

Live-In Relationship: Morality, Ethics and Need for Legislation

Dr. S. K. Chaturvedi¹
Shradha Baranwal²

Abstract

In India, a Live-in relationship is no more an alien concept considering the changes in societal fabric and its choices. Still, the issue of acceptability of the live-in relationship sometimes crops up which mandates recognition of its existence and the need to accord legitimacy to the same. Considering, that right to marriage has been maintained as a fundamental right via a plethora of judgments; and further protection has been given in such relationships which do resemble marriage-like institutions; it is high time that live-in relationships should be given statutory recognition with similar conditions of eligibility which are applicable in marriage. Various committees and judgments have indicated the same, yet the live-in relationship has not achieved the statutory recognition which is long due. The issue is not of existence but of protection which is at risk considering occasional draconian judgments which refuse to consider the right to companionship as a fundamental right and put unwarranted insistence on morality and ethics even to protect life and liberty. The institution of marriage has itself undergone a major change, yet some parts of the society and legal system simply refuse to acknowledge the same. This paper is an attempt to focus on the need for legalization and legislation pertaining to live-in relationships which would recognize the right of companionship beyond marriage and would also accord protection of life and liberty in such relationships.

Keywords: *Live-in-relationship, Fundamental rights, marriage, protection of life and liberty.*

¹ Assistant Professor, Department of Law, Hemwati Nandan Bahuguna Garhwal University, (A Central University), SRT Campus, Tehri, Uttarakhand, India.

² Assistant Professor, University of Petroleum and Energy Studies, Dehradun, Uttarakhand, India.

I. Introduction

After the landmark judgments of Lata Singh,³D Velusamy⁴and S Khusboo⁵recently a one-page order of the Punjab and Haryana High Court not only raised the eyebrows of many legal luminaries but also pushed us to the threshold of the conservative mindset of the legal system. In the case of Ujjwal and Anr. v. State of Haryana⁶the Punjab and Haryana High Court refused to grant protection of life and liberty to a young couple in live-in relationship against the apprehended threat from the girls' family. The one-page order while rejecting the prayer read, '*if such protection as claimed is granted, the entire social fabric of the society would get disturbed.*' The present case not only disregarded various norms relating to live-in relationship by the Hon'ble Apex Court but also failed to consider the Constitutional mandate of life and liberty irrespective of status. The question here is '*can morality be a ground for refusing the right to life and liberty*', further '*how to define the standard of morality and parameters of morality in a simple manner can ask who is to define morality?*' If society is to define morality, we are living in the same society in which one's permitted grave sins like '*SatiPratha*', nurtured the culture of '*Devdasi*', and permits the '*mutilation of female genital*' in the name of religion. The natural school of jurisprudence was rejected by the analytical school of jurisprudence for being vague and being completely based on morality and having divine origin. But the same natural school of jurisprudence rediscovered its relevance post-two World Wars as it was felt that morality, cooperation, and harmony are the essence of co-existence. Since then, the law and legal systems have evolved in various dimensions. There is no system currently prevalent in civilized nations which is completely devoid of morality. But having said so the question remains the same "*who is to define morality*"?

While it is an essential question to be decided another aspect that cannot be ignored is the Constitutional guarantee of protection of life and liberty which is to be granted in all circumstances and can be denied only after exercising due process. In its order, the Punjab and Haryana High Court failed to consider the

³Lata Singh v. State of U.P. &Anr., (2006) 5 SCC 475.

⁴D.Velusamy v. D.Patchaiammal, 2010 10 SCC 469.

⁵ S. Khushboo v. Kanniammal&Anr, (2010) SC 347.

⁶ Ujjwal and Anr. v. State of Haryana, CRWP-4268/ 2021 (O&M), Date of Judgment 12-05-2021.

mandate of the Constitution which is not subjected to standards of morality even if that remains a relevant aspect in the eyes of the presiding judge. It is really heart-wrenching that even after so many landmark judgments and enriched jurisprudence created by the Hon'ble Supreme Court still live-in relationship has remained a *taboo* in many parts of India. Due to lack of legislation sometimes it becomes difficult to recognize and validate the companionship choices made by adults a very recent example of the same was seen in the case of Ujjwal.⁷

The interlinking of morality and the right to protection against threats to life and liberty were mixed in the present case which is completely against the mandate of the Constitution. This interlinking could be possible only due to the lack of definite legislation with respect to live-in relationships which has kept the doors of discussion open to judge the individual choices of two adults on the threshold of morality and ethics.

In a plethora of judgments, the Apex Court as well as various High Courts have tried to accord protection and confer rights to individuals in a live-in relationship. Yet, the time has come to formally recognize the live-in relationship and accord protection not only *via* legal jurisprudence but also through definite and well-defined laws.

II. Marriage and Morality

Marriages in India hold sacred value and are considered pious bonds. Be it any religion, and even though in some religions it is expressly considered a contract⁸ still the nature and expectations of a marital relationship are close to morality and ethics. Among Hindus, marriages were always considered as a divine bond that was unbreakable and a sacramental affair but the enactment of the Hindu Marriage Act, 1955 by which the right to divorce was granted and a 'walk out space' was created, the theory of inseparable bond of man and woman came to an end. The concept of '*Ardhangini*' went for a toss as soon as marital bond became a matter of choice. Also, marriages were considered important considering the primary purpose is to beget progeny and to satisfy the Hindu belief of the son being revered as the "receiver from Hell" thus a lot of emphasis has been placed

⁷*Supra* note 4, at 1

⁸*Sharia* (Muslim Personal Law) considers marriage a contract and both the parties can have their terms written down while entering marriage subject to certain restrictions.

on the marital relationship.⁹ Various authorities in law have also considered marriage as a necessary institution in creating domestic relationships. In Baillie's Digest, marriage has been defined as "*a contract for the purpose of legalizing sexual intercourse, and procreation of children*". As discussed earlier not, only authorities in law but religion and pronouncers of religion have also emphasized the sacred nature of marriage. Prophet of Islam says, "*Marriage is my Sunna and those who do not follow this way of life are not my followers.*"¹⁰ The Courts have consistently maintained in a plethora of cases that there cannot be a divorce *de hors* the grounds as given under the statutory laws, even in those cases where there is a complete breakdown of the marriage. In a nutshell, great faith is placed in the institution of marriage under religion, statutes, and by the Courts in India, and the same is not ended in a hurried manner and on random grounds outside the purview of statutory law. Coming to the main reasons behind considering marriages as sacred affairs included inseparable bonds, the importance of progeny, and continuity of the same. These were the reasons behind conferring morality and validity to the companionship under marriages. But with the time and after the enactment of various Acts relating to Hindu marriage, maintenance, guardianship, and succession rights; now the marriages are no more forever, children even in live-in relationships do have certain rights, adopted son acquires the same status as of natural born son, daughters are inheriting property and the theory of salvation through son is no more a mandate for everyone. In fact, the same Apex Court which had maintained that no divorce can take place beyond the statutory grounds has been constantly creating arguments in favour of interpreting the grounds in a manner as to cover such cases which do not have the ground of fault for divorce necessarily. In a nutshell, society, legal systems, and institutions have chosen to proceed further from their age-old norms which conferred morality and ethics on marital relationships and are opening for other relationships which are not immoral but certainly are not solemnized like marriage.

III. Right to Companionship: A Fundamental Right

The Apex Court through its progressive judgments has expanded the ambit of fundamental rights to recognize various ancillary rights which are *sine qua non*

⁹B.M. GANDHI, HINDU LAW, 4th Ed., 260, (Eastern Book Company).

¹⁰AQIL AHMAD, MOHAMMEDAN LAW, 108, (Central Law Agency 26th Ed.).

to the protection of life and liberty. One such right which has constantly been upheld by the Apex Court includes the right of companionship or right of marriage. The Apex Court considered it essential enough to bring it within the category of 'right to life, a well-recognized fundamental right. Depriving a person of marriage would be equated with depriving him or her of the right to life.'¹¹In the case of *Shafin Jahan v. Asokan K.M.*¹²the Apex Court commenting on the right of self-determination held that,

“....Right to self-determination is an important offshoot of gender justice discourse. At the same time, security, and protection to carry out such choices or options specifically, and a state of violence-free being generally is another tenet of the same movement. In fact, the latter is apparently a more basic value in comparison to the right to options in the feminist matrix”

Further, the court held that 'non-acceptance of her choices would simply mean creating discomfort to the constitutional right by a constitutional court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanctions, the centripetal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.'

Despite having decided several cases and treating the right to choose a partner as a fundamental right, the Courts including the Apex Court have deliberately refrained from according to a similar status to the live-in relationship as a marriage. The Courts have recognized the right of a couple to have life and liberty in a live-in relationship but have not considered it as equal to marriage which had left open the gates for discussion both in favour of morality of the same and against it. 'Live in relationship' is indicative of that relationship which does not follow the formal solemnization of marriage but, the parties to the marriage observe the same rights and obligations as are observed in any formal marriage, and, for the rest of the world the union is nothing less than a marital union with the elements of stability and continuity, having an active will to remain with each

¹¹ 'X' v. Hospital 'Z', AIR 2003 SC 664. The court in this case upheld the right of an HIV+ patient to get married with the consent of other partner in marriage.

¹² *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 408.

other like husband and wife but, without the formal solemnization. The need and understanding of live-in relationships lie in the fact that 'law is a regulatory scheme tested in the laboratory of society. A law that cannot reduce human suffering is as good as non-existent. Considering the object of law, the Courts in India have always tried to strike a balance between the harsh contours of law and the need of society in changing times. In *A Dinohamy v. W L Blahamy*¹³ realizing the fact and acceptability of a live-in relationship, the Privy Council held that living respectively as husband and wife would create a presumption of law¹⁴ in favor of substantial marriage and not a fact, or condition of concubinage unless otherwise established. In a much later case, the Supreme Court held that there is a difference in morality and legality and while the live-in relationship is not considered moral in society, there is no illegality in the same. Hence a man and woman even without marriage can live together if they wish to.¹⁵ In yet another case of *S. Khushboo v. Kanniammal*¹⁶ the Supreme Court refused to consider pre-marital sex and relationship between husband and wife without there being a marriage, a taboo. While upholding the basic right of capable men and women to enter into a relationship including one alive-in relationship, the courts are guided by the mandate of the Constitution of India which under Article 21 guarantees 'right to life and personal liberty' meaning thereby, one is free to live the way he or she would want to and with respect to live-in relationship, it might be unacceptable and immoral in the eyes of society but there is no unlawfulness or illegality in such relationship. Interestingly, the Supreme Court has added a rider on the right of women in a live-in relationship and has held that the presumption of marriage can only be applicable where the parties are capable of entering into a marital relationship but do not choose to avail the same i.e. Live-in relationship is permitted only among unmarried people having attained majority and belonging to heterogeneous sex.¹⁷ In *D. Velusamy v. D Patehchaimal*¹⁸ the Supreme Court laid down certain guidelines in order to presume a marital relationship between the parties so that the benefits of various welfare legislations

¹³*Dinohamy v. W L Blahamy*, AIR 1927 PC 185.

¹⁴ Section 114 of the Indian Evidence Act, 1872.

¹⁵*Payal Sharma v. Superintendent, Nari Niketan and others*, 2001 (3) AWC 1778.

¹⁶*Supra* note 3, at 2684.

¹⁷*Indra Sarma v. KV Sarma*, AIR 2014 SC 309.

¹⁸*Supra* note 2, at 479.

could be extended to the partners in such relationship. These guidelines *inter alia* include –

- The couple must hold themselves out to society as being akin to spouses.
- They must be of legal age to marry.
- There should not be a legal bar to entering a marital relationship including the bar of an existing marriage.
- Cohabitation must be voluntary.
- They must have held themselves out to the world as being akin to spouses for a significant time.

Thus, while talking about grounds or conditions for the presumption of marriage in a live-in relationship, the presumption would be drawn only then when there is no legal disability in contracting the marriage and there has been continuity and intention to enter a marriage-like relationship. Having said so, simply living with someone for a long time, without having the intention to be in a relationship akin to marriage, would not create a presumption in favour of marriage. And once the presumption does not take place there is no occasion to grant maintenance or any other matrimonial rights. Thus, there is certainly recognition for live-in relationships but that is not equal to marriage. Coming to common law jurisdiction While equating the Common Law marriage with live-in relationship it is necessary to know the attributes of the Common Law marriage. Several US states offer their heterosexual residents this additional way of organizing their living-together arrangements. This kind of relationship can be established when the couple cohabits together and their actions support the factum of ‘marriage-like relation’ between them such as having a joint account, carrying the same last name, sharing the same household, having common custody of kids etc. Initially, the idea of common law marriages was conceived to address the grievances of heterosexual group which later grew further to support the idea of live-in-relationships among two opposite sexes who although were ready to be together and provide stability to the relationship but were averse to the institution of marriage.¹⁹ A common law marriage is legally binding in some common law jurisdictions but has no legal consequence in others; even in the countries where

¹⁹Shoshana Grossbard, *Common Law Marriage and Couple Formation*, Discussion Paper No. 8480, San Diego State University and IZA Victoria, Vernon Empire State College, New York (Sept. 2014) <http://ftp.iza.org/dp8480.pdf>.

it is permitted in the nature of the contract, the lack of uniformity in the protection of children born out of such marriages is a clear discouragement to enter into such relationships.²⁰ Apart from US, some other countries also such as France, have been experimenting with legalizing such relationship, wherein a homosexual as well as a heterosexual couples can through a civil contract, organize their association and enjoy the rights of a married couple without marriage. Such agreements are revocable by the parties by giving three months prior notice to the other. In France these agreements are popularly known as ‘civil solidarity pacts’ (*pacte civil de solidarite*). In the year 1999 the French National Assembly gave legal status to such pacts. Coming to India, in India common law marriages has no application and no such contract as in France has any application here and statutorily there is no recognition to such a relationship; the protection mechanism in India has been developed by the Judiciary through creative and beneficial interpretations of laws as applicable in India.

IV. Presumption of Marriage in Live-In Relationship Section 114, Evidence Act, 1872

Despite there being no statutory recognition of live-in relationships, the courts in India have drawn presumption in favour of marriage if there is long cohabitation akin to marriage, under section 114 of the Indian Evidence Act, 1872. This concept of drawing presumption is not a new or current practice in fact, from a very early age the presumption in favor of marriage has been considered if the couple is living like husband and wife and cohabitation is for substantially long years. The Privy Council in the case of *AndrahennedigeDinohamy v. WijetungeLiyanapatabendigeBlahamy*²¹ upheld the application of presumption which was later affirmed in the case of *Mohabbat Ali Khan v. Md. Ibrahim Khan*.²² In the case of *Gurubasawa v. Irawwa W/O ChinnappaBarashetti*²³ the court held that “a long period of cohabitation between the parties is a very strong circumstance and that in the absence of any other cogent and absolutely convincing material, that it could also raise the presumption before a Court of a

²⁰Dr. Swarupa N. Dholam, *Socio-legal dimensions of ‘live-In relationship’ in India*, <http://mja.gov.in/Site/Upload/GR/final%20article%20in%20both%20lanuage%20%281%29.pdf>

²¹*Supra* note 11.

²²*Mohabbat Ali Khan v. Md. Ibrahim Khan*, (1929) 31 BOM LR 846.

²³*Gurubasawa v. Irawwa W/O ChinnappaBarashetti*, AIR 1997 Kant 87.

valid marriage.” In this case, presuming the relationship based on long cohabitation the court granted a Succession certificate. Recently Supreme Court has held that, if an unmarried couple is living together as husband and wife, then they would be presumed to be legally married, and the woman would be entitled to inheritance after the death of her partner. A bench of Justice MY Eqbal and Justice Amitava Roy said continuous cohabitation of a couple would raise a presumption of valid marriage unless established otherwise. Law presumes in favour of marriage and against concubinage. While the court has been liberal in presuming the existence of valid marriage in case of long cohabitation it has restricted the application of the same in some peculiar cases. In *Indra Sarma v. KV Sarma*²⁴ the Supreme Court refused to presume a relationship in marriage to a person who is already married. The Apex Court held that live-in a relationship with a married person cannot be a relationship in marriage and the test laid down in the case of *D. Velusamy*²⁵ had not been satisfied. Further, the court held that the party to such a relationship would either be in a concubinage or bigamous relationship or in an adulterous relationship. Where the parties enter a relationship knowing well the legal disability such as in the present case the generic proposition of presumption of marriage would not be applicable. Further, in the case of *Madan Mohan Singh v. Rajni Kant*,²⁶ it was held that the live-in relationship if continued for a long time cannot be termed as a “walk-in and walk-out” relationship and that there is a presumption of marriage between the parties. Looking at the approach adopted by the Supreme Court, it can be clearly inferred that the Court is in favour of treating long-term living relationships as marriage itself rather than making a new and separate concept like live-in relationship. While the courts have considered presumption in favour of marriage it will not be good enough to cover such relations where marriage cannot be presumed due to inherent legal disability in the parties in entering a marriage. Thus, at present, there is a presumption in favour of valid marriage if a considerable time is spent together by the couple in a relationship akin to marriage, but the presumption would be inapplicable if the parties to live in relation suffer from one or the other disability under the law to contract marriage with each other even if they decided to.

²⁴*Supra* note 15 at 755.

²⁵ *Supra* note 2.

²⁶ *Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209.

V. Maintenance of Rights of Women in Live-In Relationship

As a matter of fact, no personal law or statutory law gives recognition to live-in relationships *per se*. Having said so, no personal law or statutory law criminalizes it either, meaning thereby, that the law with respect to the live-in relationship has not yet evolved and it is only through interpretations that the courts are filling the void. The silence of statutes compelled the *National Commission for Women* to advocate for the rights of women in live-in relationships by recommending the incorporation of the term 'live-in relationship' under section 125 CrPC in the year 2008.²⁷ Similar recommendations were also made by the Malimath Committee²⁸ and the Law Commission of India²⁹ which was also acknowledged by the Maharashtra Government in the year 2008. It was consistently maintained that if there is cohabitation for a significant lengthy time frame, the fact of marriage should be presumed and appreciated, and the benefit is to be given to the spouses. Hence, it suggested that the word 'spouse' in Section 125 CrPC ought to be altered to incorporate a woman who was living with the man in a marriage-like relationship. As far as the practical application of section 125 CrPC is concerned, in the case of *Chanmuniya v. Virendra Kumar*³⁰ the court clearly maintained that the standard of proof of marriage as required under section 7 of the Hindu Marriage Act, 1955 should not be a precondition for maintenance under section 125 CrPC. A perfect expansive interpretation of the word 'wife' was given by the Supreme Court in the present case. the Supreme Court after a broad analysis of the case and statutory provisions held that a broad and expansive interpretation should be given to the term 'wife' to include those cases also where a man and woman have been living together as husband and wife for a reasonably long period of time without having undergone the legal necessity of marriage. Since the proof of marriage under section 7 of the Hindu Marriage Act, 1955 is not strict

²⁷ Satya Prakash, *NCW pleads case of live-in partners*, December 26, 2006, HINDUSTAN TIMES, <https://www.hindustantimes.com/india/ncw-pleads-case-of-live-in-partners/story/QUkFC76vsLYIsd1eAihUI.html>

²⁸ The Malimath Committee was constituted to recommend reforms in Criminal Justice System in November 2000.

²⁹ Refer Law Commission of India, Report no. 242, Prevention of Interference with the Freedom of Matrimonial

Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, August 2012, <https://lawcommissionofindia.nic.in/reports/report242.pdf>

³⁰ *Chanmuniya v. Virendra Kumar*, (2011) 1 SCC 141.

enough to be a pre-condition for maintenance under section 125 CrPC the liberal interpretation can take care of the women left as destitute. Thus, a man who lived with a woman for a long time, even without having undergone the legal necessities of a valid marriage, should be made liable for the maintenance right of the woman. Not only this, extending the right of woman and stretching the application of Domestic Violence Act, 2005, Apex Court also warned against the robotic application of presumption and cut out the cases in which the presumption would not be applicable. While observing the case of *Indra Kumar Sarma v. KV Sarma* in which an unmarried female and a married male lived together in live-in relationship with two children and spent nearly 18 years together; after separation, the wife demanded maintenance, protection, and residence order. The Apex Court after analyzing the case in detail held that no such order can be passed in the present Act as there would be presumption when all the conditions of *D. Velusamy* are complied with which includes no legal bar on parties to contract marriage if they wish to. In the present case since the male was already married presuming marriage, would only create the effect of legalizing bigamous marriage which is, completely outside the purview of the Hindu Marriage Act, 1955 and outside the purview of the protection and maintenance scheme as laid down under the Domestic Violence Act, 2005 or the Section 125 CrPC.

VI. Legitimacy of Children and Maintenance Rights under Live-In Relationships

In the year 2014, a bench of Justices BS Chauhan and J Chelameswar clearly said that long-term continuous cohabitation would create the presumption of marriage. Further, it was held that children born out of prolonged live-in relationships could not be treated as illegitimate and they would be treated as the legitimate child of the parents living in live-in relationships. Prior to this recent ruling in the year 1994 also in *S.P.S. Balasubramanyam v. Suruttayan*,³¹ it was observed that the children born out of 'live in relationship' are legal children. Similar benefits were extended in a plethora of cases in which the Supreme court clearly held that as the presumption of marriage is considered to protect the women in a live-in relationship, and the children being the innocent party to such a relationship, should not bear the brunt of the law, and should be brought under a mechanism of protection being the legitimate child. The legitimacy of children has been

³¹ *S.P.S. Balasubramanyam v. Suruttayan*, 1994 SCC (1) 460.

considered independently from the relation of parents and this facilitated the application of the law with respect to the maintenance of the child. Further, section 112 of the Indian Evidence Act, 1872 creates legitimacy in favor of a child born during the continuance of a valid marriage between their parents. Extending the presumption as drawn under section 114 of the Evidence Act, 1872 once the presumption is held conclusive under section 114 automatically section 112 would be applicable. All these judgments of the Supreme Court not only justify the mandate of the Constitution as set out under Article 39(f) which puts the state under the obligation to give the children adequate opportunities so that they develop in a proper manner and further safeguard their interest; but also validates the presumption of legal marriage in live-in relationship under section 114 of the Evidence Act, 1872.

Not only maintenance but in some cases the Supreme Court has presumed the existence of marital relation for giving property right as well which will eventually be transferred to children only. In the case of *Vidhya Dhari v. Sukhrana Bai*³² the court on the fact of having stayed together for a very long period as husband and wife granted the right in the property to the female partner in live-in relationship. The Courts have held the children, born out of a live-in marriage relationship, being entitled to the sole property of the parents but not having any right in the coparcenary property of the parents.

VII. Application of Protection of Woman from Domestic Violence Act, 2005 in Cases of Live-In Relationship

Considering the limited law on domestic violence under the Criminal statutes and the right to seek divorce on that ground under personal laws; the enactment of the DV Act, 2005 as it is popularly known, was a welcome change for the women in India as it gave yet another mechanism of protection which was not within the limits of personal law and provided a general and secular remedy to all the women in a matrimonial relationship. The Act under section 2(f) defines Domestic relationships and it says that,

‘Domestic relationship’ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a

³²*Vidhya Dhari v. Sukhrana Bai*, (2008) 2 SCC 238.

relationship in marriage, adoption, or family members living together as a joint family.

Both the terms ‘Domestic relationship’ and ‘relationship in marriage’ have been interpreted in the most liberal and creative way, to extend the benefit of the Act in live-in relationships. The Act offered various remedies including the right to live in a shared household, protection order, and restraint order considering all kinds of abuses a woman meets with including physical, mental, and sexual torture. Under the Act section 2(a) deals with the term ‘Domestic relationship’ and this term is further explained under section 2(f) which also includes the term ‘marriage-like relation’. Both these terms have been defined and explained by the Supreme Court in the most liberal way and by the end of 2006 it was clear that the Act will apply to live-in relationships also and the status of women in legal marriage and the status of women in a live-in relationship would be brought at par under the DV Act, 2005 to avoid any anomaly between the legally wedded wife and a presumed wife under section 114 of Indian Evidence Act, 1872. In *M. Palani v. Meenakshi*³³ the respondent filed a claim for maintenance of Rs. 10,000/- for food, clothes, shelter, etc for her bare survival. The Husband resisted the claim on the ground that they never lived together and only had a consensual sexual relationship without any intention to enter a marriage-like relationship. It is very interesting here to see that earlier the contentions of the opposite party used to be a clear denial of marriage but with the liberal approach in the application of such welfare legislation as in the present case the new line of argument has developed that is ‘not having intention to enter into marriage like a relationship’. The Madras High Court closely looked into the definition of ‘domestic relationship’ as given in Section 2(f) of the Protection of Domestic Violence Act, 2005, and found that the Act nowhere specifies a particular period to infer the factum of domestic relationship. Further, the Court held, that at least at the time of having sex by them, they shared a household and lived together and thus granted relief in favor of the wife. ‘Sometimes the judgments of the Courts are too creative in their approach. In *Deoki Panjhiyara v. Shashi Bhushan*³⁴ an application by the wife for maintenance under the Domestic Violence Act, 2005 was allowed despite the contention of the husband as to not having a valid marriage between the wife and him. He contended that since the wife has already

³³*M. Palani v. Meenakshi*, C.R.P.(PD) No.238 of 2008, High Court of Madras.

³⁴*Deoki Panjhiyara v. Shashi Bhushan*, (2013) 2 SCC 137.

been married before getting married to him, she is not entitled to relief. Rejecting his claim, the court held that this fact was in the knowledge of the husband, but he did not raise any objection to it neither sought nullity of the marriage nor stopped living with the wife and hence in the absence of valid decree of nullity or the necessary declaration as to void status of marriage the maintenance right of the woman cannot be curtailed. While discussing this case there are two propositions- *firstly*, a bigamous marriage is void ab initio and does not confer any right to the parties to the marriage. *Secondly*, a live-in relationship exists, and a marriage-like relationship is presumed when there is no solemnization of a formal marriage. In Deoki Panjhiara case the grant of maintenance would not justify either of the bars. It is not a live-in relationship and hence marriage cannot be presumed, and maintenance is given. Further, it is not a voidable marriage either in which till the time declaration is sought validity may be continued. Rather in the present case there was bigamy, and the bigamous marriage goes to the root of the relation and is *void ab initio*. Hence on both the logics no relief could have been given.

VIII. Social Acceptance of Live-In Relationship

The workability of law is tested in the complex web of society. Law is not applicable in a vacuum. To maintain social order and security in society proper application of the law is necessary. Acceptance or rejection of practice either in judgments or in the statute is a mere reflection of change in the society. The analysis, discussion, and writings are there to address the transitional phase in the changing society which is neither clearly addressed by the statute nor attains universality in Judicial pronouncements. Live-in relationship in India is in such a phase where the laws on live-in relationship have not yet been settled and the society also has not fully accepted the same but the same is growing with each passing day. In metros, the couples are keener to enter into a relationship that has a commitment to stay together but at the same time absolves the parties from their mutual matrimonial liabilities i.e., financial freedom is not curtailed and no strict compliance to maintenance is made. In the case of separation, there is no need to follow a lengthy and painful process under the law and the separation can be achieved mutually in the way cohabitation was achieved on a mutual basis. As understood, it is widely recognized that the recurring theme of law includes (i) social control, (ii) disputes settlement and (iii) social engineering.

IX. Need for Legislation in Live-In Relationship

The judgments as discussed above clearly established the desire to recognize the live-in relationships as a valid association of two adults yet the question of legislation that can specifically recognize and confer legitimacy on live-in relationships remains a huge issue. Although, some would say that recognition through judgment is enough to address the same but occasional orders as given by the Punjab and Haryana Court in the case of *Ujjawal v. State of Haryana* clearly establish the need to address the social taboo which surrounds the entire idea of live-in relationship. The refusal of the High Court to accord protection to life and liberty on the question of social fabric and morality is nothing but a mockery of justice. This happened even after the landmark judgments of Lata Singh (2006), Indra Sarma (2013), and KS Puttuswamy (2017). All these judgments in clear terms established that live-in is not living in sin and such associations are not a crime. The Apex Court clearly upheld the liberty of an adult to choose a life partner. Further, the decision to get married or otherwise is intensely personal and should not be subject to forceful restrictions.

In KS Puttuswamy the Court held that the autonomy of an individual in relation to marriage is integral to the dignity of the individual. Clearly, the standards of societal immorality are not equal to illegality. The live-in relationship may be treated as immoral, but Courts have clearly refused to treat the same as illegal which is very much reflected in the number of judgments by which protection and rights to individuals in a live-in relationship have been accorded.

Not only the Supreme Court but the Law Commission of India has also clearly advocated for specific recognition of live-in relationships through legislation. In its report on “Prevention of Interference with the Freedom of Matrimonial Alliance (in the name of Honour and Tradition): A suggested Legal Framework,”³⁵ the report suggested that ‘*relationships akin to marriage not prohibited by law should also be included in the meaning and word ‘marriage’.... [which] means that live-in relationships should also be included and the protection of law....to be accorded to persons in such relationships.*’ While suggesting, the Law Commission also warned against the social biases in this regard and reserved the suggestion to first protect the legal marriage which was

³⁵Refer supra note 25.

at risk due to honor and tradition issues³⁶ one fails to understand why there is so much reservation in clearly recognizing live-in relationship as legitimate and create specific laws on that. Recognition of the live-in relationship was given at an early stage even by the Privy Council yet due to the societal pressure the state, as well as the judiciary is restrained by clearly emphasizing creating specific legislation or guidelines on the same.

A few years back in the year 2014 the Law Commission of India was asked to take up the study on the live-in relationship to lay a background for legislation but nothing concrete in this regard could be achieved. This results in contradictory judgments and denial of even fundamental rights on the pretext of morality and ethics. Hence, there is a need to develop legislation in this regard at the earliest to put at rest contradictory discussions and violations of rights in case personal choices are exercised beyond the so-called moral fabric of the society. Separate and specific legislation is also necessary considering the current system is inadequate to address the live-in relationship as the basic idea to enter such a relationship is entirely different from entering into a marital relationship and hence the remedies the benefits which are applied in a matrimonial relationship cannot be mechanically applied in live-in relationship. A major concern in a relationship is the commitment issue that triggers the choice of live-in relationship and since the parties have chosen not to take up any obligation post-separation, applying the remedies of personal law in a live relationship would seriously affect the choice of parties and one party would always remain at the receiving end without ever having the intention to opt for it. Couples enter a live-in relationship to avoid the lengthy and painful procedure of divorce, to keep their financial independence intact, and to have lesser obligations in matrimonial relationships. However, applying the reliefs of personal laws, Domestic Violence Act, 2005, and relief under section 125 CrPC are in a way bringing live-in relationship on the same pedestal of a legally solemnized marriage. This can go either way that is parties may feel discouraged to enter a live-in relationship because despite exercising their right to not be guided by the matrimonial obligations the parties to a live-in relationship are burdened with the same. Another consequence could be since still law does not recognize the no-fault theory of divorce such as in the case of breakdown of marriage live-in could be proved a good option for the couples and this could affect the institution of marriage in totality. Hence, the

³⁶ Para 7 of the Report.

drawbacks of the existing system are in a way creating confusion about the benefits and losses of a live-in relationship and the constant attempt of the courts to being the live-in relationship equal to marriage is not a positive answer to address the need for live-in relationships. Probably because of the concerns above, the Law Commission in its 71st Report (1978) suggested certain amendments in the Hindu Marriage Act, 1955 and Special Marriage Act, 1956 to make the provisions of divorce much simpler so that live-in relations cannot step in as an option. Despite several recommendations by the Law Commission and a plethora of judgments in which the Supreme Court emphasized the need to have an irretrievable breakdown of marriage as a ground for divorce. Since the law has still remained primitive in its approach to guiding matrimonial relations couples are finding an option of 'easy walk in' 'walk out relation' with another party. The Hindu Marriage (Amendment) Bill 2010 introduced by the Rajya Sabha to simplify the divorce procedure and to include the irretrievable breakdown of marriage as a ground for divorce never saw the light of the day further the Malimath Committee Report (2003) recommendation for the amendment of Section 125 of Criminal Procedure Code to include under the ambit of protection women of void marriage and woman under live-in relationship also could not be implemented. Since none of the recommendations, and attempts by the Judiciary, no certainty could be achieved with the live-in relationship the burden is entirely on the Courts to interpret the existing laws in a creative manner to extend the protection but that is only a temporary treat and not a permanent solution.

There is an urgent need to develop the separate mechanism of protection for live in relationship so that both legally solemnized and live-in relationship can survive in a given set of society with their exclusive benefits and liabilities thereunder. Simply applying the existing laws on live-in-relationships will not bring useful results and would further confuse the prospects of marriage and prospects of live-in relationships.

X. Conclusion

The live-in relationship has always been a point of discussion in society. The recent judgment by the Punjab and Haryana High Court again initiated the discussion on the validity and need for recognizing the same as a valid relationship. Between morality and legality, the choice of an adult cannot be put to a risk wherein protection of life and liberty may become a question of discretion and not a constitutional mandate. For the Apex court initially, it was the question

between morality and legality. While accepting the concerns of morality being the focal point of society, the apex court has always tried to strike a balance in the individual choice of mode to express sexual needs and relief under the law in case of exigencies. The Apex court has tried hard to address the need of destitute women by extending the ambit of maintenance laws and protection against domestic violence. To bring justice to those females who were the victims of live-in relationships Indian judiciary took a brave step and through interpretations developed arrangements in which the destitute is protected without going into the issue of morality and immorality in making their choices. Despite the efforts of the Apex Court, Law Commission, and civil society, the fact that live-in relationship is indicative of choices going to be made in near future, the law makes are not ready to accept the change and assert their law-making power in harmony with such change. Due to the passivity of law makes the issues relating to succession, maintenance, guardianship, and protection, find little statutory help for their enforcement. Through interpretation, the Apex Court has tried to address these issues, but interpretation cannot take the place of codified law as interpretation has its own limits. It is the duty of the Court and the lawmakers to ameliorate and create new laws according to the changing needs of society. While at present various personal laws and special laws like the Domestic Violence Act, of 2005 has been made applicable in cases of live-in relationship too yet, the formulation of specific provisions to address the entire working mechanism of live-in relationship is the need of the hour. Live in a relationship has rights and obligations akin to marriage still the children born out of such a relationship are not too sure about the validity of their existence, and the woman in such a relationship is not insured enough to believe in the security of such a relationship. At the same time bringing complete parity in legally solemnized marriage and the live-in relationship would create a lot of confusion in making choices in society. To avoid all the above, it is needed that lawmakers do address the issue of live-in relationships making appropriate laws that will not only reduce the burden on Courts but also would establish the place of live-in relationships in society.