

LIVE IN RELATIONSHIP AND LEGITIMACY OF CHILDREN: JUDICIAL ATTITUDE

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1.1 Introduction

The institution of marriage appears to have been evolved with a view to discipline sexual relations and ensure legitimacy of children and their intellectual and psychological development in a congenial atmosphere.² With advent of industrial revolution and the development of education throwing open the avenues of economic independence to women, human values, especially those pertaining to husband and wife relations, has undergone radical transformation.³ The outcome of rapidly changing social morals has been a peculiarly ambivalent situation in the form of non-marital heterosexual relations ("live-in" relations as they commonly called). Such relationships among the urban, educated, upper middle class and elite young people has emerged towards their independence outlook, aimed at keeping them away from the 'shackles' that institutionalized the marriage.⁴ 'Live-in' relationship is a de facto non-marital heterosexual relations prevailing in West with the different name like: common law marriages, informal marriages or marriage by habit, deemed marriages etc. It is a willful rejection of the institution of marriage, of the stereotypes it engenders, and of the restrictions and inequalities it has come to stand for.⁵ It is a form of inter-personal status legally recognized in some jurisdictions as a marriage even though no legally recognized marriage ceremony is performed or civil marriage contract is entered into or the marriage registered in a civil registry.⁶

1.2 Law and Live-in-Relationships in India

There exist no law which directly recognizes the live-in' relationship; however two legal moves have brought such relationship (i.e. the non-marital heterosexual

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² Sarojini Nayak & Jeevan Nair, *Women's Empowerment in India*, 110 (2005) Pointer Publisher, Jaipur.

³ *Ibid* at p. 111

⁴ Shoma A. Chatterji, *Women in Perspective-Essays on Gender Issues*; 168 (2010) Vistas Publishing.

⁵ *Ibid*.

⁶ Bradley, David "Regulation of Unmarried Cohabitation in West-European Jurisdictions - Determinants of Legal Policy", *International Journal of Law, Policy and the Family*, 15(1): 23 (2001).

relations) into sharp focus in India during the last decade. First, in 2008, the Maharashtra Government's attempt to amend Section 125 of the Criminal Procedure Code (hereinafter referred as Cr.P.C.) brought this issue to the fore.⁷ The amendment sought to broaden the definition of the term "wife" in Section 125 Cr.P.C. by including a woman who was living with a man "like his wife" for a reasonably long period.⁸ This move followed the recommendations of the Malimath Committee (2003)⁹. Second, the Protection of Women from Domestic Violence Act (hereinafter referred as PWDVA) 2005, is considered to be the first piece of legislation that, having covered relations 'in the nature of marriage', provided a legal recognition to relations outside marriage.¹⁰ In the following discussion, an attempt has been made to examine the context and implications of these two legal moves on different forms of non-marital cohabitation.

1.3 Malimath Committee Report

The Malimath Committee, i.e., the Committee of Reforms of Criminal Justice System, set up in November 2000 under the Chairmanship of V.S.Malimath, Former Chief Justice of the Karnataka and Kerala High Courts submitted its report in 2003 (Government of India 2003, hereinafter GOI 2003), wherein, it made several recommendations under the head "offences against women"¹¹ first being to amend Section 125 of the Cr.P.C. which is concerned with maintenance rights of the "neglected wife, children and parents". This Section seeks "to prevent starvation and vagrancy by compelling the person to perform the obligation which he owes in respect of his wife, child, father or mother who are unable to support themselves".¹² The Committee sought to extend the definition of 'wife' in Section 125 Cr.P.C. by recommending 'to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage'.¹³ The extended definition of 'wife' is thus clearly set against the backdrop of secondary relationships of already married men and is not directed at taking cognizance of what may be

⁷ S. 125 Cr.P.C. is available to all neglected wives, or discarded or divorced wives, abandon children and hapless parents belonging to any religion against husband, father or son. No other relation can claim maintenance under this provision.

⁸ Maharashtra to Legalize 'live-in' Relationships, Times of India October 09, 2008.

⁹ Ministry of Home Affairs, Government of India, Committee on Reforms of Criminal Justice System 189-94 (2003).

¹⁰ S. 2(g), Domestic Violence Act, 2005.

¹¹ Supra note 9.

¹² Ibid at p. 189.

¹³ Ibid.

regarded as emergent forms of non-marital cohabitation. Providing an explanation for its recommendation, the report underlines:

A woman in a second marriage (of a man) is not entitled to claim maintenance as in law a second marriage during the subsistence of the first marriage is not legal and valid. Such a woman though she is de facto the wife of the man in law, she is not his wife. Quite often the man marries the second wife suppressing the earlier marriage. In such a situation, the second wife can't claim the benefit of Section 125 Cr.P.C. for no fault of hers. The husband is absolved of his responsibility of maintaining his second wife. This is manifestly unfair and unreasonable. The man should not be allowed to take advantage of his own illegal acts. Law should not be insensitive to the suffering of such women.¹⁴

It is quite evident from above that focus was not on 'non-marital' adult heterosexual relationship but between a married man and his second wife; particularly the one who has been cheated into believing that she is marrying an unmarried man. By adding the clause 'during the subsistence of the first marriage', the report left little room for any speculation regarding the objective of the recommendations.

Following recommendations of the Malimath Committee, Maharashtra Government initiated an aborted attempt in 2008 to amend Section 125 Cr.P.C which brought the issue of legal status of 'live-in' relations into the public gaze. The move was construed as an attempt to confer legal status on secondary unions of men as well as legalize the 'live-in' relations, in which the young men and women choose to enter 'non-marital' heterosexual relations prior to entering a long-term committed nuptial ties.¹⁵

1.4 The PWDVA and 'Relations in the Nature of Marriage'

The PWDVA 2005, has been widely hailed as the first legislation to recognize the existence of non-marital adult heterosexual relations.¹⁶ This Act defines an "aggrieved person" who will be covered under this Act as "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent".¹⁷ Further, the Act defines a 'domestic relationship' as '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

¹⁴ Ibid.

¹⁵ Supra Note 8.

¹⁶ Karanjawala, Tahira and Shivani Chugh "The Legal Battle Against Domestic Violence in India: Evolution and Analysis", International Journal of Law, Policy and the Family, pp. 289-308, (2009).

¹⁷ Protection of Women from Domestic Violence Act, 2005, S. 2(a).

consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family'.¹⁸

This does not imply that the Act deals with all forms of domestic relations in a comprehensive manner. It excludes the domestic relationship between a male employer and a live-in domestic worker. The Act also clearly has no space for adult 'same-sex' relationships. Nevertheless, it can be construed that, unlike the recommendations of the Malimath Committee, the PWDVA, 2005 has implications for a broader terrain of non-marital relations, as it does not explicitly limit itself to the secondary relations of men. In having used the idea of "relations in the nature of marriage", the Act seems to have widened the scope of legally recognized domestic relationships between men and women. While this provision invited much criticism and controversy, it is important to note that it neither made an invalid marriage as valid nor provided legal recognition to bigamous marriages. But this provision merely seeks to denounce the domestic violence in any quarter, thus, not a judgment call on the morality of the choice to cohabit outside of marriage.¹⁹

It can, therefore, be argued that it would be sheer mistake to see this Act as conferring some sort of legal status upon non-marital relations. What it undoubtedly does, is to acknowledge the existence of such relationships and the right of women in such relations to accord protection to them from the violence.

1.5 Live-in Relationship and Judicial Attitude in India

Live-in Relationship in India is often seen as a taboo; however, it is not very uncommon to find people in big metros staying together as husband-wife without any formal marriage. None of the statutes dealing with marriage such as the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, Parsi Marriage and Divorce Act, 1936 and Christian Marriages and Divorce Act, 1872²⁰ recognize "live-in" relationship directly. Protection of Women from Domestic Violence Act, 2005 is considered as the first legislation that recognized the right of

¹⁸ Ibid. S. 2(f)

¹⁹ Lawyers Collective and ICRW: Staying Alive: Second Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005;7(2008).

²⁰ S. 11 of the Hindu Marriage Act, 1955; S. 4 of Parsi Marriage and Divorce Act, 1936; Sections 4-9 of Christian Marriages and Divorce Act, 1872.

protection of a person in “relationship in the nature of marriage”²¹. However, living together for long period has been considered to be presumption of marriage until some facts prove it to be otherwise under Section 114 of Indian Evidence Act, 1872²².

Indian Courts have also made a strong argument in favour of presumption of marriage in cases where a man and woman have been living together for a reasonably long period of time. For instance, Privy Council in 1927 in *A. Dinohamy vs. W.L. Blahamy*²³, laid down the general proposition that “where a man and woman are proved to have lived together as husband and wife, the law will presume unless contrary be clearly proved; that they were living together in consequence of a valid marriage, and not in a state of concubinage.”²⁴ As per this ruling, a “live-in” relationship was to be considered as a valid marriage if the couple lived together and there was no evidence to the contrary.

In 1929, the Privy Council made significant additions to 1927 ruling *MohabhatAli vs. Md. Ibrahim Khan*²⁵, wherein it held that “the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.”²⁶ For a ‘live-in’ couple to be considered validly married, the court wanted evidence of cohabitation for a number of years, without specifying the minimum number of years. In 1952, the Supreme Court in *GokalChand vs. ParvinKumari*²⁷ reiterated the principle laid down in *Dinohamy’s* case but added that though the presumption for a valid marriage between a “live-in” couple could be drawn from their long cohabitation, it was no guarantee to earn them legitimacy if the evidence of living together was rebuttable and observed that:

²¹ Sections 2(a),12 read with Sections 18, 19, 20, 21 and 2(f) Domestic Violence Act,2005; “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 relationship in the nature of marriage, adoption or are family members living together as a joint family.

²² S. 114, the Indian Evidence Act, 1872.

²³ AIR 1927 PC 185.

²⁴ Ibid at 187.

²⁵ AIR 1929 PC 135.

²⁶ Ibid at 138.

²⁷ AIR 1952 SC 231. In this judgment the Supreme Court had refused to recognize a live-in relationship, though the couple had lived together for some years before the pregnant women went away to live alone with her child born out of her live-in relationship with the man. The rebuttal of the presumption in favour of a valid marriage, in this case, came from the child, who said she did not remember her father ever visiting her or her mother.

Continuous cohabitation of woman and man as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.²⁸

As a sequel, in Badri Prasad's case where a man and a woman lived together for around 50 years, the Supreme Court stated that there would be strong presumption in favour of wedlock. The Court however added that, "the presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy".²⁹ Debate on legality of the 'live-in' relationship as well as legitimacy of a child born out of such relationship once again generated in Madan Mohan Singh & Others vs. Rajni Kant & Another³⁰, the Court while dismissing the appeal in the property dispute held that there is a presumption of marriage between those who are in 'live-in' relationship for a long time and this cannot be termed as 'walking-in and walking-out' relationship.³¹ This attitude of the court could clearly be inferred that it is in favour of treating the long term living relationship as marriage rather than branding it as new concept like 'live-in' relationship. In Tulsa vs. Durgatiya³², the Supreme Court reiterated the rule that there would be a presumption of marriage when there has been long cohabitation.

Hence, there is a long list of judgments which have favoured a presumption of marriage over that of "concubinage" thereby reflecting strong conviction of judiciary to help such hapless women. As such, one can contend that the Indian legal system does not always seek strict evidence regarding the validity of a marriage in the face of other circumstantial evidence that indicates the existence of "a relation in the nature of marriage".

Keeping into consideration the vulnerable position of women who enter into such relationship willingly or unwillingly, the courts have delivered farreaching judgments. For instance, Allahabad High Court held that a major man and woman can stay

²⁸ Ibid at 240.

²⁹ Badri Prasad v. Dy. Director of Consolidation, AIR 1978 SC 1557.

³⁰ AIR 2008 SC 324.

³¹ Ibid at 327.

³² 2008(4) SCC 520.

together without getting married if they want and this is not illegal.³³

The Supreme Court in the case of *Vidyadhari v. Sukhrana Bai*³⁴, issued a Succession Certificate to the 'live-in' partner, who was nominated by the deceased.³⁵ In *Abhijit Bhikaseth Auti v. State of Maharashtra*, the Bombay High Court observed that it is not necessary for a woman to strictly establish the marriage, to claim maintenance under Section 125 of C.r.P.C.³⁶ In *Koppiseti Subbharao Subramaniam vs. State of Andhra Pradesh*³⁷, the Supreme Court extended the protection against dowry under S. 498-A of the Indian Penal Code, 1860 so as to "to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband" and resort to cruelty or torture to the women.³⁸ This case has extended the protection of women from dowry even when they are in a live-in relationship. Whereas, Delhi High Court while dealing with the validity of 'live-in' relationship in *Alok Kumar vs. State*³⁹, observed that:

There are no strings attached to this relationship, neither this relationship create any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time.⁴⁰ Further, the persons entering into such relationships are debarred from complaining of infidelity or immorality of the other partner.⁴¹

In *Lata Singh vs. State of U.P. & Another*⁴², the Apex Court observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of 'adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she

³³ *Payal Sharma v. Superintendent, Nari Niketan, Agra*, AIR 2001 All. 254.

³⁴ AIR 2008 SC 629.

³⁵ *Ibid* at 632.

³⁶ (2009) Cr LJ 889.

³⁷ AIR 2009 SC 1329.

³⁸ *Ibid* at 1332.

³⁹ (2010) Cr.L.J. 299; wherein, the petition was filed for quashing of First Information Report (FIR) registered against the petitioner. The complainant, out of malice in order to wreck vengeance on the petitioner because petitioner refused to continue 'live-in' relationship with her, had filed the complaint. The court considered that it is a fit case where FIR should be quashed to prevent the misuse of criminal justice system for personal vengeance of a partner of 'live-in' relationship.

⁴⁰ *Ibid* at 301.

⁴¹ *Ibid*

⁴² AIR 2006 SC 2522. In that case, the petitioner was a woman who had married a man belonging to another caste. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that 'no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court'.

likes”.⁴³ This is further evident from the Supreme Court judgement in *S. Khushboo vs. Kanniammal & Another*⁴⁴, wherein, apart from other prominent issues such as freedom of speech, etc, Judges Deepak Verma J. and B S Chauhan clarified the scope of criminality in consensual adult relationships when they reiterated that:

While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of ‘adultery’ as defined under Section 497 I.P.C.⁴⁵

The Supreme Court once again in *Chellamma vs. Tillamma*⁴⁶, gave the status of wife to the partner of ‘live-in’ relationship. Katju J. and Mishra J. stated that, in their opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society but is not illegal. There is a difference between law and morality. The bench went one step ahead and observed that the children born to such a parent would be called legitimate. They have the rights in their parent’s property.

Unfortunately, the Courts while interpreting the recommendations of Malimath Committee (seeking change in definition of ‘Wife’ as described in Section 125 of Cr.P.C.) could not appreciate the real intent of such recommendations which were made keeping in view the interests of second woman who was living with man as his wife for a reasonably long period, during the subsistence of the first marriage.

There are instances in which the courts have interpreted only one part of recommendation ignoring the other relevant one. For instance in *Chanmuniya vs. Virendra Kumar Singh Kushwaha and Another*⁴⁷, Justices G. S. Singhvi and A.K. Ganguly cited the first part of the recommendation of the Malimath Committee to support their case for a broad interpretation of the term ‘wife’. For them, the above recommendation of Malimath Committee suggested that the “evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties.”

Therefore, for these judges, the Malimath Committee recommendations that the word “wife” in Section 125 Cr.P.C. should be amended to include a woman who was living

⁴³ Ibid at 2524.

⁴⁴ AIR 2010 SC 3196.

⁴⁵ Ibid at 3199.

⁴⁶ AIR 2009 SC 112.

⁴⁷ (2011) 1 SCC 141.

with the man like his wife for a reasonably long period. This omits the phrase “during the subsistence of the first marriage”, which as we saw above, is part of the original recommendation. The judges made no reference to the situation in which a man or a woman enters a second marriage during the subsistence of the first one. It is submitted that, if the idea is to protect women in marriages or marriage like relations which render women vulnerable, the ground laid down by the recommendations of the committee needs to be much clearly stated and broadly defined when incorporated in law.

Though, the Protection of Women from Domestic Violence Act 2005, is considered to be the first piece of legislation that, in having covered relations “in the nature of marriage”, provided legal recognition to relations outside marriage but the connotation of phrase “in the nature of marriage” is far from obvious and this is already a ground for contestation of the PWDVA. In the case of ArunaParmod Shah vs. Union of India⁴⁸, the petitioner challenged the constitutionality of the Act on the grounds that,

first, it discriminates against men and,

second the definition of “domestic relationship” contained in Section 2(f) of the Act is objectionable.

Regarding the second, the petitioner argued that placing “relationships in the nature of marriage” at par with “married” status leads to the derogation of the rights of the legally wedded wife. The Delhi High Court rejected both these contentions regarding the constitutional status of the Act. With regard to the second contention, which is of concern to us, the court said that “there is no reason why equal treatment should not be accorded to a wife as well as a woman who has been living with a man as his ‘common law’ wife or even as a mistress”. In this case, the Judges interpreted “a relation in the nature of marriage” as covering both a “common law marriage” and a relation with a “mistress” without clarifying the legal and social connotations of these terms.

A certain amount of dissonance in the interpretation of the idea of “relation in the

⁴⁸ WP (Cri.) 425/2008 & Cri. Misc. Application 4171/2008 available at <http://www.indiankanoon.org/doc/511970/> last visited on 27.01.2015.

nature of marriage” in the PWDVA, 2005 was reflected, in *D.Veluswamy v. D Patchaiammal*⁴⁹, wherein, the Supreme Court has dwelt at length upon the interpretation of this provision (i.e. ‘relation in the nature of marriage’) of the Act. In a case which concerned a woman seeking maintenance from an apparently already, married man under Section 125 Cr.P.C. ,the judges observed that:

Unfortunately [the] expression [in the nature of marriage] has not been defined in the Act [PWDVA, 2005]. Since there is no direct decision of this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required.⁵⁰

It was further observed that:

It seems to us that in the aforesaid Act of 2005 Parliament have taken notice of new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe.⁵¹

After making this statement, which equates “relation in the nature of marriage” with “live-in” relations prevalent in the west, the judges state that in their opinion a “relationship in the nature of marriage” is akin to a common law marriage. According to the judgment, common law marriages require that although not being formally married, (a) The couple must hold themselves out to society as being akin to spouses, (b) They must be of legal age to marry, (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried, (d) They must have voluntarily

⁴⁹ AIR 2010 SCW 6731, where in the appellant had alleged that he was married according to Hindu Customary Rites with one Lakshmi. The respondent D. Patchaiammal filed a petition under S. 125 Cr.P.C. in the year 2001 before the Family Court at Coimbatore in which she alleged that she was married to the appellant on 14.9.1986 and since then the appellant and she lived together in her father’s house for two or three years. It is alleged in the petition that after two or three years the appellant left the house of the respondent’s father and started living in his native place, but would visit the respondent occasionally. It was alleged that the appellant deserted the respondent. The respondent alleged that she did not have any kind of livelihood and she was unable to maintain herself, whereas appellant is a Secondary Grade Teacher drawing a salary of Rs.10000 per month. Hence it was prayed that the appellant be directed to pay Rs.500/- per month as maintenance to the respondent. Thus it was the own case of the respondent that the appellant left her in 1988 or 1989 (i.e. two or three years after the alleged marriage in 1986). It is important to note that the respondent had filed the maintenance petition after twelve years of her desertion by the appellant. The lower Family Court had held that the appellant was married to the respondent and not to Lakshmi. These findings have been upheld by the High Court in the impugned judgment. In opinion of the Apex Court, since Lakshmi was not made a party to the proceedings before the Family Court or before the High Court and no notice was issued to her hence any declaration about her marital status vis-a-vis the appellant is wholly null and void as it will be violative of the rules of natural justice. There is also no finding in the judgment of the learned Family Court Judge on the question whether the appellant and respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. The Apex Court opined that such findings were essential to decide the case. Hence, it set aside the impugned judgment of the High Court and Family Court Judge, Coimbatore and remanded the matter to the Family Court Judge to decide the matter afresh in accordance with law.

⁵⁰ Ibid at 6738

⁵¹ Ibid

cohabited and held themselves out to the world as being akin to spouses for a significant period of time.⁵²

The judges also stated that:

In our opinion not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant, it would not, in our opinion, be a relationship in the nature of marriage.⁵³

It was further observed that:

No doubt the view we are taking would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live-in relationship'.⁵⁴

In saying this, the judges appear to be implying that the scope of the term "live-in relationship" is much broader than that of "relationship in the nature of marriage". Indirectly, however, the judgment also equates what it treats as a "new social phenomena" with the idea of "relationship in the nature of marriage", subject to the definition of common law marriage. Arguably there is much confusion in the various arguments of the judgment which seems to draw upon contradictory meanings of the phrase "live-in" relationship.

It is submitted that this would mean that if a married man deceived a woman into marrying him, and lived with her as if married, this would not be a relationship in the nature of marriage, even though they represent to the world that they are married and live in a stable relationship and have children together. This was not the intention of the Act and it was in some measure intended to protect women like these as the phenomena of a man marrying more than once is well known in this country.

It is thus obvious that non-marital relationships do not have a 'criminal' or 'illegal' status in India insofar as they do not amount to 'adultery' and insofar as the principle of 'presumption of marriage' prevails and this is not a new trend. However, this cannot be construed that courts promote such relationships rather the law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage.

⁵² Ibid at 6740

⁵³ Ibid

⁵⁴ Ibid at 6741

Such stands, in particular cases of “live-in” relationship, by and large, are based on the assumption that they are not between equals, and therefore women must be protected by the courts in the patriarchal setup of the society. But, the same is not the case when one of the parties to the marriage is already married and it is this which can be seen to be a newly recognized thorny issue in the Indian legal domain.

Legitimacy of children born out of ‘live-in’ relationships

In *Madan Mohan Singh and others vs. Rajnikant and another*⁵⁵, the apex court observed that the courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence.

Further, in *Bharatha Matha and Another vs. R. Vijaya Ranganathan and others*⁵⁶, in this case the court dealt with the legitimacy of the children born out of such relationship observing thus, it is evident that Section 16 of the Hindu Marriage Act, 1955 intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object.

Recently in the year 2014 the apex court in *Uday Gupta vs. Aysha and Another*⁵⁷, observed that if a man and woman are living together for a long time as husband and wife, though never married, there would be a presumption of marriage and their children could not be called to be illegitimate. The children born out of ‘live-in’ relationships are treated to be legitimate.

Conclusion

‘Live in’ relationships are not new for western countries, where usually unmarried men and women enter non-marital but exclusive relation with each other, often as a form of experimentation prior to a marital commitment. However, in India, such relationships are often seen as a taboo, it is not very uncommon to find people in big metros staying together as husband-wife without any marriage. True, in an ambience where it is difficult to get rid of a bad marriage because of difficult divorce laws, ‘living in’ for many appear to be an attractive alternative. But is it really as attractive as it appears to be? Does the bold radicalism structured into the relationship stand the test of time? What if one of the live in partner walks out of the relationship? What if

⁵⁵ AIR 2010 SC 2933

⁵⁶ AIR 2010 SC 2685

⁵⁷ Judgment delivered on April 21, 2014.

one of the 'live in' partners is already married and has children?

In India because of complex marriage laws women generally fell prey to male chauvinism and enter into fraudulent marriages thereby become 'other women' in his life. Such women are not welcomed in our society. In order to help such women, Justice (Retd.) S Malimath committee recommended to amend Section 125 C.r.P.C. for changes in the definition of the word 'wife', so that the courts could treat any woman who has lived with a man for a 'reasonable period' as his legitimate wife. Therefore, purpose of recommendations of the Malimath Committee (which have however not been implemented) was to provide some relief to women who have been victim of such relations in which, the male partner is already married and enters a relation with another woman, who may or may not be aware of the marital status of this man.

As a sequel to this development, the Domestic Violence Act, 2005 also recognized the economic rights of female "live-in" partners. Thus, these legal moves appear to be against the backdrop of prevalent practices of married men entering secondary relations with women and are a response to more traditional and even patriarch forms of non-marital cohabitation. It may also be noted that none of these legislative moves should be treated as dealing comprehensively either with the gamut of "live-in" relations or with the corpus of rights and obligations which might require legal redress in such relations. At best they extend some of the rights of married women to the women who are in non-marital relations with men. Such cases are arguably quite distinct from a western style cohabitation patterns which are referred to as 'live-in' relationships in popular vocabulary.

Hence, keeping inconsideration, the Indian social conditions and cultural ethos, it is obvious that all forms of 'non-marital' relations cannot or should not be treated as legally identical. In any case, even if they should be treated as such the decision to do so should be preceded by a careful consideration of the implications this will have for the different categories. Since there is no clear legal definition of 'non-marital relations', the field has been left wide open and hence the Apex Court felt an urgent need to separate a 'relation in the nature of marriage' from that with a 'servant' or a 'keep' and a 'one night stand'. This, however, cannot be construed that judiciary promotes such 'live-in' relationships. Law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage. Such stands, in particular cases of live-in

relationship, it appears that, by and large, is based on the assumption that they are not between equals and therefore women must be protected by the courts in the patriarchal set up of Indian society.