

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

A Study of Rights in Live-In Relationship

SOUGAIJAM DEVITA DEVI¹

ABSTRACT

Live-in relationship is increasingly adopted by many partners in the present days. The relationship is not a new concept emerged in modern era rather it can be traced back to ancient India and several tribes living in India. The obligations and prolonged legal process of divorce are some of the factors that increase the number of live-in relationship. Such between two major persons who are qualified for marriage has been allowed legally in India. Court has formed certain criteria to be fulfilled to be a marriage like nature. The study aims at analysing the various rights and obligations arise from the live-in relationship and its validation under different personal laws. Personal laws have not recognized such relationship. However, the women in the live-in relationships are protected and maintained by various secular laws as well as children born out of them are been considered as legitimate. However, their rights are different than the legitimate children of valid marriage. The courts have progressively made judgments to protect the children born out of such relationship as they have not chosen to be in this position. In the Indian patriarchal society, there is a need to analyse whether the quantum of protection woman get is in accordance to the sufferings they received. Also, there needs to be protection for men in the relationship as well for the law to give justice to all.

Keywords: *Live-in relationship, legitimate, personal laws, rights.*

I. INTRODUCTION

Relationship between a man and a woman give rise to many aspects of a family. Societies have always given moral recognition to relationship where there is marriage. India is a country where several religion exist among different groups of people, thus they are ruled by their personal laws. Several personal laws have laid down the conditions for valid marriage. These marriages and only children born out of them are considered to be legitimate. However, marriages between different religious parties (inter-faith) and other special circumstances are dealt legally under the Specific Marriage Act.

The status of parents' relationship becomes immense important with regard to the legal status of children. It affects their socio-economic well-being and mental well-being. Children who are from valid marriage get more legal rights over their parents' property as well as recognition

¹ Author is a student at St. Joseph College of Law, India.

from society.

When the society treats a person illegally, ostracizing from involving in societal events like public gatherings, family functions, etc., emotional well-being of person gets affected. This in turn affects other dimension of well-being of a person. Thus, the objective of the study is to analyse the various rights and obligations that arise in live-in relationship and also under different umbrellas of personal laws in India.

The live-in relationship is one of the most common relationships existing in today's context. They cohabit without getting into the institution of marriage. The factors for live-in relationship are numerous. The changing lifestyles in the modern era, independence over family bonding and responsibilities, etc. have led to live-in relationship which is common in urban areas. It is prevalent in metro cities more than the rural areas. Couples try to see their compatibility with each other before getting into marriage. They try to know each other better for better married life in the future.

The problem arises when such relationship causes one worse-off as not all the live-in relationship led to lawful marriage. Live-in relationships are not considered legitimate by the personal laws. For the lawful marriage, there are specific laws that govern the aftermath issues arising out of it. Indian society has always been looking down on pre-marital sex. It led to different inquiries regarding the children born out of such relationship. There are no specific laws that governed live-in relationship though Honourable Courts have legalised it.

II. LIVE-IN RELATIONSHIP

Live-in relationship is the cohabitation of two persons with mutual consent. They stay together by supporting each other in their lives. Generally, they verbally make agreement with each other regarding their stay like a contract. It usually happens when two persons are emotionally and sexually bonded and want to live together and does not require any ceremony or family meetings for them to recognize as couple. They do not have to abide by all the rules and obligations of marriage with regard to family and friends. Hence, it is easier for them to enter into such relationship and break off.

It is mainly common in cities and urban areas where people from different place come and live. Working women, who do not want to bind themselves by all the obligations, often enter into such relationship. It also helps people who are not able to marry due to several reasons like inter-caste or race or religious to be with their love ones. Unlike marriage, couples do not have to go through long legal process like divorce, settling the properties and other family issues. Often, they do not interfere in each other family issues.

(A) Historical Background

The concept of live-in relationship is not new in the context of Indian history though the word may be used newly in the modern times. During the ancient India, there were multiple of forms of marriage under Vedas. One of the forms was Gandharva where man and woman live together without solemnizing marriage. The man and the woman settle with an agreement of living together verbally². It does not include family members consent or witness to the marriage. It is similar to other form of marriages with respect to commitments and obligations one has. It was the mutual consent between the parties involved and were not forced to live together. Thus, women were able to choose their own choice of man. The period was also known to be glory for women as they enjoyed honourable and respectable position in the society. They lived in par with men. In addition, during the Vedic period, devadasi system also existed which is dated back to AD 985³. During this time, devadasi spent their whole life serving the God once they are dedicated. During the pre-colonial era, they also served royal families, kings and queens. They were able to live a life close to traditional women as having children from the relationship she had encountered. However, they were not able to recognized their husband and children in the society. Due to their awards of land and gold when royal families were served, devadasi were economically strong. However, in colonial period, they lost their status in the society which they used to enjoy, they were made to dance in the street and became economically weak as the economy of temple got depressed. The 20th century marked the beginning of exploitation scheduled tribes and scheduled caste⁴.

In the medieval age, concubinage was similar to live-in relationship⁵. Concubines live together with the man even though his wife is there and staying together. It mostly happens when the wife is not able to give birth to child and through concubines, man used to get his children. In some cases, concubines were also treated as sex slaves, their reputations varied from one culture to another.

Another practice was the maitray karar⁶. Man and woman enter into an agreement in written form to be friend. They live together and supporting each other and only for those period which they made an agreement. The man is a married person and the woman is unmarried but has the responsibility to take to care of her parental family. However, woman does not have any right

² Rajesh M. Dave, *Legal Status of Live In Relationship In India*, 9, IJAL,17, 17-18 (2019)

³ Maria Costanza Torri, *Abuse of Lower Castes in South India: The Institution of Devadasi*. J. Int. Women's Stud (2009).

⁴ Jogan Shankar, *Devadasi Cult: A sociological Analysis* (Ashish Publishing House 1994)

⁵ *Live-in Relationship: Evaluation and Legal Provisions*, 3, IJALR.

⁶ Sangeeta Chatterjee, *Legal Recognition of Live-In Relationship: An Emerging Trend of Social Transformation in India*,11, IJLJ (2020).

to claim for maintenance or any support against the man during or after the period ends. Such relationship was declared as void ab initio in 1990 by the Gujarat High Court in the case of *Minaxi Zaverbhai Jethwa v. State of Gujarat*⁷.

In the tribal areas of Rajasthan, the Garasiya tribe practice dapa's system. In this, young girls and boys lived together by eloping. They continue living together without marriage till they attained financial stability⁸. In the state of Chhattisgarh, there exists pethu system in Bastar region⁹. The man and woman live together and get married only when they beget a child. In addition, ghotul system also existed where boys and girls first get known to each other and live like a honeymoon before getting married. Hence, the concept of live-in relationship has been in existence since the ancient era and is not a recent foreign concept.

(B) Research Methodology

The study uses doctrinal method using the relevant articles, case laws, reports and news.

(C) Objective of the study

The study aims at analysing the legality of live-in relationship and its validation under various personal laws. Though personal laws have not recognized live-in relationship as valid, Courts have legalised such relationship. Therefore, there arise issues regarding property rights and protection of people involved in such relationship. The study also aims at analysing the issues regarding their rights.

(D) Statement of the problem

Live-in relationship have been legalised by several judgments. However, there are questions regarding their rights in terms of property, maintenance, etc. Personal laws do not recognise but courts have treated such relationship like lawful marriage though the criteria for such nature have to be fulfilled. However, there is differential treatment of children born of such relationship and from lawful marriage. Thus, the study focuses on analysing the various legal rights partners and their children.

(E) Scope and limitation of the study

The study focuses only on the legality and rights of live-in relationship partners and their children with respect to different personal laws. Other kinds of property law not related to family are excluded from the purview of this study.

⁷ *Minaxi Zaverbhai Jethwa v. State of Gujarat* 15 December, 1999

⁸ Saloni Narula Khanna & Gagandeep Kaur, *Live-In Relationship In India- A Comparative Study*, 53, UGC CARE Group 1 Journal.

⁹ *Ibid*

III. LEGALITY OF LIVE-IN RELATIONSHIP

There is no specific law which governs the live-in relationship in India. However, Honourable Supreme Court has upheld the live-in relationship in its several judgments. The right to cohabit without interruption was upheld to be under the ambit of Article 21 in the case of *S. Khusboo v. Kanniammal*¹⁰. Live-in relationship may be unethical in the purview of Indian society but they are not illegal. The Court has held that “a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence”¹¹. Even if the consenting adults though major but have not reached the legal age of marriage (Woman- 18 & Man- 21 years) are also given protection by the Court¹². The presumption is that unless any contrary is proven, when a man and woman cohabit for long time, they are assumed as legally married under Section 114 of the Indian Evidence Act¹³. According to Hindu Marriage Act, 1955 such relationship without solemnizing the marriage is considered to be void.

(A) Rules to determine relationship in the nature of marriage

Honourable Supreme Court laid down rules to determine nature of marriage of a relationship in *Indra Sarma v. VKV Sarma*¹⁴.

- Time period of the relationship

The time period is not specified. The phrase ‘at any point in time’ is used in Section 2(f) of the Domestic Violence Act. It may differ from case to case as the fair time period to sustain the relationship varies.

- Shared household

It is specified in Section 2(s) of the Domestic Violence Act. Any place of household where the aggrieved person has lived at any stage whether singly or jointly with the respondent. The place can be owned or tenanted or a joint family property of the respondent irrespective of whether the aggrieved person has the right over it.

- Providing funds

The couple supports each other, has joint bank accounts, jointly owned immovable properties or in the name of woman, investing or funding in shares for long terms in companies in a view to keep long term strong connection.

¹⁰ *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 (India)

¹¹ *Lata Singh Vs. State of U.P.*, [AIR 2006 SC 2522]

¹² *Pushpa Devi v. State of Punjab*, 2021

¹³ *S.P.S Balasubramanyam v. Suruttayan* 1994 1 SCC 460

¹⁴ *Indra Sarma v. V.K.V. Sarma* AIR 2014 SC 309

- Intentions and behaviours of the parties

The duties and obligations which are common towards their relationship help in defining their relationship.

- Domestic arrangement

Dividing the household activities just like the married couple like in typical household where woman does manage the home or both together.

- Public socialization

Couple attend public functions, interacts with society, relatives, friends and others in a way as if they are married couple signifies their relationship to be maintain in the nature of marriage.

- Children

Having children signifies commitment from both the parties.

(B) The categories of live-in relationship (domestic relationship) which are illustrative in nature (Indra Sarma v. VKV Sarma).

1. Between an unmarried adult male and unmarried adult woman. Such relationship falls under the definition of Section 2(f) of Domestic Violence Act (DVA).
2. Between a married adult male and an unmarried woman where the woman knowingly enters into the relationship. Such relationship not of nature like marriage.
3. Between an unmarried adult male and married adult woman where the woman knowingly enters into the relationship. It is not of nature like marriage.
4. Between a married adult man and unmarried woman where the woman unknowingly enters into the relationship. Such relationship may consider as nature of marriage.
5. Between same sex persons. The DVA does not recognize it.

(C) Women's Rights in Live-in Relationships

- Rights of Protection against domestic violence

Under the Protection of Women from Domestic Violence Act, 2005 (PWDVA), a woman can seek protection for any domestic violence, (Indra Sarma v. VKV Sarma).

The women who have domestic relationship and live in shared household as mentioned in the Act gets the protection. *M. Palani v. Meenakshi*¹⁵, AIR 2008 Mad 162 - The

¹⁵ *M. Palani v. Meenakshi*, AIR 2008 Mad 162

petitioner and the respondent had sexual intercourse but they do not live together. The petitioner side argues that as they have not lived together, respondent is not entitled to maintenance as well as it was consented from both the parties to have such act. However, it was argued that petitioner had told the respondent that he does not believe in marriage. The Madras High Court held that it is not necessary for the parties to live together for a particular period to claim maintenance under Domestic Violence Act. It is sufficient that they had entered into sexual intercourse at a shared household. The term shared household is understood as given in Section 2(s) of the Act. It does not require strict proof of marriage to have protection under the Act.

- Right to claim maintenance

A women in live-in relationship can claim her maintenance from her spouse or the man whom she cohabitating with under Section 125 of Cr.P.C. She has the right to maintenance if the man abandoned her after cohabitating for long time. The Supreme Court laid down conditions required for such maintenance such as- representing themselves as spouse in society, legal age of marriage, qualified to marry and voluntary cohabitation for significant period¹⁶. Even though the legal age of marriage for boys is 21, the court allowed live-in relationship if the both the partners are adult¹⁷. It was held that woman can also seek maintenance under the provisions of PWDVA¹⁸. In the case of Savitaben¹⁹, it was held that definition of wife under the Criminal Procedure Code (Cr.P.C) does not extend to second wife or others who are not legally married.

- Right to inherit property

In Dhannu Lal v. Ganeshram²⁰, the woman lived with the man without marriage as his first wife has left him. They had two children from this relationship. The petition as that she was not legally wedded wife and do not have right over the property. The court presumed them as legally married as they live-in together for long time. She was also allowed to inherit the property of her husband. In the case of Sree Rangammal (died) & Ors v. E B Venkatasubramanian & Ors, the woman who was in live-in relationship was granted share in her husband's joint family property²¹.

¹⁶ D. Velusawamy v. D. Patchiammal AIR 2011 SC 479

¹⁷ Nandakumar vs The State Of Kerala on 20 April, 2018, CRIMINAL APPEAL NO. 597 OF 2018 (Arising out of SLP (Crl.) No. 4488 of 2017)

¹⁸ Lalita Toppo vs State of Jharkhand. Indian Kanoon website: <https://indiankanoon.org/doc/6354756/>

¹⁹ Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636

²⁰ Dhannu Lal v. Ganeshram, (2015) 12 SCC 301

²¹ Sree Rangammal (died) & Ors v. E B Venkatasubramanian & Ors (1985, Mad HC)4

- Right to visa

The court in *Svetlana Kazankina v. Union of India*²² held that in granting extension to visa, marriage and live-in relationship should not be treated differently as live-in relationship has become a reality in the present days. It was emphasized by the Court that the objective of allowing extension of visa to married foreigners in India is to let couples enjoy their friendship, devotion and love.

(D) Legitimacy of children born out of live-in relationship

Judiciary has broadened the scope of legitimacy, and for the first time upheld the legitimacy of children born out of live-in relationship in the landmark case of *SPS Balasubramanyam v. Suruttayan*. The court held that “If a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife, and the children born to them will not be illegitimate.”. It was interpreted in consensus with Article 39(f) of the Indian Constitution according to which state has the duty to provide sufficient opportunities for children by protecting their interests and grow normally.

In the case of *Tulsa v. Durghatiya*²³ (2008), Supreme Court imposed a condition for the child to be legitimate that parents must have lived under one roof and cohabited for long time. There should be continuation in their cohabitation; it should not be stepping in and out. In such situations, the intention of the parents towards maintaining their relationship has lesser degree.

(E) Inheritance right

Under Hindu law, legitimacy of a child determines his or her inheritance rights. Legitimate children have all the rights over the ancestral property and parents’ self acquired property. Both the legitimate son and daughter are given the coparcenary rights. Whereas children born out of void and voidable marriages though deemed to be legitimate have rights over on father’s self acquired property only and cannot claim over the ancestral property²⁴. In the case of *SPS Balasubramanyam v. Sruttayan*, the court held that children born out of live-in relationship has entitlement to father’s property.

They are also been assigned the status of ‘legal heir’ by giving the right of inheritance in the case of *Vidyadhari v. Sukhrana Bai*²⁵. The father’s self acquired can be anything which becomes

²² *Svetlana Kazankina v. Union of India*, (2015) 225 DLT 613

²³ *Tulsa & Ors v. Durghatiya & Ors*, (2008) 4 SCC 520 (India)

²⁴ **BHARATHA MATHA V. R. VIJAYA RENGANATHAN AIR 2010 SC 2685.**

²⁵ *Vidyadhari v. Sukhrana Bai* (2008) 2 SCC 238

father's property. This includes the share of ancestral property also. In the case of *Revanasiddappa & Anr vs Mallikarjun & Ors*²⁶, the illegitimate children were granted the rights to father's self acquired property though it includes the share of ancestral property. The ancestral property in father's self acquired is the one which the father gets after dividing him and all his legal heirs such as legitimate children and wife. Thus, the illegitimate children get lesser share of property than the legitimate children.

(F) Custody

The custody of child is the legal guardianship of a child. The issue of custody arises when the parents decided to separate or divorce. However, it does not mean that the other parent who did not get the custody of child has been completely separated from the child. Under Specific Marriage Act, 1954, the court can grant custody to any one of the parents as it may seem proper and just in the interest of child²⁷.

Under the Hindu Minority and Guardianship Act, 1956, the natural guardian of a legitimate child is the father and after him is the mother. For all the minor legitimate children under the age of 5, the mother is the natural guardian. Whereas for illegitimate child, the natural guardian is the mother, after him is the father. Thus, Section 6(b) of the Act deals with illegitimate children which indirectly may refer to live-in relationships, giving the right to mother. As there are no specific laws that govern live-in relationship in India, the court approaches in similar manner as the cases involving marriages keeping the best interest of the child as the paramount factor²⁸.

(G) Maintenance

A son or a daughter whether legitimate or illegitimate has the right to claim maintenance. The father has the obligations to maintain his children or from his estate if he died. In the case of *Dimple Gupta vs. Rajiv Gupta*²⁹, it was held that under Section 125 of Code of Criminal Procedure, 1973, children born out of illegal relationship though considered illegitimate has the right of maintenance which includes minor as well as major if they do not have the resources to support themselves. Additionally, even if maintenance is not given to second wife, the child can have maintenance under this section. If such maintenance is not provided, it will be a violation of fundamental right Article 21 as minor cannot support themselves due to lack of resources. It was held as depriving of his right to live a dignified life in the case of *PV Susheela vs.*

²⁶ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1 (India)

²⁷ Devina Row, *Children Born In Live In Relationships Have Rights Too!*, 1, De Jure Nexus Law Journal (2021)

²⁸ Ibid

²⁹ *Dimple Gupta vs. Rajiv Gupta* 2007AIR SCW 6651

Komalavally³⁰. With regard to the maintenance, the courts have narrowed the gap between the legitimate and illegitimate children.

IV. DEVADASI SYSTEM

Devadasi also involve in live-in relationship largely due to their inability to get married in the society. They are either forced into such system or made to believe that it is their duty to do and have to maintain their family from the earnings made from the practice. The system has been prohibited by enacting legislations such as The Karnataka Devadasis (Prohibition of Dedication) Act, 1982, The Tamil Nadu Devadasis (Prevention of Dedication) Act, 1947, The Andhra Pradesh Devadasis (Prohibition of Dedication) Act, 1988 and The Maharashtra Devdasi System (Abolition) Act, 2005.

(A) General Legislations pertaining to Devadasis

1. The Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989

Section 3(k) of the Act recognized the dedication of Devadasis, they being from lower caste which the society considers and being a woman from that community. The Act punishes those who are not from Scheduled Caste or Scheduled tribes but promotes the dedication these women as devadasis. The Act does not punish those people who promotes within the community of SC/ST.

2. Indian Penal Code, 1860

Trafficking of persons for the purpose of exploitation is a crime under Section 370 of the Act. The punishment of it is not less than 7 years imprisonment but may extend to 10 years or life imprisonment if it is minor. Section 373 punishes those who engage in buying and selling of minors for the purpose of sexual exploitation which may extend to 10 years and fine. As the consent of devadasi women were irrelevant and forced to indulge into such activities or just as norms and includes minor girls, these provisions may apply³¹. The Act also punishes those who knowingly engages trafficked minor person for sexual exploitation under Section 370A for which the punishment is rigorous imprisonment of 5 years to 7 years and fine

3. The Immoral Traffic Prevention Act, 1956

The Act recognizes those who keeps brothels for engaging in prostitution and procures, induce or take the person for prostitution by criminalizing such acts. The persons here are those who

³⁰ PV Susheela vs. Komalavally (2000)DMC376

³¹ Jayna Kothari et al, Intersections of Caste and Gender: Implementation of Devadasi Prohibition Laws, CLPR (2019)

are above the age of 18 years. The punishment differentiates between first time offender and subsequent one. The first timer is punished for 7 years of imprisonment and life imprisonment for second one. The punishment is same for those who aids or abets such act of trafficking.

In case of trafficking a minor person, the punishment increases to minimum of rigorous imprisonment of 7 years and maximum of life imprisonment.

4. The Protection of Children Against Sexual Offences Act (POCSO)

The Act is applicable to minor Devadasi girl. Section 5 and 6 of the Act punishes imprisonment which may extend to life regarding penetrative sexual assault and aggravated penetrative sexual assault.

5. The Juvenile Justice Act, 2015

It is relevant in the case of minor Devadasi. The Child Welfare Committee under the Act has the power to deal with those children who are in need of care and protection provided the case is referred to them.

6. The Protection of Women from Domestic Violence Act, 2005

The Act can be applied to Devdasi women as it was enacted for the purpose of protecting the women from domestic violence within the shared household. The violence includes harm or injury which endangers the health and safety of a person that causes physical, sexual, verbal, emotional or economic abuse. Those Devadasi who has attained majority can claim relief under the Act.

The above legislations are not effectively implemented. The Court has also provided directions to curb the devadasi system by strengthening the enforcing authorities.

1. Vishal Jeet v. Union of India³²

The petitioner filed Public Interest Litigation (PIL) regarding the directions for eradicating forced prostitution and other Red Light areas issues. And asked for directions for implementation of devadasi legislations and conduct an investigation against those police officers and take actions against them in whose jurisdiction devadasi practice was flourishing. In examining the issues, the Supreme Court considers the practice as socio-economic issues rather than only social problem, thereby directing the followings:

The governments of all the states and union territories to take speedy and appropriate action by directing the law enforcing authorities.

³² Vishal Jeet v. Union of India [1990] 3 SCC 318

And advisory board to be set up for the purpose of making suggestions in taking measures towards eradication of child prostitutions and for social welfare programmes in order to protect, treat, develop and rehabilitate those girls who are rescued from brothels or prostitution. The board should consist of Secretary of the Law Department, Secretary of Social Welfare Department, criminologist, sociologist, members of various women' organisation and other voluntary social organizations.

And to provide homes of rehabilitation with well-trained social worker professionals, doctors and psychiatrists.

Welfare programmes to be set up by Union Governments at the national level in order to protect, care and rehabilitate girls and children and to amend the existing laws.

And to form machineries for implementating the suggestions made by the committees formed by the government of central, state and union territories.

2. Gaurav Jain v. Union of India³³

This is also the case filed through PIL. It is pertaining to the rights of children born out of devadasi women and other minor girls. In examining the case, the Court scrutinised the report submitted by a Committee on the conditions and means through which their live can be improved. The Court after the analysis held that actions have not been taken to eradicate the practice of devadasi though the laws are formed and thus issued extensive directions as follows:

Machinery for implementation of laws to be set up for assisting Devadasi women and bringing them out of prostitution and to launch rehabilitation programmes.

Women and Child Welfare Department to rescue and rehabilitate the sex workers who are minors by framing suitable schemes relating to self-employment etc. and by providing institutional care for rehabilitation to be effective.

The homes for juvenile should be used for short period only and be maintained by qualified and well-trained social workers, NGOs along with help of Governments of state and central. Children who are forced to do sex work should be properly rehabilitated.

To constitute a committee under the Ministry of Welfare for the purpose of studying the challenges of devadasis and to frame schemes to rehabilitate those women who have been forced into prostitution. This includes devadasi women also.

³³ Gaurav Jain v. Union of India [1997] AIR SC 3021

Additionally, a committee constituting of secretaries to be formed which is permanent in nature for tracking and reviewing the schemes implementations.

3. S.L Foundation v. Union of India³⁴

The court in this case held that Dalit girls dedication to temple was violation of Article 14, 21, 23(1), 39 (e) & (f) of the Indian Constitution. The Court also issued directions as follows:

Permission was given to petitioners to filed complain in case of violations of any provisions in the Act enforced in the four state of South India regarding Devadasi system and in any other states before the concerned authority or secretary or the police. And they are obliged to invoke the provisions against those offenders.

The Central government can approach the court if state and union territories were not implementing its advisory.

The petitioner can make state or union territories government to extend or provide rehabilitation measures for the victims of such practice provided such instances are brought to the notice of respective government.

V. MUSLIM AND CHRISTIAN LAWS

Like other personal laws in India, Muslim law also does not recognized children born out of live-in relationship. The illegitimate children under Muslim law are filius nullius i.e. children of nobody³⁵. However, Hanafi law school recognized mother as the one to whom the child belongs and she has the duty of taking care of such illegitimate child until the attainment of 7 years of age. The father has no obligations to maintain any illegitimate children and no laws taking care of such children. Since Section 125 is applicable to Muslim women, it might also be possible to apply to Muslim children born out of such relationship. In the case of Mohd. Ahmed Khan v. Shah Bano Begum³⁶, the Supreme Court held that a Muslim divorced women can claimed maintenance under Section 125 of CrPC although mahr has been paid to her by the husband. In the case of Jubair Ahmad v. Ishrat Bano³⁷, 2019, the Court held that Muslim women even after the period of Iddat are entitled to maintenance under Section 125 of CrPC. In the case of Ali Abbas Daruwala v. Shehnaz Daruwala³⁸, the Bombay High Court held that Muslim women are covered in Domestic Violence Act. In the landmark case of Muhammed Riyad v.

³⁴ S.L Foundation v. Union of India [2014] W.P.(Civil) 127/2014

³⁵ Divya Singh, "Live-In Relationship- Legitimacy of Children and their Inheritance Rights", 10, Pen Acclaims (2020)

³⁶ Ahmed Khan v. Shah Bano Begum, (1985) 22SCC 556

³⁷ Jubair Ahmad v. Ishrat Bano, Indian Kanoon: <https://indiankanoon.org/doc/139688509/>

³⁸ Ali Abbas Daruwala v. Shehnaz Daruwala, 2018 SCC 1195

State Police Chief³⁹, Honourable J. V. Chitambaresh and J. K. P. Jyothindranath, the Kerala High Court allowed Muslim teenage couple of 18 year old boy and 19 year old girl to be in live-in relationship. According to the court, the girl and the boy are in the legal age of marriage as per Section 251 of Mohemadan law. She as the major has the right to live according to her choice and her wants of live-in relationship is permissible.

Christian law also does not recognize live-in relationship of couples⁴⁰. One of the important essentials of valid marriage in Christian marriage is the solemnization of marriage. It does not recognize any rights of illegitimate children. The parents are not bound to maintenance his or her illegitimate children. However, Section 125 of CrPC is a secular law and it is made to make protect the children and to ensure that no children are left out.

In the case of succession of property, an illegitimate Christian child has no right to claim any property intestate. Such children can only have share of parents' property if it is mentioned in the will of the deceased. The Succession of Christians is governed by Indian Succession Act, 1925 and the word child in the Act only mean the legitimate child. In terms of guardian of the illegitimate children, neither father nor mother is the natural guardian as per the law. However, Supreme Court had held that natural guardian of an illegitimate child is the unwed mother and she need not inform the father regarding the guardianship⁴¹. The father in no way gets the guardianship of his illegitimate child.

(A) Advantages of live-in relationship

- Easy entry and exit

It is a relationship people can easily enter with mutual consent between the parties. It does not require any interventions of third parties or processes which usually takes place in marriage. Such relationship does not require family and relatives gatherings for their acknowledgment of starting of living together. Unlike marriage, it is also easier to get broken. They do not have heavy responsibilities and joint authorities in every aspects of life as in the case of marriage. Hence, couple due to any reasons can break off the relationship⁴².

- Absence of dowry

One of the challenges in Indian marriages is the burden of dowry though dowry is been

³⁹ Muhammed Riyad v. State Police Chief, B&B Associates: <https://bnblegal.com/article/partners-live-relationship-cannot-separated-writ-habeas-corporus-kerala-high-court/>

⁴⁰ *Property Rights of a Female in a Live-In Relationship and The Factors Influencing Them*, No Broker Times (last visited May 13, 2023) <https://www.nobroker.in/blog/rights-of-a-female-in-a-live-in-relationship/>

⁴¹ ABC v. State (NCT of Delhi) 2015 SC 609

⁴² Priya Sepaha, *Live-in Relationship in India: Laws and Challenges*, 1, LCJLS (2021)

prohibited in the country. Live-in relationship does not have demand of dowry for the people to live together. Thus, it saves women from being the victim of dowry demands.

- Absence of marriage ceremony

Marriage ceremony is a big burden to poor and middle class family. Family incurs huge debt after the marriage ceremony. However, in live-in relationship, marriage ceremony does not take place and parties do not have to incur such cost.

- Freedom and personal space

Unlike in marriage, parties involved in live-in relationship have more freedom and personal space. They are bonded with marital relationship hence there is less involvement in each other's business or personal life. It is convenient for career oriented woman as there is less household pressure.

- Compatibility check

Among today's youth, they want to check their compatibility. They will be able to know their partner's habits and lifestyles according to which they may decide their continuations of relationship⁴³.

(B) Disadvantages

- Social stigma

As the society still does not recognize live-in relationship, it creates a social stigma towards such people. They are being judged by people in many family gatherings and other ceremonies, and it is difficult to find a decent place for their living.

- Lack of bonding

Since, there does not exist any bonding of husband and wife like in marriage. The parties find difficulties to get support from each other at crucial times.⁴⁴

- The parties can abandon each other at any point of time due to any misunderstanding or fight. There is less effort to solve the problem.
- There is absence of specific laws governing live-in relationship. Thus, when a couple lives for a long time together, they suffer from financial and support issues from each other.
- There might be an increase in the probabilities of parties committing adultery.

⁴³ Swati Thakur, *Live-In Relationships- Pros And Cons Of Live-In Relationships*, Legal Study Material (last visited May 13, 2023) <https://legalstudymaterial.com/live-in-relationships/>

⁴⁴ Chatterjee supra note 3

- Children born out of such relationship are illegitimate and have to undergo differential ill treatment of society.

VI. DISCUSSION

The courts have legalised the live-in relationship in various judgments. It is been recognized as the fundamental right under the ambit of Article 21 of the Indian Constitution. The modern concept of woman empowerment and feminism has contributed largely in women becoming empowered and hence the traditional concept of marriage which put various restrictions and obligations on women is gradually becoming unpopular. The period of globalization connects the world and makes the work faster and engages people in many things. People travel from one place to another in short period of time for work as well as personal purposes. When people are bound by traditional marriages, it becomes setback for those people who have to travel across the world frequently. In addition, the various prolong legal procedures for dissolving the marriage is a hindrance. Hence, live-in relationship paves the way for such people to live the life they want in their globalised world.

With the new way of living, there arise new dimension of problems which one has to solve. Sometimes, a partner in the relationship become worse-off than before and there might be fights among them while staying together. As such relationship does not have any futuristic obligations, people tend to take advantage of other person. In such cases, courts have granted relief to women in live-in relationship under Protection of Women from Domestic Violence Act and also maintenance under Section 125 of Code of Criminal Procedure. Many of the women enter into such relationship also because of the words of man that he does not believe in marriage. Women as in India are taught from the childhood to sacrifice themselves and adjust to the requirement of male dominant society. It is to be measured that whether quantum of sufferings women undergo is align to the protection and compensation they get. Societal view towards men and the women differs. When a man enters into several relationships, society does not criticize the men but when a woman does, she gets criticised.

In all the cases, women have given priority in providing protection. But it is not to deny that man does not suffer due to changing circumstances that women are getting more educated and knowledgeable. Men in such relationship have not provided any legal protection. The notion is that it is the man who initiates the intimate live-in relationship.

The devadasi women are been exploited despite the prohibitory legislations. There is lack of coordination between different departments of enforcing authorities. Many of the devadasi do not have the awareness related to protective laws and welfare schemes. Majority of the girls are

dedicated by their family members and close relatives. They come from family of extreme poverty and lower caste where the responsibility of maintaining the family is put upon these girls. Being a dalit girl and poor makes them vulnerable⁴⁵. It happens at the young age of puberty or even before puberty like 11 years old. This is the extreme violation of various rights of children such as right to education. Having lack of education at the minor stage and being dedicated by family members has made these girls unable to file a complaint. And continue to be the victim of such practice. When these girls conceive, they are unable to know the father of her child. Thus, they are unable to get into various legal processes like applying for passport, etc. In addition, it puts a pressure on these children of not knowing their father to live a dignified life in the society. As almost 95% devadasis were not able register themselves as parents of their children in schools shows that the legitimacy of such children is at risk⁴⁶. Even if they know the father of their children, they are not willing to reveal their names.

However, some of them live with their partner like live-in relationship in the belief that he will support her and her children. But there is no complete support as the man usually is married person. They are unable to avail the protection under the laws that are applied to live-in relationship. Since the children born out of live-in relationship are considered legitimate, devadasi children whose parents are staying in live-in relationship should be legitimate. Though the law legalise marriage of devadasi and children born from such marriage to have inheritance right, the reality is contrasting as the society does not give respect to them. Their lives are sexually exploited; they do not give respect which a person as a human deserves. It is a violation of Article 21 Right to Life.

The court has declared that Section 125 of CrPC will override any personal laws if there is any contradiction with it. Granting maintenance only for few months after the divorce does not restore the justice to women, it is required that she had sufficient to live a dignified life as it is right of all persons. Courts have told that the purpose of Section 125 is to give social justice and that it is not religious centric. Though the live-in relationship is not recognized under Muslim law, women can still avail the maintenance under Section 125 as its purpose is to give justice and that Muslim women are also included under the ambit of women in this section. In addition, courts have recognized the growing number of such relationship and the changing lifestyles and have legalised the live-in relation of a Muslim girl aged 19 and a boy aged 18 years. The couple being major and their right to choose relationship have been upheld. And the children born out

⁴⁵ Tameshnie Deane, *The Devadasi System: An Exploitation of Women and Children in the name of God and Culture*, 24, *Journal of International Women's Studies* (2022)

⁴⁶ Sampark, *Gender-based violence on scheduled caste girls: A rapid assessment of the Devadasi practice in India* (2015)

of such relationship are illegitimate. Father does not have the obligation to maintain his illegitimate children under the Muslim Law. On the other hand, Courts have declared that illegitimate children born from live-in relationship can have maintenance under Section 125 of CrPC. However, they are still deprived of their inheritance right.

Under Christian law also, live-in relationship is not recognized and children born out of such relationship are illegitimate. They do not have any inheritance rights unless they are given the share of property through the will of the deceased person. During their lifetime, they cannot claim any property as an inherent right; they do not have any natural guardian. However, the Supreme Court declared unwed mother as the natural guardian of the illegitimate child and that she need not inform about her guardianship. In such case, the claim of maintenance by women and children in the live-in relationship under Section 125 of CrPC is unclear as the father does not have obligations. On the other hand if the father is made to pay the maintenance without informing the guardianship, there may be unfair treatment to the father. The probability of children getting the love and care from the father is lower.

Since live-in relationship does not require long process of engaging in ceremonies for couple to cohabitate, often it becomes convenient for LGBTQ community. Though intimate relationship of same sex couple is decriminalized, their marriage is still not legalised. While granting its legality, courts declared it as unconstitutional without allowing them to be institution of marriage. Courts have considered legal those live-in relationships which are in the nature of marriage and of heterogeneous couple. In such case, it is unlikely for their live-in relationship to be legally recognized.

VII. CONCLUSION

The modes of relationship in the modern days are changing rapidly. People find alternative ways to marriage to be in the relationship and support each other. Live-in relationship became the convenient way for the couple who are prohibited to marry or those who do not like to be marriage. Legalisation of live-in relationship has given protection to the couple. It has upheld the right of people to live the life of their choice despite the contradicting laws of different personal laws governing the relationship of people. The provisions providing protection to live-in relationship have been gender biased as it is available only to women and not to men. Though Indian society is patriarchal in nature, it will not be right to deny that men also suffer in the relationship. It is equally important to protect the men as well to make a just society.

As the relationship continues, the rights of children born out of such relationship are the concern. They are still treated as illegitimate though it has been mentioned in several judgments

that children are not be give injustice as they have not taken the decision of their parents mode of relationship. Mother plays an important role in the life such children as they are considered to be the natural guardian which may be one of the factors that women suffer more than men in the society after a live-in relationship. The fathers under Muslim and Christian laws do not have the obligations to maintain their illegitimate children which makes difficult for these children to have life at par with legitimate children. And, though the homosexual relationship is allowed, also in terms of live-in relationship, their rights and protection are in still uncertain. Thus, specific laws to govern the live-in relationship are required to deliver justice to everyone involved in live-in relationship.

(A) Recommendation

As the live-in relationship has become a reality, proper laws are required to govern it. The laws are required to protect the man in the relationship and not only the women as per the secular laws in order to bring justice. More empirical research can be done to understand the ground reality of the families involved in it.

VIII. REFERENCES

Cases

- ABC v. State (NCT of Delhi) 2015 SC 609
- Ali Abbas Daruwala v. Shehnaz Daruwala, 2018 SCC 1195
- Bharatha Matha v. R. Vijaya Renganathan AIR 2010 SC 2685.
- Devina Row, Children Born In Live In Relationships Have Rights Too!, 1, De Jure Nexus Law Journal (2021)
- Dhannu Lal v. Ganeshram, (2015) 12 SCC 301
- Dimple Gupta vs. Rajiv Gupta 2007AIR SCW 6651
- D. Velusawamy v. D. Patchiammal AIR 2011 SC 479
- Gaurav Jain v. Union of India [1997] AIR SC 3021
- Indra Sarma v. V.K.V. Sarma AIR 2014 SC 309
- Jubair Ahmad v. Ishrat Bano, Indian Kanoon: <https://indiankanoon.org/doc/139688509/>
- Lalita Toppo vs State of Jharkhand. Indian Kanoon, <https://indiankanoon.org/doc/6354756/>
- Lata Singh vs. State of U.P., [AIR 2006 SC 2522]
- Minaxi Zaverbhai Jethwa v. State of Gujarat 15 December, 1999
- M. Palani v. Meenakshi, AIR 2008 Mad 162
- Muhammed Riyad v. State Police Chief, B&B Associates: <https://bnblegal.com/article/partners-live-relationship-cannot-separated-writ-habeas-corpus-kerala-high-court/>
- Nandakumar vs The State Of Kerala on 20 April, 2018, CRIMINAL APPEAL NO. 597 OF 2018 (Arising out of SLP (Crl.) No. 4488 of 2017)
- Pushpa Devi v. State of Punjab, 2021
- PV Susheela vs. Komalavally (2000) DMC376
- Revanasiddappa v. Mallikarjun, (2011) 11 SCC 1 (India)
- Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636
- S. Khushboo v. Kanniammal, (2010) 5 SCC 600 (India)
- S.L Foundation v. Union of India [2014] W.P.(Civil) 127/201

- S.P.S Balasubramanyam v. Suruttayan 1994 1 SCC 460
- Sree Rangammal (died) & Ors v. E B Venkatasubramanian & Ors (1985, Mad HC)4
- Svetlana Kazankina v. Union of India, (2015) 225 DLT 613
- Vidyadhari v. Sukhrana Bai (2008) 2 SCC 238
- Tulsa & Ors v. Durghatiya & Ors, (2008) 4 SCC 520 (India)
- Vishal Jeet v. Union of India [1990] 3 SCC 318

Articles and Books

- Devina Row, *Children Born In Live In Relationships Have Rights Too!*, 1, De Jure Nexus Law Journal (2021)
- Divya Singh, “*Live-In Relationship- Legitimacy of Children and their Inheritance Rights*”, 10, Pen Acclaims (2020)
- Jayna Kothari et al, *Intersections of Caste and Gender: Implementation of Devadasi Prohibition Laws*, CLPR (2019)
- Jogan Shankar, *Devadasi Cult: A sociological Analysis* (Ashish Publishing House 1994)
- *Live-in Relationship: Evaluation and Legal Provisions*, 3, IJALR.
- Maria Costanza Torri, *Abuse of Lower Castes in South India: The Institution of Devadasi*. Journal of International Women’s Studies (2009).
- Priya Sepaha, *Live-in Relationship in India: Laws and Challenges*, 1, LCJLS (2021)
- *Property Rights of a Female in a Live-In Relationship and The Factors Influencing Them*, No Broker Times (last visited May 13, 2023) <https://www.nobroker.in/blog/rights-of-a-female-in-a-live-in-relationship/>
- Rajesh M. Dave, *Legal Status of Live In Relationship In India*, 9, IJAL,17, 17-18 (2019)
- Saloni Narula Khanna & Gagandeep Kaur, *Live-In Relationship In India- A Comparative Study*, 53, UGC CARE Group 1 Journal.
- Sampark, *Gender-based violence on scheduled caste girls: A rapid assessment of the Devadasi practice in India* (2015)
- Sangeeta Chatterjee, *Legal Recognition of Live-In Relationship: An Emerging Trend of Social Transformation in India*, 11, IJLJ (2020).
- Swati Thakur, *Live-In Relationships- Pros And Cons Of Live-In Relationships*, Legal

Study Material (last visited May 13, 2023) <https://legalstudymaterial.com/live-in-relationships/>

- Tameshnie Deane, *The Devadasi System: An Exploitation of Women and Children in the name of God and Culture*, 24, *Journal of International Women's Studies* (2022)
