All you need to know about Live-in Relationships in India

Every millennial, today, believes that the tie that marriage binds is too binding for them. And an alternative is a relationship that resembles marriage but without its obligations and responsibilities. This is when live-in relationships engender. This arrangement is generally entered into by consent, either to test compatibility before marriage or to simply evade the hassles of a formal marriage. Keeping the reason aside, there are a growing number of couples who choose live-in relationship over marriage. But as compared to dating, which has become acceptable among the urban, live-in relationship is considered quite unconventional. Although most couples view this arrangement as a lucrative option, some budge because it is the assent of the family that is the hardest to obtain. Even though there is no legal hurdle preventing such a relationship, now, there is still disapproval from society. Traditionally, marriage has been considered a revered institution and if a woman was financially dependent on the man, the unsteadiness in the relationship would easily portray her subservient to her counterpart. Moreover, the ‘walk in and walk out’ presumption seemed antithetical to the very ethos of marriage. However, despite the mindset of a sizeable chunk of the population, the apex court has been rather significant in providing protection to the couples.

Official statement by the Judiciary

There is no specific law on the subject of live-in relationships nor is it recognised by the Hindu Marriage Act, 1955. In the absence of any statute, the court did try to shed light on it through the judgement given in ***Badri Prasad v. Deputy Director of Consolidation*** ***and Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others,*** where in

the former it upheld the legal validity of the 50-year-old live-in relationship of a couple and in the latter, the court said that a man and woman can live together, without getting married. Besides, it was also noted that it may be immoral for society but is not illegal. But some reckon that, the judiciary is neither overtly encouraging such relationships nor prohibiting it, but only rendering justice while keeping in view social and constitutional morality.

In the case of **S. Khushboo v. Kanniammal & Anr**., the court held that living together is a right to life. The actress Khushboo, allegedly endorsed pre-marital sex and live-in relationships and her detractors accused her of perpetuating nuisance. The court gave a judgement in the favour of the actress, thus upholding the distinction between law and morality.

And finally in the case of **S.P.S. Balasubramanyam v. Suruttayan**, the supreme court held that if a man and a woman live under the same roof and cohabit for a number of years, there will exist a presumption under section 114 of the Indian Evidence Act, that, they live as husband and wife and the children born thereinafter will be legitimate.

Pre-Nuptial Agreements

A premarital agreement or ‘prenup’ is a contract between two individuals entered into before marriage. It entails the state of finances and personal liability among the couples along with the division of property in the event of divorce or break-up. Countries like Brazil, Germany and Switzerland recognise and enforce pre-nuptial agreements. But such agreements before marriage are not common in India, as they are not in conformity with the ethos of the Indian tradition. Marriage, as believed by many, is socially recognised and legally protected. But many societies around the world have gone through some formidable changes regarding the institution of marriage and live-in relationships. Currently, the concept of pre-nuptial agreements with regard to marriage is alien to the Indian legal system, let alone live-in relationships.

Finding Accommodation

Although the urban have reluctantly grown used to the idea of such a relationship, it is all the more difficult to find accommodation. Even in the metropolitan cities, there is no escape from the ghettoised benchmark of living. Then couples often resort to living in hotel rooms and in the infamous OYO Rooms, for temporary accommodation and in the limbo for a permanent abode together.

Rights of Women

The woman in the relationship can claim protection under Protection of Women from Domestic Violence Act, 2005. The status of the woman is though not equivalent but is akin to that of the wife, **provided** the couple has have lived together in a shared household for a considerable amount of time because the definition includes a relationship which is 'in the nature of marriage'.

In the recent case of **Ajay Bharwaj v. Jyotsna**, the court awarded a sum of 40 lakhs as maintenance to the woman in a live-in relationship. The court also referred to the 2003 report of the Malimath Committee, 'Reforms in the Criminal Justice System', that recommended that the word 'wife' in section 125CrPC should be amended to include a woman, who is living with a man like his wife for a considerable amount of time.

In furtherance of the recommendation of the National Commission for Women to the Ministry of Women and Child Development, the court upheld that the women can seek maintenance under Section 125 of Criminal Procedure Code, 1973, in the case of **Abhijit Bhikaseth Auti v. State of Maharashtra and Others**.

Dowry

The Supreme Court held that dowry can occur in a marital or non-marital relationship (but resembling a marriage), as it is just an unjust demand for money. In the case of **Koppisetti Subbarao Subramanian vs. State of**

Andhra Pradesh, where the defendant would harass the live-in partner for dowry, the court reject the claim made by him that Section 498A did not apply in this instance, as he was not married to the woman. The Supreme Court delivered a landmark judgement, as it went a step further to protect woman from harassment and dowry in a live-in relationship.

Rights of the Male Partner

'The rights of a male partner' is hotly debated amongst the men's rights activists and the judges, where the former accuses the latter of always gravitating towards the other sex. As of very recently, only women can claim maintenance from men in a live-in relationship. Even in the case **of S. Khushboo v. Kanniammal & Anr., the court drew an assumption that 'a live-in relationship is invariably initiated and perpetuated by men'**. While this relationship is based on gender parity, the desired justice is a far cry.

Inheritance Rights of the Partners

Partners in a live-in relationship do not enjoy a right of inheritance to the property of their partner. The Hindu Succession Act, 1956 does not specify the succession rights of the partners in a live-in relationship. But in the case of **Vidhyadhari v. Sukhrana Bai**, the court held that a couple living together for a reasonably long time can receive property in inheritance from either partner.

Status of Children from Live-in Relationships

In comparison to formal marriage, the legitimacy of the children born in the live-in relationship is often questioned. Despite the increasing trend of couples entering in informal relationships, children from these relationships have serious legal implications.

Section 112 of the Indian Evidence Act 1872 recognizes a legitimate child, only if it was born during the continuance of a valid marriage between the mother and the father. An until recent children born from a live-in relationship were considered illegitimate in the eyes of law. But in the case of **Tulsa v. Durghatiya**, the Supreme Court awarded legal status to the children born from a live-in relationship. Having said that the court also mentioned that the couple should have lived under a roof for a reasonable amount of time.

Besides, Section 125 CrPC provides maintenance to children whether they are legitimate or illegitimate, till they are minors or after majority if the child is unable to maintain himself.

Nevertheless, the court in the case of **Dimple Gupta v. Rajiv Gupta,** held in the furtherance of the above-stated view that children from live-in relationships have the right to maintenance.

Adoption

In June 2018, the **Central Adoption Resource Authority (CARA) has barred couples in a live-in relationship from adopting a child, after its Steering Committee held that cohabitation without marriage is not considered a stable family in India.**

Rape Allegations

Recently, Public interest Litigation was filed in the Delhi High Court which sought the government to keep the cases of live-in relationships outside the purview of rape under the Indian Penal Code. However, the High Court dismissed the PIL stating that nobody could be arrested only on the basis of an allegation of rape prior to conducting a preliminary inquiry; there are an alarming number of rape cases registered by the police, which the police suspects have germinated due to termination of the live-in relationship or simply refusal to marry. According to the report by the Delhi Police, at least

25 per cent of the registered rape cases in a live-in relationship were false. In spite of this, a man living in with a woman is not immune to the charges of rape; in furtherance to the idea of rape in a domesticated setting, marital rape is not a crime regardless of the status of matrimony.

Divorce or Break-up

In the case of a live-in relationship, it is not possible to have a formal divorce in the eyes of law. The consequences of the dissolution of this relationship are left unanswered in law, for example, the absence of law in case of division of their joint property after separation. Though it is fairly easy to get into a live-in relationship but the aftermath of dissolution is still ambiguous.

Conclusion

The status of live-in relationships in other countries is far more relaxed and progressive. In Canada, all the live-in couples enjoy the legal sanctity if they have lived together for 12 months or they give birth or adopt a child. This gives immediate legal status to the relationship and the child thereof.

But in India, the social stigma goes against the individualistic way of living in apprehension of high rates of adultery, vulnerability of women and uncertainty of the future of children. The social fabric of our country seems gradually change with time, with society and the media co-constructing each other. The reciprocal impact of the socio-economic and cultural change renders the unconventional visible and slightly acceptable.

For Example, the Red Label commercial, where the parents surprise their son on his birthday at his house, only to find his live-in partner with him, has taken a controversial topic and associated it with a socially progressive message. And real estate websites like 99acres have increased the acceptance of an informal cohabitation of the couples thereby slyly integrating the idea in the society. But the idea of live-in was not entirely new, it existed even before the judiciary protected individuals and then the

society would boycott the perpetrator. An activist from the Indian freedom struggle and a socialist leader, Ram Manohar Lohia never married but instead was in a live-in relationship with Rama Mitra. He, once, said that a man and woman could do anything so long as the breach of commitment and use of force was not there.

The aversion to the idea is not new and nor will it end in a jiffy, societal unconditional acceptance take longer than the judicial overhauling of the system.

Favouring or fawning live-in relationships?

Introduction

The tradition of man and woman living together as a married couple without getting married is not new, and it has been practised since ages. Earlier, the nawabs, princes and wealthy men in India had not only several wives but also several live-in relationships, in their zenanas. At that time, it was perfectly normal and not considered immoral. Concubines were kept as a source of man’s entertainment and relaxation. But as the time passed by, woman become more aware of their rights and consequently bigamy was outlawed and practice thus died out.

In India, a new trend of relationships is taking hit nowadays, live-ins, where a man and a woman live together without entering into a marriage so that they do not have any responsibility, accountability and can check their compatibility if they want to get married in the future. Sadly, our Indian

society has disapproved this concept of live-in relationship because of many reasons. Firstly, our society has preached the idea of holy matrimony since ages, with a view that a girl should remain virgin till she married. Secondly, the social stigma attached to this kind of relationships forces them to remain secretive.

The only social union between a man and woman of unrelated nature exist in India is marriage, which is considered as sacrament, holy and divine concept practised since ages. But as we are developing and moving forward, this concept of marriage is losing its sacred sanctity. Nowadays people are getting married not because they want to, but they have to, that is why they have adopted the idea of a live-in relationship as a substitute to marriage but in other countries, a live-in relationship is not taken as a taboo, and there are laws relating to such kind of relationship.

Concept of Live-in relationship

The definition and ambit of living relationship are not clearly stated in any rule book or law or statute. In this kind of relationship, no solemnization of marriage takes place, yet the parties represent themselves as a couple to the outer world, and such relationships are also known as common law marriage or sui juris marriage or de facto marriage. Law and society are entwined with each other, and one cannot prevail without others. This is because laws are made to for the development and smooth functioning of the society.

So when there is a change in society for development and betterment, the law needs to be updated according to the present prevailing conditions. Presently, this concept of live-in relationships is adopted by our society; consequently, our law needs to be updated. Hence, various explanations were given by our Hon’ble supreme court and high courts, in order to explain the newly emerging concept of live-in relationship.

Live-in relationships can be classified into two categories: firstly by choice; secondly by circumstances. Relationship by choice is those type of relationship where partners willing to live together with the person, other

than spouse if married, as a matter of preference. On the other hand, relationship by circumstances is a situation where both the parties are under a mistaken assumption that a valid marriage exists between them or when they are under the misrepresentation that they got divorced.

If the man and woman followed all rituals of the marriage but already had a wife or husband living at such time from whom, he or she had not divorced as yet, this marriage will not be recognised in law. Such a live-in relationship is thus involuntarily entered into. It is essential to understand that the courts and the lawmakers look to make laws to protect the socio-economic and legal interests of the partners, especially women caught in the circumstantial live-ins. But this often leads to misuse of these laws by partners in relationships of choice.

Similar relationships

Live-in relationships are different from other kinds of relationship one might have. These kinds of relationship are explained below-

- **A “mistress”** (paramour or lover) refers to a man’s long term female sexual partner and companion, with whom he had intimate relations while married to another woman. The relationship is semi-permanent and generally secret. The man may pay for some of the woman’s living expenses, or provide her with an allowance. However, they do not live together, as in the case of a live-in relationship. But the area of differentiation as regards rights is a grey area, as Courts sometimes grant a similar mistress right to as if she were a live-in partner.
- **Concubine** refers to a woman who lives with a man in addition to his wife and gets the status of a lover. This relationship is solely for the purpose of sexual relations, that is why the status of the concubine is lower than that of wife, and they have limited rights as compared to wife. These relationships are very different from a live-in relationship because of the element of consent, status of the woman and sexual relationships. Legal status is given to live-in relationship but not to concubines and mistress was quoted by a two-judge bench of Justices

MY Eqbal and Amitava Roy in case of Dhannulal and Ors v Ganesram and Ans, it is well-settled principle that law is in favour of marriage and against concubinage and concubines and mistress will not be considered a couple in live-in relationship with a presumption of marriage.

- **“Cohabitants”** is similar to live-in partners

Need

The trait of live-in relationship originated when a man was uncivilized and uneducated but in modern times people are opting for these relations in order to test the compatibility before marriage or the law of the land prohibits them to marry, e.g. lesbians, gays etc. or they do not want any kind of responsibility. Apart from this, the relationship of this kind is easy to form and dissolve as it does not require a formal procedure for dissolving it.

When a marriage is performed according to law and religion, a set of rights and duties are formed which cannot be blown away easily contrarily to a live-in relationship. But all these things do not apply to everyone because of the difference in personalities of the individuals.

Rights of Child born through a Live-In Relationship

Laws prevailing in India does not differentiate between a child born through a married couple or a living relationship; they both enjoy the same rights of succession and inheritance. Notwithstanding that marriage is null and void under section 11, if a child born out of a wedlock would have been legitimate if the marriage had been valid then the child shall be legitimate irrespective of the fact that child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976) or degree of nullity is granted or not.

This is done in order to keep up the spirit of the law in the righteous direction and to subside the social evils wherein illegitimate child was denied his rights. Thus this definition covers the ambit of live-in relationship and children born out of such a relationship.

The legality and legitimacy of a child are still questionable under other acts, and the status is dwindling for the legal status of children encouraging the extensive misuse of the provisions and still escape the liability. Therefore, in other laws legality of a child had been proved beyond a reasonable doubt because the status is still questionable. The main problem arises when parent of illegitimate child agrees to separate, the future of the child is tossed. That is why new laws or amendment regarding guardianship is needed so as to include children born out of such a relationship.

Inheritance Rights

The supreme court of Indian held that, child born out of a live-in relationship cannot claim inheritance in joint Hindu family and can only claim a share in the parent's self-acquired property, setting aside the previous judgement of Madras High Court which held that children born out of live-in relationship were entitled to share in an ancestral property because of the fact that the couple is assumed to be married if they are in long term relationship.

But this rule can be interpreted in different ways, one of them is, a child can claim on their parent's ancestral property as the can ask for parent's share in such property as stated under section 16. Hence, another interpretation states that a person can claim not only from the parent's personal property but also from their parent's share in ancestral property.

The supreme court also stated that when a person is in a matrimonial bond, he/she cannot claim the inheritance for children from a person they are enjoying a live-in relationship with, because such relationship will be considered as, not a live-in relationship.

Societal effect

The live-in relationship gives right to liberty, right to privacy, right to life, and many more rights and advantages, but as we all know there are two sides of every coin, if there are positive effects there will be some adverse effects also which are state below-

Breaking down of marriage institution

Marriage as a holy matrimonial bond creates an important concept of any society that is kinship. Culture and subculture of society acknowledge the concept of intimate and sexual interpersonal relationships in different ways. These ways are termed as a wedding ceremony, also known as matrimony, which will lead to a relationship between man and woman to ensure security for children. On the contrary, in a live-in relationship, there is no sense of accountability and responsibility, a couple can quickly get, and the brunt of this separation is faced by their children. Apart from this, a live-in relationship is degrading the value of the social union like marriage, as it contains only two persons.

In and out relationship

This kind of relationship can be termed as in and out relationship, which means that it does not demand any obligation on the parties. The people opting for an option of live-in relationship rather than marriage, cannot complain infidelity or immorality, it is just for the sake of personal enjoyment.

Negative identity

We have to accept the fact that no matter how many times we claim to be modern but we still stuck to our orthodox thinking somehow. Even in this modern era, so-called modern people still consider progeny of live-in relationship as negative, and they consider as a responsibility of a parent to leave a valuable legacy and not vicarious liability. Indian cannot throw its

proven and time-tested advantages of its custom to the winds, our future generation should be proud of their birth, culture, traditions and national identity which they have to carry forward.

Weakens social relationship

As such relationships are a choice of two individual wish to make their own family without the will of their parents, there is always an expectation of weak relation between the parents of the spouse family. Therefore it is no doubt that there is always a change of conflict of ideas and opinion in the family; as a result, it will literally lead to weakening the relation between other members of the family. So overall it is no it has a better negative effect in the society.

Evolution by judiciary

The apex court in case of **D. Velusamy V. D. Patchaiammal** held that not every relationship would be considered as live-in there is a certain standard which needs to be fulfilled to consider a relationship as live-in:

There four essential requirements to fulfil the criteria of live-in relationship

- **Legal age to marry,**
- **Qualify to enter legal marriage**
- **Must be unmarried**
- **Voluntary cohabitation should be for a considerable period of time**
- **Shared household,**
- **The pooling of resources and financial arrangement between the parties**
- **Domestic arrangements,**
- **Children,**
- **Socialization of relationship in public**

These are some more guidelines in order to construe the same Since the Supreme Court is not to legislate the law, it is the Indian Parliament to make law.

Important cases

Before independence case like **Dinohamy v Blahamy**, the privy council laid down the basis for a live-in relationship, herein, counsel stated that when a man and woman are living together, the law will presume that unless the contrary is proved that they were in a live-in relationship rather than being a concubine.

After independence, **Badri Prasad v Dy. Director of Consolidation** was the first case in which apex court recognized the concept of live-in relationships, by giving validation to a 50 years old live-in relationship.

Removal of live-in relationship from the category of the offence was done in the case of Patel and others whereas legitimacy status and share in ancestral property of a child born out of the live-in relationship were granted under the case of **S.P.S. Balasubramanyam v Suruttayan Andalli Padayachi & Others.**

In **Radhika v. State of M.P,** the SC stated that when a man and a woman are in a live-in relationship for a long period of time, the will be by default treated as a married couple and their offspring would be legitimate.

But the ambit of Domestic Violence Act and CrPC was increased in the case of **Sombhat Bhatiya v State of Gujarat and others, and, Abhijit Bhikaseth Auti v State of Maharashtra**. In Sombhat Bhatiya and State of Gujarat and others where apex court held that Domestic Violence Act does not differentiate between marriage and relationship in nature of marriage and in both the cases couple is entitled to the benefit of the act. In Abhijit Bhikaseth Auti v. State Of Maharashtra and Other 13on 16.09.2009, the Supreme Court held that it is not important for a woman to strictly establish the marriage to claim maintenance under Section 125 of CrPC.

The facet of adultery was raised in the case of **Lata Singh v State of UP** and another where apex court held that live-in relationship is permissible only if both the parties are unmarried and if any one of the is married he/she could be liable for adultery under Section 497 of CrPC.

The Supreme Court has given the following guidelines based on which the Parliament may pass new legislation:

- **Duration of relationship-** Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the factual situation.
- **Shared household-** The expression has been defined under Section 2(s) of the DV Act and, hence, needs no further elaboration.
- **Pooling of Resources and Financial Arrangements** supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long-standing relationship, maybe a guiding factor.
- **Domestic Arrangements-** Entrusting the responsibility, especially on the woman to run the home, do household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.
- **Sexual Relationship-** Marriage like relationship refers to a sexual relationship, not just for pleasure, but for an emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also marital affection, caring etc.
- Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.
- **Socialization in Public-** Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

- **Intention and conduct of the parties-** Common intention of parties as to what their relationship is and to involve and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

Laws governing live-in relationship

The concept, issues, and laws related to live-in relationships are not covered by the legislature under any Indian rule book, so when legislature lags behind in any societal matters affecting the public at large, judiciary comes to the rescue. The judiciary has interpreted two different statues to cover the topic of live-in relationship under the umbrella of already prevalent law so that the aggrieved party can count upon someone for justice. The first statute is Criminal Procedure Code Section 125, and the second statute is the Protection of Women from Domestic Violence Act (PWDVA), 2005.

Criminal Procedure Code Section 125

The live-in issue relationship was raised by the **Malimath Committee** for improving the changing environment of society in order to the prevention of atrocities against women. This committee recommended several changes under the head “offenses against woman”, the first and foremost recommendation was regarding the amendment of section 125 of the CrPC to cover live-in relationships under its ambit.

This particular section talks about maintenance rights of a wife, children and parents in case the man who should be accountable and responsible neglects them. Malimath committee recommended increasing the ambit of definition of wife under section 125, by including a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage.

This recommendation clearly states that man should be married to the second woman while his first marriage is still valid and second wife should be

able to claim maintenance under section 125 because husband should not be allowed to take disadvantage of his own illegal and irresponsible act and why the second wife should alone bear the brunt of a mistake committed by both of them. Law cannot be insensitive towards the suffering of women. This particularly indicates any marital relationship excluding any relationship resembling live-in relations.

In 2008, following the recommendations of the Malimath committee, Maharashtra government tried to amend section 125 of the CrPC which brought the issue of live-in relationships into the limelight. There was some case in which the court has applied this recommendation. In **Chanmuniya v Virendra Kumar Singh Kushwaha and another,** the court held that man and woman living together for a long period of time is sufficient proof for assuming that couple is married. The court had not said anything with regards to a second marriage during the subsistence of the first marriage.

The main motive of this section is to secure the right of a wife in case she is not able to maintain herself with an essential condition that she should not be living in any kind of adulterous relationship, with a valid reason to abandon the husband. Therefore, there is a need to amend this section to include live-in relationship under its ambit.

Protection of Women from Domestic Violence Act

The first legal act to recognize the existence of a live-in relationship is the Protection of Women from Domestic Violence act, 2005. According to this act an “aggrieved person” is 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. The act defines the domestic relationship as a relation between people who live or have lived in a shared household when they bind by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

The act does not allow all kind of relationship, and it excludes same-sex relationships. Thus, this act covers a wide range of marital relationships as recommended by the Malimath committee for section 125 CrPC. The act has widened the scope by adding the phrase “relation in the nature of marriage” for legally recognizing the domestic relationship between unmarried man and woman.

It only recognizes the existence of relation for the right of a woman rather than conferring some legal status upon a non-martial relationship. This was challenged in Delhi high court in 2008, in the case of Aruna Pramod Shah v UOI, the petitioner challenged the constitutionality of the Act on the grounds that, first, it discriminates against men and second, the definition of “domestic relationship” contained in Section 2(f) of the Act is objectionable. Regarding the second, the petitioner argued that placing “relationships in the nature of marriage” at par with “married” status leads to the derogation of the rights of the legally-wedded wife.

The Delhi High Court rejected both these contentions regarding the constitutional status of the Act. With regard to the second contention, which is of concern to us, the court said that “there is no reason why equal treatment should not be accorded to a wife as well as a woman who has been living with a man as his “common law” wife or even as a mistress”. In this case, the judges interpreted “relation in the nature of marriage” as covering both a “common law marriage” and a relation with a “mistress” without clarifying the legal and social connotations of these terms. It is worth mentioning here that the Lawyers Collective had hailed an earlier judgment Aruna Parmod Shah vs UOI, Decided on 7 April 2008, High Court of Delhi as progressive which had observed the unequal character of “relations in the nature of marriage”. I quote from the judgment:

An assumption can fairly be drawn that a “live-in relationship” is invariably initiated and perpetuated by the male. The Court should also not be impervious to social stigma, which always sticks to women and not to the men, even though both partake of a relationship which is only in the nature of marriage. The court in making this observation and the Lawyers Collective in

approving it appears to be signalling that in this case there is convergence in both, the intention and the interpretation of the Act, as being directed at protecting women from violence within forms of relations between men and women which are presumed to be unequal.

Section 114 of Indian Evidence Act, 1872, which says that 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, have been used in a number of judgements. In a 2010 judgment as well, the judges made a strong argument in favour of presumption of marriage in any case where a man and woman have been living together for a reasonably long period of time and cite a long legal history of judgments which have favoured a presumption of marriage over that of “concubinage”.

Hence one can contend that the Indian legal system does not always seek strict evidence regarding the validity of a marriage in the face of other circumstantial evidence which indicates the existence of “a relation in the nature of marriage”. This is further evident from the SC judgment in the famous case involving the south Indian actress Khushboo (S Khushboo vs Kanniammal & Anr, 28 April 2010) wherein, apart from other prominent issues such as freedom of speech, etc, judges Deepak Verma and B S Chauhan clarified the scope of criminality in consensual adult relationships when they reiterated that:

While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of ‘adultery’ as defined under Section 497 IPC.

Now, it is clear from the above discussion that live-in relationships cannot be considered as criminal or illegal in India because of the presumption of marriage when both the parties are unmarried. In October 2010, SC delivered

a judgment where a woman was seeking maintenance from a married man under section 125 CrPC; the judge observed that:

Unfortunately, the expression 'in the nature of marriage' has not been defined in the Act PWDVA, 2005. Since there is no direct decision of this Court on the interpretation of this expression we 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.

The judgment further observes that:

It seems to us that in the aforesaid 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.

After equating the "relation in the nature of marriage" with "live-in" relations which are prevalent in the west, the judges stated their opinion by saying that "relationship in the nature of marriage" is akin to a common law marriage. In the judgment, it was mentioned that even if the couple is not formally married, they must show the society that they are spouses.

They must be of legally eligible to marry in terms of age (i.e. 18 for girls and 21 for boys in India). They must be qualified to enter into a legal marriage. This includes that they must be either unmarried, divorced or widowed at the time of marriage. They must have voluntarily entered into cohabitation and held themselves out to the world as being akin to spouses for a significant period of time.

But to return to the matter of immediate concern here, the third criterion which has been set out seems to considerably delimit the scope of relations covered by the PWDVA. The judges go on to state that:

Not all live-in relationships will amount to marriage at the end under the 2005 act. To get the benefit under this act, the abovementioned conditions neede to be satisfied and to prove that such conditions are satisfied, shreds of evidence in favour of your contention. If a man has a ‘keep’ and he financially maintains her, uses her for sexual acts or a servant, it would not be considered as a relationship in the nature of marriage.

The PWDVA has transformed from past cultures to the present day cohabitees. While some refer this practice as a western or modern phenomenon, it is now referred to invoke the protection of the rights of thousands of women who were earlier kept as mistresses or ‘Keeps’ in both urban and rural areas.

The judges’ further state 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’.

Simply, we can say that judges want to imply that the scope of live-in relationship is much wider than the relationship in the nature of the marriage. In her commentary on this judgment, Indira Jaising of the Lawyers Collective, who is one of the main authors of this Act, is evidently dismayed at the manner in which the court has interpreted this provision. She specifically lashed out at the exclusion of cases in which one of the parties is already married.

She argues:

This would mean that if a married man deceived a woman into marrying him, and lived with her as if married, this would not be a relationship in the nature of marriage, even though they represent to the world that they are married and live in a stable relationship and have children together. This was not the

intention of the Act, and it was in some measure intended to protect women like these.

The phenomena of a man marrying more than once are well known in this country, and the history of permitting multiple marriages has not been erased by the law but continues to influence the behavior of men. The strange result of this interpretation has been that the man will not be in a relationship in the nature of marriage for he is previously, but the woman will be in a relationship that is equivalent to marriage because she is not previously married.

Live in relationship laws in different countries

Scotland

When the count of the cohabiting couple touched 150000, Scotland government understood that there is a need to introduce new laws in order to regulate live-in relationships. Therefore, the Scotland government introduced the family act 2006 for changing according to the fast evolving environment. Section 25 (2) of this particular act identifies three aspects of a relationship to consider it as a valid living relationship:

- Length of the period during which they stayed together
- Nature of relationship
- Nature and extent of financial agreements.

Apart from this, if a situation arises when the relationship no longer exists between them, then section 28 of this act gives rights to cohabitants for claiming financial support.

France

the French National Assembly in October 1999 passed Pacte Civil De Solidarite (civil solidarity pact) commonly known as PACS. According to the procedure laid down in this act, PACS is a type of contract signed between a couple, which is signed and registered by the clerk of the court and couple signing the PACS are not considered as a single in terms of their marital status. It is a kind of cohabitation under which a couple without getting married is allowed to enjoy the right of a married couple and have to bear fewer responsibilities than marriage.

United States

The United States of America accepted this concept of live-in relationship, also known as common law marriages, in the year 1970. Prior to 1970, these kinds of relationships had no legal recognition. During the 1980s, a new termed “palimony” was coined and used by US courts in the case of *Michel Marvin v Lee Marvin*, where Michelle adopted the surname of Marvin without being married to him. And claimed that he promised her to support for rest of her life. But she failed to prove that there was an agreement between them. Court held that if there is an agreement between the couple for shared income earned during that period, then they are legally bound to follow that condition.

China

A voluntary contract can be made between couples in China, but no compulsion is there, and no specific laws are made in the context of these relationships. Nevertheless, children either born out of wedlock or a result of a legally valid marriage, does not make any difference both are treated equally.

Canada

Canada recognizes the concept of live-in relationship as a common law marriage. Under this, if a couple is in living together for 12 consecutive

months or have a child together, their relationship is deemed to be considered as marriage, and they can enjoy same rights and bear same responsibilities as a married couple.

Australia

The law governing live-in relationships, i.e. The Family Law Act does not prohibit any kind of relationship between two people either of the same sex or of different sex. A person can also enter into de facto relationships even if he/she is married to another person.

Ireland

Ireland holds almost the same position as India, the government recognizes live-in, but it is frowned upon by society. The public is against the new law passed by their legislature for giving property rights to unmarried couples, they do not differentiate between same and opposite-sex marriage, provided that they should be cohabiting for at least three years and one year is reduced if they have children.

Philippines

According to article 147 of The Family Code, man and woman holding the capacity to marry each other, are in a live-in relationship, and during that period if they acquire any property, that property will be governed by the rule of co-ownership. Anything can be considered as property for this context like money, property or industry owned them in common.

Conclusion

The culture of live-in relationships is mixing and flourishing rapidly in our Indian social context, which is, based on our traditions and cultures, so there is a dire need for our society to accept this concept rather than frowning

upon it and the first step of acceptance can only come from our legislature, judiciary, and executive by making and implementing laws related to this.

Even though live-in relationships are prevalent in the majority of western countries, India will take time to accept this kind of social that is the reason why marriages continue to be institution preferred over any other kind of union. Our judiciary has put considerable efforts to solve issues related to this problem of difference in the interest of people; one that favours this and the other who doesn't. But now there is a need of significant change which the legislature can bring, they have to formulate such policy which is a perfect blend of old age tradition and modern culture, so that, the interest of both the parties can be protected.

There prevailed a time when marriage was considered as **sine qua non** for sharing a social bond, but as everything slowly evolved, the way sharing a social bond also did. But nowadays testing compatibility before tying the knot sounds more practical and will decrease the rate of divorces or forced marriages, where the couple has no reason to stay together, but they are together just for the sake of society.

As is evident from the statement made by Jaising, the main concern of those who have been pushing for such legislation is to provide some relief to women who have been in such relations under fairly conventional conditions. This was even more obvious in the case of the recommendations of the Malimath Committee which have however not been implemented. Such cases are arguably quite distinct from a western style cohabitation patterns which are referred to as "live-in" relationships in popular vocabulary.