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## RIGHTS OF WOMEN & CHILDREN IN LIVE-IN RELATIONSHIPS

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### ABSTRACT

Live-in Relationships are a form of co-existence wherein the couple shares a common household without being subject to marital rights and obligations. However, this practice has, to a very large extent, been stigmatised by the Indian Society to be unacceptable and immoral. As a mirror to societal psyche, live-in relationships do not find any recognition in the current legal framework governing personal rights of individuals in a society. Over the passage of time, the Indian judiciary has intervened to recognise that such cohabitation in the form of live-in relationships is not illegal. The judiciary has also made attempts to categorize rights of individuals in live-in relationships, but there has not been enough in-depth analysis of the same in the Courts.

This article aims to analyse the current legal status of live-in relationships as well as the status of rights that may be accrued to women and children in such relationships. The article also determines the status of validity of live-in relationships for same-sex couples while suggesting a way forward in this domain.

**KEY WORDS:** Indian Judiciary; 'Live-In Relationships'; Inheritance: Maintenance; Same-sex couples.

### I. STATEMENT OF OBJECTIVES

The research goals for this paper are to understand and analyse the following questions:

- Are women afforded the same rights in a live-in relationship when compared to Marriages.
- Do welfare legislations such as Prohibition of Domestic Violence against women, 2005 apply in Live-In relationships.
- What are the succession rights of children born in Live-In relationships.
- Can these rights be afforded to same-sex couples in Live-In relationship.

**STATEMENT OF HYPOTHESIS :** It is hypothesised that judicial interpretation has allowed women and children certain rights in Live-In relationship but they are not backed by an express stipulated framework of legislations to govern Live-in Relationships.

**METHOD OF STUDY :** Various forms of method of study were undertaken in order to present wholistic findings on the topic. Firstly, doctrinal and theoretical research on the topic of live-in relationships was undertaken by analysing the jurisprudence in form of judicial precedents as well as legislature to understand the present scenario. Secondly, a socio-legal research approach was also applied since live-in relationships are a social concepts and the law on the same is reflected in the society's view of the topic. This socio-legal approach was backed through the understanding on the legal history of the topic by presenting pre and post-independence judicial views.

Lastly, **empirical research** was undertaken in the form of an online questionnaire survey with an objective to understand the current views of the society in different age-groups.

**LITERATURE REVIEW :** Literature on the topic of Live-In relationships has been focused on discussing the legality and recognition through judicial precedents of the concept of a live-in relationship. (Panda, 2016) & (Baruah, 2016) make an analysis of the history of live-in relationships in India as well as the judicial history of the concept in Indian Courts. (Abhang, 2014) has also highlighted the legislations, such as PWDV Act and Evidence Act, which can be used to support the existence of live-in relationships in the Indian Scenario. (Agrawal, 2020) as well as (Goyal, 2016) have made a detailed analysis of inheritance rights that can be associated with live-in relationships. Special emphasis is also on (Marwaha & Rathore, 2014) which undertakes

a study from a feminist perspective on the topic of live-in relationships and analyses whether there is an actual need for regulations governing live-in relationships. (Saxena, 2019) has compared and contrasted the concept of live-in relationships in India with several international jurisdictions to provide an analysis on the different applications. However, one area of research that hasn't been undertaken within the topic of live-in relationships is the applicability of the concept to same-sex couples in the Indian context.

#### Introduction

Social norms in the Indian society dictate that the subsistence of legal marriage is an important cornerstone of the social lives of individuals in the society. The concept of *consortium omnisviteais* is a well-preserved tenet in the Indian society. However, as times are changing, adult heterosexual couples have been seen to engage in relationships where they agree to stay together for long periods of time without being subject to marital obligations. These relations which bear a similarity to the social norms of a marriage, are colloquially referred to as "Live-In Relationships". In this type of cohabitation, couples agree to live together without the conventional rights and publications that flow out of a legally recognized marriage. (Abhang, 2014). In the Indian context, live in relationships are still considered a taboo and thus haven't been accorded express legal recognition (Bag, 2012). As a consequence, none of the personal law statutes such concerning marriage and succession have recognised or mentioned the concept (Saxena, 2019).

It must be noted that historically, the concept of shared cohabitation out of the bounds of legal marriage is not absent in Indian culture. *Maytree Karaar* was a custom very similar to modern day live-in relationships that was practiced in the state of Gujarat. The idea was that men and women could live together and maintain a relationship without marrying each other by registering themselves with the local authorities to secure their rights and status of cohabitation. The custom in practice expected the men to provide financially even though there was no legal subsisting marriage (Singh, 2014). However, it was observed that this custom was essentially used to further the perverse practice of married men having mistresses and thus the Gujarat High Court decreed relations formed via this custom to be *void ab initio* (*Minaxi Zaverbhai Jethva v State of Gujarat*, 2000). Therefore, we see that while there existed a practice which resembled modern day live-in relationships, it was struck down because it furthered a regressive immoral act. There has not since been express recognition of modern-day live-in relationships but the judiciary has tried to implement the essence of the same through several case laws and interpretations of the scope of existing statutes.

**Judicial Pronouncements :** It is imperative to track the history of this concept because it relates to the social circumstances and culture of India. In India, historically & culturally, marriage is considered a sacrosanct, inviolable social institution (Kumar, 2012). Therefore, receptivity to the idea of couples engaging in live-in relationships has been historically low. The reason for the same was that live-in relationships were perceived as immoral & a violation on the sanctity of the bond of marriage. Keeping this ideal in mind, the society, and legal opinion consequentially, created a presumption in law that shared cohabitation between a consenting couple for an extended period of times would be construed as a marital relation, unless any evidence to the contrary could be produced (Goyal, 2016). This presumption can be traced back to the late colonial era where in the privy council, in the case of *A. Dinohamy v. W.L. Blahamy*, 1927, observed that when a woman and a man have been cohabitation for a continuous period of time, the law will presume that they were living as a married couple and not in a manner of concubinage. This principle has been reaffirmed by the privy council in 1929 as well. (*Mohabhat Ali v. Md. Ibrahim Khan*, 1929).

This principle of presumption of marriage has been followed by the Supreme Court in a plethora of cases. This highlights a lack of change in perspective of the Indian society as well as judiciary post-independence. The court emphasised this presumption in the case of *Tulsa v. Durgatiya*, (2008), wherein the court observed that a conjoint reading of Section 50 & 114 of the Indian Evidence Act, 1872 reveals that presumption of a marital relationship exists on the basis of the conduct of parties to a relationship in varied circumstances. This can be seen in application in the case of *Badri Prasad v. Dy. Director of Consolidation*, 1978, where the court expressly recognised a couple who had been living together for the past fifty years as a married couple. However, it must be noted that this presumption of marriage is rebuttable (*S.P.S. Balasubramanyam v. Suruattayan*, 1994; *Sobha Hymavathi Devi v. Setti Gangadhar Swamy*, 2005). In the case of *Thakur Gokal Chand v. Parvin Kumari*, 1952, Justice Faizal Ali observed that this presumption in favour of a marital classification can be rebutted if an evidence to the contrary surfaces. Another important case in the progression of recognition of live-in relationships is the case of *Madan Mohan Singh v. Rajni Kant*, 2010, wherein the Apex court upheld this presumption of marriage. This case paved the way for further precedents to afford subsisting rights to women in live-in relationships.

However, an important difference of opinion by the Delhi High Court highlights a pragmatic and modern approach to legitimising live-in relationships by reconciling with modern day view and refuting the presumption of marriage. Justice Shiv Narayan Dhingra in *Alok Kumar v. State*, 2010, stated that there exists no legal obligation of upholding the values of marriage in a live-in relationship. A live-in relationship has been thus termed as a “walk-in & walk-out relationship” which either party can terminate without the other’s consent without any legal implication at any point. This distinction by the Delhi High Court exhibits a more practical approach to treatment to live-in relationships by recognising that these relationships allow couples more freedom in cohabitation. Therefore, establishing a presumption of marriage defeats the purpose of live-in relationship. At present, there exists no express legal framework governing the concept of live-in relationships. However, an implied inference of a live-in relationship exists in the Protection of Women from Domestic Violence Act, 2005. Section 2(f) of the DV Act defines “Domestic relationship” as follows:

*“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.”*

While discussing the issue of domestic violence, the court clarified that the term ‘relationship in the nature of marriage’ includes live-in relationships (*Aruna Parmod Shah v. Union of India*, 2008). Additionally, the Apex court has also provided descriptive illustrations for when a relationship can be considered a live-in relationship. (*Indra Sarma v. K V Sarma*, 2014) In conclusion, the Apex Court has provided enough clarity to highlight that even though a live-in question may not be governed by an express framework, the concept of the relationship in itself is not itself illegal (*Payal Sharma v. Nari Niketan*, 2001). An observation by Justices M. Katju and R.B Mishra, who were presiding over the case that speaks manifold is “*In our 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.*” Furthermore, a special bench of the Supreme Court of India, consisting of Justices K.G Balakrishnan, Deepak Verma & B.S. Chouhan, in the case of *S. Khushboo v. Kanniammal*, 2010, held that a ‘live-in relationship’ is not a criminal offence. The Court also stated that living together as consenting adults in a live-in relationship is protected under the Article 21 of the Indian Constitution. Lastly, the court also commented that there exists no law that prohibits pre-marital sexual intercourse. (Rajgopal, 2010) Special emphasis is on the landmark judgment of *Veluswamy v. D. Patchaimmal*, 2010, wherein the Supreme Court enlisted a comprehensive set of criteria to determine which cases constitute live-in relationships. The question was pertaining to the scope and application of the term “relations in the nature of marriage” within the DV Act. The Court held that the term relations in the nature of marriage would be akin to a common law marriage. The stipulations of a common law marriages include:

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

Therefore, the court surmised that live-in relationships qualify as common law marriages and also set out additional criteria to determine the existence of a live-in relationship. These criteria are as follows:

1. **Duration of relationship:** A reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the factual situation.
2. **Shared household:** As defined under the Section 2(d) of the DV Act.
3. **Pooling of Resources and Financial Arrangements:** supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long-standing relationship, may be a guiding factor.
4. **Domestic Arrangements** - Entrusting the responsibility, especially on the woman to run the home, do household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.
5. **Sexual Relationship** - Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also marital affection, caring etc.
6. **Having children** is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

7. **Socialization in Public** - Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.
8. **Intention and conduct of the parties** - Common intention of parties as to what their relationship is and to involve and as to their respective roles and responsibilities, primarily determines the nature of that relationship.”

It can thus be surmised that there is sufficient jurisprudence to determine that the concept of a live-in relationship is legitimate concept in law and cannot be categorized as a criminal offence. It becomes important to compare the status of live-in relationships in other jurisdiction in the global landscape.

**Status Of Live-In Relationships In Other Jurisdictions :** As mentioned earlier, recognition of live-in relationships in a country is intrinsically dependent on the social culture a mindset of the country. The following chapter creates an analysis of the legal validity of live-in relationships and additionally rights accruing from said legitimacy in a spectrum of international jurisdictions.

**United States of America :** While co-habitation without marriage was illegal in the USA prior to 1970, the practice of live-in relationships garnered the status of a common law when done in line of certain requirements. American legal history saw the implementation of several consensual sex legislations. As a consequence, cohabitation out of wedlock was institutionalised while giving co-habitors the same rights and obligations as married couples. This situation is similar to the practices of Sweden and Denmark. Further, couples also have the option of entering into cohabitation agreements which can stipulate a limit the rights and liabilities of couples engaging in live-in relationship. (Graf *et al.*, 2020) However, it must be noted that couples living together are not recognized as legal parents and have to undergo procedure to attain such recognition. (Marwaha & Rathore, 2014)

**United Kingdom :** Live-in relationships in UK do not have any legal benefits and status granted to married couples. However, there is legal recognition of the concept for heteronormative and same-sex couples. These relationships are largely covered by the Civil Partnership Act, 2004. Under the act, partners do not have an express right of inheritance unless named in the partners will. Similarly, the bereavement allowance that may be availed by widowed spouses is not available to live-in partners. (Duncan *et al.*, 2014) However, the law aims to protect the rights of children born under these relationships and creates regulations which affords rights to such children irrespective of whether parents are married or cohabiting.

**Scotland :** The Family Law (Scotland) Act, 2006 established rights and obligations concerning couples in live-in relationships. Section 25 (2) of the Act also provided criteria to determine whether couple is cohabiting by establishing parameters such as firstly, the length of the period during which they lived together; secondly, the nature of the relationship during that period; and thirdly, the nature and extent of any financial arrangements, subsisting or which subsisted during that period. The phrasing of the Act qualifies same-sex couples to also engage in live-in relationships by using the gender-neutral term “partners”. Further, as per Section 28 of the Act, in case of separation of couple, the parties also have the right to apply for financial support. Provision for maintenance of partners is also reflected in the provision that in case of intestate death of a partner, the surviving partner can move the court for financial support from the estate within 6 months. (Gordon & Nobbs, 2006)

France

In November 1999, the French Parliament passed an act allowing “Civil Solidarity Pacts” known as *Pacte Civil de Solidarite* that allowed couples to enter into unions that were not marriages by signing a contract before the court clerk. This form of union is a contractual obligation, which binds “two adults of different sexes or of the same sex, in order to organize their joint life” and further allows the couple to enjoy the rights usually afforded only to married couples in the domain of paying of income taxes, housing and availing social welfare benefits. (Godard, 2007) The contract can be revoked unilaterally as well as bilaterally after giving the partner three months’ notice in writing. It must also be note that, PACS remains available to both same and opposite sex couples through the use of gender-neutral terminology.

**Canada :** Canada has legitimised live-in relationships in the form of “Common Law Marriages”. While Canadian provinces have different ways of treating live-in relationships, all provinces have conferred basic rights such as child custody and inheritance. Emphasis is also on the case of British Columbia wherein common-law partners have the same fundamental rights as legally married couples after two years of cohabitation (Ross, 2017). The example of Canada highlights that there is a possibility of creating a sustainable framework that provides rights to live-in relationships while preserving the sanctity of a legal union in the form of marriage.

Scope Of Rights Available To Women In Live-In Relationship

This chapter seeks to determine what rights are available to specifically women in live-in relationships. The need to analyse rights of women as a separate stake holder in the relationship is because, historically, Indian society has discriminated against women. Due to this systemic trend of oppression, there needs to be analysis to evaluate whether protective provisions exist within the paradigm of live-in relationships. Another aspect for the reason for this study is that as times are changing, women are becoming independent and self-sufficient. Therefore, should they choose to enter live-in relationships, analysis must be done to see whether their rights can be protected in these relationships. Discussed below, is the status of rights and protection afforded to women specifically in live-in relationships.

**Protection against Domestic Violence :** It must be noted that the discussion on whether women in live-in relationships are entitled to protection against domestic violence led the court to decide the landmark case, *Veluswamy v. D. Patchaimmal*, 2010. This case is considered landmark because it not only adjudicated upon the scope of applicability of the DV act in live-in relationships, but also provided a comprehensive set of conditions to determine what cases can be considered live-in relationships. The judgement has been noted as one of the first comprehensive attempts to define live-in relationships as well as recognize and acknowledge women's rights in the same. The judgement has thus expressly afforded women protection under the Domestic violence Act, 2005 by interpreting that the Live-In Relationships are under the scope of the definition of 'aggrieved person' in a 'domestic relationship'. The rationale for this, as expressed earlier is that the objective of the Act is to provide protection to women in not just marriages but also "relations in the nature of marriage". (Khan, 2015) A live-in relation falls in this category and thus women in live-in relationships have the right to protection of the Domestic Violence Act, 2005. **Right to Maintenance**

Maintenance under personal laws refers to an amount payable by a spouse, who might be unable to maintain herself either during the subsistence of the marriage or post separation or divorce of the couple. (Devika *et al.*, 2019) While Section 25 of the Hindu Marriage Act, 1955 purports that maintenance as a right can be availed by either spouses, other legislation and judicial precedents have created a circumstance wherein enforcement of Right to Maintenance is easier and more prevalent for women in the relationship. This is exemplified in Section 125 of the Criminal Procedure Code which penalises the refusal of husbands to maintain their wives. (Arora, 2019) While this is a gender biased expression of law, the objective of the provision seeks to include all women in relations akin to marriages under its effect. Specifically, the legal right to maintenance for women in "live-in relationships" has been evolved through the case of *Chanmuniya v. Virendra Kumar Singh Kushwaha*, 2011.

In the case at hand, a woman who had been living with the man in the bounds of a marriage, but was not a legally married wife of the man, claimed maintenance under Section 125 of the Criminal Procedure Code. The Supreme Court bench, comprising of Justices G.S. Singhvi and Asok Kumar Ganguly, observed that the provisions of Sec. 125 must be viewed in light of Sec. 26 of the PWDVA, 2005. Thus, based on this interpretation, the Court concluded that women in live-in relationships are entitled to all reliefs under Section 125, which are available to legally wedded wives. (*Abhijit Bhikaseth Auti v. State of Maharashtra*, 2009) Special emphasis is also on the Malimath Commission for reforms in the Criminal Justice System, set up by the Supreme Court in 2003. The report submitted by this Commission posits that a female live-in partner has the right to claim alimony. This has further been reiterated by a report from the National Commission for Women in 2008, which reiterates the same demand in order to protect women in, live-in relationships. Both these reports are important milestones in the progression of jurisprudence to allow maintenance to female partners in live-in relationships. Therefore, it can be concluded that the right to maintenance is a well-established provision that women in live-in relationships can exercise.

**Right to Inheritance :** Under Indian personal law, inheritance rights for partners flow from the legal validity of their union. (Agrawal, 2020) Presently, there is no express provision for a right of inheritance for live-in partners, following this same rationale. The Indian Judiciary has also not addressed this question of inheritance right for partners. Therefore, in view of the existing legal framework, the only way for partners in live-in relationships to transfer wealth in form of inheritance, is to nominate the other in a will. This method of succession was recognised in the case of *Vidyadhari v. Sukharna Bai*, 2008, wherein the Supreme Court issued a succession certificate in favour of a live-in partner who had been nominated by the deceased. However, such a nomination can only be made for self-acquired property. Thus, ancestral property cannot be inherited through nominations. (Baruah, 2016) This acts as a barrier for live-in partners to inherit their partner's wealth and may socially act as a detriment to the welfare of the surviving partner as well preclude the partners intent of supporting another.

Thus, a conclusion can be derived that the inheritance rights of partners and women interchangeably, in a live-in relationship are not guaranteed. There exists a need for the courts to adjudicate on the matter and address the question of succession rights for partners in a live-in relationship.

**Custodial Rights :** The question of custodial rights in a live-in relationship is an important one from a feminist perspective. There has been judicial application of mind on the matter of guardianship and custody in Hindu personal laws as they are codified. As such Section 6(b) of the Hindu Minority and Guardianship Act, 1956, indirectly deals with guardianship in live-in relationships and purports that in case of children born out of wedlock, the mother is natural guardian and has primary custodial rights. However, previously, through the positivist interpretation of law, it was deemed that in the situation of break-up in the live-in relationship, the husband would acquire custodial rights as the natural guardian. But the Supreme Court in the case of *Gita Hariharan v. Reserve Bank of India*, 1999, held that this interpretation of favouring the male guardian is problematic from the perspective of gender equality. The Court thus disavowed a preferential right of custody to male guardians. Further, in the case of *Shyam Rao MarotiKorwate v Deepak Kisan Rao Tekam*, the court further elaborated that in the matter of guardianship, the welfare and development of the child, as under Section 13 of the Guardianship Act, is the primary concern and appointment of the guardian must take place accordingly. Therefore, it can be concluded that in live-in relationships, guardianship and custody is a subjective matter and is implemented on a case to case basis. Ancillary Rights

As in accordance with the socio-legal landscape of India, the courts have usually been of the opinion that most rights afforded to married couples cannot be conferred to individuals in live-in relationships. However, this view is slowly changing as the courts interpret new rights to be applied within the purview of live-in relationships as the need to protect the interest and welfare of women in such relationships arises. This can be seen in the Supreme Court's interpretation in the case of *KoppisetiSubbharaoSubramaniam v. State of A.P.*, 2009. In this case, the SC stated that the protection covers against dory under Section 498 A of the Indian Penal Code, 1860 can be afforded to women in live-in relationships. Another right that has been afforded to women in live-in relationships is the right of abortion in accordance with the stipulations of Medical Termination of Pregnancy Act, 1971 (Jain et al., 2016). Earlier this right was only afforded to married women. However, the Bombay High Court in a Suo moto PIL, revamped the abortion laws of India to allow unmarried women the right of abortion as a mark of reproductive autonomy which is a fundamental right. (*High Court on its own Motion v. State of Maharashtra*, 2016)

**Rights Of Children Born In Live-In Relationships :** Children born in live-in relationships require protection because society might not accept them because of their parent's non-marital status. There is a chance that this might preclude them from certain rights that are inherent to children born out of marital unions. The rights that need to be secured for children born in live-in relationships can be broadly categorised as the right to legitimacy and the right to inheritance.

It is a well-established principle of law that live-in relationships are not illegal. However, since there is no express framework of legislature to regulate these relationships, the legal position of inheritance is ambiguous and requires further adjudication.

**Right to Legitimacy :** The Supreme court through its adjudication has held that children born in live-in relationships must be recognised as legitimate. (*ParayankandiyalEravathKanapraavanKalliani Amma v. K.Devi*, 1996; *S.P.S. Balasubramanyam v.Suruttayan*, 1994). This has been done to protect children born in such circumstances, in spite of their parents' marital status. The rationale behind this is that there exists a need to view children and partners in a live-in relationship as separate stakeholders and accordingly accrue different rights to them. (Malik, 2015) However, an important pre-requisite to legitimacy is that the parents of child must qualify the requirement of sharing a common household for a considerable period of time. The idea is to evaluate whether the couple shares responsibilities and obligation like they would in a marriage. (*Tulsa v. Durghatiya*, 2008) The right of legitimacy also gives way to the important right of succession and inheritance.

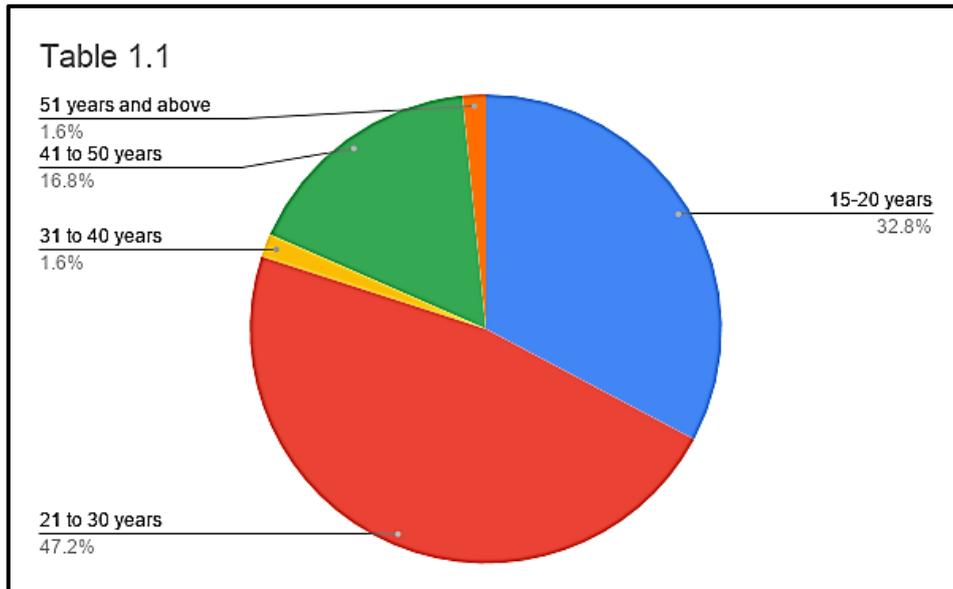
**Right of Inheritance :** The framing of Section 16 of Hindu Marriages Act, 1955 allows children born in relationships others than marriage to inherit their parent's property. The caveat is that, to invoke Section 16, the couple must show either *de jure* or *de facto* marriage (*ReshamlalBaswan v. Balwant Singh Jwalasingh Punjabi*, 1994). The court in *Ramkali v. MahilaShyamwati*, 2000, posited that a *de facto* marriage as a circumstance wherein a couple may resides together for an extended period of time as husband and wife with habit and repute. Therefore, a live-in relationship falls under the purview of a *de facto* marriage and Section 16 can be invoked to claim inheritance as a child born in live-in relationships.

However, it must be noted that in the past, such invocation of legitimacy to claim inheritance was limited to the property of the child's parents (*BharathaMatha v. R. Vijaya Renganathan*, 2010). Therefore, only self-acquired property of the parents could be inherited by the child and not ancestral property (*JiniaKeotin v. Kumar Sitaram Manjhi*, 2003). This created a serious disadvantage to children born in these relationships and the Court tried to improve their status by using their overreaching powers to benefit the society and support children born in these relationships. (*Dimple Gupta (Minor) v Rajiv Gupta*, 2007) In 2011, the Supreme Court brought a change to the above principle in the case of *Revansidapa v. Malikarjun*, 2011. The court interpreted that the use of the word "property" in the Section 16 of the HMA indicates that there does not need to be a distinction between ancestral property or self-acquired property. Thus, children in live-in relationships are entitled to inherit both self-acquired property as well as ancestral property. This interpretation of the Supreme Court has helped cement the right of inheritance for children in live-in relationships and such children now cannot be discriminated against.

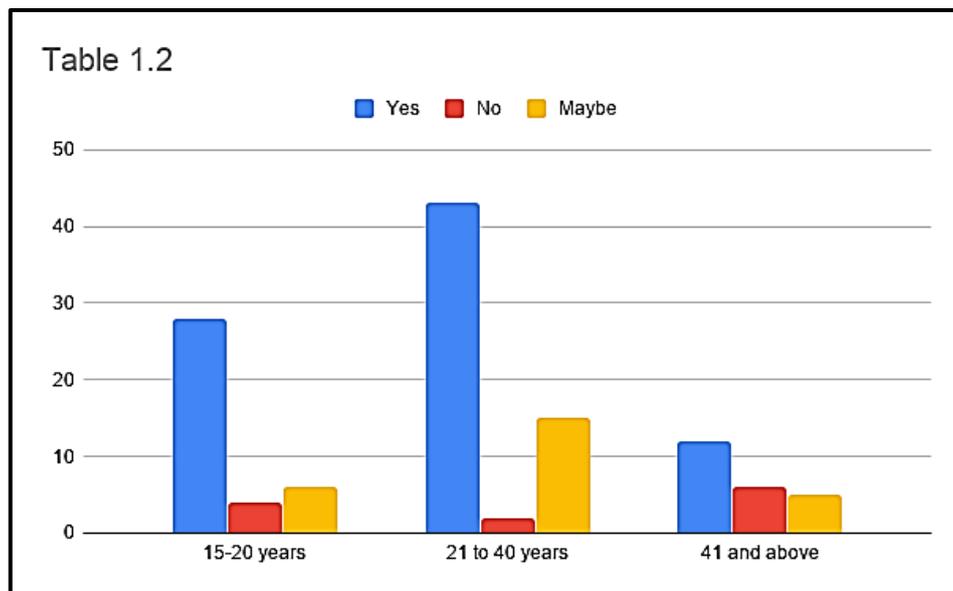
**Same-Sex Couples & Live-In Relationships :** India in 2018, decriminalised homosexual acts through the Supreme Court's landmark judgment of *Navtej Singh Johar v Union of India*, 2018. This judgment has paved way for same-sex couples to avail all personal law rights that have been previously only afforded to heteronormative couples. However currently, the right of same sex marriages is not recognised under Indian personal laws. When a petition came up in front of the Supreme Court to recognize same-sex unions under Section 5 of the HMA, the government responded that ancillary legislations do not reflect validity of same sex unions and the matter must be left for the parliament to adjudicate in the future. (Garg & Mahapatra, 2020)

Therefore, an important question is to determine whether same-sex couples can at least engage in live-in relationships freely. Several High Courts have adjudicated on this question and the current position is that same-sex couples are allowed to engage in live-in relationships. (Bhardwaj et al., 2020; In August 2020, a division bench of the Orissa High Court recognized that same-sex couples have the right to engage in live-in relationships without attracting any illegality or penalty. The court relied on precedents that legitimise live-in relationships for heteronormative couples as well as decisions on fundamental rights which highlight the choice of an individual and the right to love with personal dignity. (*Chinmayee Jena v. State of Odisha*, 2020; *Shakti Vahini v Union of India*, 2018). Similarly, the Uttarakhand High Court also held that same-sex couples have the right to live together even if they are not eligible to enter into wedlock as of now. Justice Sharad Kumar Sharma, while making this inference, cited Article 21 of the Constitution and observed that it is the duty of the judiciary to uphold the choices individual make in their personal and private life. (Mandhaniet al., 2020) Therefore, it can be concluded that since live-in relationships are now recognised by the judiciary and also some legislation, this option is available to same sex-couple if they wish to avail it. This choice is a necessary placeholder in the absence of legalisation of same-sex marriages in India. However, it must be noted that in order for same-sex couples to freely exercise this choice, there needs to be adjudication on the question of what rights they are entitled to. Currently, the rights available to heteronormative couple's such as right to inheritance and maintenance are not available to same-sex couples. Simply put, the only right available to same-sex couples is the right to consensual cohabitation.

**Results Of Survey Conducted To Analyse Opinions On Live-In Relationships :** This survey undertaken by way of a questionnaire aimed at understanding the opinions and knowledge of different age groups regarding live-in relationships as well as the rights available to parties engaging in them. The sample size of the survey was 125. About 47% of the sample size was composed of individuals aged between '21-30 years'. This age group is one of the primary age groups who are likely to enter into live in relationships in because of their age and worldview. Thus, this chunk was an imperative part of the study. Another 16% was made up of individuals of the age of '41-50 years'. This age group plays an important role in understanding the reflective will of the society as they are the ones raising children who are about to enter adulthood generally. The rest of the sample size was filled up of individuals aged '15-20 years'. The age-wise composition of the sample size is depicted graphically in **Table 1.1**.

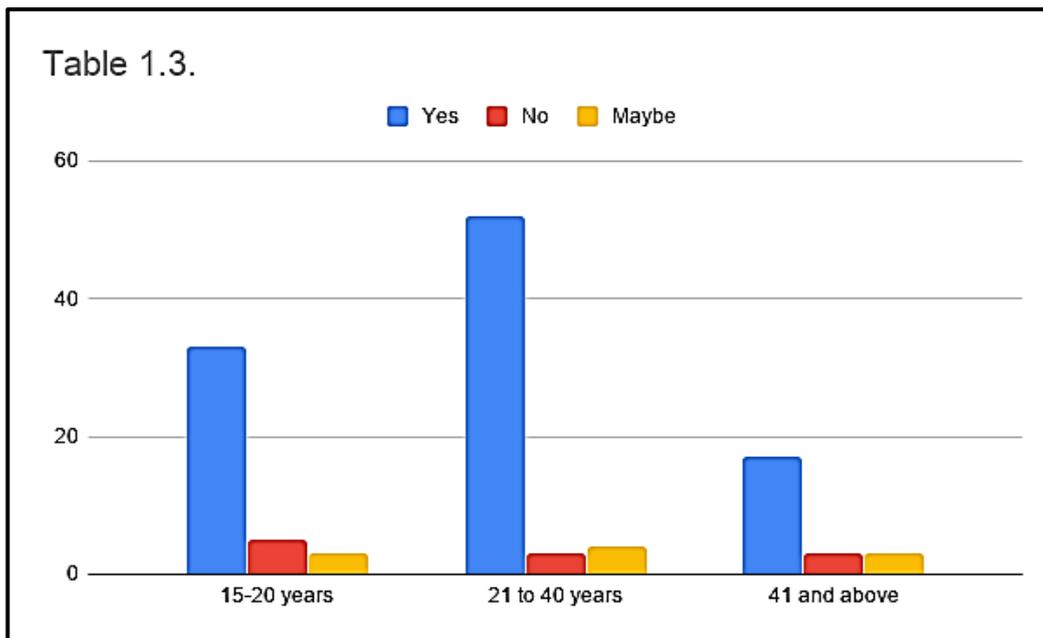


Across the spectrum of all age groups, all individuals were well aware of what a live-in relationship is as 96.8% of the sample size and answered the question “Do you know what a Live-In Relationship is?” in the affirmative. Another common understanding across the age groups was that Live-in Relationships in India are still considered “taboo” in the society as 88% of the sample size agreed that such relationships are still taboo while 10% were undecided.



The findings of the survey will now be presented with an age group classification to analyse the general trend of opinion amongst different age groups. There is a trend in the affirmative for younger age groups on the question of whether women in live-in relationships should have the same rights as that of women in marital unions. This is exemplified as 73% of the 15-20 age-group and 86% of the 21-40 age group answered yes on the question. However only 50% of the 41 and above age group answered in the affirmative to the question. The detailed analysis to the question is presented in **Table 1.2**.

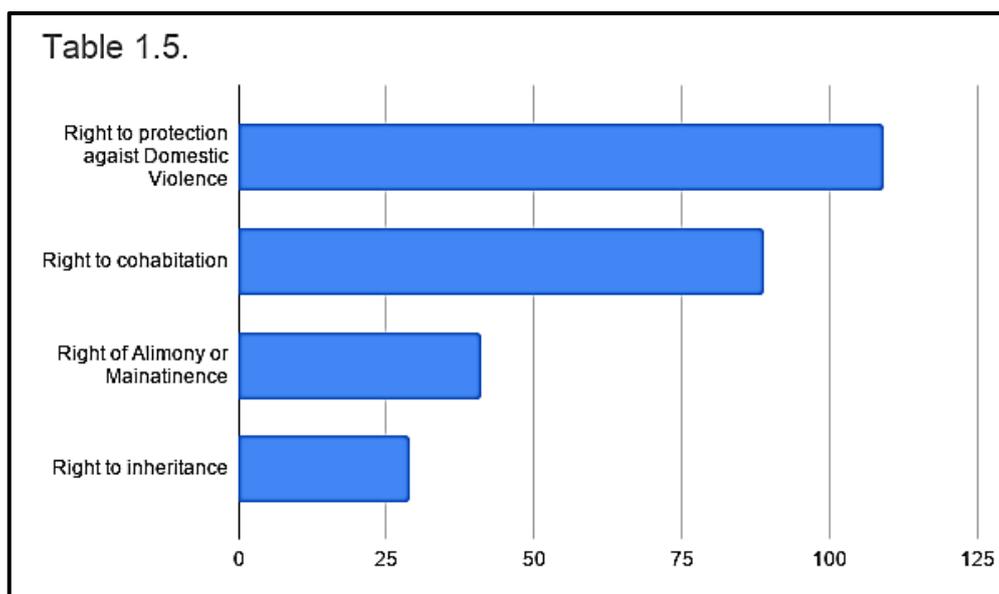
The next question presented was whether children born in live in relationships should have the same rights as children born in marital unions. Here, the trend through all categories of age group was to answer in the affirmative in large percentage. This highlights a distinction in the society belief of granting rights to children born in live-in relationships but not as much to partners in such relations. The summary of the data is presented in **Table 1.3**.

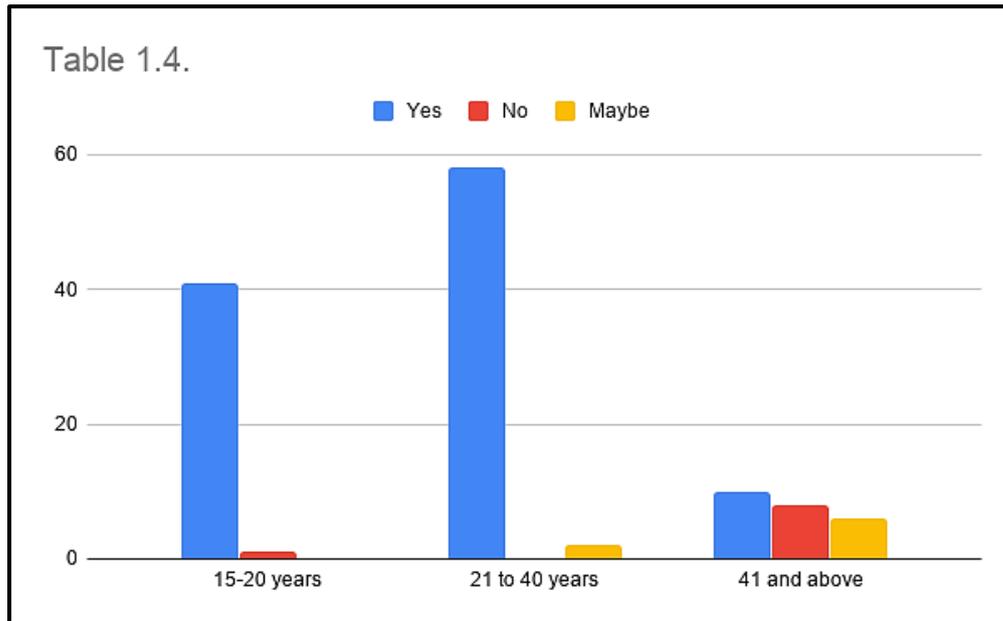


The last observation on the basis of age groups is on the question of whether same-sex couples should have the right to engage in live-in relationships, considering that gay marriage is not legal in India yet. Here, the trend for age groups of 15-20 years as well as 21 to 40 years showed clear affirmative answers, as roughly 98% of the sample size in both categories answered in the affirmative.

However, the 41 and above age group had a diverse response wherein 41% answered yes, 33% answered no and 25% answered maybe. The detailed analysis is presented in **Table 1.4.**

Another important data set to observe is the overall opinion of the sample size the about the various rights that may be afforded to women in a live in relationship. **Table 1.5.** ranks public perception the same.





On a whole, it can be observed that there exists prevalent belief that while women in live-in relationships can be granted rights of cohabitation and protection against domestic violence, there is lesser agreement with the idea of allowing maintenance and right to inheritance.

The following inferences can be made through these findings:

1. The younger age groups are more receptive towards the legalisation of live-in relationships when compared to other age groups. This can be attributed the contrast of old moral and social conditioning and on the flip side, changing and liberal mindsets.
2. There is also a divisive difference on the opinion of older generation and younger generation, on the topic of legality of live-in relationships for same-sex couples. This is because, social acceptance of same-sex relations is still at a nascent stage and the Indian society has a long way to go before social acceptance can be achieved across all age groups.
3. Lastly, there is change in mindset when it comes to women and children in live-in relationships. This is exemplified in the fact that the findings show wider acceptance for rights of children in live-in relationships when compared to that for women in these relationships.

**NOTE:** The list of question aske in the survey questionnaire are attached in Appendix I.

## II. CONCLUSION & SUGGESTIONS

The Indian Judiciary has given way to recognition of live-in relationships, keeping in view the objective of upholding fundamental rights of citizens to live in personal dignity and with choice. The change in the legal position on the “presumption of marriage” also highlights a foray into modern interpretations of live-in relationships. However, only legitimising the existence of live-in relationships is not enough and there exists a need to adjudicate upon what rights are available to women & children in these relationships. The courts have done so by recognising the right of maintenance and cohabitation for women in live-in relationships. The court has also recognised other rights such as right to protection against dowry as well as a right to abortion. These rights are equally important in paving the way for women to live freely in said relationships. However, a right that remains murky due to the lack of judicial interpretation, is the right of inheritance for women in such relationships.

Similarly, in the case of children born in these relationships, the Courts have recognised their right to legitimacy and inheritance. However, in the absence of an express legal framework., the implantation of these rights remains absent and inconclusive. In the case of same-sex couples, the court has recognised their right to engage in such relationships but remined silent on the question whether such couples are entitled to rights that have been afforded to heteronormative couples. The legalisation of live-in relations has therefore entailed the requirement to create a wholistic and new set of laws which can govern these relations. Only judicial recognition through precedents is not enough in ensuring that their rights are protected. These set of regulations will have to include protection in case of desertion, bigamy, inheritance as a means to protect such couples. There is a need for such a framework as it can help mitigate existing defects of personal law. It must be noted

that with the changing attitude of Indian society, live-in relationships are becoming increasingly popular and prevalent. Keeping this in mind, the recognition of rights and obligations flowing from a live-in relationship or relationships of a similar nature becomes very imperative. Special legislation can be devised, where couples in such a relationship can register themselves as 'domestic partners' instead of husband and wife while avail the rights and obligations for this special status.

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### **Appendix I: Survey Questionnaire**

Question 1: Please enter your name.

Question 2: Please specify your gender

Question 3: Please specify the age group you belong to.

Question 4: Do you know what a Live-In Relationship is?

Question 5: Do you believe that Live-In relationships should be legal in India?

Question 6: In 2020, is a Live-In Relationship still considered a taboo concept in India?

Question 7: Do you believe that a women in a Live-in Relationship should have the same rights as a married women.

Question 8: If yes, which of the following rights should they have?

- a. Right to protection against Domestic Violence
- b. Right of Alimony
- c. Right to inheritance
- d. Right to cohabitation

Question 9: Do you believe that all children born in Live-In Relationships have the same rights as children born out of marriage ?

Question 10: Considering that same-sex marriage is not legal in India, do you believe that Live-in relationships and corresponding rights afforded, should be applicable to same-sex couples?

Question 11: Please share you views regarding any of the question in detail, if you wish to do so.