CHAPTER- I
INTRODUCTION

1.1 INTRODUCTION

The ‘live-in-relationship’ is a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. Couple present themselves as spouse to the world. ‘Live in relationship’ means those relationships when there is no marriage between the parties in the sense of solemnization of a marriage under any law, yet the parties live as couple, represent to the world that they are a couple and there is stability and continuity in the relationship.¹ The definition and ambit of live in relationship is not clear.

India is a developing country. Younger generations are slowly accepting the western ideas and lifestyles including the non-marital living together; the one of the most crucial development amongst the concept of relationships. Though the general norm was marriage in ancient India, the Hindu scriptures describe and admit the instances of non-marital and premarital relationships as well. Premarital relationships existed in the Vedic period and afterwards though in occurrence were rare. In India the concept of living together without marriage is not new; in earlier times it was known as maitri-karar in which a written agreement was made between two persons of opposite sex that they would live together as friends and look after each other. Such relationships were socially ambiguous, sexually exploitative and highly stigmatized relationships in society.²

The sexual relationship between man and woman outside marriage was totally taboo in feudal society and was regarded with disgust and horror.³ However, by enacting the Protection of Women from Domestic Violence Act, 2005, the Parliament of India has recognized that the Indian society is changing. As stated, such non-marital relationships have become very frequent due to various dictating

³ Jatindra Kumar Das, Human Right Law and Practice 343 ( PHI Learning Pvt. Ltd., 2016)
circumstances. Consequent to this, after splitting, the partners do not have any mutual obligation or responsibility. Quality of the edifice of marriage has been continuously chipped away, with divorce rates making marriages as non-enduring and thereby making it synonymous with a disposable syringe. Furthermore, the off springs face the worse brunt of this. They are primarily condemned by the society and then they have no legal status.⁴

Live in relationship in different countries is recognized either via implied provisions of different statutes that protect property rights, housing rights, or it finds recognition as it exists. Some countries like France and USA provide for cohabitation agreements i.e. live-in relationship contracts in which partners can determine their legal rights and obligations. However, law of various countries excludes a uniform protection and rights when it comes to the rights of child born under such relationships and thus discouraging non-marital living together relationships with legal sanction.⁵

The concept of non-marital live-in together is well demonstrated in France wherein a homosexual as well as a heterosexual couples can enter into a civil contract to organize their lives by live-in together and enjoy the rights of a married couple without marriage. These agreements can be revoked by both or either of the parties by giving three months prior notice to the other party. In France these agreements are popularly known as ‘civil solidarity pacts’ (pacte civil de solidarite). The French National Assembly in 1999 gave legal status to pacts and allowed couples to enter into agreements for a social union.⁶

In Philippines the right to each other’s property of live-in couple’s is governed by co-ownership rule. Family Code of Philippines provides that when a man and a woman capable to legally marry each other, live exclusively together as husband and wife without the benefit of marriage; their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.⁷

---

⁵ _Supra_ note 1 at 10
⁶ Id. at 12
Family law (Scotland) Act, 2006, for the first time identified and legalized live-in relationship of over 150,000 cohabiting couples in Scotland. The Act explains that for the purpose of Sections 26 to 29 whether a person is cohabitant of another then court of law shall give regard to the following factors:

i. The length of the period during which they lived together,

ii. The nature of the relationship during that period and

iii. The nature and extent of any financial arrangements.\(^8\)

This Act has also a provision that in case of breakdown of relationship, cohabitant has right to apply in court of law for financial support.\(^9\)

1.1.1 Concept of Live-in-Relationship in India

India is a country which having rich values, traditions, customs and beliefs. In India institution of marriage is combination of contract and sacrament. According to Hindu Marriage Act marriage is considered as religious and holy union and this Act also provides essential conditions for marriage without fulfilling that marriage is not considered as valid marriage. In a society where relationship between male and female without marriage is not easily acceptable Indian Evidence Act seems to provide that long cohabitation is a presumption of marriage.\(^10\) Marriage gives the status of husband and wife to the parties and this status has certain rights and obligations. However, live-in-relations in India fall under the presumption of marriage; women however, are still the losers. Live in relationship directly affecting the status of wife, children and family.

---

\(^8\) Family Law (Scotland) Act, 2006, Section 25(2) [In determining for the purposes of any of sections 26 to 29 whether a person (“A”) is a cohabitant of another person (“B”), the court shall have regard to—

(a) the length of the period during which A and B have been living together (or lived together);
(b) the nature of their relationship during that period; and
(c) the nature and extent of any financial arrangements subsisting, or which subsisted, during that period.]

\(^9\) Family Law (Scotland) Act, 2006, Section 28 [Financial provision where cohabitation ends otherwise than by death.]

\(^10\) 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.]
In India the traditional society might have stigmatized non-marital live-in relationships but the increasing number of live-in couples indicates a degree of acceptance. Under the practice of live-in-relationship a heterosexual couple of a man and a woman, generally both unmarried, live together without getting formally married. This practice is prevalent in metro cities where while working at the same place, man and woman find it convenient to live together like a husband and wife and enjoy the life without taking the risk and responsibility of marriage. However, in such a relationship if a child is born, the problem occurs. As evident, the questions of legitimacy of such children, the issues of their custody as well as the issues of inheritance have already started coming out in many cases and the Indian courts are trying to find solution to these problems in the existing laws.\textsuperscript{11}

Only in 2005, The Protection of Women from Domestic Violence Act appears to have included live-in-relationship in the definition of domestic relationship. ‘Aggrieved Person’ means any women 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.\textsuperscript{12} ‘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.\textsuperscript{13}

The Malimath Committee on Reforms of Criminal Justice System, 2003, made recommendation that the definition of the word ‘wife’ in Section 125 should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage.\textsuperscript{14} In June, 2008, it was recommended by the National Commission for Women to the Ministry of Women and Child Development to include live-in female partners for the right of

\begin{itemize}
  \item $^1$ Supra note 7
  \item $^2$ The 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.]
  \item $^3$ The 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.]
\end{itemize}
maintenance under Section 125 of Criminal Procedure Code, 1973.\textsuperscript{15} Indian judiciary has also supported the recommendations of National Commission for Women and Report of Malimath Committee in\textit{Abhijit Bhikaseth Auti v. State of Maharashtra}\textsuperscript{16}.

- \textbf{Role of Indian Judiciary}

Law and society are the two faces of the same coin they are not alien to each other and one needs the other. The changes demand that law should move with the time. The instances of non-marital live-in are increasing in Indian society, and it urges for its meaning in the eyes of law. Hence, the courts of country in number of decisions have tried to explain the concept of live-in relationship. The verdicts of the courts varied from case to case as courts had to explain the concept in the light of facts present in each case.

In \textit{Varsha Kapoor v. Union of India}\textsuperscript{17}, the Delhi High Court held that domestic violence is a human right issue and a female living in a relationship in the nature of marriage has right to file complaint also against the relatives of husband or male partner, not only against husband or male partner. The Supreme Court in \textit{D. Velusamy v. D. Patchaiammal}\textsuperscript{18} has observed that a distinction has been drawn between the ‘relationship of marriage’ and the ‘relationship in the nature of marriage’ by the Parliament and has provided benefits under the Protection of Women from Domestic Violence Act, 2005. It appears that the social phenomenon which has emerged in urban areas of our country has been taken in notice by the Parliament.

The question of legitimacy of child is also directly related to protection of women. On this point apex court in \textit{Madan Mohan Singh v. Rajni Kant}\textsuperscript{19} case said that the courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. On the same issue Justices Chauhan and Chelameswar said

\textsuperscript{16} (2009) Cri.LJ 889(Bom.)
\textsuperscript{17} (170) 2010 DLT 166(DB)
\textsuperscript{18} AIR 2011 SC 479
\textsuperscript{19} 2010(9) SCC 209

- 5 -
that in fact, what the High Court wanted to say is that if a man and woman are living together for a long time as husband and wife, though never married, there would a presumption of marriage and their children could not be called illegitimate.\textsuperscript{20} Thus it is evident that by conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, the Hindu Marriage Act intends to bring about social reforms, as its prime object.\textsuperscript{21}

The persons in long-term live-in relationships may be presumed by courts to be as a married spouse. Such decisions, while being delivered for upholding the rights of the women, contradict the matrimonial laws. In India bigamy is illegal\textsuperscript{22} and it is unclear if either the man or the woman is already married and having a living spouse, in what sense a live-in relationship can be equal to a marriage. Same issue came before the Supreme Court in \textit{Indra Sarma v. V.K.V. Sarma}\textsuperscript{23}, court held that in such circumstances the status of women will be that of concubine and she cannot ask for maintenance. Court further held that every live-in-relationship is not a relationship in the nature of marriage falling within the definition of domestic relationship.

Unless this kind of relationship is not recognized in law, the careful scrutiny of the existing matrimonial laws indicates, the partners cannot be allowed to separate


\textsuperscript{21} Hindu Marriage Act, 1955, Section 16 [Legitimacy of children of void and voidable marriages—

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(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{22} Indian Penal Code, 1860, Section 494 [Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.]

\textsuperscript{23} Indra Sarma v. V.K.V.Sarma, AIR 2014 SC 309
formally. Either by choice or by circumstance, it is easy to get into live-in relationship but difficult to get out of this relationship formally. Further, the consequences of this relationship are still not addressed in law, for example, there is no law in place which deals with the division of property acquired by mutual gains of couple.

Thus, there is a need to formulate a law to clarify the concept. However, the judiciary has tried to accord legality to the concept and protect the rights of the parties and the children of live in couples, but there should be clear laws with regard to the duration of relationship required to give the status to a relationship and rights of non-married couples and children born to such couples because the utmost need of the hour is to secure the future of the children born to live in couples. The guidelines\(^{24}\) formed in \textit{Indra Sarma Case} are indeed welcoming and pragmatic in approach. Though the live in relations provide the individuals individual freedom but due to the insecurity it carries it with, there needs to be a law to curtail its disadvantages.

### 1.1.2 Live-in-Relationship in France, Philippines and Scotland

In France non-marital relations are governed by civil solidarity pacts. The civil solidarity pact is a contract binding two adults of different sexes or of the same sex, in order to organize their common life.\(^{25}\) However it is provided that parties may not be bound by another pact, by marriage, sibling or lineage, further an adult under custody cannot enter into such contract.\(^{26}\)

Live-in relationship appears to be increasingly common nowadays in Philippines and is called common-law marriage. Live-in-relationship is governed by the Family Code of Philippines\(^ {27}\), which recognizes and expressly governs the property matters of unmarried couples living together like a husband and wife but without the benefit of marriage. The Philippine Civil Code provides that property acquired by unmarried couple through their work and industry shall be governed by the rules on equal co-ownership and any property acquired during the union is

\(^{24}\) Indra Sarma v. V.K.V.Sarma, AIR 2014 SC 309 at para 55

\(^{25}\) Available at: www.advocatekhoj.com/blogs/index.php?bid=4294fe94c613c9ad072931429&bcmd=VIEW (Last visited on Sep. 30, 2015)

\(^{26}\) Ibid.

\(^{27}\) Family Code of Philippines, 1987, Articles 147 and 148 [Chapter 7-Property Regime of Unions Without Marriage]
presumed to have been obtained through their joint efforts. As to the one who took care of the family and maintained the family household, he/she is still considered to have jointly contributed to the acquisition of a property, though actually he/she may not have directly participated in the property’s acquisition.  

Recently cohabitation and its acceptance have become more common than ever before. In Philippines, more than half of all couples are now living together before they got married and it may be due to readily apparent advantage of a common-law marriage over a formal marriage i.e. the parties who may want to get out of the relationship don’t have to go through the process of annulment/declaration of nullity, a process that is quite tedious, lengthy and expensive.  

The couples who live together like married couples but are not married or living in a civil partnership have very limited legal obligations and rights. According to the Scottish Government it is a common misunderstanding in Scotland that a couple will have established a common-law marriage after having lived together for a certain period of time. From 4 May 2006, the last form of irregular marriage, marriage by cohabitation with habit and repute which required more than just living together, was abolished. New rights and obligations concerning cohabiting couples have been introduced under The Family Law (Scotland) Act, 2006. For the purposes of the Family Law Act, 2006, a cohabiting couple is either a homosexual couple or a heterosexual couple of man and woman who live together as if they were married or in a civil partnership. There is no minimum duration of time specified that a couple must live together before they can be considered to be cohabiting, but the court will consider the duration of time as a factor when deciding whether the couple was living as if they were married or in a civil partnership. The Act of 2006 creates a legal presumption that each party will have an equal share in household goods acquired during the cohabitation, excluding motor vehicles and money. The parties are also

---

28 Ibid.
31 Family Law (Scotland) Act 2006, Section 25(1)[“cohabitant” means either member of a couple consisting of— (a) a man and a woman who are (or were) living together as if they were husband and wife; or (b) two persons of the same sex who are (or were) living together as if they were civil partners.]
presumed to have an equal share in any allowance or account created for joint household expenses.\textsuperscript{32}

\textbf{1.2 STATEMENT OF RESEARCH PROBLEM}

India is developing fast and embracing the global changes faster but at the same time a country of culture, religions, traditions and centuries old beliefs; a country which is still enveloped in its values. India at the same time is a country which is ever evolving and ever accepting towards the new trends and culture. The embracing of global changes and at the same time being enveloped in its ancient cultural values is because of presence of progressive as well as conservative masses. The way apart thought of these masses of the nation have successfully divided the country in two parts. While one part is indulged in their century old beliefs the other part is ready to embrace the global changes. Conflicts have been created by the divisions of masses between these two thoughts and these conflicts ought to be resolved for the betterment of our society.\textsuperscript{33} One of such conflicts in the present scenario has been ‘live-in Relationship’. In past few years there has been a considerable increase in the number of non-marital living together couples. An increasing number of couples suggest that youth prefer a live-in relationship over marriage. Increase in the number of such couples has also given rise to various economic, social and legal issues and continue to do so. Hence it is imperative to understand the socio-legal position of live-in relationship in India.\textsuperscript{34}

In a recent ruling by the Supreme Court in \textit{Indra Sarma v. V.K.V. Sarma}\textsuperscript{35}, is considered to be an important judgement over the issue of live-in relationship. It was said by the bench headed by Justice K.S. Radhakrishnan that the Protection of Women from Domestic Violence Act, 2005, protects in its ambit an unmarried couple and not consider live-in relationships in general. It was ruled that the Domestic Violence Act protects a woman in a relationship in the ‘nature of marriage’. The court

\begin{flushleft}
\textsuperscript{32} \textit{Family Law (Scotland) Act 2006, Section 26(2)(2) It shall be presumed that each cohabitant has a right to an equal share in household goods acquired (other than by gift or succession from a third party) during the period of cohabitation.}

\textsuperscript{33} Rashmi Shukla, “\textit{Legal Aspects of Live-in Relationship in India}, available at: www.livelaw.in/legal-aspects-live-relationship-india/ (Last visited on Oct. 09, 2015)

\textsuperscript{34} \textit{Ibid.}

\textsuperscript{35} \textit{Indra Sarma v. V.K.V. Sarma, AIR 2014 SC 309}
\end{flushleft}
observed that if the relationship in which a woman is living is ‘a relationship nature of marriage’ then such woman can avail maintenance and other benefits provided under the Domestic Violence Act. The court draws some guidelines to decide when a relationship is in the ‘nature of marriage’ and when it is not in nature of marriage. Eight parameters were listed i.e. domestic arrangement, sexual relationship, children, conduct of the parties about their relationship, duration of relationship, pooling of resources, shared household, children and socialization in public.\textsuperscript{36}

While the term ‘relationship in nature of marriage’ explained by the apex court in the judgement is surely laudable the Hon’ble court missed out on two very essential aspects. Firstly, the court didn’t took note of women caught in adulterous relationship by circumstance, the court ruled out the possibility of any sort of protection under the Protection of Women from Domestic Violence Act, 2005, to a woman in such a relationship. Further, it is completely unfair to confer upon the man any responsibility which was seemingly not part of the arrangement at the first place. The court failed to take into consideration the ‘intention’ of the parties i.e. a relationship which might fulfill the said criteria of being a relationship ‘in the nature of marriage’ but might not have any intention of being under the marital duty and obligation.\textsuperscript{37}

Thus it is thereby imperative to say that a woman must be extended the protection of Domestic Violence Act irrespective of status of her relationship i.e. whether she is in an adulterous relationship, a live-in relationship or in a marital relationship. Further, it is not logical to confer presumption of marriage in a relationship which was an escape from matrimonial duties and obligations. Hence, it is required that the legislatures shall enact law to govern live-in relationships.

At present the concept of live-in relationship and the rights of the parties and the children of the live in partners are not dealt with any specific legislation. Until the Supreme Court of India declared that live in relationship though considered immoral but it is not illegal by taking an initiative, live-in relationship was a very ambiguous concept. Majority of people in India have still not recognized live-in relationships. The endless scope of human activities and attitudes makes live-in relationship a very

\textsuperscript{36} AIR 2014 SC 309 at para 55
\textsuperscript{37} Supra note 34
sensitive issue. It means that there will be an almost innumerable of combinations of circumstances which may fall for consideration.

The idea of live-in-relationships may seem to be very unique and appealing but in reality the problems likely to arise are many and challenging, few problems are as such:

a) Effects of live-in-relationship on the status of women:
   - Woman living in such relationships has no status that of legal wife and it may give rise to the problems of multiple partner relationship and bigamous relations.
   - Women living in such relationships have no statutory right of maintenance.

b) Effects on the status of children of live-in-partners:
   - Children of live-in-partners have no statutory right to claim legitimacy, maintenance and succession in father’s property. However, Courts have protected these rights of such children through judicial activism and beneficial interpretations.
   - On the other hand couples having children and not continuing the relationship will adversely affect the interest of the children due to lack of love and parental care. Increase in litigation on matters pertaining to maintenance, legitimacy of children, inheritance etc is another area of great concern.
   - The Hindu Marriage Act, 1955, through Section 16 dealing with legitimacy of children of void and voidable marriages, the legislation indirectly ascribes legitimacy to children born out of live in relations and it is only their property and maintenance rights subject to debate. Indian Evidence Act also provides that if child was born during the continuance of a valid marriage between the mother and the father the legitimacy of a child is proved. The Act consequently fails to address the issue of such children born out of live-in relationships. Thus in India such children have been given the status of

---

Indian Evidence Act, 1872, Section 112 [Birth during marriage, conclusive proof of legitimacy.—
The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.]
‘legitimate in law, illegitimate in fact’ which is proof of the insecurity. These children face challenges on a daily basis in the society.39

- Maintenance is often explained as the obligation to provide for spouse in matrimony forms an integral aspect with respect to the rights of the live in partners and the children born out of such a union of live in relationship. Under Section 21 of the Hindu Adoptions and Maintenance Act, 1956, a legitimate son, son of predeceased son or the son of predeceased son of pre-deceased son, so long he is minor and a legitimate unmarried daughter or unmarried daughter of son or the unmarried daughter of a pre-deceased son of pre-deceased son, so long as she remains unmarried shall be maintained as dependants by his/her father or the estate of his/her deceased father. Further it includes a minor illegitimate son of deceased Hindu. However child born out of a live-in-relationship is specifically not covered under the given Act and consequently, maintenance rights under this statute are debatable.40

- Under the Hindu Succession Act, 1956, a legitimate Child, both son and daughter form a Class-I heir to the joint family property. On the other hand, under Hindu law an illegitimate child inherits the property of his mother only

---


40 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 he remains 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.]
and not putative father as the illegitimacy makes it difficult to carry out such inheritance from the father’s side.\(^{41}\) Thus the property rights or the inheritance rights of children born out of live-in relationship get affected due to the specific legal status of their rights.

- **Another aspect of live-in relationship is issue of custody of child born out of such relationships.** An issue which emphasizes on the major legal barrier faced by live-in couples in the absence of legislation dealing with such unions makes it easier to enter into such relations but hard to get out of one. Such issues with respect to custody of children of live in partners arise usually at the time of a split up and dealt with in a similar manner as in case of unmarried mother due to absence of specific laws to deal with children of unmarried couples.

c) **Another problem regarding live in relations is that involuntary aspect of such relationships may occur in case where the man or woman was led to believe that their partner was unmarried, divorced or widowed and married him.** However, bigamy laws prevent this relation being recognized as second marriage. Such a live-in relationship is thus involuntarily entered into. It is important to note this difference as Courts and lawmakers now look to make laws to protect partners, especially women caught in circumstantial live-ins. But this often leads to misuse of these very laws by partners in relationships of choice. The challenge thus lies in balancing these opposite interests while framing laws.

d) **Encouraging live-in-relationships in the existing circumstances will invite problems which will destroy the social fabric of this country.** The status of the women in such relationship is not that of a wife and lacks social approval. The chances of exploitation of women in such relationships will be in rise due to the absence law. One of the studies reveal that the chances of couples begetting children are very less as couples usually prefer not to have children. Live in relationship characterized by the couple having complete knowledge of the consequences of living together as a couple without a marital status or

\(^{41}\) *Supra* note 39
legal recognition and entering the same by their free will provides this relation an element of voluntariness. This is prevalent in major Indian metros like Mumbai, Delhi and Bangalore where couples prefer living together to increase cost efficiency and use this time as a trial period before marriage. As this relationship is primarily based on deriving mutual material benefits, it is perceived in a fictitious manner by law.

e) The law as to the status of children born to couples in live in relationship is also not very clear because no specific law in India recognizes the status of the couples in live in relationship. The need to ascertain the status of such children obtains greater importance in a rights-based world where protection of child rights is the primary agenda of every legislation. The fate of children is often determined by the relations governing social sphere of their lives. Children are the most important unit of any progressive society. In light of this, procreation by couples involving in any form of relation and including live-in relationships significantly impacts and decides the placement of such newly born children in the society.

Human beings are the greatest victim of emotions, so we should comprehend the gravity of the pain of separation and the mental trauma suffered by the couple of a live-in relationship after they break up.\textsuperscript{42} To compare the status of live in relationships with the status of married couples it is required to analyze the impact of live in relationships on marriage and family institutions. It may also be argued that it is difficult to fit the concept of live in relationships within matrimonial laws governing the institution of marriage and legitimacy of children.

It is imperative to recognize live-in-relationship in India through legislation which would tie both the parties with responsibilities, rights and create obligations with duties by confining the ambit of these relationships. The position of Live-in-Relationships is not very clear. However, it is the duty of the legislation to tackle the existing problem as the Court doesn’t possess the power to amend or abrogate the existing laws, the Indian courts in order to counter the present existing problems of live-in couples, have extended the present laws to these couples as well. However we

\textsuperscript{42} Supra note 4 at 1309
need to understand that the institution of marriage and issues that emerge from a concept which is an escape from marriage needs to be perceived in different contexts. A set of accepted norms and values in context of marriage cannot easily be planted in context of non-marital relationships. Fifty years ago in India such change was socially unimaginable. The concepts of western society like ‘living together unmarried’ that were taken up by Indian society and gradually are percolating into our social norms. The often long hours of work especially late in the night and no time for family are the most obvious contributing factor in the transformation of urban life and the indulging in non-marital live-in relationships.

The question that needs conscious attention is that is Indian society ready for this trend? In India we always cite the unique concept of the family being responsible for looking after the young and the aged, this conventional institution is issue of concern. Further, it needs to be noted that in fact it is the women and children who will ultimately emerge as the most vulnerable and possibly the greatest losers.

To regularize live-in-relationship statutorily in India it is paramount to keep in mind that the law needs to be reformed with the evolution of society and hence it would be necessary to study the socio-legal aspects of the countries that have recognized legalized or regularized live-in-relationships. In France two adults of same sex or opposite sex can enter into an agreement to live together, which is clearly illegal and not allowed in India. Before entering into the debate of suitable model to regularize live-in-relationship in India it would be necessary to compare the social fabric of Indian society with the societies that have regularized these relations. It will also necessary to compare the legal system of these countries with Indian legal system that considers lesbians and gay relations abnormal and penalizes as unnatural offence. For the purpose of this research project we have selected France, Philippines and Scotland. These nations have regularized live-in-relationships through law. Hence it will be of utmost importance to study, analyse the laws governing such relations in these countries and further it is necessary to compare social and legal structures of France, Philippines and Scotland with the social and legal values of India before approaching to suggestions that could be beneficial in Indian fabric.
1.3 LITERATURE REVIEW

A research can contribute something to the existing literature only if that research has been carried out after reviewing the existing literature in the field. Keeping in view this general principle and to make present research more focused the already available literature on live-in-relationship will be analyzed by researcher by going through the contents and observations of the various works done on the relevant subject. A few numbers of books and research papers are mentioned below:

Jayanta Ghosh in book ‘Live in Relationship & Hindu Marriage: A Critical Legal Analysis’\(^ {43}\) focuses upon some of the recent popular cohabitation patterns in India i.e. adult heterosexual non-marital cohabitation, popularly termed live-in relationship and the legal moves thereon. As some popular and judicial readings seem to suggest legal sanction and recognition of new forms of non-marital heterosexual cohabitation patterns in India, these legal moves do not unambiguously signify that. Through a critical examination it is shown that the legal changes are primarily directed at taking cognizance of women's vulnerable position within conventional forms of non-marital relations. Such critical examination has been done of some recommendations and aspects of the Malimath Committee and the debates ensuing from the Protection of Women from Domestic Violence Act, 2005. In the absence of such legal changes being explicitly cognizant, the contradictory interpretations and conflicting implications arise in response to diverse forms of live-in relations prevalent in contemporary society.

Beliza Ann Furman in her book ‘Test-driving Marriage’\(^ {44}\) looks at the pros and cons of an unwed, live-in relationship with advice on finances and establishing space, boundaries, and privacy, and describes a variety of living-together relationships. She also provides solutions for coping with the nuances of unofficial marriage.


Assistant Professor Manbir Bhinder in ‘Live -In -Relationship: In A Marriage Centric India’\(^{45}\) an article authored by her considers marriage as sacrament and live in relationship though not illegal but socially and morally improper. She considers the avoidance of responsibility as a main reason of live in relationship. She discusses the position in India with the help of few cases and then recognizes the need of protection of rights of female partner. After highlighting the rights of children born out of live-in relationships she discusses the live in relationship in relation to Indian society and finally concludes that rights of partners and child born out of live-in relationships should be protected by granting legal status to these relationships but only after considerable period of cohabitation.

N.T. Satish in ‘Living in Relationship - An Indian Perspective’\(^{46}\) defines living in relationship as an arrangement where two people who are not married live together in an intimate relationship, particularly an emotionally and/or sexually intimate one, on a long-term or permanent, and is a common pattern among people in the Western world, Common reasons being wanting to test compatibility or to establish financial security before getting married. He points out that although live in relationship has neither legally nor socially recognized in India but it has been legally recognized in some countries. For the purpose of leasing a flat or place to live the people indulging in living together unmarried relationships may represent in society as married couple. Marriage, for an Indian couple is a sacred union and compared to living together before you tie the knot, a marriage is more preferred to many, first in foremost because it is legal and above all you have gain high respect in society. He analyse through recent Indian court rulings the rights ascribed to long term cohabiting partners and term live-in relationships legal in India. He found that live-in partners have economic rights under Protection of Women from Domestic Violence Act, 2005 and further tries to find out the reasons for live in relations, compares live in relation with institution of marriage, discusses law on live in relationship in India and finally concludes against the legalization of live in relations.


Anjali Agarwal in her article ‘Live in Relationships and its Impact on the Institution of Marriage in India’ finds that to be in a live-in relationship or not to be is the most debated question in India, where rich values, beliefs, traditions and customs are important sources of law. Marriage is a sacred union and as a social institution it has legal implications and a high respect in society. Marriage is one of the important parts of Indian culture; however, changing times have seen the gradual emergence of the Western cultural idea of a live-in relationship. These relationships are under criticism and highly debated regarding its legality and implication on Indian social and cultural values. Though long term cohabitation between a man and a woman has long been equated to a valid marriage by the court but there is no explicit legislation to deal with these relationships. In this article author has tried to clarify the current legal status of live-in relationship in India through discussing the current developments in granting various rights to live-in partners in India through courts. She further has tried to identify the need of a proper legislation for securing the rights of persons living together unmarried in India and finally concludes by emphasizing the need for a statutory legislation to clearly lay down the rights and responsibilities of each live-in couples.

Vijay V. Muradande in article ‘Socio-Legal Dimension of Live In Relationship: A Challenge to Society’ starts his work with brief introduction of the concept of live in relationship and then discusses its national and international scenario through review of position of live in relationships in various countries including India. he then discusses the judicial response towards live in relations and after that highlights pros and cons of such relations. He has finally concluded his work by calling such relations a challenge to society and concludes with demand to regulate live in relationship through law.


Anuja Agrawal in ‘Law and Live-in-Relationships in India’ focuses upon adult heterosexual non-marital cohabitation patterns, popularly termed live-in relations and some of the legal moves which have brought in India. These legal moves do not unambiguously signify legal sanction and recognition of new forms of non-marital heterosexual cohabitation patterns in India as some popular readings seem to suggest. Through debates ensuing from the Protection of Women from Domestic Violence Act, 2005 and critical examination of some recommendations of the Malimath Committee, it is shown that the legal changes are primarily directed at taking cognizance of women's vulnerable position within conventional forms of non-marital relations. Contradictory interpretations and conflicting implications arise in the absence of such legal changes being explicitly cognizant of and responsive to diverse forms of live-in relations prevalent in contemporary society.

Kalpana Vithalrao Jawale in her article ‘Live-In Relationship: Recent Development and Challenges in India’ analyzes Supreme Court’s recent observation on the issue of live-in relationship in the context of Tamil actress Khushboo’s statement on premarital sex. Supreme Court held that, live-in relationship is not an offense. India is a country which having rich values, beliefs, traditions and customs and these customs and values are the important sources of law. Marriage is a sacred union and a social institution that gets legal effects and high respect in society. Though marriage is one of the important parts of Indian culture with strong cultural roots, focused on morality and social ethics, however, we have started to follow the Western culture, with changing times, which is totally different from Indian culture. A certain section of India too seems to have followed the Western culture i.e. of live-in relationship. Kalpana Jawale gives focus on decision delivered by the Supreme Court of India, its effects on the society and new challenges. She points out that change in law affect the country’s whole population. There are enough fair chances of following non-marital relationships by the youth in the coming years which will diminish the


importance of marriage. Live in relationships are directly affecting the status of wife, children, family and whole country. Indian society has to play the role of watchdog over the concept of live-in relationship otherwise our identity, humanity and our rich ancient culture and tradition will be in grave danger.

Bhumika Sharma in ‘Live in Relationships: The Indian Perspective’\textsuperscript{51} tries to suggest through highlighting studies of some experts that marriage is better than live in relation in a legal system in which such relations are not recognized. She further highlights the provisions of France and Philippines who have regularized such relations. She also discusses the issues of children born out of live in relationships and also evaluates the parliamentary debate, judicial decisions and acceptance of Justice Malimath Committee Report by the Maharashatra government and finally concludes in favour of regularization of live in relationships.

Shrivastav Vera in his article ‘Socio - Legal Aspect of Live In Relationships’\textsuperscript{52} discusses the socio legal aspects of marriage and live in relationship in India. He compares Indian legal system on live in relationship with the law of Philippines, France, United Kingdom and USA. By discussing few judgments of Supreme Court of India highlights some essentials of live in relationships. Then he refers the Justice Malimath Committee report to protect the women’s right of maintenance in such relations. Finally he has concluded his research article arguing in favour of need to revamp the Indian legal system to accommodate the changes that take place in society however he denies the need of a new and separate legislation to deal with upcoming issues.

In Book ‘A General Jurisprudence of Law and Society’\textsuperscript{53} by Brian Z. Tamanaha author explores the relationship between law and society. Focusing on this common understanding that law is generally understood to be a mirror of society or a reflection of its customs and morals that functions to maintain social order, the book


\textsuperscript{53} Brian Z. Tamanaha, A General Jurisprudence of Law and Society ( Oxford University Press, New York, 2001)
conducts a survey of Western social and legal theories about law and its relationship with in society. Author has then criticized this common understanding theoretically and empirically. Through the theoretical criticism author exposed the mythical quality of the evolutionary theory and the social contract theory, the most often repeated theories about the emergence of law, and further establishes fundamental shift resulting from enlightenment ideas about reason and morality i.e. the theoretical understanding of the relationship between morality and law. Through empirical criticism author covers various subjects, primarily including the impact of legal transplantation and globalization. Author then constructs a framework with which to understand the relationship between law and society. The basic component to this framework is a non-essentialist approach to the concept of law, which provides a basis for understanding of the phenomenon of legal pluralism. The book finally articulates how this framework would operate in facilitating reader’s ability to study, understand, and criticize the relationship between law and society in a variety of contexts around the world today. In addition to illuminating the relationship between law and society, a key aspect of the argument of this book is to construct an approach to law that integrates legal theory with sociological approaches to law.

1.4 RESEARCH QUESTIONS

(i) What is the socio-legal status of live-in relationship in India?
(ii) Whether live-in couples have rights and liabilities like married couples?
(iii) How live-in relationships can be governed in Indian scenario?

1.5 HYPOTHESES

(i) Live-in-relationship is a threat to social fabric of India.
(ii) Present laws are inadequate to deal with the issues of live-in-relationships.

1.6 OBJECTIVES OF THE RESEARCH

(i) To examine the legality of live-in-relationship and legal status of live-in partners and their children.
(ii) To contemplate the rights and liabilities of live in partners.
(iii) To scan the response of judiciary upon live-in-relationships.
(iv) To examine and compare the status of live in relationship in France, Philippines, Scotland and India.
1.7 RESEARCH METHODOLOGY

This study is juxtaposed with the recognition of live in relationship through judiciary and metro cities, and its repudiation by marriage centric Indian society. The nature of the research proposal warrants doctrinal, non-empirical, theoretical research which includes perusal of mostly published work like researching through archives of public libraries, published academic journals. To study the impact of live in relationship over the institution of marriage and society and compare the socio-legal system of India with France, Philippines and Scotland co-relational analysis will be done.

The proposed research will use the following research materials:

a) Text books, research papers, editorials in newspapers and reports published by any university, news agency, public library or a government department or ministry will be used as primary sources of research material.

b) The authoritative reports of committees and commissions, the judgments of the different law courts of India and foreign nations, statues and codes of different countries including India would constitute the primary source of the research material.

c) Research articles and research papers uploaded online by individuals, online blogs and debates, research work presented in national and international seminars and debates but not published, political administrative and private papers will be used as secondary research materials.

d) The different manuals, journals, commentaries and digests, observations of the court judgments, parliamentary debates will also be used as secondary sources for the purpose of this research work.

1.8 CHAPTERISATION

To bring out the appropriate and most relevant answers to the questions set forth to be answered through this research work and objectives set forth to be achieved the research work “Socio-Legal Status of Live-in Relationship:
A Comparative Study of France, Philippines, Scotland and India" has been worked out in following Chapters, titled as:

**Chapter-I: Introduction**

In this chapter the information about the research work, research proposal, research problem, research questions, objectives of the research and research methodology has been elaborated.

**Chapter-II: Historical and Contemporary Aspects of Live-in Relationship**

In this chapter researcher has tried to bring into light the old forms of live in relationships and their acceptability in the society in ancient times, medieval times and modern world. Under this chapter researcher has also explored the forms of non-marital relationships in different parts of the world including the discussion of conditions of these relations at those times. Further, the demographic transitions that enhanced the concept of living together unmarried have been discussed. Researcher has tried to highlight different forms of non-marital relationships in contemporary world.

**Chapter-III: Live-in Relationship and its Impact in India**

The chapter includes the discussion on the concept of live in relationship under Indian culture and society with the help of observations of the courts. This chapter also includes the comparison between institution of marriage and live-in relation and impact of live in relations over the institution of marriage and marriage centric society.

**Chapter-IV: Rights and Liabilities of Live-in Partners in India**

This chapter contains the analysis of whether in India 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 inheritance over the individual property of other partner and what are the rights over their joint property after break up? All these questions have been dealt with in this particular chapter.
Chapter-V: Comparative Study of Socio-Legal Status of Live-in Relationship in France, Philippines, Scotland and India

In this chapter researcher has studied the laws regulating the non-marital relationships and matters incidental to such relationships in France, Philippines and Scotland. Further, the rights and responsibilities of the non-married partners in France, Philippines and Scotland have also been discussed. Researcher have summed up this chapter by analyzing the comparison of legal status of non-marital relationship in France, Philippines, Scotland and India.

Chapter-VI: Conclusion and Suggestions

In this chapter researcher has concluded the research by justifying the hypotheses and finally concluded the research with making some suggestions.