person and
against whom the aggrieved person has sought any relief under this Act:
Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may
also file a complaint against a relative of the husband or the male partner.]
\textsuperscript{84} The Constitution of India, Article 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]
\textsuperscript{85} The Constitution of India, Article 15 [Prohibition of discrimination on grounds of religion, race,
caste, sex or place of birth,]
\textsuperscript{86} The Constitution of India, 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]
\end{flushleft}
Recommendation No. XII (1989) has recommended that state parties should act to protect women against violence of any kind especially that occurring within the family. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of Indian Penal Code. However, the civil law does not address this phenomenon in its entirety. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India to provide for a remedy under civil law, which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”

The Court also took note of Section 12, Section 19 and Section 31 of Protection of Women from Domestic Violence Act, 2005, as conjoint reading of all

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87 Varsha Kapoor v. Union of India & Ors., 170(2010) DLT166(DB) at para 7
88 Protection of Women from Domestic Violence Act, 2005, Section 12 [Application to Magistrate.- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.
(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:
Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.
(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.
these Sections form the basis of redressal machinery provided to the aggrieved person in the scheme of the Protection of Women from Domestic Violence Act and such a

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.] Protection of Women from Domestic Violence Act, 2005, Section 19 [Residence orders.- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -
(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
(b) directing the respondent to remove himself from the shared household;
(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;
(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:
Provided that no order under clause (b) shall be passed against any person who is a woman.
(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.
(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.
(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.
(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.] Protection of Women from Domestic Violence Act, 2005, Section 31 [Penalty for breach of protection order by respondent.- (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.
(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.
(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.]
petition is maintainable even against a woman as provided in proviso to Section 2(q) of the Act of 2005. No doubt, the provision is not adequately worded and there appears to be some ambiguity in the definition of ‘respondent’ as contained in Section 2 (q). The Court quoted the report of Dr. S.S. Jagnayak, the Director of Southern Institute for Social Science Research, in which he has described the ambiguity in Section 2(q) as ‘loopholes to escape the respondents from the cult of this law’.91 The court further holds the view:

“While interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives also to be respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage”.92

Further, setting aside the judgment of the Bombay High Court Hon’ble Supreme Court in Hiral P. Harsora vs. Kusum Narottamdas Harsora93, has struck down the words ‘adult male’ before the word ‘person’ in Section 2(q) of Domestic Violence Act holding that these words discriminate between persons similarly situated, and is contrary to the object sought to be achieved by the Domestic Violence Act. The court also said that the proviso to Section 2(q) of the Act, being rendered otiose, also stands deleted.94

Thus, it is clear from the above discussed judgments that an aggrieved woman living in a ‘live-in relationship’ in a ‘relationship in nature of marriage’ can take the protection of Protection of Women from Domestic Violence Act, 2005, through an application to magistrate under Section 12 of the Act and seek Protection Orders

91 Varsha Kapoor v. Union of India & Ors., 170(2010) DLT166(DB) at para 12
92 Varsha Kapoor v. Union of India & Ors., 170(2010) DLT166(DB) at para 19
93 P. Harsora and Others v. Kusum Narottamdas Harsora & Others, CIVIL APPEAL NO. 10084 of 2016(SC)
under Section 18\(^95\), Residence Orders under Section 19 and Penalty for Breach of Protection Order by Respondent under Section 31 of the Act of 2005.

### 4.2.4 Woman’s Right to Reside in Household Shared During Live-in Relationship

An aggrieved woman living in a relationship in nature of marriage has a right to shared household. It has been observed in *Abhijit Bhikaseth Auti v. State of Maharashtra\(^96\)*:

“Sub section (1) of section 17 \(^97\) starts with a non-obstante clause which has over-riding effect over other statues. The sub-section provides that every women in a domestic relationship shall have right to reside in a shared household whether or not she has any right, title or beneficial interest in the same. This is indeed a provision which enlarges the scope of the concept of matrimonial home under the existing laws dealing with matrimonial relationship. This is in the context of the

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\(^95\) Protection of Women from Domestic Violence Act, 2005, Section 18 [Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favor of the aggrieved person and prohibit the respondent from-
(a) committing any act of domestic violence;
(b) aiding or abetting in the commission of acts of domestic violence;
(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
(g) committing any other act as specified in the protection order.]

\(^96\) (2009) Cri.LJ 889(Bom.)

\(^97\) Protection of Women from Domestic Violence Act, 2005, Section 17 [Right to reside in a shared household.-(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.]
The definition of domestic relationship under clause (f)\textsuperscript{98} of section 2 which means 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 a marriage. The definition of shared household under section 2(s)\textsuperscript{99} of the said Act is very wide. It even includes a household which may belong to the joint family of which the respondent is a member. Section 19\textsuperscript{100} which gives power to the Magistrate to pass residence orders providing for grant of various orders in relation to a shared household for protecting the rights of the aggrieved person.\textsuperscript{101}

Thus it is clear from the observations of the court that if a relationship is considered a relationship in nature of marriage then the aggrieved woman can also seek residence orders. Such a right of woman extends to joint family home of the respondent.

4.2.5 Right to Protection under the Medical Termination of Pregnancy Act, 1971

Indian judiciary has extended to live-in relationships protection under Medical Termination of Pregnancy Act, 1971 which only married women have enjoyed so far in law. In a PIL, *High Court on its Own Motion v. State of Maharashtra*\textsuperscript{102}, 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 assumed to be applicable also to couples who live-in a relationship ‘in the nature of marriage’. Medical Termination of Pregnancy Act, 1971, governs and grants women

\textsuperscript{98} Protection of Women from Domestic Violence Act, 2005, Section 2(f)

\textsuperscript{99} Protection of Women from Domestic Violence Act, 2005, Section 2(s)

\textsuperscript{100} Protection of Women from Domestic Violence Act, 2005, Section 19


\textsuperscript{102} High Court on its Own Motion v. State of Maharashtra, (Suo Motu PIL No. 1 of 2016 Bombay High Court)
the right to abort. The Act spelled out how a married woman, who may have conceived accidently despite using birth control devices, could be permitted to terminate such pregnancy, if unwanted, on the ground that its continuation would cause her mental trauma. Since the law specified ‘married woman’, the High Court while dealing with the rights of women in prison to medical termination said, law in present scenario of live-in relations would extend to even such women, who though not married, live in with their partner. The judgment is beneficial to women who have not tied the knot but live with a man in a relationship akin to marriage, it identified the need for protective laws and the extent to which such relationships imitating and are rising in society.

The High Court was deciding a suo motu PIL sparked by a case of a woman inmate in Mumbai who wished to terminate her second pregnancy while in custody. The bench of Justices V.K. Tahliramani and Mridula Bhatkar explored into the essence of the law that legalises abortion in India under Section 3 of the Medical Termination of Pregnancy Act, 1971, Section 3(2)(b)(i)

103 Medical Termination of Pregnancy Act, 1971, Section 3(2)(b)(i)


105 Ibid.

106 Medical Termination of Pregnancy Act, 1971, Section 3 [When Pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are.

Of opinion, formed in good faith, that,-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.
Termination of Pregnancy Act. It allows termination of pregnancy if there is risk to the life of the pregnant woman. The law says an unwanted pregnancy caused by failure of a birth control device in a marriage can be ended, but only till the foetus is twenty weeks old\textsuperscript{107}. The bench observed that besides physical injury, the law widened the scope of termination of pregnancy by including 'injury' to mental health of the woman. The law provides two ‘explanations’ of what constitutes such injury. While the first points to a rape survivor and the anguish a resultant pregnancy causes, 'Explanation 2' to Section 3(2)(b) lists a pregnancy that is accidental, caused by failure of a birth control device. Such a pregnancy, if unwanted, may be presumed to constitute grave injury to mental health of the pregnant woman. In this PIL, High Court on its Own Motion v. State of Maharashtra\textsuperscript{108} the hon’ble court directed:

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"Explanation 2 should be read to mean any couple living together like a married couple."
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The court further observed:

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A woman irrespective of her marital status can be pregnant either by choice or it can be an unwanted pregnancy. Wanted pregnancy is shared equally, however, when it is an accident, then the man may not
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\textsuperscript{107} Medical Termination of Pregnancy Act, 1971, Section 3(2)(a),(b)

\textsuperscript{108} High Court on its Own Motion v. State of Maharashtra, (Suo Motu PIL No. 1 of 2016 Bombay High Court)

\textsuperscript{109} High Court on its Own Motion v. State of Maharashtra, (Suo Motu PIL No. 1 of 2016 Bombay High Court) at para 12 available at: http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvanVkZ2VtZW50cy8yMDE2LzZmbmFtZT1DU01QSUwyMDE2MjE2MzgzNy10cmFzdXJlZGdldC1tb2RlZC0wMzUxMTYwMDUyMDU= (Last visited on Sep. 21, 2016)
be there to share the burden. Under such circumstances, a question arises why only a woman should suffer."

A doctor, while advising a medical termination of pregnancy, must contemplate the future prospects such unwanted pregnancy holds for a woman. The court observed that there are reasons why a pregnancy is sought to be ended. There are social, financial and other aspects attached to the pregnancy of the woman and if pregnancy is unwanted, it can have serious repercussions. The right to control their own body and fertility and motherhood choices should be left to women alone. Thus the protection of Medical Termination of Pregnancy Act was extended to women in live-in relations by the court.

4.2.6 Right to Protection of Section 376 of Indian Penal Code, 1860, Against Live-in Partner

We have discussed earlier that courts have presumed in favour of marriage in cases of long term non-marital relationships; however there have also been instances before us where courts have refused to presume so for the purpose of penal statutes. Thus when a case under Section 376 of Indian Penal Code came before the court where male live-in partner pleaded that entering in live-in relationship means consent for sexual relations, the court refused to presume them married. In case of Anil Dutt Sharma v. Union of India, the Delhi High Court refused to keep live-in relationships outside the purview of rape under the Indian Penal Code. The court opined that:

“Keeping live in relationship out of purview of Section 376 of the IPC would amount to giving them the status of matrimony, which the legislature has chosen not to do.”

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110 High Court on its Own Motion v. State of Maharashtra, (Suo Motu PIL No. 1 of 2016 Bombay High Court) at para 13
111 Supra note 104
113 Anil Dutt Sharma v. Union of India & Others, W.P.(C) No. 1045/2015(Delhi HC) at para 5
The court holds the opinion while deciding a PIL, which had sought direction to the government to keep the cases of live-in relationships outside the purview of the offence of rape under Indian Penal Code, 1860. The court held:

"As far as the relief sought, of keeping the live-in relationships outside the purview of Section 376 (rape) of the IPC is concerned, the same would amount to giving the live-in relationships, the status of matrimony and which the legislature has chosen not to do. All that we can observe is, that a live-in-relationship constitutes a distinct class from marriage. It is also not as if the defence of consent would not be available in such cases to the accused. We do not find any merit in the petition and dismiss the same."  

The PIL also sought direction that the complaint lodged by a female live-in partner against her male partner should be registered under Section 420 IPC (cheating) and not Section 376 of Indian Penal Code, which was turned down by the court, saying it cannot pass such order. It is evident from the view of the court that so far as the penal statutes are concerned non-marital relationships will be kept outside the presumption of marriage as they are presumed for the purposes of granting civil rights to female live-in partners. In criminal cases it will depend purely on the facts of particular case whether accused of rape in live-in relationship gets convicted or acquitted. For instance in a recent case the Delhi High Court has acquitted a man, who was jailed for ten years by a trial court for raping a woman in Delhi in 2011, observing that she was in a live-in relationship with him and her statement regarding the alleged incident was suffering from ‘serious infirmities’. The court set aside the order passed by the trial court in 2013 in which it had convicted the man for alleged offences under Sections 376 (rape) and 506 (criminal intimidation) of the Indian Penal Code.

114 Ibid.
Code, 1860, and had awarded him ten years imprisonment along with a fine of rupee 15,000.116

4.2.7 Right to Succession and Live-in Couples

As live-in relationships have not been perceived by any special statutory provisions in India, there is no special reference to rights of couples in such relationships. However, they may themselves allow their partner to enjoy some rights. In case of death of either of the partners, the property devolves on one’s own estate and the live-in partner cannot succeed the same in absence of a will to the contrary. The main principle for such relationships is one of non-intervention. Each of the partners owns what he/she acquires and is free to dispose of their belongings according to their individual wish. Moreover, a debt contracted by one partner is only his/her responsibility. But, irrespective of the right to succession, a surviving cohabitant does have the right to retain an undivided estate as a widow or widower is entitled to.117

Right to property is one of the most important rights of a human being. The property may be acquired by an individual or it can be inherited by one from his or her predecessors and partners. The recent trend of the attitude of the courts in case of succession rights of live-in relationships in India shows a huge change towards the notion of the institution of marriage.118 It is also evident from the case of Dhannulal v. Ganeshram119 where Supreme Court upheld that if an unmarried couple lived together as husband and wife, then they would be presumed to be legally married and the woman would be eligible to succession after death of her partner of his property. A bench of Justice M.Y. Eqbal and Justice Amitava Roy said that continuous


117 Supra note 2 at 56-57


119 Dhannulal and Others v. Ganeshram and Another, AIR 2015 SC 2382
cohabitation of a couple would raise the presumption of valid marriage and it would be for the opposite party to prove that they were not legally married. The court holds the view:

"It is well settled that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. However, the presumption can be rebutted by leading unimpeachable evidence. A heavy burden lies on a party who seeks to deprive the relationship of legal origin". 120

One of the main concerns which remain unclear is what length of time of cohabitation will enable the person to be qualified as domestic partner. While a casual ‘walk-in walk-out’ relationship cannot qualify a partner for succession rights, long time-period of continuous cohabitation has been accepted as a marker for grant of successful succession or maintenance rights. 121 It is necessary to statutorily make a fixed time or make differentiation between a ‘walk-in walk-out live-in relationship’ and a ‘live-in relationship’ which will make a person qualify for a succession rights. Another intertwined issue is the question of ‘proof of continuous cohabitation like married couple’. It is essential that the party represents themselves like married couples to the society and there has been social recognition to that effect. The Courts have specifically mentioned any negative evidence regarding the period of continuous cohabitation can weaken the case. 122

The legal position regarding succession rights in live-in relationship is quite unclear. It is necessary that there should be a proper legal framework to remove the confusions and the ambiguities in the current law. However, it would be interesting to note that judgments of which Indian Courts have took note in deciding the property

120 Dhannulal and Others v. Ganeshram and Another, AIR 2015 SC 2382 at para 15
122 Ibid.
matters relating to unmarried couples. One of such cases is of *Marvin v. Marvin*\(^{123}\),
where the plaintiff and the defendant stayed together without getting married and agreed to share their efforts and earnings together. The Court held that:

“(1) The provisions of the Family Law Act do not govern the distribution of property acquired during a non-marital relationship; such a relationship remains subject solely to judicial decision.

(2) The courts should enforce express contracts between non-marital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services.

(3) In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties.”\(^{124}\)

Another case is of *Watts v. Watts*\(^{125}\), where the Supreme Court of Wisconsin held that a domestic partner could bring a cause of action based on unjust enrichment in the absence of an express or implied contract. Just like the principle of unjust enrichment is applicable on all, it should be applied to live-in partners as well.\(^{126}\)

In the current Indian legal position, a person can nominate any person in the will. The best way to inherit property in case of live-in relationships is through a will. Though, the judiciary has for long presumed marriage for partners living together for long as husband and wife. The unclear position based on facts results in an exhausting legal process for claiming inheritance right. There is a need to expand the definition of family to ‘include committed domestic partners’. Without recognizing the

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\(^{123}\) Marvin v. Marvin, 18 Cal.3d 660 (1976)


\(^{125}\) Watts v. Watts, 137 Wis. 2d 506 (1987)

inheritance right of such partners, it would be denial of respect for donative intent of the intestate in return of concern shown for the partner. However, the state should make such legislation so that the couples who are unmarried and staying together for long can get certain social benefits like inheritance rights. Though the process of nomination is no doubt a good option, however it cannot be better if such live-in partners get intestate inheritance rights like any other married couple. This can be achieved through special legislation.

“Professor Waggoner stated that committed domestic partner should get automatic intestate inheritance with a smaller share than of a spouse in recognition of the competing claims of the decedent’s blood or adoptive relatives, and to some extent to maintain the incentive to enter into formal marriage.\textsuperscript{127} Waggoner introduced a test consisting of five parameters for determining who is a committed domestic partner i.e. the partners must be adult; the partners otherwise can marry as it is not prohibited due to related by blood; neither partner is married at the time of decedent's death; the partners must have shared the same place to live, whether or not they had other places to live; the two individuals must have had a marriage-like relationship. If we make a careful analysis, we can find that the Indian Judiciary has already adopted the test laid by Professor Waggoner in \textit{D. Velusamy's}.\textsuperscript{128} case. So, it can be easily said that the Indian judiciary is very progressive in terms of recognizing new forms of social arrangements and granting legal rights and status to it. Historically, Indian judiciary has recognized the inheritance right in cases where there has been long cohabitation between two partners which is akin to a marriage. Live-in relationship is not a very new phenomenon; by whatever name it might be called, its legal status has been recognized for long. The courts have granted inheritance rights in such cases of long cohabitation.”\textsuperscript{129}

From the above discussed rights and duties of live in partners we can assume that though statutes have not provided any rights to live in partners but courts have extended legal protection to long term live in relationships which are in the nature of marriage. But certain questions arise out of the stand of Indian judiciary on presumption of long term cohabitation of couple as legally married. Question arises

\textsuperscript{127} Supra note 118
\textsuperscript{128} D.Velusamy v. D.Patchaiammal AIR 2011 SC 479
\textsuperscript{129} Supra note 118
that whether woman living in such long term relation, that is considered legally married, can avail all rights which are available to wife under law? There are no judgments and observations on this point. However it seems to researcher that court’s view that long term live-in partners will be considered legally married, cannot be universally applied on all rights available to a married woman, it varies with question of individual right e.g. whether right to divorce is available to presumed legal wife, whether presumed legal wife can file complaint of bigamy, undoubtedly the answer would be no, however, until the question is not taken up by court we cannot presume anything. Though researcher is of the point that court’s ruling that long term cohabitation will be presumed as legally married, cannot be interpreted in the sense that such presumed legal wife can avail all rights available to actually wedded wife.

There is no proper legal definition of a live-in relationship and due to this reason the legal status of such a relationship is dubious. The Indian law does not provide any rights or obligations of the parties who are in a live-in relationship. The status of the children who are born as a result of such a relationship is also not clear and due to this reason the courts have provided a description to the concept of live-in relationships through various judgments in the past few years. The courts have liberally stated that any man and woman who are cohabiting since a long time will be presumed to be legally married under the law unless it is proved to be contrary.

4.2.8 Rights of Child Born out of Live-in Relationships

Right to maintenance of child or duty to maintain child born out of live-in relationship, child’s right to inheritance, right to custody of such child and right to give such child in adoption all rights depends on primary question of legitimacy of child. Thus before going into the discussion of other rights of child and duties of parents towards such child it is necessary to discuss the question of legitimacy of child born out of live-in relationship.

4.2.8.1 Legitimacy of the Child

Right to legitimacy is the first and the foremost right for a child born in a live-in relationship as legitimacy will form the basis for all the other rights which are available to a child in our country. Legitimacy of children born out of such relationships presents a dilemma to the Indian courts. Courts have been divided on this point, however, a child out of a prolonged relationship is deemed legitimate.
“The Supreme Court while deciding a case involving the legitimacy of a child born out of wedlock has ruled that if a man and a woman are involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be legitimate. Also, the recent change introduced in law through the Domestic Violence Act, 2005, gives protection to women involved in such relationships for a ‘reasonable long period’ and promises them the status of wives. A Supreme Court Bench headed by Justice Arijit Pasayat declared that children born out of such a relationship will no more be called illegitimate. Law inclines in the interest of legitimacy and thumbs down ‘whoreson’ or ‘fruit of adultery’.”

In case of S.P.S. Balasubramanyam v. Suruttayan the Supreme Court held:

If man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114 of the Evidence Act, that they live as husband and wife and the children born to them will not be illegitimate.

This presumption is rebuttable, however, if not rebutted leads to conclude that they live as husband and wife and the children born to them will not be illegitimate. This judgment suggested that the law treats long term live-in relationships as good as marriages. Court took notice of the responsibility of the State to provide the children with adequate opportunity to develop in a normal manner and safeguard their interests. This was a landmark case wherein the apex court for the first time upheld the legitimacy of the children born out of a live-in relationship. The courts may subsequently interpret live-in relations to mean ‘living together as husband and wife’ excluding those relationships by choice, without intending to be married, as that are still a matter of doubt and debate.

132 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 common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.]
Though there have been a few recent judgments regarding live-in relationships as discussed above, there are few issues which have not been addressed or not adequately addressed. One of the main concerns which remain unclear is what length of time of cohabitation will enable the child to be legitimate. In case of *Madan Mohan Singh v. Rajni Kant*\(^{134}\) it has held that a child born from such a relationship will no more be considered as an illegitimate child. The crucial pre-condition for a child born out of a live-in relationship to be not treated as illegitimate is that the parents must have lived under one roof and co-habited for a significantly long time for society to recognize them as husband and wife.\(^{135}\) The Courts in India have continued to support this interpretation of law in a manner to ensure that no child is ‘bastardized’ for no fault of his/her own. In case of *Parayan Kandiyal Eravath Kanapravan Kalliani Amma v. K. Devi*\(^{136}\), the court observed:

> ‘*Hindu Marriage Act, 1955 is a beneficent legislation and, therefore, it has to be interpreted in such a manner as advances the object of the legislation. The Act intends to bring about social reforms. Conferment of social status of legitimacy on a group of innocent children, who are otherwise treated as bastards, is the prime object of Section 16.*’\(^{137}\)

### 4.2.8.2 Maintenance

Child born to a man and a woman, who are involved in a live-in relationship for a long period, will no more be called illegitimate and will be treated as and would be legitimate. Law presumes legitimacy in the interest of child and thumbs down ‘whoreson’ or ‘fruit of adultery’. As we have already discussed, while discussing the legitimacy of child born out of a live-in relationship, that law has tried to eradicate the illegitimacy of child. Whether a child is born out of valid, void, voidable marriage or live-in relationship judiciary has given them the status of legitimate child (except for

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\(^{134}\) 2010(9) SCC 209

\(^{135}\) Madan Mohan Singh & Ors v. Rajni Kant, 2010(9) SCC 209 at para 22

\(^{136}\) 1996(4) SCC 76

the purposes of inheritance of ancestral property). Further, even if statutory legitimacy has not been enshrined on the offspring of the live-in relations or even if courts do not enshrine the status of legitimate on the children of live-in relations, researcher finds that they have statutory right to claim maintenance under Hindu Adoptions and Maintenance Act, 1956, and Code of Criminal Procedure. Under provisions of these laws illegitimate child have also been given the right to maintenance. Section 20\(^{138}\) of the Hindu Adoptions and Maintenance Act, 1956 which specifically deals with Maintenance of children provides that a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children.\(^{139}\) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.\(^{140}\) Hindu Adoptions and Maintenance Act, 1956, provide that the obligation of a person to maintain his or her daughter who is unmarried extends in so far as the unmarried daughter is unable to maintain herself out of her own earnings or other property.\(^{141}\)

Maintenance is often explained as the obligation to provide for another person. Section 21\(^{142}\) of the Hindu Adoptions and Maintenance Act, provides nine categories

\(^{138}\) The Hindu Adoptions and Maintenance Act, 1956, Section 20 [Maintenance of children and aged parents.—
(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.
(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property. Explanation.—In this section “parent” includes a childless step-mother.]

\(^{139}\) The Hindu Adoptions and Maintenance Act, 1956, Section 20(1)

\(^{140}\) The Hindu Adoptions and Maintenance Act, 1956, Section 20(2)

\(^{141}\) The Hindu Adoptions and Maintenance Act, 1956, Section 20(3)

\(^{142}\) The Hindu Adoptions and Maintenance Act, 1956, Section 21 [Dependants defined.—For the purposes of this Chapter “dependants” mean the following relatives of the deceased:—
(i) his or her father;
(ii) his or her mother;
(iii) his widow, so long as she does not re-marry;
(iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father’s or mother’s estate, and in the case of a great grand-son, from the estate of his father or mother or father’s father or father’s mother;
(v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains
of dependants of a deceased person. It forms a very important aspect in the case of a child born out of a live-in relationship. It includes minor illegitimate son, so long as he remains a minor; illegitimate daughter, so long as she remains unmarried, of the deceased person irrespective of gender of deceased person.

The reading of the Section 20 of Hindu Adoptions and Maintenance Act makes it clear that both parents are liable to maintain children. Under this Act only father is not responsible to maintain children. Hence both live-in partners are equally liable to maintain child and child have right to claim maintenance from both of its parents. However child can’t pick and choose parent while claiming maintenance. The Hindu Adoptions and Maintenance Act provide a clear provision of maintenance to child irrespective of legitimacy. Thus it can be concluded that a child born out of live in relationship of Hindu couple has statutory right to maintenance.

Child born out of live-in relationship of couple to whom Hindu law does not apply, researcher finds Section 125 of Code of Criminal Procedure, relevant. Section 125 of the Criminal Procedure Code, provides remedy to children who are unable to claim maintenance under personal laws. Section 125 provides a legal right to children, wives and parents to claim maintenance. It provides that if any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or his legitimate or illegitimate child (not being a married daughter) who has attained majority, where

unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father’s or mother’s estate and in the case of a great-grand-daughter from the estate of her father or mother or father’s father or father’s mother;

(vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance—
(a) from the estate of her husband, or
(b) from her son or daughter if any, or his or her estate, or
(c) from her father-in-law or his father or the estate of either of them;

(vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband’s estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson’s widow, also from her father-in-law’s estate;

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried.]

143 The Hindu Adoptions and Maintenance Act, 1956, Section 21(viii)
144 The Hindu Adoptions and Maintenance Act, 1956, Section 21(ix)
145 Supra note 104
146 The Code of Criminal Procedure, 1973, Section 125(b)
such child is, by reason of any physical or mental abnormality or injury unable to maintain itself\textsuperscript{147}, may apply for maintenance before magistrate. So we can see that the maintenance of a child born out of a live-in relationship is a very sensitive topic.

Indian judiciary used its power to achieve the ends of social justice in the landmark case of \textit{Dimple Gupta v. Rajiv Gupta}\textsuperscript{148} wherein the Supreme Court held that even an illegitimate child who is born out of an illicit relationship is entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973, which provides maintenance to children whether they are legitimate or illegitimate while they are minors and even after such a child has attained majority if he/she is unable to maintain himself/herself\textsuperscript{149}.

Even though there have been quite some cases that have upheld the maintenance rights of live-in partners where the statutes were interpreted in a very broad manner to include female live-in partners as ‘legally wedded wives’, however, in the case of \textit{Savitaben Somabhai Bhatiya v. State of Gujarat}\textsuperscript{150} made an exception where the live-in partner had assumed the role of a second wife and was not granted any maintenance, whereas the child born out of the said relationship was granted maintenance.\textsuperscript{151} Thus status of relationship of live-in couple and question of legitimacy of child born out of such relation are not bar to right of child to maintenance.

\textbf{4.2.8.3 Inheritance}

The future of children of live-in partners becomes very insecure in case the partners step out of their relationship. There comes the requirement of a strong provision to safeguard the rights of such children. There must be provision to secure the future of the child and also entitling the children to a share in the property of both the parents. The law of succession depends on the personal laws applicable to the deceased person. Though, the judiciary has for long presumed marriage for partners

\textsuperscript{147} The Code of Criminal Procedure, 1973, Section 125(c)
\textsuperscript{148} AIR 2008 SC 239 available at: http://judis.nic.in/supremecourt/imgst.aspx?filename=31190
\textsuperscript{149} Ibid.
\textsuperscript{150} AIR 2005 SC 1809 available at: http://judis.nic.in/supremecourt/imgst.aspx?filename=26864
\textsuperscript{151} Ibid.
living together for long as husband and wife. The unclear position based on facts, results in an unnecessary legal process for claiming inheritance right.

In the absence of a specific legislation, in the case of *Bharata Matha v. R. Vijaya Renganathan*152 Supreme Court of India took the initiative to safeguard the interest of children born to live-in couples. The Supreme Court held that a child born out of a long term relationship is not entitled to claim inheritance in Hindu ancestral coparcenary property (in the case of an undivided joint Hindu family) and can only claim a share in the parents' self-acquired property.153 The Bench set aside a Madras High Court judgment, which held that children born out of long term live-in relationships were entitled to a share in ancestral property as there was a presumption of marriage in view of the long relationship. While a casual ‘walk-in walk-out’ relationship cannot qualify a partner for succession rights, long time-period of continuous cohabitation has been accepted as a marker for grant of successful succession rights. It is necessary to statutorily make a fixed time or make differentiation between a ‘walk-in walk-out live-in relationship’ and a live-in relationship which will make a person qualify for a succession rights. The Bench of Justices B.S. Chauhan and Swatanter Kumar made it clear that in view of the legal fiction contained in Section 16 of the Hindu Marriage Act, 1955, (legitimacy of children of void and voidable marriages), the illegitimate children, for all practical purposes, including succession to the properties of their parents, have to be treated as legitimate. They cannot, however, succeed to the properties of any other relation on the basis of this rule, which in its operation, is limited to the properties of the parents. A child can only make a claim on the parent's self acquired property, in case the child is illegitimate. It can also be interpreted in a way in which a child could lay a claim on the share of parents' ancestral property when parent receives the share after partition of ancestral property, as Section 16 permits a share in the parents' property.154

However, in another case, *Revanasiddappa v. Mallikarjun*155, the Supreme Court observed that taking into consideration the current social circumstances, it is

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152 AIR 2010 SC 2685
154 Supra note 1 at 7-8
155 Revanasiddappa v. Mallikarjun, (2011) 11 SCC 1
necessary that the amended Section 16 (3)\textsuperscript{156} of the Hindu Marriage Act, must be interpreted to give right of inheritance to an illegitimate child to the ancestral property. On 31 March, 2011, a special Bench of the Supreme Court of India consisting of G.S. Singhvi, Ashok Kumar Ganguly remarked that:

\begin{quote}
The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage. This is the crux of the amendment in Section 16(3). However, some limitation on the property rights of such children is still there in the sense their right is confined to the property of their parents.\textsuperscript{157}
\end{quote}

Legitimacy has always formed a pre-requisite for the inheritance rights under Hindu law. Consequently, the Courts have always ensured that any child who is born from a live-in relationship of a reasonable period should not be denied the right to inheritance and this practice is in sync with Article 39(f) of the Constitution of India.\textsuperscript{158}

Courts have not pronounced uniform judgments with respect to live-in relationships and further complexity is added with respect to Section 16 of the Hindu

\textsuperscript{156} Hindu Marriage Act, 1955, Section 16 [Legitimacy of children of void and voidable marriages.- (1) Notwithstanding that a 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 a 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 the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity. (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case, where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]


\textsuperscript{158} Revanasiddappa v. Mallikarjun , (2011)11 SCC 1 at para 38
Marriage Act, 1955, which accords a legal status of legitimacy even to illegitimate children for the purpose of inheritance. The court in case of Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi 159 observed:

In view of the legal fiction contained in Section 16, the illegitimate Children, for all practical purposes, including succession to the properties of their parents, have to be treated as legitimate. They cannot, however, succeed to the properties of any other relation on the basis of this rule, which in its operation, is limited to the properties of the parents.160

Justice Ganguly while deliberating on the issue property rights of a child under Section 16(3) stated that:

Section makes it very clear that a child can only claim rights to the property of his parents, and no one else. However, we find it interesting to note that the legislature has advisedly used the word "property" and has not qualified it with either self-acquired property or ancestral property. It has been kept broad and general.161

However, in the case of Babulal v. Nathibai III 162, it has been clearly stated that child of a live-in relationship cannot claim partition or a right in coparcenary property of the father. The fiction of legitimacy created by Section 16 of Hindu Marriage Act is limited to the extent of right in the property of parents. Thus illegitimate children of son are not entitled to inherit property of grandparents. However where the coparcenary interests devolves on the father as a sole surviving coparcener, in such a case it can be treated as the separate property of the father and the illegitimate child can inherit it.163

159 1996(4) SCC 76
The intention of the Section 16 of Hindu Marriage Act is to eliminating the distinction between children born out of valid/void/voidable marriages is to bring about social reforms and conferment of the social status of legitimacy on innocent children which would actually be undermined by imposing restrictions on rights guaranteed to legitimate children. Therefore, the researcher finds it more logical that children born out of live-in relationships will have the right to whatever becomes of the property of their parents whether self-acquired or ancestral in light of the laws of equity and lack of clarity with respect to the concerned sections of the specified statutes.

4.2.9 Live-in Couple’s Right to Custody of Child

The term child custody is used in family law courts to describe legal guardianship of minor child. The issue of child custody generally comes for the determination of court during divorce proceedings or marriage annulment proceedings. Family law courts not always base decisions on the best arguments of each party generally it decides on the best interests of the child or children. In most cases, both parents continue to have legal custody of child however only one parent gains physical custody of child. In general, courts tend to award physical child custody to the parent who demonstrates the most financial security, adequate parenting skills and the least disruption for the child. Until the child becomes legally major both parents continue to enjoy legal custody of child. Legal custody means that parent can make decisions with respect to welfare of the child, such as medical treatments, religious practices and insurance claims. Physical child custody means that one parent is held primarily responsible for the child's housing, educational needs and food. In most cases, the non-custodial parent still has visitation rights. In India people practicing different religions have their own personal laws and they have their different notion of custody.

The issue of custody is a significant legal barrier faced by people who are in a live-in relationship in comparison to married couples. Due to the lack of legislation, it is easy to get into such a relationship, but it is very hard to get out. Custody issues on a child born out of a live-in relationship usually arising at the time of separation. As already discussed that in long term relationships especially with children out of such

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165 Ibid.
relations court presumes in favour of marriage, it can be assumed that if an issue relating to custody of child arises it can be dealt in a similar manner as in the case of marriage due to the absence of specific laws for such a scenario.

On the issue of custody of children, Section 26\textsuperscript{166} of Hindu Marriage Act, 1955 provides that in any proceeding under Hindu Marriage Act, the court may pass such interim orders and make such provisions as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes.\textsuperscript{167} Further wherever it is possible court may after the disposal of the proceedings, upon application by petition for the purposes make all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending. Further the court may also from time-to-time revoke, suspend or vary any such orders and provisions previously made.\textsuperscript{168}

Under Special Marriage Act, 1954 Section 38\textsuperscript{169}, deals with the matters of custody of children. It provides that in any proceeding under Chapter V (Restitution of Conjugal Rights and Judicial Separation) or Chapter VI (Nullity of Marriage and Divorce) of the Special marriage Act, 1954, the District Court may pass such interim

\begin{footnotesize}
\begin{enumerate}
\item[166] The Hindu Marriage Act, 1955, Section 26\textsuperscript{—}In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:
Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.\]
\item[167] The Hindu Marriage Act, 1955, Section 26
\item[168] The Hindu Marriage Act, 1955, Section 26
\item[169] The Special Marriage Act, 1954, Section 38\textsuperscript{—}In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.
Provided that the application with respect to the maintenance and education of the minor children, during the proceeding, under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.\]
\end{enumerate}
\end{footnotesize}
orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary all such orders and provisions with respect to the custody, maintenance education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending.\textsuperscript{170} However, the application with respect to the maintenance and education of the minor children, during the proceeding, under Chapter V or Chapter VI of the Special Marriage Act, 1954, shall as far as possible, be disposed of within sixty days from the date of service of the notice on the respondent.\textsuperscript{171}

However it is prima facie evident that until live-in relation between any couple has not been considered as legally wedded husband and wife they cannot take the benefits of these Acts, and courts have not made it clear that while presuming a long term relationship as marriage it enables the parties to take benefits of matrimonial laws or not. However it seems that they may be governed by the Hindu Minority and Guardianship Act, 1956. Since the custody of the minor is involved, the courts have taken the view that it should also take into consideration the provisions of the Hindu Minority and Guardianship Act, 1956, and particularly Section 6\textsuperscript{172} which provides that the natural guardian of a Hindu minor, in respect of the minor's person as well as

\textsuperscript{170} The Special Marriage Act, 1954, Section 38
\textsuperscript{171} The Special Marriage Act, 1954, Proviso of Section 38
\textsuperscript{172} The Hindu Minority and Guardianship Act, 1956, Section 6 [Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—
(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;
(c) in the case of a married girl—the husband:
Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—
(a) if he has ceased to be a Hindu, or
(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).
Explanation.—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.]
in respect of the minor's property (excluding his or her undivided interests in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother-provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;

(c) in case of a married girl-the husband.¹⁷³

It further provides that if a person has ceased to be a Hindu; or if he has completely and finally renounced the world by becoming a hermit (Vanaprastha) or an ascetic (Yati or Sanyasi) such person shall not be entitled to act as the natural guardian of a minor under the provisions of Hindu Minority and Guardianship Act, 1956.¹⁷⁴ It has also been stated that the expressions ‘father’ and ‘mother’ used in Section 6 of Hindu Minority and Guardianship Act, 1956, do not include a step-father and a step-mother.¹⁷⁵ Though the Hindu Minority and Guardianship Act, 1956, clearly states in Section 6 that the father is the natural guardian of his minor legitimate children, 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, Sub-Section (b) of Section 6 of the same Act seems to deal with live-in relationships in an indirect manner as it grants the custodial rights to the mother in case of children born out of illegitimate relations.¹⁷⁶ 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. Further, Section 13¹⁷⁷ of Hindu Minority and Guardianship Act, 1956, goes on to provide about the welfare of the concerned minor

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¹⁷³ The Hindu Minority and Guardianship Act, 1956, Section 6
¹⁷⁴ The Hindu Minority and Guardianship Act, 1956, Proviso (a) and (b) of Section 6,
¹⁷⁵ The Hindu Minority and Guardianship Act, 1956, Explanation to Section 6
¹⁷⁶ The Hindu Minority and Guardianship Act, 1956, Section 6(b)
¹⁷⁷ The Hindu Minority and Guardianship Act, 1956, Section 13 [Welfare of minor to be paramount consideration.—

(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.]
to be of paramount consideration and thereby to negate the effect of previous provisions if they are in contravention of the welfare of the concerned child.

Though there is lack of clarity on the application of these personal laws to the child born out of live in relations, however, ‘relationship in nature of marriage’ as defined by court in cases of D. Velusamy\textsuperscript{178} and Indra Sarma\textsuperscript{179} gives a clear vision of applicability of provisions of Protection of Women from Domestic Violence Act, 2005, to couples living in a long term live-in relationship and comes under the court’s guidelines about the ‘relationship in nature of marriage’. The Act of 2005, gives the aggrieved woman right of custody orders under Section 21\textsuperscript{180}. It provides that the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under Protection of Women from Domestic Violence Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and can also make the arrangements for visit of such child or children by the respondent. However in the opinion of the Magistrate any visit of the respondent may be harmful to the interests of the child or children, he can refuse to allow such visit.\textsuperscript{181}

Thus the custody order under Protection of Women from Domestic Violence Act, 2005, is the one of the provisions discussed above which is directly available to all those live-in couples who come under the relationship in nature of marriage. However, lack of a special legislation governing live-in relationships is extremely felt with respect to custodial rights of parents. Issue of custodial rights emerges when a couple decides to split. If any such issue of custody is brought before courts, then, because there is no special legislation with respect to live-in relationships, courts may either decide these cases as child of married couple or as a child of unmarried single mother. Under personal laws, father is given the first right in case of a legitimate child, whereas mother is given the first preference in case of illegitimate child.\textsuperscript{182}

\textsuperscript{178} D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479
\textsuperscript{179} Indra Sarma v. V.K.V. Sarma, AIR 2014 SC 309
\textsuperscript{180} Protection of Women from Domestic Violence Act, 2005, Section 21 [Custody orders-Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:
Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.]
\textsuperscript{181} Protection of Women from Domestic Violence Act, 2005, Section 21
\textsuperscript{182} Supra note 12
Taking into consideration the object of provisions i.e. the welfare of child, these legal provisions can also be extended to children born out of non-marital unions as well.

4.2.10 Right of Live-in Couple to Adopt and Give Child in Adoption

In India Central Adoption Resource Authority\textsuperscript{183} from time to time makes rules and guidelines relating to the adoption of child. Adoption Regulations, 2017\textsuperscript{184} released by Central Adoption Resource Authority deals with eligibility criteria for prospective adoptive parents under Rule 5\textsuperscript{185}. It provides as follow:

(1) The prospective adoptive parents shall be physically, mentally and emotionally stable, financially capable and shall not have any life threatening medical condition.

(2) Any prospective adoptive parents, irrespective of his marital status and whether or not he has biological son or daughter, can adopt a child subject to following, namely:-

(a) the consent of both the spouses for the adoption shall be required in case of a married couple;
(b) a single female can adopt a child of any gender;
(c) a single male shall not be eligible to adopt a girl child;

\textsuperscript{183} NOTE: [Central Adoption Resource Authority is a body constituted in accordance with Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2015.]

\textsuperscript{184} NOTE: [Regulations framed by the Central Adoption Resource Authority in exercise of the powers conferred by clause(c) of section 68 read with clause (3) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015.]

\textsuperscript{185} Adoption Regulations, 2017, Rule 5 [Eligibility criteria for prospective adoptive parents.-
(1) The prospective adoptive parents shall be physically, mentally and emotionally stable, financially capable and shall not have any life threatening medical condition.
(2) Any prospective adoptive parents, irrespective of his marital status and whether or not he has biological son or daughter, can adopt a child subject to following, namely:-
(a) the consent of both the spouses for the adoption shall be required, in case of a married couple;
(b) a single female can adopt a child of any gender;
(c) a single male shall not be eligible to adopt a girl child;
(3) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.
(5) In case of couple, the composite age of the prospective adoptive parents shall be counted.
(6) The minimum age difference between the child and either of the prospective adoptive parents shall not be less than twenty-five years.
(7) The age criteria for prospective adoptive parents shall not be applicable in case of relative adoptions and adoption by step-parent.
(8) Couples with three or more children shall not be considered for adoption except in case of special need children as defined in sub-regulation (21) of regulation 2, hard to place children as mentioned in regulation 50 and in case of relative adoption and adoption by step-parent.]
(3) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.

It seems clear from the above criteria that though single parent can adopt a child as per Rule 5(2)(b) and 5(2)(c), but live-in couples are not allowed to adopt kids as Rule 5(3) requires two years stable marital relationship of adopting couple. Having a child out of wedlock creates a flood of legal complexities and complications related to rights of maintenance, status of legitimacy and illegitimacy, inheritance rights of the child, and custodial rights and right to give child in adoption in case of a split.

Adoption regulations also provide that where the surrendering parent is an unmarried mother, the surrender may be executed in the presence of preferably any single female member of the Child Welfare Committee. In case of a child born out of wedlock, only the mother can surrender the child and if the mother is a minor, the Deed of Surrender shall be signed by an accompanying adult as the witness.

Thus in law though there is no specific provision regarding adoption by live-in couples and right to give child in adoption by live-in couple however through guidelines position on adoption has been made clear that a non-marital couple cannot adopt a child and only a couple having two years stable marital relation can adopt a child and only the mother of child born out of wedlock can give her child in adoption.

4.3 **SUM UP**

Question remains unanswered that if court consider long term cohabitation as marriage, will female partner can avail other matrimonial rights as wife, such as, right to separate residence, right to file divorce and other rights enshrined on wife by the statutes? Another intertwined issue is the question of ‘proof of continuous cohabitation like married couple’. It is essential that the party represents themselves like married couples to the society and there has been social recognition to that effect. The Courts have specifically mentioned any negative evidence regarding the period of continuous cohabitation can weaken the case.

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186 Adoption Regulations, 2017, Rule 7(4) [If the surrendering parent is an unmarried mother, the Deed of Surrender may be executed in the presence of preferably any single female member of the Child Welfare Committee.]

187 Adoption Regulations, 2017, Rule 7(7) [In case of a child born out of wedlock, only the mother can surrender the child and if the mother is a minor, the Deed of Surrender shall be signed by an accompanying adult as the witness.]
Another question which is under debate is that live-in relationship promotes bigamy. The Court have addressed that a person needs to be unmarried to be granted maintenance rights. Contrastingly, the Court has also held that in live-in relationship, there can be no complain of infidelity or immorality. However, it is not clear, if bigamy is allowed under the person’s religion whether such claims can be sustained. Another contrasting problem, is that person who is deserted remains helpless in such cases where the persons lived into a bigamous relationship and the courts considers unmarried status to be one of the condition for granting maintenance. In such cases, the deserters go scot free, due to the loopholes present in the law.

Researcher finds, in case of long period of cohabitation, where the couples represent themselves as a married couple, there can be an exception in providing maintenance rights and grounds of the person to be unmarried will be considered as an exception. It is necessary to take a proper stand and differentiation should be made between the rights and liabilities that are in bigamous live-in relationships.

There is a need to expand the definitions under various beneficial legislations to include live-in partners. Without recognizing the inheritance right of such partners, it would be denial of concern shown for the live-in partners. However, the beneficial legislations should be extended to live-in partners so that the couples who are unmarried and staying together for long can get certain social benefits like inheritance rights. The unmarried people who reside with one with whom he or she may or may not be in a romantic or sexual relationship should be accorded a legal status. The status as to such partners may be achieved through a registration process. Deeming a child legitimate for certain purposes and illegitimate for other also raises questions of equality, it nullifies the object of enshrining legitimacy on children born out of such relationships, and is also a concern of legal status of child born out of a live-in relationship.

Thus from the above discussion of availability of various rights to women in live-in relations and child born out of these relations one thing that is worth noting that courts have extended the rights to women due to vulnerable position of them and taking into consideration the concept of relationship in nature of marriage under Protection of Women from Domestic Violence Act, 2005. Thus the position of women under relationships in nature of marriage can be well ascertained through the judgments discussed in this chapter, however, the rights of women under relationships which are not in nature of marriage depends on the good conscience of judiciary.