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A Comparative Analysis of Socio-legal Live-in Relationships in Different Countries and Nepal's Viewpoint

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ABSTRACT

The main focus of this research is to comparatively analyze the social and legal position of Live-in relationships in different countries in contrast to Nepal. It delves into the historicity from the Garden of Eden to the Gandharva marriage and the increasing popularity of cohabitation from western societies to the eastern. Since the late 20th century, living together before marriage has become a standard facet in the process of relationship formation among young adults compared to traditional marriage. How different countries have addressed live-in relationships through legislation, providing examples from the United States of America, United Kingdom, Canada, Australia, France, Ireland, Scotland, Philippines, China and India. It underlines the laxity of specific laws governing live-in relationships in Nepal, although certain provisions offer limited legal protection in specific situations. An acknowledgement of both traditional values and the evolving needs of an expanding Nepalese society is required to formalize live-in relationships.

Keywords: *Live-in Relationship, Cohabitation, Family, Common law marriage, Domestic Violence.*

I. INTRODUCTION

Cohabitation or live-in relationship occurs when a man and woman live together as though married, but without completing any recognized marriage ceremony or meeting the requirements for common law marriage, where this exists. This least-formal relationship has been growing in importance over recent decades.² Since the late 20th century, in Western societies, there are numerous contexts of social and cultural changes regarding marriage and marriage symbols, marital status and sexual ethics, marriage and family structure, marriage rules and religion etc. It is evident that cohabitation was relatively rare prior to the late 1980s.³ In several developed countries, marriage has lost ground to cohabitation, and living together

¹ Author is a student at Kathmandu School of law, Nepal.

² Antony W. Dnes & Robert Rowthorn, *The Law and Economics of Marriage and Divorce*, Cambridge University Press, 2002, pp. 118–131

³ Murrow, C., & Shi, L., The influence of cohabitation purposes on relationship quality: An examination in dimensions, *American Journal of Family Therapy*, 38(5) 2010, pp. 397–412

before marriage has become a standard facet in the process of relationship formation.⁴

From the late 1960s beyond, cohabitation began to rise rapidly in Western countries, and is still at prominent stage in Western societies compare to non-Western contexts. Cohabitation in Western is principally closely related to the history of marriage. It is explored that cohabitation as an acceptable institution in Western societies can be broken down into a number of theoretical perspectives and conventional discourses.⁵ Similarly, in Asian contexts, it is less clear whether delayed marriage has been similarly offset by increases in cohabitation, mostly due to limited facts on the prevalence of it.⁶ Living together allows partners to learn more about each other and evaluate their compatibility. Young people are increasingly willing to move in together before marriage, as they are free to go away if the trial period ends in failure. This process can reduce the danger of having an unhappy marriage that eventually ends in divorce. The young people see pre-marital cohabitation as a means of improving their prospects in future marriage, and of “divorce- proofing” their relationship.⁷ Therefore, it is argued that live-in relationships have become a relatively permanent and recognizable family structure.⁸

II. A HISTORICAL LOOK AT LIVE-IN RELATIONSHIP

The concept of live-in relationships is ancient and closely connected to human life. According to Scripture, Adam named man and Eve named woman were the first human beings on the planet. The Bible confirms the historicity of Adam and Eve as a real people created by God and every person born is related to them. The non-married couple were placed in the Garden of Eden and given everything they needed: food, work, companionship, and fellowship but commanded them not to eat from the Tree of the Knowledge of Good and Evil. When a serpent entered the Garden of Eden to entice them, Eve believed the serpent, ate of the fruit, then gave it to Adam who also ate of the fruit where it results them out of the Garden of Eden into the world.⁹

According to Manu, in the Vedic period and afterwards premarital relationships existed but were of occasional occurrence. The concept of live-in together before marriage is not new

⁴ Patrick Heuveline & Jeffrey Timberlake, The Role of Cohabitation in Family Formation: The United States in Comparative Perspective, *Journal of Marriage and Family* 66(5) 2004, pp. 1214–1230

⁵ Kiernan, K., The rise of cohabitation and childbearing outside marriage in Western Europe, *International Journal of Law, Policy, and the Family*, 15(1) 2001, pp. 1–21

⁶ Gavin W. Jones, Delayed Marriage and Very Low Fertility in Pacific Asia'. *Population and Development Review*, 33(3) 2007, pp. 453–489.

⁷ Wendy D. Manning & Jessica A. Cohen, Premarital Cohabitation and Marital Dissolution: An Examination of Recent Marriages. *Journal of Marriage and Family* 74(2) 2012, pp. 377–387

⁸ Herbert Goldenberg, & Irene Goldenberg, *Counseling Today's Families*, Brooks/Cole Pub. Co., 4th ed. 2002

⁹ Adam and Eve, *Answers in Genesis*, available at <<https://answersingenesis.org/adam-and-eve/>> accessed on 03/19/2024

because it was always present in the society. Though marriage was a general norm in ancient times, the Hindu scriptures illustrate and recognize the existence of premarital relationships as well. In the Vedas, we find acknowledgement of eight classical types of marriages, which are Brahma Marriage, Arsha Marriage, Daiva Marriage, Prajapatya Marriage, Gandharva Marriage, Asura Marriage, Rakshasa Marriage, and Paishacha Marriage where the Gandharva marriage is similar to that found in a live-in relationship. In the Gandharva marriage, a man and a woman mutually decide to live together. It neither involves the family of the couple nor a particular ritual to ceremonialize the marriage. It is just a verbal commitment but it still comes under the ambit of marriage. Although a couple was united by means of a Gandharva Vivaha, the responsibility and commitment was identical to any of the other kinds of marriages ordained in the traditional texts. The Gandharva form of marriage described in Vedas is similar to the concept of cohabitation in western world where a man and woman mutually agree to live together in a sexually intimate relationship in the absence of solemnization of marriage as per rituals.¹⁰

As per the Apastamba Grihya-sutra, an ancient Hindu literature, Gandharva marriage is the method of marriage where the girl chooses her own husband. They meet each other on their own accord, consent to live together, and their relationship is consummated in copulation born of passion. According to Vedic records, it is one of the common and earliest forms of marriage in Rig Vedic times. The marriage of Dushyant and Shakuntala is an exemplary epitome from the history of this class of marriage. In Mahabharata, one of two vital epics of Hindus, Rishi Kanva, the foster father of Shakuntala, suggests Gandharva marriage with the statement, "the marriage of a desiring woman with a desiring man, without religious ceremonies is the best marriage".¹¹

III. MARRIAGE V. LIVE-IN RELATIONSHIPS

Marriage is a social institution, and it is the legally and socially binding union of a couple as a spouse that helps to constitute the basic unit of social structure. Marriage has a socially and traditionally accepted method of consensual partnering, which is a legally accepted relationship between a man and a woman which defining and regulating sexuality, reproduction, responsibility and role with viewpoints concerning marriage have changed substantially¹² because of revolutionary changing values and norms of society, which are enforced to change

¹⁰ Johann Jakob Meyer, *Sexual life in ancient India: A Study in the Comparative History of Indian Culture*, Motilal Banarsidass Publishers, 1989, p. 89-99, ISBN 978-81-208-0638-2

¹¹ Ibid.

¹² Stephanie Coontz, *Marriage, a History: From Obedience to Intimacy, or How Love Conquered Marriage*, New York: Viking Press, 2005.

in all social phenomenon.¹³ Section 67 of the National Civil Code Act 2017,¹⁴ Marriage deemed to be concluded: “If a man and a woman accept each other as husband and wife through any occasion, ceremony, formal, or other act, a marriage shall be deemed to have been concluded.” Living together or cohabitation in an intimate sexual relationship outside of marriage¹⁵ which is a more prominent discourse and rising trend all around the world, it is argued that cohabitation is a trial period before marriage and it as a substitute to marriage.¹⁶

Marriage has always held an elevated meaning in society and it continues to be respected for all that it brings with it; norms and conventions are established in the instruction so deeply that guilt arises on deviation. These roles and norms manifest itself in taking care of dependent family members, such that they pose as less of a burden on society. Thus, it assists those who cannot help themselves.¹⁷ A married couple is recognized legally and accepted by society as husband and wife. When a couple attempts to terminate their marital relationship, they are bound to follow certain legal procedures. However, When a live-in couple desires to walk out of their relationships, they can do so at any time without fulfilling any formalities. In a marriage, when one of the spouses dies, the other spouse has the legal right to inherit a portion of the deceased spouse’s share or property. In a live-in relationship, when one of the partners dies, the other partner will have no claim to the share or property unless his or her name is epitomized in the former’s will.¹⁸ Marriage is not only sacramental because of its historical associations but also because of a set of reasons taken together, whether social, economic or legal. Therefore, it is the choice of the individual who wishes for such a relationship. Society has nothing to do with the liberty and decisions of the individual.¹⁹

IV. SOCIO-LEGAL STATUS OF LIVE-IN RELATIONSHIPS IN DIFFERENT COUNTRIES

In the 21st century live-in relationships are on a rapid rise. From the various implied provisions and statutes, live-in-relationship has found its recognition in numerous countries.²⁰ The concept

¹³ Joanne J. Paetsch, Nicholas M. Bala, Lorne D. Bertrand, Lisa Glennon, "Trends in the Formation and Dissolution of Couples," J. Scott, J. Treas, M. Richards (eds.), *The Blackwell Companion to the Sociology of Families*, ch.18, 2004

¹⁴ The National Civil (Code) Act 2017, s. 67 available at <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Civil-code.pdf> accessed on 03.24.2024

¹⁵ Rhiannon A. Kroeger and Pamela J. Smock, "Cohabitation: Recent Research and Implications," J. Scott, J. Treas, M. Richards (eds.), *The Blackwell Companion to the Sociology of Families*, ch.11, 2014

¹⁶ Brienna Parelli-Harris, Nora Sanchez Gassen, "How Similar Are Cohabitation and Marriage? Legal Approaches to Cohabitation across Western Europe," *Population and Development Review*, 38(3), 435–467, 2012.

¹⁷ Elizabeth S. Scott, "A World Without Marriage," *Family Law Quarterly*, 41(3) 2007, pp. 537–566

¹⁸ Ashwini D'souza, *Comparative Analysis on Live- in Relationship in Socio-Legal Context*, *International Journal of Law, Management & Humanities*, Vol. 4 Iss 6, 2021, pp. 1097 - 1109

¹⁹ *Ibid.*

²⁰ Shivam Kumar, *RISE IN LIVE-IN RELATIONSHIPS IN THE 21ST CENTURY*, *Journal For Law Students and Researchers*, ISSN(O): 2582-306X Vol. 2, ISSUE 4, 2021

of live-in relationship is prominently known by different names and legally dealt with by different laws worldwide. 'Cohabitation' is the term used for live-in relationships in various countries. It is regarded synonymous to non-marital cohabitation where it is an arrangement where two people who are unmarried, live together in an intimate relationship, particularly an emotionally and sexually intimate one, on a long-term basis.²¹

(A) United States of America

Prior to 1970, live-in relationships were illegal in the United States of America. The American legal history is a witness to several consensual sex legislations and the common law marriage doctrine, which paved the way for living together contracts and their cousins, the "prenuptial agreements." In the USA, the concept of cohabitation agreements institutionalized cohabitation by giving cohabitants specific rights and liabilities under such agreements.²²

In the *Fenton v. Reed*²³ case, the court applied the common law marriage doctrine and recognized a long-term cohabitation as marriage. In 1976, the California Supreme Court decided *Marvin v. Marvin*²⁴ holding that agreements between cohabiting couples to share income received during the time they live together can be binding and enforceable legally. In the United States of America the expression 'palimony' was coined which means grant of maintenance to a woman who has lived for a considerable period of time with a man without marrying him, and is then abandoned by him. The first decision on palimony i.e *Marvin v. Marvin* was the well-known decision. Subsequently in several decisions of the Courts in the United States of America, the concept of palimony has been developed. In 2008, the New Jersey Supreme Court held in *Devaney v. L'Esperance*²⁵ that cohabitation is not a prerequisite for a palimony claim; however, a marital-type relationship is required.

(B) United Kingdom

In the United Kingdom, the total number of cohabiting couples has increased from around 1.5 million in 1996 to around 3.6 million in 2021, an increase of 144%. In 2021, 22% of couples who lived together were cohabiting rather than married or in a civil partnership.²⁶ In the UK, a couple living together in a stable sexual relationship are often referred to as "Common Law

²¹ Shashi Bhushan, "Socio-Legal Status of Live-In Relationship: A Comparative Study of France, Philippines, Scotland and India", Ph.D. Thesis, Punjab University, Chandigarh

²² Gary A. Debele & Susan C. Rhode, *Prenuptial Agreements in the United States*, International Academy of Family Lawyers (2006)

²³ 4 Johns.52(N.Y.Sup.ct.1809)

²⁴ *Marvin v Marvin* L.A. No. 30520, Cal. (1976) available at <https://law.justia.com/cases/california/supreme-court/3d/18/660.html> accessed on 20.03.2024

²⁵ *Devaney v. L'Esperance*, 949 A.2d 743 (N.J. 2008)

²⁶ Catherine Fairbairn, "Common law marriage" and cohabitation, *House of Commons Library*, November 3, 2002, <<https://researchbriefings.files.parliament.uk/documents/SN03372/SN03372.pdf> > accessed on 22.03. 2024

Spouses," which is governed by the Civil Partnership Act, 2004. For a cohabited couple to be called Common Law Spouses, the above pre-conditions need to be fulfilled:

The parties must be over the age of sixteen (16) years.

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

They should not be within the prohibited degrees of relationship.

The said Act of 2004 covered the parties from the same sex until 2019, however, with the amendment act of 2019, it incorporated couples of heterosexual nature as well to seek protection under the act by registering themselves and to form a civil partnership.²⁷

(C) Canada

In Canada, the practice of live-in relationships is officially recognized as a "Common-Law Relationship." It means that, conjugal couples who have been living together in a relationship for at least 12 continuous months without any interval are also known as having a Common-Law Relationship. The live-in couples also enjoy the same legal sanctity as married couples. In 2006, the peak was higher and located among somewhat older women: over 40% of Quebec women aged between 25 and 30 were living in a live-in relationship. Thus, a marriage-like relationship can be between the same or the opposite gender.²⁸

Family Law Act, R.S.O. 1990 Chapter F3, Cohabitation agreement 53(1) Two persons who are cohabiting or intend to cohabit and who are not married to each other may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or on ceasing to cohabit or on death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to decision-making responsibility or parenting time with respect to their children; and
- (d) any other matter in the settlement of their affairs.

Moreover, Effect of marriage on agreement 53(2) If the parties to a cohabitation agreement

²⁷ Civil Partnership, Marriage and Death (Registration etc.) Act, 2019 available at <https://www.legislation.gov.uk/ukpga/2019/12/enacted> accessed on 03-21-2024

²⁸ Benoit Laplante and Ana Laura Fostik, *Two period measures for comparing the fertility of marriage and cohabitation*, DEMOGRAPHIC RESEARCH, Vol. 32, Article 14, 2015, pp. 421-442 DOI: 10.4054/DemRes.2015.32.14 accessed on 03-21-2024

marry each other, the agreement shall be deemed to be a marriage contract.²⁹

(D) Australia

In Australia, Section 4AA of Family Law Act, 1975 defines the meaning of de facto relationship, (1) A person is in a de facto relationship with another person if:

- (a) The persons are not legally married to each other;
- (b) The persons are not related by family;
- (c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Moreover, 4AA (5) A de facto relationship can exist between two persons of different sexes and between two persons of the same sex, and it can also exist even if one of the persons is legally married to someone else or in another de facto relationship.³⁰

(E) France

In France, the most widespread change came after 1972, with an increase in the number of couples living together outside marriage, first as a premarital “trial period” and then as a stable form of union. In the early 1990s, nine out of ten couples began their union without marrying, and ten years later, half of all first births were out of wedlock. Cohabitation outside marriage first started among students and unemployed young adults before spreading to the rest of society. Today, it is these same categories that most frequently enter stable, intimate, non-cohabiting relationships. In the past, marriage took place soon after the beginning of cohabitation; today, among those in Living Apart Together (LAT) relationships, six people out of ten intend to live together within the next three years. Additionally, the age at which people marry has risen since 1972, whereas the age at which people first form couples has remained stable during some time, and cohabitation has become a lasting way of life. More recently, people have started living together at a later age as well, which could make way for LAT relationships.³¹

France has instigated equal treatment of married and unmarried couples in its legislation. On October 13, 1999, the French National Assembly passed the Bill amending the French Civil Code by placing provisions for Civil Solidarity Pacts. The live-in relationship is governed by

²⁹ Family Law Act, R.S.O. 1990, Part IV, Domestic Contracts, Sec. 53

³⁰ FAMILY LAW ACT 1975, SECT 4AA (1 & 5) De facto Relationships

³¹ Regnier-Loilier, Beaujouan, & Villeneuve-Gokalp, *Neither single nor in a couple: A study of living apart together in France*, DEMOGRAPHIC RESEARCH, Vol. 21, Article 4, 2009, pp. 75–108 DOI: 10.4054/DemRes.2009.21.4 accessed on 03-22-2024

the Civil Solidarity Pact, in French known as “*Pacte civil de solidarite*,” commonly known as *Pacs*, which defines cohabitation as a stable and continuous relationship between a couple of different sexes who stay together³² and permits a couple to enter into a union by signing a contract before a court clerk. The success of *Pacs* continues to grow, and in 2008, nearly 140,000 such unions were celebrated.³³ The contract binds two adults of different sexes or of the same sex in order to organize their common life and permits them to enjoy the rights given to married couples in the spheres of income tax, housing, and social welfare.³⁴

(F) Ireland

Ireland has experienced a change in the discernment of the traditional family unit, moving away from the obsolete view that couples must be married to live together. According to the 2022 census, since 2016, the number of cohabiting couples without children living in private households went up by 17%, more than twice the growth rate of married couples without children living in private households.³⁵

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Section 172 (5), A qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period—

(a) of 2 years or more, in the case where they are the parents of one or more dependent children, and

(b) of 5 years or more, in any other case.³⁶

(G) Scotland

In 2019 in Scotland, of the 579,000 families with dependent children, 59% (342,000) were married couple families, 16% (93,000) were opposite-sex cohabiting couple families, 1% (8,000) were same-sex cohabiting couples, and (25%) 144,000 were single parent families.³⁷

Family Law (Scotland) Act, 2006, Section 25, Meaning of “Cohabitant” in Sections 26-29. In

³² Cohabitation defined by Civil Solidarity Pact- “de facto stable & continuous relationship between two persons of different sexes living together as couple”

³³ See supra note 30

³⁴ Civil Code(France), 1999 (Act no 99-944), Article 515-1[A civil covenant of solidarity is a contract entered into by two natural persons of age, of different sexes or of a same sex, to organize their common life.]

³⁵ Census of Population 2022 Profile 3 - Households, Families and Childcare, *CSO statistical publication* (2023) available at <https://www.cso.ie/en/releasesandpublications/ep/p-cpp3/censusofpopulation2022profile3-householdsfamiliesandchildcare/keyfindings/> accessed on 03-21-2024

³⁶ Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, s 172 (5)

³⁷ Families and households in the UK: 2022, Office for National Statistics, available at <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/latest> accessed on 23.03.2024

sections 26 to 29, “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.

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.³⁸

(H) **Philippines**

Cohabitation has been historically documented in the Philippines, particularly among low-income people to avoid the legal fees and celebration costs of marriage. Low educated women had a 36 percent higher risk of cohabitation, compared to medium educated women, while highly educated women had a 44 percent lower risk of cohabitation compared to medium educated women.³⁹ The number of common-law or live-in couples in the country rose to 12.66 million between 2015 and 2020, the Philippine Statistics Authority (PSA).⁴⁰

In the Family Code of The Philippines, under the chapter “Property Regime of Unions Without Marriage”, Article 147 states; “When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void 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”.⁴¹

³⁸ Family Law (Scotland) Act 2006, Sec. 25

³⁹ Bernice Kuang, Brienna Perelli-Harris & Sabu Padmadas, The unexpected rise of cohabitation in the Philippines: evidence of socioeconomic disadvantage or a second demographic transition?, *Asian Population Studies*, 15:1, 2019, pp. 8-27 DOI: 10.1080/17441730.2018.1560664

⁴⁰ Beatrice Pinlac, PSA: 2020 saw 12.66 million PH common-law partners, (Inquirer.Net 17 February 2024) available at <<https://newsinfo.inquirer.net/1731329/psa-number-of-common-law-partners-in-ph-rose-to-12-66-million-in-2020>

⁴¹ The Family Code Of The Philippines 1987, ch 7, art.147

(I) China

According to a survey conducted by the Chinese Marriage and Family Counseling Center in 2019, around 70% of young Chinese people in cities have lived together with their partners before marriage. They believed that cohabitation before marriage can have a positive impact on intimate relationships in both the short and long term. This includes benefits such as improving mutual understanding, adapting to living habits, and facilitating smoother and more effective communication.⁴²

According to the Marriage Law of The People's Republic of China 1980, Article 19 states that; Children born out of wedlock shall enjoy the same rights as children born in wedlock. No one may harm or discriminate against them. The father of a child born out of wedlock shall bear part or the whole of the child's living and educational expenses until the child can support himself.⁴³

(J) India

The empirical study in the International Journal of Indian Psychology, with a sample study of young adults, indicates that 75% of the respondents believed that live-in relationships lead to a better understanding before marriage.⁴⁴ Such a concept is gaining momentum especially amongst the educated and economically viable groups conscious about their rights. As of now, with regard to legal recognition, there is no legislation in India that concerns Living Together Relationships directly, nor would it be illegal as per the existing laws in India. When it comes to Living Together Relationships, in the recent past the court tended to presume marriage based on the number of years of cohabitation.⁴⁵

The supreme court of India, for the first time in the case of *Khushboo v. Kanniammal and Anr* (2010)⁴⁶ gave legal recognition to live- in relationships by bringing it under the ambit of ‘ Domestic Relationships’, protected under the Section 29 (f) of Protection of women from Domestic Violence Act, 2005.⁴⁷ The court further held that this can be brought into the purview

⁴² Ruth Wickham, How Chinese People Think about Love and Marriage, China Educational Tours available at <<https://www.chinaeducationaltours.com/guide/article-chinese-love-and-marriage.htm>> accessed on 23.03.2024

⁴³ Marriage Law of The People's Republic of China (1980), art.19

⁴⁴ Vinita Gosh, "Perception of Youth Towards Live-In Relationships in India", *The International Journal of Indian Psychology* (2021) DOI: 10.25215/0902.209

⁴⁵ Dr. Rabbiraj. C, Socio-Legal Dimensions of Live-In-Relationships in India, *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Volume 19, Issue 7, Ver. VI (July. 2014), pp. 25-29

⁴⁶ *Khushboo v. Kanniammal and Anr* AIR 2010 SC 3196.

⁴⁷ Protection of Women from Domestic Violence Act, 2005 Section 2(f) "Domestic Relationships" 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.

of right to life⁴⁸ as enshrined in the Indian Constitution. The court was of the opinion that the act of two adults living together, in any case, can't be considered illegal or unlawful. In the recent judgement of **Indra Sarma vs. V.K.V.Sarma**,⁴⁹ in 2013 the Honorable Supreme Court clarified plethora points and furnished a handful of guidelines to be followed in the absence of a dedicated law. These guidelines will serve the aim of bringing such relationships under the Domestic Violence Act, 2005. The Supreme Court illustrated five categories where the concept of live-in relationships can be considered and attested in the court of law. The following are the categories:

1. The Domestic relationship between an adult male and an adult female, both unmarried;
2. The Domestic relationship between a married man and an adult unmarried woman, entered knowingly;
3. The Domestic relationship between an adult unmarried man and a married woman, entered knowingly;
4. The Domestic relationship between an unmarried adult female and a married male, entered unknowingly;
5. The Domestic relationship between same sex partners (gay or lesbian).

The Court inferred that a live-in relationship will fall within the expression relationship in the nature of marriage under Section 2(f) of the Protection of Women Against Domestic Violence Act, 2005 and provided certain guidelines to get cognizance of such relationships. Also, there should be a close examination of the entire relationship, in other words, all elements of the interpersonal relationship need to be taken into account, including the individual factors.

V. NEPAL'S SOCIO-LEGAL VIEWPOINT ON LIVE-IN RELATIONSHIPS

Living together, also known as cohabitation, is the practice of two people who are not married to each other sharing a sexual relationship and household. Living together is becoming more common and acceptable in different parts of the world, especially among young and urban people. However, in Nepal, living together is still a controversial and sensitive issue that raises social, moral, and legal questions.⁵⁰ Such live-in relationships are not a new phenomenon in Nepal because In some ethnic groups and regions, such as the Nyinba of Humla district and the Loba of Upper Mustang region, living together has been a traditional and customary practice

⁴⁸ Article 21 of the Indian Constitution

⁴⁹ *Indra Sarma v. V.K.V Sarma* [AIR 2014 SC 309]

⁵⁰ *Is Living Together Legal in Nepal?*, Court Marriage in Nepal, June 24, 2023 available at <<https://courtmarriageinnepal.com/blog/is-living-together-legal-in-nepal>> accessed on 03.25.2024

for centuries. These groups practice fraternal polyandry, where a woman lives with two or more brothers as her husbands. They do so for economic and social reasons, such as preserving land and property, controlling population growth, and ensuring family welfare.⁵¹

According to the research findings conducted in the capital city of Nepal, Kathmandu,⁵² young individuals are living together as an alternative to marriage for a variety of reasons, including conserving money, satisfying sex desire and sexual pleasure, personal freedom, and independence. The findings analyze the effects and implications of living together relationships in individual life, familial life, and societal life using sample case studies of cases filed by 9 couples in the Kathmandu District Court of various types. The findings show that;

(a) If partners' relationships are harmonious, it will be simple to meet their basic biological demands and even easier to progress.

(b) If both live-in couples have the same position, occupation, educational background, and economic background, as well as a commitment to marry in the future, they may have a happy existence and living together may cause less harm.

(c) The majority of the misunderstanding between living together occurs between one and two years. The majority of living together relationships do not last into marriage. If there are no children, the couple can easily separate with minimal conflict, but if they have a child or children, the male partner would usually leave without telling his partner. Overall, these findings show that traditional married relationships are considerably superior to the living-together relationships discovered in this study.⁵³

Cohabitation is becoming a famous living agreement among young partners, particularly in urban areas of Nepal.⁵⁴ Cohabitation is increasingly ratio in Nepalese societies, with the majority of couples now living together before marriage, where the rates of cohabitation have increased considerably in the past three decades. Non-marital cohabitation has an increasing ratio and rethinking about the conventional marital life; nonetheless, there are several reservations and fears concerning its input to social acceptance and cultural cohesion in the Nepalese social fabric. Normally, cohabitation promotes freedom and private choices for persons rather than many young adults believe cohabitation is a better conduct to experiment their relationships and interactions prior to marital status. It is a pragmatic way of manipulate

⁵¹ Ibid.

⁵² Naresh K. Maharjan, Living Together Relationships in Nepal: Need for Legal Protection, *Online International Interdisciplinary Research Journal*, ISSN 2249-9598, Vol. 12, Issue 02, 2022, pp. 32–43

⁵³ Ibid

⁵⁴ Mina D. Uprety, Cohabitation: Conceptual Significance and Practical Inconsistency, *Pragya Darshan*, Vol. 5 No. 1 (2023), pp. 29–34

and inspire individuals' choices in their life-partner relationships. Therefore, the reasons for cohabitation magnitude would provide many aspects of their future existing such as time together, convenience, rationality, testing, and forthcoming determination.⁵⁵

Although Nepal doesn't have specific legislation to regulate and govern live-in relationships, but, it has several provisions to offer for the legal protection of such relationships in specific situations.⁵⁶ The Domestic Violence (Offence and Punishment) Act, 2066 (2009), Section 2(b)⁵⁷ The term "domestic relationship" means a relationship between two or more people who live together in a shared household and are related by descent (consanguinity), marriage, adoption or are family members living together as a joint family; or a dependant domestic help living in the same family. According to the National Civil (Code) Act, 2017 (2074), Section 74,⁵⁸ Marriage to be deemed concluded if child is born from physical intercourse: (1) Notwithstanding anything contained in sub-section (2) of Section 69,⁵⁹ If a woman is proved to have delivered a child by conceiving pregnancy from physical intercourse with a man, marriage between such a man and a woman shall, ipso facto, be deemed to have been concluded.

VI. CONCLUSION

Live-in relationships represent two people living together or coexist without being married. Unlike other countries, Nepal presently does not have any specific laws defining live-in relationships. Though Nepalese society has theoretically recognized live-in relationships, however, it has not practically accepted them. There are various challenging impacts in living relationships, such as less social acceptance, cultural rejection, economic insecurity, more advocacy for personal freedom rather than social concern, risk of conflict and violence, ramifications on children, violence on women, insecure for stable settlement, risk of isolation, negative thoughts, and detrimental break-ups. In recent trends in Globally including Nepal, cohabitation or non-marital relationships are increasingly rising which is advocated to change the concept and rationality of marriage. Live-in relationships have developed as a crucial social institution, particularly in industrial or capitalist societies, in the name of "alternative to marriage" or "alternative to being single". Nepal's social structure needs to open up their minds to this new concept of living together with the changing needs of society. To formalize live-in relationships in Nepal, the mentality of Nepalese people must be modified in accordance

⁵⁵ Ibid.

⁵⁶ See supra note 49

⁵⁷ Domestic Violence (Offence and Punishment) Act, 2066 (2009), sec. 2 (b)

⁵⁸ The National Civil (Code) Act, 2017 (2074), sec. 74 (1)

⁵⁹ Section 69 Freedom of Marriage sub-section (2) A marriage must be made, or caused to be made, public irrespective of the manner used to conclude it.

with the rapidly expanding society in order for it to become an accepted part of social standards. Nepalese society requires the formation of separate legislation to regulate and balance live-in relationships that acknowledge both traditional values and evolving needs within the gamut of laws. For the appropriate functioning of live-in relationships in Nepal, an unequivocal legislature and judiciary have to come into play.
