

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 3

---

2024

© 2024 *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](mailto: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](mailto:submission@ijlmh.com).

---

# Legal Recognition of Live-In Relationships: A Cross-Country Analysis of India and France

---

MUDRA SHARMA<sup>1</sup> AND ABHIRANJAN DIXIT<sup>2</sup>

## ABSTRACT

*The article draws a comparison between the legislative frameworks surrounding live-in relationships in India and France. It examines the mode and limitations of legal recognition of such relationships in the two nations, and what implications exist for the couples living in this arrangement. Live-in relationships in India have been beginning to find some legal footing largely via judicial interpretation that are gradually stretching protections under certain conditions. By contrast, the French law permits such couples to proceed on a more stipulated and defined legal pathway via the Pacte Civil de Solidarité (PACS) that comes with formalized recognition and the same rights and responsibilities that one gets in marriage under a variety of legal regimes. The paper sharply brings out the cultural, historical and legal differences between the two nations in acceptance and regulation of live-in relationships. It points at how legal recognition holds security for couples – especially concerning questions of property rights, inheritance and parental responsibilities – within the larger tide worldwide to recognize the various forms of family structures.*

**Keywords:** *Live-in relationships, legal recognition, India, France, cultural differences, Pacte Civil de Solidarité, judicial interpretations, property rights, inheritance rights, parental responsibilities.*

## I. INTRODUCTION

Live-in relationships, where couples live together as partners but with none of the formalities attached to marriage, have become an increasingly prevalent form of partnerships across different cultures and legal settings. Live-in relationships present unique challenges to – and also opportunities for – legal regimes around the world and therefore, how they are treated legally, or even whether they are legally recognized at all, attests to wider changes that are taking place in social norms, rights and freedoms embedded in the law. Here we will look at how the law treats live-in relationships in two jurisdictions: in the Asian nation-state of India,

---

<sup>1</sup> Author is a student at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

<sup>2</sup> Author is an Assistant Professor at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

and in Europe, in the cosmopolitan republic of France. A comparison of these two settings allows us to see, first, that the law's recognition of live-in relationships depends on the cultural, historical and legal ensembles within which legal norms have developed.

Although the institution of the live-in relationship can be found everywhere, it differs greatly in the way it is viewed across the world and is governed by laws according to the cultural context. In many countries in the West, cohabitation is fully legalized and those couples enjoy nearly the same rights and duties as a married couple. Common-law partnerships in Canada and cohabitation agreements in many parts of Europe offer inheritance and custody rights to a couple under the same roof without the legal necessity of marriage.

In contrast, in many countries of Asia and the Middle East, cultural and legal systems are less supportive of live-in relationships; in some cases, these are more linked to religious and traditional values that stick closely to and encourage marriage. Yet even in these regions, we see a trend towards legal frameworks that recognize the rights and obligations of people in other family forms, perhaps as national governments react to and respond to global demographic trends.

They should have an equal right to the legal status of a live-in relationship. That recognition gives legal security to the partner in three areas – one, property; two, inheritance and three, parental responsibilities. Without it, everyone in the live-in relationship is legal a vulnerable one.

Second, it can confer social legitimacy on a couple who chooses not to marry but to cohabit, lowering stigma and discrimination in societies that still hold to traditional values. This last point has led some leftist writers in the Anglo-American world, in both the US and the UK, to support moderate levels of state recognition of cohabitation, while retaining — or even adding to — protections associated with marriage.

Finally, acknowledging them helps to protect any weaker partners – including offspring born as a result of such relationships – and guarantees them their rights and benefits.

This introductory step clears the path for a more detailed exploration of the acknowledgment and consequences of live-in relationships under family law in India and France or, as I call it in the book, the increasing 'democratization of marriage'. My comparison of two seemingly disparate and different legal systems is meant to expose more general trends and possibilities for further legal reform in other jurisdictions.

### **(A) Legal Definitions and Framework**

Defining live-in relationships from a legal point of view helps us understanding the rights and duties that come along with a live-in relationship. The last part of this essay delves into the legal frameworks that are defining and recognizing live-in relationships in India and France.

It is thus a relatively modern phenomenon in India, which cannot be referred to in the positive law of statutes, and has had to largely rely on the judiciary to interpret its nature and give a legal framework to live-in relationships. There has been a progressive trend in the judiciary with regard to recognizing the rights of partners in live-in relationships through the doctrine of ‘relationship in the nature of marriage’.

The Supreme Court of India recently deduced some criteria for a live-in relationship to qualify as a ‘relationship in the nature of marriage’ under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) in the judgment of *D Velusamy v. D Patchaiammal*. A relationship in the nature of marriage wouldn’t be a relationship of illicit cohabitation. While observing that not all live-in relationships could be read as a relationship in the nature of marriage, the Supreme Court laid down the following test: In order to constitute a ‘relationship in the nature of marriage’, the following elements need to be examined: common household, sexual relationship and pooling of resources. The Supreme Court set some criteria for a live-in relationship such as sharing a common household together; having a sexual relationship; pooling of income and other financial support; a relationship, in which the partners have demonstrated a commitment to each other by living together in a shared household.

- The couple must hold themselves out to society as akin to spouses.
- They must be of legal age to marry.
- They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- They must have lived together and held themselves out to the world as being married for an extended period.

The Court held that, if these requirements are not met, such a relationship is merely a ‘concubinage’ or a ‘live-in affair’ – both of which are not recognized as marriages under secular law in India, and therefore are not entitled to protection under PWDVA. This judgment creates a quasi-jural status for some live-in relationships by giving them legal protection under laws enacted for the protection of married women, including maintenance and alimony rights.

Unlike India, France has built an explicit legal route to recognize non-marital cohabitation. French law recognizes a form of civil cohabitation, the ‘Pacte Civil de Solidarité’ (PACS).

Enacted in 1999, PACS provides a form of civil union available to both heterosexual and same-sex couples, providing most of the legal benefits and obligations of a marriage, though with differences.

In France, a living-in relationship can be informal or registered in order to legally recognize the situation. For this, please follow the rules that can be summarized as follows: For a PACS, the partners need to:

- Sign a formal agreement in the presence of a court clerk.
- Be at least 18 years old.
- Not be already married or pacted with someone else.
- Not have close family ties that would prevent a marriage.

After it is entered into, couples enjoy much of the same legal situation as married people — including rights to joint taxation, social security benefit distribution, and inheritance rights. But legal obligations are both fewer and less far-reaching than in marriage, especially when it comes to inheritance and adoption rights. Also, PACS can be simpler and cheaper to dissolve than divorce.

The difference between how live-in relationships fared in India and in France points to a difference in the degree of legal recognition given to such relationships in different parts of the world. Even as the Indian legal approach operates in a complex terrain of judicial creativity and multiple layers of customary rules, the process of legal recognition in France has been more straightforward – more defined, precise and clear-cut. Legal definitions do evolve and change everywhere, and the direction that the changes have taken in these two countries reflect the global turn to the acknowledgement of diverse family forms through changing and adapting customary legal rules to the needs of societies and individual choices.

## **II. HISTORICAL DEVELOPMENT OF COHABITATION LAWS**

Situated against the backdrop of broader social shifts in marriage, family and intimacy norms over time, the evolution of these laws offers an opportunity to contextualize and critique the nature of the current legal status of live-in relationships in India, and how they play out in that country today. It addresses how law develops as a dynamic mechanism that absorbs changes, accommodates them, tinkers with them and eventually begins to impose them.

### **(A) Shifts in Societal Attitudes and Legal Norms**

Indian law recognizing live-in relations is a slow process and has largely been precipitated by

the change in social attitudes towards marriages and social relationships in general. For most of its history India has had an extremely conservative attitude to the sanctity of marriage – not only sanctioned by the law enforced by Britain during the colonial era, but also perpetuated by a strong sense of familial relationships informed by cultural and religious values. Change came relatively slowly in India but as urbanization, globalization and economic development picked up speed, attitudes towards propriety in family life evolved, notably in India's urban centers.

this forbearance on the part of the legal system continued well into the late 20th and early 21st centuries when social changes began to compel the courts to adapt to an ever-evolving market. So, the judiciary started to interpret enacted legislation to bring into force vested rights so as to protect certain people in live-in arrangements (living with consent, not within certain familial ties). In the much-celebrated *S Khushboo v. Kanniammal*, the Supreme Court expounded on the need to look at 'live-in relationships' not only in the context of freedom of an individual, but also through the framework of loose and easy social norms.

These rights of partners in live-in relationships have been protected by the courts, which have increasingly construed principles of fairness, justice and equality embedded in the Constitution of India to counter a prejudiced society and legal lacunae. This is indicative of the seepage of liberal, progressive and tolerant thinking about non-marital sex and relations from elite society into the legal mainstream.

One can see that in France – and for very different reasons than in our own country – cohabitation laws developed a certain trajectory in light of a long tradition in secularism and individual liberty, as well as in a culture that dictated different rules for different affairs in life. The French Revolution also left France with an aversion to hierarchy and a lasting dedication to egalitarian principles. Over the course of the 19th and 20th century, this evolved into more liberal views with regard to families and interpersonal relationships outside of marriage.

The legal recognition of cohabitation and structuration of non-marital relationships solidified at the end of the 20th century, with the legislation of the Pacte Civil de Solidarité in 1999, in order to cater to growing demand for legal recognition of same-sex relationships and broader socio-cultural acceptance of various family forms. The PACTS catered both to same-sex couples but also become an increasingly popular route for heterosexual couples looking for less formal alternatives to marriage.

It reflects a major transformation of the regulatory model of French legal personhood in the realm of 'family' and indeed 'relationship' recognition, from a highly regulated heteronormative marriage-based model to an increasingly flexible model allowing for open-

ended recognition of a range of different bonded relations between persons. It is one of several overlapping tendencies in the French social sphere toward greater acceptance of individual choice in structures and meanings of personal and family life recognized and formalized through legal proceedings and structures guaranteeing the ‘proof of existence’.

### III. LEGAL RIGHTS AND RECOGNITION

In India the property rights of live-in couples are contractual in France where there is a total difference between these couples. France has a civil law while India has a common law. The legal set up of each country and the local culture and religion makes the two-method difference in approach. This section aims at sketching out the way property rights are treated by the cohabitants in India and France.

As far as Indian law is concerned, there is no presumption in favor of live-in partners’ property rights. This makes the legal recognition and enforcement of its parties’ partnership rights contingent almost entirely on judicial interpretation. This would presuppose the existence of a statute that addresses the property rights of live-in partners. Indians simply don’t have such statutes.

Recognition of the rights of women – and men – who live in a relationship by the Indian judiciary, in some instances, via the Protection of Women from Domestic Violence Act, 2005 (PWDVA), an Act that is protection from abuse, though some of its other rights may have an indirect impact on property rights, including the right to reside in a shared household. These are conditional rights and not co-owners of jointly acquired property.

This has been done many times through judicial precedents construing the property rights of cohabitants, such as in *Indra Sarma v. V K V Sarma*, where the Supreme Court of India decided that a woman who’d lived with a man long enough should be treated, for some purposes, pretty much like a ‘wife’, and entitled to such things as some of the man’s estate, alimony and so on that would ordinarily go to a wife. Such characterizations can be quite variable, and might or might not be drawn upon in any given case.

Absence of clear laws compel partners to depend on general legal principles and guidelines such as the palimony (an adaptation of US law based on a similar case there) which has been used by Indian courts to grant maintenance in some live-in relationship cases. Partnerships in live-in relationships are advised to formalize a property sharing arrangement by way of written contracts in order to avoid legal wrangles.

In France, the government provides a dedicated framework for property rights between couples

in live-in relationships, especially Pacte Civil de Solidarité (PACS) registrants. Interestingly, PACS delineates some property rights between cohabitating partners that are similar to those guaranteed through marriage while juxtaposing key differences.

In accordance with PACS, partners have the option of either separating their property or co-owning it (indivision) with their partner. The separation of property regime is presumptive, meaning that separation is the default, and each partner keeps ownership of any property they or their partner procured before the life partnership or any assets procured exclusively by one of the partners during the relationship except for elements of household fame and community of property. Partners are entitled to have joint ownership and co-own their assets acquired during their life partnership.

Besides these regimes, PACS partners also receive protections analogous to those of spouses – such as inheritance rights, and tax benefits – which, though not technically property rights, do have an impact on them. Here’s one example. PACS partners are exempt from paying inheritance tax on property given to one another, and this privilege mimics that of married spouses.

And, moreover, France’s system of property rights offers protection not just for PACS partners but for unregistered partners too, through laws regarding cohabitation, so that if one partner owns a house and the other has, say, invested money in its upkeep or mortgage payments, the latter could claim rights to the house based on his or her investment. This claim might need to be pursued through the court system, but it does exist.

### **(A) Inheritance Rights**

Right of inheritance is a matter of family law and succession which impinges directly on the lives of those in live-in relationships. It determines whether a partner can inherit from the estate of the other where there is no will or some other form of testamentary arrangement. India and France handle live-in relationships differently in this respect. The contrast is striking because the two countries are similar in some respects.

For example, partners in a live-in relationship don’t have a legal right to inherit property from each other under the traditional Hindu Succession Act, 1956, or the Indian Succession Act, 1925, unless a will explicitly caters for their succession, as was the case here. Under the general law of inheritance in India, only legal or related heirs – those related by blood, or having been legally adopted by the individual, or a legally wedded wife – are recognized as heirs for succession purposes.

But there is some limited judicial traction on this front too, through progressive interpretations,



such as in the area of live-in relationships. For example, the ongoing presence of a partner in a live-in relationship has been held to be relevant for the purpose of protecting a person under the Protection of Women from Domestic Violence Act 2005 (PWDVA), which can include a financial relief order that might, in turn, impact inheritances.

Nonetheless, without formally recognizing the relationship under state law through marriage or testamentary recognition, such as a will, partners in live-in relationships face little state protection or recognition under succession laws. Legal advisors often recommend people in such relationships to make a will to ensure that their partners are recognized as heirs.

In contrast, the French system provides more definite inheritance rights to cohabiting partners, but only where they are linked through a Pacte Civil de Solidarité (PACS), or civil solidarity pact. Pacted partners have certain rights similar to those of married couples and divergent from them: notably, in terms of inheritance, where there are differences of scope and application.

- **Adjustments to Succession Law:** While there is some tax advantage under French law for PACS partners when compared with non-partners, PACS partners do not, for example, automatically inherit from each other if they die without a will. If one partner has a will, and so does not die intestate, the surviving partner does not have automatic inheritance rights. However, a Will allows the surviving partner to inherit.
- **Tax:** Whilst PACS partners don't inherit automatically, provisions reduce inheritance tax to the same rate as that for related individuals, and make it easier for an unrelated beneficiary (such as the surviving PACS partner) to inherit substantial assets through a will.
- **Legal elasticity:** The structure of PACS lets couples further bolster their inheritance agreements with explicit additional legal contracts such as a 'tontine' contract by which each party's survivor receives a share of the estate of the other, or by naming each other as beneficiaries of life insurance policies, which can often bypass the ordinary inheritance process and ensure financial rights for the surviving partner.

The difference between the Indian system and the French one is a part of a wider division about the nature of familial rights and relationships that fall outside the domain of marriage in divergent legal traditions. In France, PACS offers the path to legal status and economic security; in India, the absence of such an institution leaves live-in partners at the mercy of changing judicial interpretations, as well as personal legal action, such as the step of making wills to obtain mutual inheritance rights.

This comparative (and engaging) examination of the rights of inheritance between India and

France, in the context of live-in relationships, highlights not only the legal intricacies but also the socio cultural underlies of these laws, and the necessity of laws to follow changes in the society and legal planning of non-marital relations to ensure security against the hardships in eventuality of death, separation or dissolution of such relations.

### **(B) Legal Protections**

The questions of whether partners in live-in relationships can claim the right to be recognized as such in domestic violence cases or whether they can claim housing rights are obvious areas where legal differences between India and France stand out. This part reviews the different legal approaches in these countries and states the specific legislative measures of protection of live-in partners.

### **(C) Domestic Violence**

Legal protections against domestic violence for partners in live-in arrangements in India are, however, relatively new developments. Extending the remedies and protections afforded to women by the landmark interpretation of the domestic violence law to women who were partners in what the court described as a ‘relationship in the nature of a marriage’. *D Velusamy v. D Patchaiammal* was a milestone in the expansion of domestic violence protections beyond merely marriage. The Supreme Court interpreted the Protection of Women from Domestic Violence Act, 2005 (PWDVA) as applying not only to married women but also to women who were ‘a relationship in the nature of a marriage’ and thus provided them with legal recourse to protection against abuse, claiming maintenance, and sharing the household expenses.

But that judicial interpretation has its limits and does not confer these protections on all live-in relationships as a matter of course. To qualify for the protections, such a relationship must, the court ruled, satisfy certain criteria, such as its duration, social recognition and economic interdependence. This leaves many unable to satisfy the criteria in place, and without protection.

On the contrary, France has provided a uniform level of legal protection against domestic violence, not only to married couples but also to all forms of domestic relationships. Following the creation of the Pacte Civil de Solidarité (PACS) and the legal reforms resulting from it, legal protections available to victims of domestic violence have been made even stronger, including for live-in couples. Under French law, both husband and husband and wife and wife have the explicit right to protect themselves from violence through protective orders and pursue remedies through the justice system, regardless of their specific marital or PACS status.

French laws also contain similar tools for immediate protection, in the form of par EPU’s, which are mutually available to both married and unmarried spouses. Courts of law in France are

extremely focused on the protection of the safety and security of people who live together as intimate partners. This is reflected by ensuring that the legal tools that are available to combat domestic violence are accessible and immediately applicable.

#### **(D) Eviction and Housing Rights**

Indian law is also silent on the rights of partners in live-in relationships, including the right to stay in the same home and the right against eviction from the home. All this means that cohabitants may continue to live in very precarious conditions, particularly if their relationship falls apart. Judges have sometimes come to the aid of live-in partners by providing an interpretation of the law according to which the rights of women in live-in relationships derive from an analogy with the rights of wives, especially with regard to the right to live in a shared household.

In cases where a woman was in a long-term live-in relationship and thrown out of her home by her partner, courts sometimes gave relief similar to what is provided under matrimonial laws, but these are ad hoc decisions that turn on the facts of the case, and the nature of the relationship as judicially interpreted.

For example, partners in a PACS in France have rights relating to housing and eviction analogous to those of married couples, such as the right to remain in the shared domicile in the case of death of their partner or in the case of separation; as well as protection against eviction without legal process. PACS partners also commonly have access to certain contractual benefits for which they would not be eligible were they not in a domestic partnership, such as joint leases, which grants a more secure and stable tenancy situation for the couple living together.

#### **IV. CHILDREN IN LIVE-IN RELATIONSHIPS**

In India, property rights of people in live-in relationships fall far short under the law, because there won't be any marriage, but parental rights have been equally difficult, with courts standing by the biological rights of parents. The biological parent in a live-in relationship will be the first one to get the custody unless the social parent – a parent the child is emotionally bonded with – files for custody independently. The non-biological partner does not have inherent parental rights over the child unless formally adopted. A fundamental judgement that set the precedent for children of live-in relationships as evidence-based was the decision of the Supreme Court in *Tulsa & Ors v. Durghatiya*. The judgment emphasized the paramount importance of child's interest over either parent in a custodial case and guardianship case whether they were married or not.

France more explicitly recognizes the rights of partners in pactured live-in relationships, especially through the Pacte Civil de Solidarité (PACS), which was passed in 1999 to allow for essentially the same mutual obligations in a live-in domestic partnership as married couples. Partners can adopt a child together, and the non-biological father can be granted stepchild adoption, which gives him full legal parental rights. French law prefers to see ‘shared parental responsibilities’ and ‘legal rights to both parents’, whether or not they are genetic parents. ‘The best interests of the child’ are to be considered.

#### **(A) Custody and Visitation Rights**

Custody and visitation rights for live-in partners are determined by the ‘best interests of the child’ doctrine, and granted by the judiciary on a case-by-case basis, regardless of biological or non-biological parentage.

In France, les parents isolés (that is, unmarried) have the same rights to custody and visitation as les parents mariés (either one or both of them might be married to someone else; the key thing is the couple in question). Rules generally follow the notion of what is in the best interest of the child. In disputes over custody and visitation, PACS partners are often treated just like married couples, and courts will readily order co-parenting arrangements – unless proven to be harmful to the child’s welfare.

#### **(B) Recognition of Paternity and Maternity**

In India for such live-in couples to be recognized as fathers or mothers of children born to them can be problematic, especially for fathers. While mothership is seldom disputed – childbirth is indeed recognizable and obvious – the father is legally compelled to voluntarily acknowledge paternity, or the law may declare such paternity by a court order.

In France, the children of live-in couples can: have paternity recognized at birth; have maternity automatically recognized; or parentage can be simply recognized by an act drawn up at any time later with the support of lawyers and witnesses. This allows differences between partners to be resolved and aids legal recognition of the paternity of both parents, making procedures much simpler.

#### **(C) Child Support and Welfare**

Indian law is adamant that, whether married or not, the parents owe child support and welfare to their offspring, and courts will generally — though not invariably — rule in accordance with the principles of ‘the best interests of the child’. In most cases, the father is ordered to make child support payments; in some cases, the mother must also. Which parent makes payments

depends on which parent has custody, and how many assets each parent has.

In France, for example, child support obligations are enforced in almost the same way for married and unmarried couples alike. French law ensures, as long as the parents have the financial means and the children require it, that all children receive financial support from both parents.

## **V. LEGAL OBLIGATIONS ACROSS COUNTRIES**

In India, children are legally very different to those born into live-in relationships in France. Whereas the laws in France provide a similar system of support for children born to unmarried and married parents, the responsibilities of live-in parents in India are much less consistent and barely structured by law. Rather, they rely on judicial discretion.

### **(A) Status of Children Born Out of Live-In Relationships**

#### *Legal Identity and Inheritance*

Children born to couples in live-in arrangements are considered legitimate children by law and, as such, can inherit the parents' property according to the Hindu Marriage Act and other personal family laws (though these rights are often hard to prove if paternity is contested).

In France, a child born out of wedlock has the same rights as one born of a married couple. The right of inheritance is an example. It means that an illegitimate child has the same right to its father's estate as a legitimate one. In fact, the right their parents' marital status. This is often the case for their social welfare, too, and securing their future by providing a clear legal identity for the child, who may well need it should the parents separate.

### **(B) Comparative Analysis**

The legal recognition of live-in relationships in India and France provides an intriguing example of how two very different legal regimes tackle equivalent social changes toward deviating family structures. This essay will bring to light the similarities and differences between the two legal systems, the role of culture in legislation, the challenges of enforcing the law, and the way the laws toward cohabitation might evolve in coming decades.

### **(C) Similarities in Legal Recognition**

The problem for them is similar to that for India: how to accommodate expanding moral codes into existing legal structures. In France as in India, courts and legislatures have been forced by developments at the grass-roots level to grapple with the consequences of a growing number of live-in couples for family law, social security, and inheritance.

### *Protection Against Discrimination*

Both legal regimes have likewise slowly trended toward banning discrimination based on marital status, particularly in the realm of employment and housing. Recognition of the rights of those in live-in relationships serves to counter both social and systemic discrimination.

### *Recognition of Children's Rights*

India too has brought France in line on the rights of children in live-in relationships, granting them of the same rights regarding maintenance and inheritance as children born in marriage. India and France have demonstrated that the moral and legal imperative to support children and respect their rights can be independent of parental marriage.

### **(D) Differences in Legal Frameworks**

France has taken a more codified approach to the legal recognition of live-in relationships through the Pacte Civil de Solidarité (PACS, or civil partnership), a legal status that is substantively like marriage, although there are important disparities, principally in respect of inheritance and tax benefits. India has not developed a statutory regime for live-in relationships, and so judicial interpretations have dominated the recognition and protection of such relationships.

### *Scope of Legal Protections*

PACS partners in France benefit from many of the protections enjoyed by married couples. In India, on the other hand, partners in live-in relationships have to rely on a patchwork of judicial decisions, ones that are 'ad hoc in approach, inconsistent in nature and fact-specific in result', as noted by D K Basu in the India Law Journal.

### **(E) Cultural Influences on Legislation**

#### *Impact of Social Norms*

The traditional, strongly religious approach to marriage and family in India influences public and legal attitudes to live-in relationships, in a way that causes stigmatization and less formal social recognition of unconventional forms of romance such as live-in relationships, in contrast to the social vernacular of more secular, liberal France, which enables different kinds of partnerships to be formalized, ranging from live-in relationships to gay marriage.

#### *Legal Responses to Cultural Changes*

Even as they adjusted, however, the two countries' legal systems responded differently; France did so via explicit legislative reforms, while India's evolutions have been more reactive,

addressed via the ‘stop-gap’ measures of the judiciary filling immediate legal vacuums.

### **(F) Challenges in Legal Enforcement**

#### *Inconsistencies in Application*

However, in India enforcement of laws governing live-in relationships is more sporadic, because judicial precedents vary drastically from case to case. France doesn’t have this problem, because PACS creates a more consistent legal framework.

#### *Social Acceptance*

Enforcement is also affected because of variations in the level of social acceptability. In rural and tradition-bound communities in India, the live-in arrangement may call forth less social acceptance, and this could be reflected in law enforcement. In France too, while it is more uniformly accepted, there are still variations, especially among the older, more traditionally minded members of society.

## **VI. SOCIETAL IMPACT AND PUBLIC POLICY**

Narayan and her co-author circulate the view that live-in relationships ‘reflect significant social change’ in social norms in both India and France and that those who choose to live in together ‘prompt far-reaching policy changes change, and then offers possible policy responses that can strengthen legal protections, increase legal clarity and enforcement, and provide citizens with information about the rights and protections to which they may be entitled as a result of their choice to live in together.

### **(A) Impact on Social Norms and Stigma**

Live-in relationships are – perhaps – tolerated in India, but they are also viewed in a very suspicious light. This can be partly explained by a cultural and religious valuing of marriage. And despite massive urbanization and globalization, a slower shift towards a more accepting attitude towards live-ins can be seen specifically among the younger, more urban populations (although of course there are exceptions). Stigma remains, especially in rural areas where traditional notions are more entrenched. Having live-in relationships recognized by the judiciary is changing some of the norms, but acceptancy is still patchy.

In contrast, live-in relationships in France are less likely to be frowned upon by society in general. This is due to a prevailing liberal culture of personal relationships and family structures, as well as legal recognition in recent decades (e.g., via the Pacte Civil de Solidarité – PACS contract). Though there are right-wing elements of society that offer resistance to such practices, they are far less dominant than their counterparts in India.

## **(B) Suggestions**

There is an urgent need in India for specific legislation codifying and safeguarding the rights of those in live-in relationships — on property rights, rights of inheritance, domestic or family violence, and child custody and maintenance — using models such as France’s PACS as a starting point for thinking through flexible and protective laws to be adapted to the Indian social and legal framework.

France already has a strong PACS regime, but there is scope for improving it or at least extending it to some of those rights which are presently only accorded to married couples. For example, there are places where the rights of PACS partners have not yet been extended to the same rights which married couples have, such as rights of adoption and assisted reproduction technologies – and could well be done so to reinforce the principle of equality.

### **1. Improving Legal Clarity and Enforcement**

More specific directions must be given to the judiciary so as to ensure the effective and uniform application of the law in relation to live-in partners, which could be achieved by codifying the principles set out in the leading judgments into statutory law so as to provide better guidelines for the courts and to reduce the subjectivity in judicial decisions.

The French Government could improve the situation by allowing more specific laws regarding the end of the partnership. For instance, raising a new section for dividing the property and the financial earnings between two partners could help them claim their rights as they are explained in the law as clearly as it is explained for the end of marriage.

### **2. Educating the Public about Rights and Protections**

More direct educational campaigns relating to the legal issues pertaining to live-in relationships could improve legal literacy in both India and France and inform people about their legal rights when entering or terminating a live-in relationship. Educating the young generation about their legal rights and encouraging them to avail the legal protections offered by their law may help in reducing the stigma.

## **(C) Challenges and Critiques**

While the legalization of cohabitation in India and France is a progressive step, especially in a country marked by extensive patriarchy like India, the debate on the same often attracts considerable attention from various spheres of society, including the legal fraternity, the religious section of society and the society at large. Significant discussion in this section centers on the legal voids and ambiguities, the numerous critiques put forth by various sections of the



society against the legalization of cohabitation, the practical challenges in the implementation of these laws and ends with a comparative evaluation as to the effectiveness of the policy in the concerned countries.

### **1. Legal Gaps and Ambiguities**

The legal regime that pertains to live-in relationships has distinctive ambiguities that stem from a complete absence of particular legislation on the subject, and interpretations by the courts that range all over the map. Three of the more salient ambiguities relate to property, inheritance and custody of children. For example, the Protection of Women from Domestic Violence Act, 2005, may or may not offer some legal protections to women in live-in relationships, but what exactly constitutes such a relationship remains entirely open to judicial interpretation.

In France they are more codified in the PACS, but uncertainties remain, especially regarding issues of parental responsibility and claims to mutual support. PACS doesn't fully equalize the rights of live-in partners with those of married couples in terms of automatic rights of inheritance and joint access to a host of assisted reproductive technologies.

### **2. Critiques from Social and Religious Groups**

Without adding that people live together in good faith, and that such marriages are not contemplated. In India, social and religious formations cast criticism on the acknowledgement of live-in relationships, as an insult to marital values, which will encourage an 'inverted family system', which in turn can lead to moral degradation. Such social resistance gets reflected in the design and application of laws meant to lend protection to individuals from live-in relationships.

Even in France – a relatively liberal society – conservatives and some religious elements criticize legalizing PACS as weakening the institution of marriage. Such criticism has less influence on legal processes than in India, however, because the French legal system and society hold personal liberty and secularism in high regard.

### **3. Challenges in Implementing Laws**

Difficulties in the actual implementation of rights relating to live-in relationships in India arise from the stigma, general lack of awareness and discretionary powers of the judiciary. Uncertainty surrounding the enforceability of rights further debilitates such relationships, making it extremely difficult for individuals in live-in relationships to approach the judicial system to enforce their rights and ensure protection.

Entangled lay and ecclesiastical courts in the French judicial system often resulted in couples

doing nothing at all when it came to separating property. Even in France, where probabilistic judgments operate within a more rigidly organised legal structure, implementation of the law is not problem-free. Delays can be caused by cumbersome bureaucracy, and in small, more conservative towns there is sometimes still a backlash against the recognition of the rights of PACS partners.

## VII. CONCLUSION

The evolution of the common law in both countries shows us that the recognition of these relationships depends on the environment and culture in which each law takes shape, and on the steps that legal institutions have taken to reflect societal change. In France, as discussed above, statute law gives formal recognition to live-in relationships that meet certain criteria. The relevant provisions are part of a package of statutes which introduce a new concept of family for the 21st Century – i.e., a new way of providing legal and social security protections to individuals who do not necessarily live together or have children. In India, on the other hand, judicial steps that have necessarily been piecemeal, reflect a wider reluctance to address live-in relationships in the terms that are used in other parts of the world. What is clear from these developments is that, despite some courageous judicial rulings, the legal recognition of these relationships in India will vary and be governed by strict rules. Partners in these relationships may or may not be entitled to certain legal benefits and, until a common pattern emerges, it is haphazard in the extreme. From the partner's perspective, the position may still leave her in the lurch legally. For example, the well-known Vizag rape case (2009) demonstrated the growing vulnerability of women in live-in relationships and it is a sad irony that a provision drafted to protect women in 'live-in relationships' ended up completely failing them, in the case of Shanoor Asgarabifaiza.

PACS works to make live-in relationships more structured and formal with many of the rights and duties of marriage: property and inheritance rights, and access to government welfare arrangements including health benefits and social security which in India are still deficient. France's model can be considered a good measure of one way in which modern relationship forms can fit within an evolving legal framework, and be still flexible to changing societal patterns and preferences.

Despite both countries having the historically shared buddha tradition of legal emancipation from marital constraints, it is clear that India is becoming more liberal, with its legislations adapting better to shifting dynamics of family and desire, while France is becoming more conservative, driven by the strong desire for formalizing all forms of relationships – including

homosexuality – to deny the socialization of the fetish of ‘family’ and marriage. The legal recognition of a plurality of relationship forms in France really helps align the legal system with the shifting dynamics and norms of a modern society, whereas the legal retention of nineteenth-century norms of prohibition on live-in relationships in India only further widens the gap between a liberalizing civil society and a deeply conservative legal system, which is often the product of societal and cultural norms influencing the judicial interpretations of law.

These trends may well be followed by further formalization, both in Belgium and France, as part of ongoing social changes that have resulted in an ever-greater variety of family forms. Legal changes in both countries will go in the direction of expanding protection for members of couples who live together, narrowing down the territories in which personal relationships are unequal under law. Thus, this ‘Europe of differences can once again benefit from a comparative endeavor, which brings greater coherence to change. With a few changes of detail, the idea and practice of domestic partnership, as practiced in the US, could serve as a model. And as we have seen, it can be done.

\*\*\*\*\*

## VIII. REFERENCES

1. Martin, C., Cherlin, A., & Cross-Barnet, C. (2011). Living Together Apart in France and the United States. *Population*, 66(3-4), 561–581. <https://doi.org/10.1353/pop.2011.0025>
2. Chatterjee, S. (n.d.). Legal recognition of live-in relationship: An emerging trend of social transformation in India. *Indian Journal of Law and Justice*, 11(1, Part-II). Retrieved from <https://ir.nbu.ac.in/bitstream/123456789/3988/1/IJLJ%20-%20Vol.%2011%20No.%201%20%28Part%20II%29%20Article%20No%201.pdf>
3. Jain, S. (2022, September 13). Are live-in relationships legal in India. *iPleaders*. Retrieved from <https://blog.ipleaders.in/are-live-in-relationships-legal-in-india/>
4. Mishra, J. (2024, February 2). Legal recognition of live-in relationships in India: Trends and challenges. *The Legal Quorum*. Retrieved from <https://thelegalquorum.com/legal-recognition-of-live-in-relationships-in-india-trends-and-challenges/>
5. (2022, February 23). Understanding the law on live-in relationships in India. *Nyaaya*. Retrieved from <https://nyaaya.org/nyaaya-weekly/understanding-the-law-on-live-in-relationships-in-india/>
6. (2024, January 2). Live-in relationship: Legal rights of live-in partners in India. *Lloyd Law College*. Retrieved from <https://www.lloydlawcollege.edu.in/blog/legal-right-of-live-in-partners-in-india.html>
7. Shah, H. (2023, December 14). Live-in relationships & legal implications in India. *LinkedIn*. Retrieved from <https://www.linkedin.com/pulse/live-in-relationships-legal-implications-india-harshad-shah-md78f/>
8. Sattigeri, A. (2021, July 26). Legal status of live-in relationships in India: Mapping Indian jurisprudence. *Lawctopus*. Retrieved from <https://www.lawctopus.com/academike/live-in-relationships-in-india/>
9. Hamid, Z. (2023, July 24). How legal are live-in relationships in India? | In Focus podcast. *The Hindu*. Retrieved from <https://www.thehindu.com/podcast/how-legal-are-live-in-relationships-in-india-in-focus-podcast/article67115570.ece>
10. Sepaha, P. (2021, April). Live-in relationship in India: Laws and challenges. *Law Colloquy Journal of Legal Studies*, 1(II). <https://lawcolloquy.com/journals/PriyaV1C2.pdf>
11. Narayan, C. L., Narayan, M., & Deepanshu, M. (2021). Live-in relationships in India— Legal and psychological implications. *Journal of Psychosexual Health*, 3(1), 18-23. doi:10.1177/2631831820974585. [https://www.researchgate.net/publication/350202468\\_L](https://www.researchgate.net/publication/350202468_L)

## ive-In\_Relationships\_in\_India-Legal\_and\_Psychological\_Implications

12. (2024, April 9). Legal rights of live-in relationships in India. *Jyoti Judiciary*. Retrieved from <https://www.jyotijudiciary.com/legal-rights-of-live-in-relationships-in-india/>
13. Sahu, S. S. (n.d.). Live in relationship in India: A Socio – Legal Study. *The Advocates League*, 2(I). <https://theadvocatesleague.in/assets/pdf/researches/SHRADDHA.pdf>
14. Jain, A. (2024, February 10). ‘Civil partnership’ in UK, ‘cohabitation’ in France — How other countries view live-in relationships. *The Print*. Retrieved from <https://theprint.in/world/civil-partnership-in-uk-cohabitation-in-france-how-other-countries-view-live-in-relationships/1960919/>
15. Bargad, A. (n.d.). Live-in relationship in various countries. *Legal Service India*. Retrieved from <https://www.legalserviceindia.com/legal/article-4058-live-in-relationship-in-various-countries.html>
16. Martin, C., & Théry, I. (2001). The PACS and marriage and cohabitation in France. *International Journal of Law, Policy and the Family*, 15(1), 135-158. doi:10.1093/lawfam/15.1.135. Retrieved from [https://www.researchgate.net/publication/233326025\\_The\\_PACS\\_and\\_Marriage\\_and\\_Cohabitation\\_in\\_France](https://www.researchgate.net/publication/233326025_The_PACS_and_Marriage_and_Cohabitation_in_France)
17. Daley, S. (1999, October 14). France gives legal status to unmarried couples. *The New York Times*. Retrieved from <https://www.nytimes.com/1999/10/14/world/france-gives-legal-status-to-unmarried-couples.html>
18. Barlow, A., & Probert, R. (1999). Addressing the legal status of cohabitation in Britain and France: Plus ça change...? *Web Journal of Current Legal Issues*, 3. Retrieved from <http://webjcli.ncl.ac.uk/1999/issue3/barlow3.html>
19. Gventsadze, A. (2023, March 31). Cohabitation and civil union according to the French civil code as of November 14, 2022. *Law and World*. Retrieved from <https://lawandworld.ge/index.php/law/article/view/350>
20. (2024, April 19). Legal recognition of live-in relationships. *Free Law*. Retrieved from <https://www.freelaw.in/legalarticles/Legal-Recognition-of-Live-in-Relationships->
21. Parashar, A. (n.d.). Live in relationship in India in contrast with foreign countries. *Legal Service India*. Retrieved from <https://www.legalserviceindia.com/legal/article-14585-live-in-relationship-in-india-in-contrast-with-foreign-countries.html>
22. Mukundhan, A. (2024, March 19). Live in relationship rules in India: Legal rights of a person. *LinkedIn*. Retrieved from <https://www.linkedin.com/pulse/live-relationship-rules-india-legal-rights-person-abhinav-mukundhan-wjw8f/s>