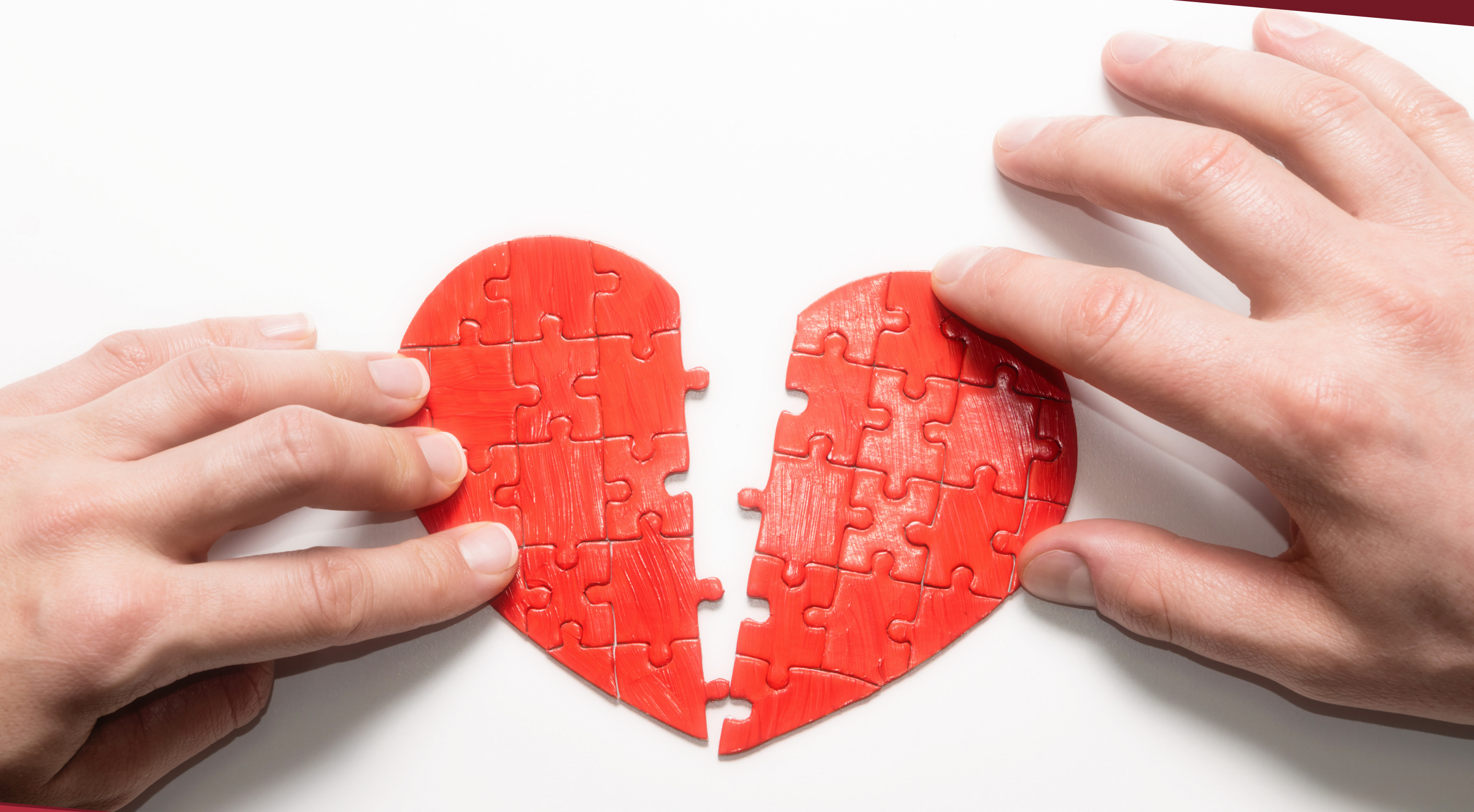


Centre for Socio Legal Research

ISBN : 978-93-5473-377-2



RESEARCH REPORT

Live-in Relationships In India



CSLR

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RESEARCH**

- More than 100+ responses.
- Overview on Institution of Marriage
- Moral Policing & Constitutional Morality

September, 2021

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About CSLR :

The Centre for Socio Legal Research (CSLR) was established in 2020 with an aim to address the existing social issues with a legal lens by encouraging empirical research in the field of law and policymaking and providing students across the country with a hands-on experience of the existing inequalities through the means of research.

We address issues related to society by closely linking them to the nuances of law focusing on in depth-research on the diverse complexities of the society in terms of the societal issues, norms, and the rights of the vulnerable groups by creating a medium to voice the opinions of people which belong to different social groups which range from people of different communities, ethnicities, class, creed, linguistic backgrounds, castes, gender, religion, persons with disabilities, transgender persons, sexual minorities and those who are victims of the social stratification which exists in our society. Through emphasizing on advocacy of issues related to human, constitutional, and fundamental rights, through conflict and peacekeeping strategies relevant in the international context and that of India.

Acknowledgements:

We would like to express our deep and sincere gratitude to “Centre for Socio Legal Research” for providing us with this learning opportunity to learn and research extensively on this appealing topic “*Status of Live- in Relationships in India*”. We would also like to express our gratitude towards our Research Supervisor, Ms. Shambhavi Goswami for giving us the opportunity to do research and providing invaluable guidance throughout this research. Her dynamism, vision, sincerity and motivation have deeply inspired us. It was a great privilege and honour to work, study and research under her guidance. We would like to extend our sincere gratitude towards the Board of Advisory for their invaluable insights and guidance.

We are extremely thankful to all the contributors who contributed and offered impeccable research and continued commitment to make this research project a success. We would also like to extend our gratitude toward our parents and peers for their valuable advice. The completion of this project requires counselling and assistance from many people and we are thankful to them for helping us in this project.

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Abstract:

Live-in relationships reflect the choice of two individuals to live together like partners without engaging in the institution of marriage. Years after independence, it is not just the Indian society that discriminates against people entering into live-in relationships but also the Indian legal system, which systematically discriminates between the socially acceptable institution of marriage and the “taboo” practice of being in a live-in relationship. The legal stature of these live-in relationships is rather unsettled and ambiguous. At times, the mindset of the judges sitting on the bench becomes the sole decider of whether the court will grant protection and sanction to a couple living in a live-in relationship or not.

Recent judgments delivered by the Punjab and Haryana High Court underscores this very fact. While in one case the Court refused to grant protection to a couple living in a live-in relationship, it granted protection in the other one by pronouncing that the courts should be guided by ‘constitutional morality’ and not merely by ‘morality’. The term “**constitutional morality**” was addressed in ***Manoj Narula vs. Union of Union of India***. These judgments prompt us to revisit the scope and extent of Right to Life under Article 21 of the Constitution of India.

Furthermore, in ***K.S. Puttaswamy vs. Union of India***, it was held that it should be the discretion of individuals as to how they want to lead their lives and State is only required to guarantee protection to individuals’ autonomy rather than imposing restrictions. Privacy also incorporates the right to live with dignity to fulfil the objective of personal liberty and freedom which are the cornerstone of the Indian Constitution and democracy. This paper discusses the legal stature of live-in relationships, the decisions of courts in this regard, and argues for a more liberal application of the fundamental right granted under Article 21 of the Indian constitution.

Introduction :

Breaking the barriers of marriage as the only socially acceptable institution and prerequisite for cohabitation, the novel concept of live-in relationships has been increasingly emerging in India. Live-in relationship is when a couple chooses to enter into a mutual arrangement for purposes of cohabitation as partners. Like any other unorthodox, non-conformist idea, this has been subject to much debate and discussion in Indian society.

This research project seeks to explore all such perceptions and contestations around the concept and ultimately connect it to the constitutionality and legality of the issue. It begins by analysing the relevance of the institution of marriage in our society and a weighted comparison with live-ins. It goes on to systematically decode the perception of live-in relationships through both secondary and primary research. The latter has been gathered by means of an empirical study with the sample being dominated by young adults. This reveals growing acceptance and changing perceptions due to a number of factors such as westernisation and education.

However, taboo and disdain around the concept continue as is evident from the parental and societal pressures cited by the respondents. Fear around the erosion of Indian socio-cultural values is the primary driver of such a perception. This is reaffirmed by the countless instances of moral policing and abuse that such mentalities eventually materialise into, not just by civilians but even law enforcement agencies that the paper sheds light upon.

With a shaky legality, fluctuating judgments, and subjective interpretations, there is a need to solidify the legal stature of live-in relationships in India. With this in mind, the paper seeks to explore the contestations between constitutionality and morality, attempting to analyse which one of the two should courts and legal systems be guided by. It reiterates the existence of a sphere of individual freedom stemming from Article-21 within which each entity is entitled to act, and calls for a more liberal approach towards live-in relations.

The Institution of Marriage:

Marriage is a social institution endorsed by men and women's physical, psychological, social, religious, cultural, and economic needs.^[i] It permits men and women to establish a formal relationship with each other to form a family, legitimise off-springs and establish other rights and obligations of husband, wife and children. In India, marriage is considered a sacred union, which is highly respected and sanctified in society. Thus, living together before or without marriage is very rare and considered taboo. Owing to the diverse cultural presence in India, different laws have been formulated, that lay down the guidelines and the procedure to execute marriages in different religions as well as deal with the arising disputes in marriages.

But over time, things have been fast-changing and couples have entered into living together without marriages, commonly known as live-in relationships. The term live-in-relationship is defined neither in the dictionary nor in law. However, it can be called an arrangement whereby two people live together as partners in an emotionally and sexually intimate relationship, without entering into a formal relationship called marriage. It is also known as Cohabitation.

In the Post war period, people in Western society started to experiment with 'living in' with each other without marriage.^[ii] The value system and religion suffered a major setback and the old moral codes became dysfunctional. People were attracted to short moments of joy more often. This was because the trauma that the people had to go through during the wars had weakened their strong Victorian moral codes.

They were attracted to casual sex, taking pleasures, indulging into more explicit sexual literature, films, etc. This hit the markets and took the war-torn people in pursuit to indulge in such pleasures and hedonism. Some of the couples did not want to take up the responsibility of a long-term commitment like marriage. Others claimed that marriage was not sanctimonious as a legal bond. In most Western societies today, live-in is no longer considered abnormal or an aberration. Not only this but people saw other advantages of live-ins over marriages. They did not have to enter

into lifelong commitments as in the case of marriages. Instead such relationships are a way to check compatibility with each other and try to understand the partners in a better way. Many females also thought that there is a choice for them whether bear a baby or not but in marriage, it was compulsory to give birth to a baby.^[iii]

In India, the practice of men and women cohabitation before marriage has been in tradition for millenniums.^[iv] In the earlier days, many princes, rich men, kings, zamindars, and nawabs in India had one or more wives and informal relations with other women as well. Engaging in such relationships with women outside marriage was not at all considered immoral for men. In fact, it was unexceptional in many parts of the country for a man to hold a further household for the purpose of his entertainment and relaxation far away from his responsibilities. But following Independence, as the society flourished and education spread, women became more aware of their rights and dignity. The practice of bigamy started to fade away. Globalisation took place and we could witness advancements in nearly every sphere, with people changing their mindsets and couples entering into live-in relationships. Freedom among the partners, privacy, maintaining individual professions, access to education, and other factors are liable for this change in mindset.^[v]

However, with such an influential society in India, that has a stronghold on the values and the culture, people have continued to disapprove of such 'live-in' relationships for several reasons. Firstly^[vi], the Indian woman was expected to stay a virgin till her marriage. She was abstained from keeping any pre-marital or sexual relationships with other men, as a part of their social behaviour in the society. Secondly, a large number of women are still dependent on men for their living, so they are forced to accept a low status while being in a live-in relationship. Thirdly, society and the attached social stigma doesn't allow many couples to live together before marriage. They believe that it will affect or harm their relationships with their parents. And in most cases, when a woman is abandoned by her partner, her own parents as well

the society won't accept her. Further, birth of children or offsprings out of such arrangements are tainted with stigma and ignominy. Last but not the least, live-in relationships also bring about numerous social as well as logistic problems in daily lives for the couples where they face obstacles such as opening a joint bank account, getting visas, applying for insurance, visits to hospitals, and so on.^[vii]

According to a poll^[viii] conducted by Inshorts (a news app) in May 2018 that records the responses of 1.4 lakh netizens with 80 percent of them belonging in the age group of 18-35 years, more than 80 percent of millennials think that live-in relationships are still considered a taboo in India while more than 47 per cent Indians believe that marriage is better when choosing between the two. More than 80 per cent of Indians support live-in relationships as a way of life. Out of those, 26 percent of millennials might choose lifelong live-ins as an option over marriages. Whereas, 86 percent of Indians opine that the reason behind live-in relationships is not merely lust and more than 45 per cent claim that it is more of compatibility testing before marriage.

With this issue taking light, a section of the society comprising distinguished activists and recognized dignitaries have stepped up and shared their valuable views^[ix] on this topic. Among them, social scientists have already identified grave social problems like pregnancy of adolescent girls at a very young age, drug abuse, incidents of violence and juvenile misdemeanours. This way, they feel that the coming generation will be more troublesome and spoiled. They will not prefer arranged marriages over live-ins with no assurance that the male partner will prove to be loyal in the future or would not leave his partner and run off secretly.

Difference Between Marriage And Live-In Relationship:

Live-in relationships or cohabitation is when two individuals choose to mutually enter into a combined living arrangement without getting married in the sense of solemnization of a marriage under any law.^[x] Terms such as “cohabitation”, “incomplete institution”, “unmarried partner”, etc. are used to describe such relationships.^[xi] Such relationships can be temporary, i.e. on an informal basis, as a precursor to marriage, an arrangement to test compatibility with one’s partner, etc.; or permanent, stemming from a disbelief in or philosophical opposition to the institution of marriage, the luxury of financial independence and security, or the lack of legal and logistical hassles in order to terminate or exit the relationship with flexibility and ease.

For persons in a same sex relationship, in jurisdictions which fail to recognise same sex marriages as legal, live-in relationships are often the only means to formalise commitment.

Marriage by contrast is a socially acceptable, legally recognised institution. In most cultures, marriage originated as a social construct with the primary purpose of granting legitimacy to sexual and romantic relationships and facilitating the process of procreation in a socially acceptable manner. Thus, marriage has two essential prongs: the personal association of two individuals (historically, man and woman) and a biological relationship for purposes of sexual gratification and reproduction.^[xii]

Biologically, the purpose of marriage is to ensure the successful survival of the human race. Kinship, property inheritance, and continuance of a familiar lineage are the social face of the very same coin. This can be viewed from the lens of patriarchal succession in India. From a Public Policy perspective, marriage is an essential prerequisite for the stability of the family; the basic societal unit. Over time it has not only become socially acceptable but rather socially obligatory to enter into the bond

of marriage. In the context of Indian socio-cultural values, many view marriage as a sacrosanct institution to be placed on a sacred pedestal.^[xiii] Bertrand Russe has argues that even though marriages have a religious basis in most cultures, it is their standing as a legally recognised relationship which is of prime importance.^[xiv]

Legal Flexibility:

From a legal perspective, terminating a live-in relationship is a much simpler exercise as compared to the dissolution of a marriage through divorce which can be an extremely lengthy and time consuming process. Additionally, the legal and financial independence associated with live-in relationships lacks in a marriage wherein the couple is often treated as a single legal entity. Conversely, live-in relationships come with their own set of legal hassles such as availing joint visas, or opening a joint bank account which are much simpler for married couples. Additionally, according to a 2010 Supreme Court Bench of Justices B.S. Chauhan and Swatanter Kumar, children born out of live-in relationships in India are not entitled to claim inheritance in Hindu ancestral coparcenary property and can only claim a share in the parents' self-acquired property, if any.^[xv]

Social Acceptance:

Whereas the institution of marriage has a certain social standing and acceptance, live-in relationships have been at the receiving end of considerable social and moral backlash. They are perceived as an unholy, immoral, and irreligious arrangement. In India, acceptance of the concept though growing in recent times, is still highly limited as compared to Western countries wherein cohabitation before marriage has gradually evolved as a behavioural norm.^[xvi] Social unacceptance of live-in relationships in India has often been witnessed as bordering on extreme with civilians and even law enforcement agencies and the judicial system indulging in moral policing. Whereas married couples can easily rent hotel rooms and

apartments, and are easily granted visitation in places like hospitals, live-in couples may have to give up some of the social and moral perks that come with a formalised marriage. Familial acceptance and support is another point of distinction between married and live-in couples with the latter often having to forgo the same.

Social Perception Of Live-In Relationships:

Years ago when South Indian actress Khushboo commented in favor of pre-conjugal sex there were 22 cases registered against her. Presently however, social perceptions on live-in relationships and premarital sex, which is often part and parcel of such a relationship, appear to be more magnanimous and liberal, this outsider culture in India has begun mushrooming across the length and breadth of the urban areas.

The instances of problems that are posed to live in couples range not only from outside factors such as finding a place of residence but also to intra-couple issues. In July, 2019 a man was arrested for stabbing his live-in partner on suspicion of infidelity; A Rajasthan rights body called for a ban on live-in relationships stating that a woman in live-in is like a concubine; In April 2019, Kannada actor and her boyfriend allegedly murdered and disposed of body of her brother for objecting to their live-in relationship.

Subsequently, there are also instances of hope and positivity such as when the Madras High Court asked the parents of two women, who were in a same-sex live-in relationship, to subject themselves to counselling by a specialist in the field, to face the matter wisely.

The most dramatic and perhaps most dangerous form of oppression that live-in couples face in India is in the form of violence and even killing of either partner by their own family members in a pseudo attempt of protecting the so-called “family honour”. A 25 year old man in a live-in relationship in Mumbai was beaten to death by his partner’s 2 brothers. Instances such as these are far too common to be overlooked as exceptions and the habitual rejection of pleas for protection that live-in

couples often raise with courts only exacerbates the issue. Regardless of any legal vagueness on live-in relationships, there is nothing vague about the right to life which should be safeguarded in any circumstance.

Breaking the barriers of marriage as the only socially acceptable institution and prerequisite for cohabitation, the novel concept of live-in relationships has been increasingly emerging in India. Like any other unorthodox, non-conformist idea, this has been subject to much debate and discussion in Indian society. This discussion is an important one since the societal perception of live in relationships may have direct ramifications for the laws on this.

Opposition to Live-In Relationships:

A fairly new concept, the idea of live in relationships has been at the receiving end of some strong opposition, with several viewing it as an illegitimate relationship with potential to harm the social fabric of the nation. In the context of Indian socio-cultural values, many view marriage as a sacrosanct institution whose importance cannot be overemphasised^[xvii]; live-in relationships shall supposedly erode this sacred institution with more and more people opting for a crude “walk-in and walk-out relationship”.^[xviii] These relationships are equated with endorsing a lack of responsibility, commitment, and tolerance, and condoning disrespect towards social bonds. Some believe that the primary motivation behind live-in relationships is sexual gratification. Whereas this view is clearly reductionist, one would be compelled to note that the primary purpose of marriage in most cultures was also to grant legitimacy to sexual relationships. Such a perception of marriage, combined with the taboo around pre-marital sex in India, results in a strong adversity towards live-in relationships. Many scholars have noted that concerns surrounding controlled female sexuality in particular drive opposition to pre-marital sexual relations. This is to be read within a larger normative discourse around culture and nationalism wherein restraining a woman’s sexuality becomes symbolic of the virtues of the

nation as a whole.^[xix] A larger apprehension concerning westernisation further supplements fears around live-in relationships and the inevitable “moral breakdown” that comes with them. The ever important social institution of family stands as a fortress of tradition and morality in India, to be protected against alien influences and decay. The strict hyper-nationalist Indian-Western binary that exists to this day in the minds of lakhs of Indians undoubtedly contributes to their disdain towards such relationships.^[xx] Concerns around bigamy, adultery, etc., contribute to this social unacceptance.^[xxi]

Some opponents of live-in relationships argue along more pragmatic lines. This includes the perception that children being born out of live-in relationships are more prone to mental trauma, instability, and legal hurdles especially with respect to matters of property inheritance. These fears are not entirely unfounded; in 2010, a Supreme Court Bench of Justices B.S. Chauhan and Swatanter Kumar said that a child born out of a live-in relationship is not entitled to claim inheritance in Hindu ancestral coparcenary property and can only claim a share in the parents’ self-acquired property, if any.^[xxii] There are many who perceive live-in relationships as harmful for the woman in the equation. A bench of Rajasthan State Human Rights Commission, in September 2019 demanded a law against live in relationships calling them out as violative of the dignity and fundamental rights of women.^[xxiii] The lack of stability and commitment in live-in relationships is perceived as being more detrimental for the female co-habitant. Despite some progressive judgments concerning alimony, domestic violence, and custody sharing associated with live-in relationships, many see the combination of engrained patriarchy and uncommitted relationships as having adverse effects on women.

Social unacceptance often creates a vicious cycle wherein even the most educated of individuals struggle to embrace revolutionary ideas due to the societal costs that come with it. Social unacceptance can often border on extreme creating pragmatic

security, health, legal, and cultural hassles for live-in couples. A prize example of such moral policing would be the infamous Aksa Beach hotel raid (August 6, 2015) in Mumbai, with close to 40 couples staying in hotel rooms being charged with “public indecency”, and some even being registered under the Prevention of Immoral Trafficking Act pertaining to prostitution.^[xxiv] Such incidents make it harder for social acceptance to materialise even amongst more open minded individuals. Other logistical, legal, and administrative concerns such as opening a joint bank account, availing visas, renting apartments, insurance schemes, visitation to hospitals, etc. add to this problem.^[xxv] Recently, a Delhi-based start-up, StayUncle was set up to assist unmarried couples in renting hotel rooms in Indian metro cities in response to such moral policing.^[xxvi]

Proponents of Live-In Relationships:

Proponents of individual choice and free agency have expressed passionate support and acceptance for live-in-relationships. The concept is gaining acceptance in metropolitan cities across the country. The ease and lack of legal hurdles in order to exit the relationship, the luxury of assessing one’s compatibility prior to entering an institutional commitment, the financial stability and security associated, or even a simple distaste towards the institution of marriage have played a role in leading more and more young couples to try out live-in relationships. An empirical study in the International Journal of Indian Psychology, with a sample study of young adults, indicates that 75% of the respondents believed that live-in relationships lead to a better understanding before marriage. It allows one to effectively test compatibility, under the most adverse circumstances. The study also implies that women view live-in relationships more seriously as men i.e. a precursor to marriage whereas men view it more loosely using terms such as “testing ground”.^[xxvii] Thus age and gender become important demographics when assessing perceptions towards live in relationships. A study of 1.4 lakh netizens, with 80% in the 18-35 age group in 2018

by Inshorts, a news app, indicates that 80% of these millennials support live-ins as a way of a life with 86% of them denying that sexual gratification is the sole motivating factor behind these, once again referring to compatibility testing as the driving force.^[xxviii] Some concrete examples of this growing acceptance would be the 'Senior Citizen Live-in Relationship Samellan', organised by VMAS Ahmedabad, a charitable trust, with seven elderly couples who met at this alliance deciding to enter into live-in relationships^[xxix] or tea brand Red Label's 2015 advertisement showcasing a live-in relationship.^[xxx]

Globalisation, education, and rising public consciousness regarding the concept of a private space, including the Supreme Court judgement declaring privacy as a fundamental right, have further contributed to this radical change. Commenting on the concept of live-in-relationships, Justice Mittal of the Punjab and Haryana High Court commented on how the concept has crept into our society from western nations and increasingly found acceptance in the metropolitan cities. He cited education as a driving force in this development and also pointed out its gradual percolation into small towns and villages.^[xxxi] The NALSA and Navtej Singh judgments by the apex court have further reiterated the existence of a sphere of personal liberty in the Indian society, especially in matters of choosing one's own partner, which can be extended in principle and form a strong case for acceptance of live-in relationships in India.

Responsibility Of The Legal System To Protect The Liberty Of Live-In Couples:

In the past few decades, India has observed significant changes in education, health, economic and social policies, women empowerment, and, most importantly, a paradigm shift in the outlook of the Indian people's mindsets. Indian society has evolved and witnessed dynamism in its cultural practises and beliefs, with a major

influence from Western culture. Many people are opening their minds towards the idea of Westernisation and changing their perception of various social issues like marriage, live-in relationships, sex education, equality and so on. However, along with this there still comes great criticism and the need for important discussions on the lack of legalisation of live-in relationships in India and how it is still considered a social stigma by many. Live-in relationships can be called an arrangement whereby two people live together as partners in an emotionally and sexually intimate relationship, without entering into a formal relationship called marriage. It is also known as Cohabitation. The term live-in-relationship has no common legal definition and is not explicitly recognized by the Indian legislature. But with time and again, courts in India have upheld the validity of live-in relationships, while recognizing the morality from law.^[xxxii]

Talking about the social stigma and prevalent myths attached with live-ins, a female with a history of bad divorces decided to live together with her partner without marriage^[xxxiii]. However, such instances of openly living without marriage piqued the curiosity of her neighbours. She became the talk of the neighbourhood, who was stared upon and greeted with dismay. Soon she was asked to get married as there was no backing by the law for the live-in couples. With this being not the only case, there have been several cases of moral policing and harassment towards such couples by the society. They fear it will affect or harm their relationships with their parents. And in most cases, when a woman is abandoned by her partner, her own parents as well the society won't accept her. Further, birth of children or off-springs out of such arrangements are tainted with stigma and ignominy. Lastly, even if they decide to live together without marriage, they face numerous other obstacles in their daily lives such as opening a joint bank account, getting visas, applying for insurance, visits to hospitals, and so on in availing facilities, and so on.^[xxxiv]

We need to understand that we still live in a society that would murder their children for marrying out of caste^[xxxv], so if the society does not fairly treat the live-in couple

then the responsibility shifts to the judiciary and the legal system to safeguard the rights of live-in couples. A similar remark^[xxxvi] was made by the Chief Justice Prakash Tatia from the Rajasthan Human Rights panel, who described live-in relationships as “social terrorism” that required adequate laws and regulation to safeguard the rights of women and protect them from legal vulnerability. He also mentioned^[xxxvii] that even though the country has been debating on issues like triple talaq, live-in relationships were more detrimental to women’s rights.

The Indian Constitution provides its citizens with certain fundamental rights and freedom. The Article 19^[xxxviii] in the Constitution of India provides protection of certain rights like freedom of speech and expression, to move freely throughout the territory of India and to reside and settle in any part of the territory of India. In addition to this, Article 21^[xxxix] grants the right to life to everyone. So, one has the freedom to live together anywhere he or she wants and with anyone of their choice, with or without marriage. The law does not state live-ins as illegal but has not been expressly established, it is the society that does not accept it and shows opprobrium. In fact, the State Women’s Commission of Madhya Pradesh suggested^[xi] that unions like live-ins be given a legal status. Not only this, in 2011 a non-governmental organisation in Ahmedabad planned a unique, never-held-before event to help look for companions for single senior citizens.

We can see from a few judgments made by the court that it is ready to welcome such decisions and take a pragmatic and rational approach, nonetheless, the recent judgements by the Haryana and Punjab Court^[xii] fail to provide protection to couples in a live-in relationship. With such ambiguity and fear, it is extremely necessary to draft and put in place adequate laws. Proper and timely enforcement will help to dictate the ambit of live-in relationships, and provide lawful rights and protection to such couples and legitimacy to children born out of these relationships. While taking

a judgement in such matters, sufficient awareness and understanding of the concept of live-ins is a prerequisite to deal with these matters carefully and making sure that justice is served. Spreading awareness and understanding of logical, social and psychological reasons behind these relationships should also be studied in depth. The couples living together before marriage are as human as any other married couple and it is the duty of the judiciary system to guide them in the right direction.

Laws Applicable On Live-in Relationships In India:

Marriages in any society hold a special place for humans and so do it in Indian society and its every community. While for Hindus it is sacramental in nature with ceremony, rites and Saptapadi^[xliii], for Muslims it's a contract.^[xliv] In this way, the marriage is governed by personal laws. With impact from western cultures, the idea of relationships for Indians has changed too and live-in relationship has arisen as a new phenomenon in Indian society especially among youngsters who want to check their compatibility with their partner without much obligations or responsibilities. The more legal and accurate term for live-in relationship would be cohabitation which literally means coexisting. Cohabitation is living together under one roof as husband and wife sharing the same household despite being married^[xlv]. Such cohabitation may be for a brief time or last for a considerably long period of time and includes sexually intimacy and emotional support to one another.

Legality of Live-in relationships:

Though there are no proper legislations or statutes focusing live-in relationships, it is not illegal between two consenting adults in India as held in Lata singh v. State of UP except in the case of adultery.^[xlvi] It is worth mentioning that in the Joseph shrine case, the Supreme Court decriminalised adultery.^[xlvii] It can be seen as immoral and frowned upon by the society but before the law, it is not illegal to practice it and definitely legal under right to life.^[xlviii] And through different judgments at various

times, the courts have upheld it and provided protection under different laws already established. In 2008, Maharashtra state govt. affirmed a proposal accepting the legality of live-in relationship and giving the status of wife to the women if the couple lives together for a reasonable amount of time. The reasonability is to be decided upon the situations prevailing around the different cases. The National commission for Women recommended bringing the women in live-in relationships under the purview of wife in section 125 of CrPc and the same idea was reiterated by Malimath committee, which was formed to reform criminal jurisprudence in India^[xlviii]. Also there is a presumption of marriage, if the live-in relationship continues for a very long time^[xlix] as the law intends to favour legitimacy more and tries to reject the idea of bastardy.^[i]

The court in case Madan Mohan Singh v Rajnikant held that the courts should favour having the presumption of marriage in long term relationships and not consider it as a walk-in walk-out relationship. They should hold it as of nature of marriage and not give a new concept like live in relationship.^[ii]

Maintenance of female partners:

As per different recommendations, a long term live-in partner is to be presumed as wife under Section 125 of CrPC and the courts has the power to order for the maintenance of such partners.^[iii] Conjoining Pal and alimony, Palimony was coined by a counsellor to address the remedies provided to the female partners in live-in relationships. Though the suit for the palimony was unsuccessful, the court found that in absence of any expressed agreements between the couples, the court may look to other kinds of remedies for justice.^[iii] The men must not be allowed to exploit the legal loopholes and if someone deserts his female partner after living together for

a long time, he should be ready to provide maintenance under Section 125 of CrPC even if there was no legal marriage subsisting between them.^[iv]

Thus, in cases where presumption of marriage is there, palimony or maintenance can be awarded by the court where they seem to be in the nature of marriage. To establish the “nature of marriage”, court laid down few criteria in case ***D. Velusamy vs. D. Patchaiammal***^[v]:

1. The couples must declare themselves similar to spouses to society
2. They must be adults such that they could marry, if wished so.
3. Apart from the status of being unmarried, they must be qualified otherwise for marriage too.
4. They must be consenting adults to the cohabitation for a considerable time being.

However, in case *Indra Sarma vs VKV Sarma*^[vi], the court held that if both the partners are unmarried and enter into a relationship mutually, it does not constitute any offence. But as the appellant knew about the married status of the respondent, it could not be said to be in the nature of marriage. Thus the court further held that all live-in relationships are not in the nature of marriage.

Protection from Domestic violence:

Protection of Women from Domestic Violence Act (PDV Act), 2005 provides for the protection of females in a domestic relationship and also sets out provisions for residential as well as monetary reliefs. Section 2(f) of PDV defines domestic relationship as a relationship between two persons who lives or lived in a shared household, related by consanguinity, marriage or nature of marriage.^[vii]

Virtue to section 20(d) of PDV act, the court may also award maintenance to any person in domestic relationship in nature of marriage in an addition to the

maintenance in Section 125 of CrPC.^[lviii] Though the relief is not available to men in the live in relationship, the court at times have awarded female partners with maintenance under this act.^[lix]

Legitimacy And Inheritance Rights Of Children Born Out Of Live-In Relationships:

It is the settled law of the country that no children must be denied rights just because he is born out of a void or voidable marriages. Section 16 of Hindu Marriage Act, 2005 provides that the child born under an illegitimate marriage is considered legitimate as if their marriage were valid.^[lx] Similar provision is provided in Special Marriages Act, 1954 which recognizes the legitimacy of children born out of void and voidable marriages.^[lxi] The reason behind this is that the children should not be devoid of basic rights just because their parents were not legally married thus holding them as legitimate.

The children born out of a live-in relationship are only entitled to claim property in the self-acquired properties of the parents but not from joint family property under Hindu law as coparceners.^[lxii] However under Mohammadan law, there is no burden on the father for the illegitimate children like this. A child born out of live-in relationship cannot claim right of inheritance from either parent in Shia law but can inherit from mother's property and the property of mother's relatives in Hanafi law.^[lxiii]

Custody and maintenance of children:

Though normally the natural guardian of a minor child is father but under section 6(b) of Hindu minority and Guardianship Act, 1956, in case of the children born out of live-in relationship the mother is first guardian and after her, the father.^[lxiv] Section

13 of same act further talks about how welfare of the child must be of paramount importance and must be construed in a broad manner and interpretation should be done negating everything else which prevents such development of the child.^[ixv]

The court at times had allowed the children born out of relationships like this to claim maintenance while they are minors under section 125(1)(c) of CrPC.^[ixvi] These provisions are set by the government to facilitate the children a bright future and to protect their rights for it was not their fault.^[ixvii]

Though there is no proper act or laws focusing particularly on rights of couples and children of live-in relationships, the personal laws and other provisions continue to provide reliefs to people seeking for it and the approach taken by the judiciary in some cases is commendable which normalises live-in relationships. The law must not be rigid and must be reformed with changing times and it's nice to see that legalities regarding such relationships have evolved however with snail's pace. However the time has come for the government to take strict steps towards bringing separate legislations and get rid of each and every discrepancy around it and uphold the rights of the couples. The government cannot drop its duty regarding this and be dependent on judiciary only for recognizing their rights in depths of different statutes.

Judicial Outlook Towards The Issues Emerging Out Of Live-in Relationships:

The judicial outlook towards live-in relationships is not static but dynamic. It differs based on multiple factors, the most important of which is perhaps the level of the judiciary in question. It is noticeable that most controversial judgements condemning or exhibiting an unfair legal treatment towards couples engaged in a live-in relationship originate at the High Court level. In 2016 the Kerala High Court upheld a university's decision of expelling a female student merely on grounds of her being in

a live-in relationship.^[lxviii] Arguably, this decision of the Kerala HC was contrary to the provisions of the law as nothing in the University's bylaws, legal statutes or the Constitution dictated such an expulsion under the circumstances. The Punjab and Haryana High Court, in no vague terms, called live-in relationships socially and morally unacceptable while denying protection to a couple which feared a threat to their lives.^[lxix] The Punjab HC essentially made an informed, educated decision to choose social morality over the very right to life of the Petitioners.

The law itself has been sufficiently clear in the 2015 Supreme Court judgement which recognizes live-in relationships as an acceptable norm of modern times. Other rulings such as the one in *Payal Sharma v. Nari Niketan*^[lxx] have also established verbatim- "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 it is not illegal. There is a difference between law and morality." In the landmark case of *S. Khushboo v. Kanniammal*,^[lxxi] The Supreme Court held that a live-in relationship comes within the ambit of right to life under Article 21 of the Constitution of India. The Court further held that live-in relationships are permissible and the act of two majors living together cannot be considered illegal or unlawful.

The most important aspect of judicial outlook towards live-in relationships and the legal treatment of couples indulging in the same is twofold. Firstly with respect to the treatment of female partners in such a relationship and the legal right to receive maintenance; Secondly the treatment of children born out of such a relationship. In *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*^[lxxii] where the High Court declared that the appellant wife is not entitled to maintenance on grounds that only legally married women can claim maintenance under Section 125 of the CrPC. But the Supreme Court repealed this decision delivered by the High Court awarding maintenance to the live-in partner (appellant) saying that provisions of Section 125 CrPC must be considered in the light of Section 26 of the Pwdva, 2005. The

Supreme Court dictated that women in live-in relationships, subject to the circumstances of the case under scrutiny, are equally entitled to the claims and reliefs which are available to a legally wedded wife.^[ixxiii]

With respect to the legal status of children born out of live-in relationships, the cases of *Tulsa v. Durghatiya*^[ixxiv] and *Bharatha Matha v. R. Vijaya Renganathan*,^[ixxv] inter alia, have made it clear that children born out of live-in relationships would not be considered as illegitimate and would be entitled to property of their parents, if any, as it is no fault of their own to be born under such circumstances. However, there is an important precondition attached to this which dictates that the parents must have cohabited for a long time and it is not merely a walk-in, walk-out relationship. The legal status of the child and the legal relationship between him/her and his/her parents is separate from the relationship between the parents themselves.

The judicial outlook towards live-in relationships in India has evolved in a unique manner inhibiting contradictory viewpoints with respect to the treatment of the relationship itself and whether it is valid in the eyes of the law. However, the majority opinion in Indian jurisprudence appears to be one favouring the legal protection of especially vulnerable parties in a live-in relationship such as children and their mothers.

Morality And Constitutional Morality:

Morality in a broad sense can be defined as certain codes of conduct and rules regarding the behaviour of a person by society, religion, a group, or a community. Morality provides a distinction between what is wrong and what is right, it sets a standard of what is expected to be moral of people's behaviour. It is based on the principle of public disapproval or popular morality of certain acts. It provides a subjective justification for certain acts of right and wrong. Although, this doesn't mean the subjective nature of morality has no importance altogether. Indian courts

have reiterated the concept of morality in different judgments and it has shaped various fundamental rights of the country.

In *State of Bombay v. R.M.D. Chamarbaugwala*, the court relied on the popular public and legal viewpoint which deems gambling as a vice. The court considered gambling activities to be *res extra commercium* and out of the ambit of the term 'trade or business as per jurisdictions of different countries.'^[xxvi]

In *K.A. Abbas v. Union of India*, the court stated that the censorship of films, their categorization into age groups, and suitability for unrestricted exhibition with or without excisions is considered to be a valid exercise of power in interests of morality and decency. This in no way leads to infringing the freedom of speech and expression of any person.^[xxvii]

In *Nashirwar v. the State of M.P.*, the issue was regarding the prohibition on the sale of liquor. The court affirmed that the prohibition of the liquor trade is permissible, lawful, and reasonable. As the harmful effects of liquor stand opposed to public morality and public interest. This gives the state complete control over the manufacture, collection, sale, and consumption of intoxicants. Another case where the root reason for curbing a right was morality and the interest of the public.^[xxviii]

With time, a shift happened in the way the court perceived morality as a source of public interest and decision making. The focus shifted from public morality to constitutional morality. The first instance where such deviation was witnessed was, in the *Naz Foundation Judgement*, the court stated that Fundamental rights under Article 21 cannot be restricted based on popular morality or public disapproval of certain acts. Unlike Constitutional Morality, Popular Morality focuses more on the subjective norms of distinction between right and wrong.^[xxix]

Constitutional morality in its strictest sense implies an unconditional abidance to the constitutional laws and doctrines as enshrined in the Constitution. It is of utmost

importance to develop a spirit of constitutionalism and every action taken should be in compliance with the basic structure of the Constitution.^[lxxx] It means to follow the norms and structure of the constitution, to conduct oneself in a way that aligns with the principles of rule of law, and to not be violative of the principles of the constitution. Constitutional morality is a concept formulated from judicial pronouncements and does not explicitly find a part in the constitution. In *Manoj Narula v. Union of India*, the court stated Constitutional morality means to follow the norms and rules of the constitution and not act in an arbitrary manner that obstructs rule of law. It means committing to every aspect of our constitution.^[lxxxii]

Difference between Morality and Constitutional Morality:

The concept of Constitutional Morality is different from Public or societal morality in many aspects. Public or societal morality is governed by the popular perceptions of the society, group or community. Based on their social beliefs and situations, a mental attitude is developed regarding people's behaviour and what is wrong and right about it. The perceptions are many times prejudiced by the limiting beliefs and circumstances of society. In contrast to this, Constitutional Morality is based on the very principle of following the rules and norms of the constitution. The perception inhibited is based on what concepts are part of the constitution, which makes it free from the prejudices of people. It does not limit an individual's freedom on some limiting perceptions of social acceptance or disapproval.

Two opposing viewpoints on Morality and Constitutional Morality:

One starts with the liberals who support the concept of constitutional morality. Backing it as a way to overcome the obstructions that come with relying on public morality. The contention is, giving societal or public morality a leverage over constitutional morality, especially in a diverse country like India would mean providing a way to justify certain acts that might even override rule of law. With the progress of time, constitutional morality has been likened to a progressive and necessary approach taken by the judiciary in many aspects. It has been found more

significant and relevant by the judges for interpreting the Indian constitution. This has been reflected in various judgments of the court. In the case of *Indian Young Lawyers Association vs The State Of Kerala*, Hon'ble Justice Chandrachud has observed, Constitutional morality is embedded in the fundamental principles of human liberty, fraternity, equality, and dignity. Between the arguments surrounding morality and constitutional morality, the latter one has to prevail.

The other notwithstanding the shared views of the liberals, many believe constitutional morality enables the biases of judicial courts to influence its application. The argument is that the doctrine of constitutional morality assigns public or societal morality a negative light. Having deep concerns about the application of constitutional morality, Attorney General of India, K.K Venugopal, condemned that constitutional morality has a grave negative side, only the gradual death of this doctrine would save the judiciary from becoming the third chamber of Parliament. He even called this doctrine a dangerous weapon. The apprehension is that the vagueness that surrounds the doctrine of constitutional morality makes it susceptible to the ideas and biases of the judges. This was also reiterated in the case of *Kantaru Rajeevaru v. Indian Young Lawyers Association*, the court observed that constitutional morality has not been defined in the constitution, which makes it vague. There is a need to define the doctrine to preclude it from subjectivity.

Should The Courts Follow Morality Or Constitutional Morality?

The judicial outlook towards live-in relationships is not static but dynamic. It differs based on multiple factors, the most important of which is perhaps the level of the judiciary in question. It is noticeable that most controversial judgements condemning or exhibiting an unfair legal treatment towards couples engaged in a live-in relationship originate at the High Court level. In 2016 the Kerala High Court upheld a university's decision of expelling a female student merely on grounds of her being in a live-in relationship.^[lxxxii] Arguably, this decision of the Kerala HC was contrary to the provisions of the law as nothing in the University's bylaws, legal statutes or the

Constitution dictated such an expulsion under the circumstances. The Punjab and Haryana High Court, in no vague terms, called live-in relationships socially and morally unacceptable while denying protection to a couple which feared a threat to their lives.^[lxxxiii] The Punjab HC essentially made an informed, educated decision to choose social morality over the very right to life of the Petitioners.

The law itself has been sufficiently clear in the 2015 Supreme Court judgement which recognizes live-in relationships as an acceptable norm of modern times. Other rulings such as the one in *Payal Sharma v. Nari Niketan*^[lxxxiv] have also established verbatim- “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 it is not illegal. There is a difference between law and morality.” In the landmark case of *S. Khushboo v. Kanniammal*,^[lxxxv] The Supreme Court held that a live-in relationship comes within the ambit of right to life under Article 21 of the Constitution of India. The Court further held that live-in relationships are permissible and the act of two majors living together cannot be considered illegal or unlawful.

The most important aspect of judicial outlook towards live-in relationships and the legal treatment of couples indulging in the same is twofold. Firstly with respect to the treatment of female partners in such a relationship and the legal right to receive maintenance; Secondly the treatment of children born out of such a relationship. In *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*^[lxxxvi] where the High Court declared that the appellant wife is not entitled to maintenance on grounds that only legally married women can claim maintenance under Section 125 of the CrPC. But the Supreme Court repealed this decision delivered by the High Court awarding maintenance to the live-in partner (appellant) saying that provisions of Section 125 CrPC must be considered in the light of Section 26 of the Pwdva, 2005. The Supreme Court dictated that women in live-in relationships, subject to the

circumstances of the case under scrutiny, are equally entitled to the claims and reliefs which are available to a legally wedded wife.^[xxxvii]

With respect to the legal status of children born out of live-in relationships, the cases of *Tulsa v. Durghatiya*^[xxxviii] and *Bharatha Matha v. R. Vijaya Renganathan*,^[xxxix] inter alia, have made it clear that children born out of live-in relationships would not be considered as illegitimate and would be entitled to property of their parents, if any, as it is no fault of their own to be born under such circumstances. However, there is an important precondition attached to this which dictates that the parents must have cohabited for a long time and it is not merely a walk-in, walk-out relationship. The legal status of the child and the legal relationship between him/her and his/her parents is separate from the relationship between the parents themselves.

The judicial outlook towards live-in relationships in India has evolved in a unique manner inhibiting contradictory viewpoints with respect to the treatment of the relationship itself and whether it is valid in the eyes of the law. However, the majority opinion in Indian jurisprudence appears to be one favouring the legal protection of especially vulnerable parties in a live-in relationship such as children and their mothers.

Limits Of Judicial Interference On Moral Issues:

From labelling live-in relationships as socially distasteful, to the moral assessment of a rape victim's conduct, Indian judicial benches have not been known to shy away from conducting moral and social analyses of its citizens' conduct and even incorporate these into their many judgments and verdicts; but is it really the court's prerogative to undertake such moral assessments?

Legality vs. Morality:

At the core of answering this question lies the exercise of drawing the crucial distinction between morality and legality. Legality and morality are both indispensable elements in determining the social acceptability of an action. It is true

that the sphere of legality and morality overlap substantially and many a times what is illegal is also immoral however a logical causation cannot be inferred from this. What is immoral may not be illegal and vice versa. Law is often binary,^[xc] apart from some inevitable ambiguities and loopholes, it's largely clear as to what is and isn't illegal as prescribed by our constitution and countless laws and legislations. Morality on the other hand is subjective, personal, and full of grey areas^[xci], ambiguities, and contestations. Moreover, when a court decidedly seeks to define the moral correctness of an action, it overlooks the complex process of societal debate and discussion, agreement and disagreement, compromise and acceptance of opposing viewpoints and that goes into developing a moral consensus, which more often than not, is not universal or one-directional. It is for this precise reason that the judiciary must be guided by legality and not morality. William Blackstone, a celebrated English jurist, propagated a "declaratory theory", highlighting a judge must not be guided by his personal moral views but rather by the law of the land, that his duty is to uphold the existing law, not create a new one.^[xcii]

When May The Judiciary Discuss Morality?

That being said, it is important to acknowledge that the roots of several laws lie in the idea of morality; why is killing someone illegal? Why is hate speech a crime? If one tries to justify these, they would inevitably find themselves going back to some basic moral concepts.^[xciii] However, morality alone cannot guide judicial decisions, laws which may or may not be guided by morality must. In that sense, while adjudicating in accordance with the law, we automatically end up taking several moral values into account, but these must be ingrained in these laws, not lie exclusive of them. A court's moral assessment must be restricted to the principles already envisaged under a particular law; defamation for example warrants intent to publicly malign, a decidedly immoral act. In assessing whether such an intent existed, or simply

interpreting such a legal concept, the court may explore or cite certain facets of morality, but the primary referent point remains the law.

Constitutional Morality:

Making moral assessments becomes necessary during the exercise of updating outdated laws and bringing them in line with the society's novel and progressive sense of morality. In the case of *Deena vs. Union of India* (1983), the country's apex court also commented that the law is dynamic and its social utility is dependent on its potential to accommodate emerging and evolving societal trends.^[xciv] The decriminalisation of homosexuality is a prize example. One must note that the courts here were guided not by morality as an isolated concept but rather constitutional morality, most importantly the right to liberty, including privacy, under Article-21. This concept of constitutional morality finds its roots in *Manoj Narula vs. Union of India* (2014).^[xcv] It was subsequently used in several landmark cases such as *Navej Singh Johar, NCT of Delhi v. Union of India*, *Joseph Shine, Independent Thought v. Union of India*, and the *Sabarimala Judgement*.^[xcvi] It holds the constitutional as sacrosanct with its essential principles, basic structure and tenets, and foundational ideas as its supreme guiding force. Constitutional morality is not the same as public morality, in fact it is anecdotal,^[xcvii] whereas the latter has been historically used to curtail basic freedoms and focuses on a narrow outdated idea of morality, the former has been used to secure several important rights and embrace a progressive notion of morality in keeping with constitutional tenets.

When Are Moral Judgments Uncalled For?

Assessing morality becomes unwarranted as soon as one enters a sphere of individual choice and agency. My immoral act of killing someone has ramifications for

the individual concerned and society at large by means of undermining their fundamental rights. But does my “immoral” decision to move in with my partner cause a third party some tangible harm? If the answer is no, my decision can be categorised under the ambit of individual agency and cannot be termed illegal even if some perceive it as immoral. It is precisely morality of this nature that courts must refrain from commenting on. Actions that do not infringe upon a third party’s legal, fundamental, or human rights cannot be curtailed under the law, in fact, the state is duty bound to protect my freedom of choice in such matters in keeping with the fundamental right to liberty under Article-21.

Dangers Of Moral Policing By Keepers Of The Law:

Moral Policing by civilians can result in numerous social costs and logistical and security concerns for live-in couples. However a much more dangerous trend is set when the keepers of law themselves, i.e. the judiciary or law enforcement agencies like the police indulge in such activities. In 2000, in order to curb “disorderly behaviour”, the Mumbai police had banned kissing in the Marine Drive area stating the State Act, 1951.^[xcviii] In 2011, the Ghaziabad police initiated “Operation Majnu” to catch hold of young boys and girls in public places.^[xcix] The police officers forced them to perform sit-ups and filmed the ‘punishment’. A prize example of such moral policing would be the infamous Aksa Beach hotel raid (August 6, 2015) in Mumbai, with close to 40 couples staying in hotel rooms being charged with “public indecency”, and some even being registered under the Prevention of Immoral Trafficking Act pertaining to prostitution.^[c] The Indian Judiciary isn’t too far behind in this regard. “Live-in relationships are socially and morally not acceptable”, the Punjab and Haryana High Court commented in May 2021, refusing to assist a couple seeking protection fearing an attack on their lives.^[ci]

In addition to the social backlash and boycott live-in couples are subjected to, such incidents begins to create very real and tangible legal consequences for them, such as being charged unfairly under legislations, being subjected to fines, or being denied equal protection under the law.^[cii] These entities wield real legal and administrative power by virtue of which they can deprive such couples of their fundamental rights in the garb of “preserving the social fabric of the nation.” The actions of these agencies also create important societal precedents, when the face of the law itself begins to endorse a narrow outdated unconstitutional idea of morality, it grants legitimacy to the proponents of such a mentality and furthers their cause and strengthens their social standing.

Moral Policing:

Recently in Mangalore, Karnataka, an adult was assaulted and allegedly stabbed too just because he was travelling with a female classmate^[ciii]. In another incident, a couple was thrashed in Kolkata metro as they were standing “too close” to each other^[civ]. A 10th class student gets beaten for walking with his female classmate in Kerala^[cv], a couple finds trouble in Assam for allegedly having an illegal affair, a girl is asked to smell socks of her male friends at the bus stand by the SHO just for being together^[cvi].

The examples just go on and on, taking significant space on almost every news platform every other day and unfortunately no part of our country is untouched from incidents like these in the name of moral policing. Cow vigilantisms, Anti Romeo Squad (sponsored by state), curtailing food and dressing choices, Mob lynching, Love Jihad laws, Khap panchayats, and honor killings are some of petty as well as extreme forms of it. Sadly, some are done in presence of police and worse, by the police as accorded by the government. And these are the cases which get reported,

one may wonder about all other incidents which do not get enough media attention. So, what exactly is moral policing?

We all are different from each other and even though there are numerous sets of universal moral values, they at times differ from one another and are bound for a conflict when clashing together usually in a socio-public environment. Moral policing is a conduct arising from this conflict wherein an individual or a group of individuals try to impose and enforce their set of moral values according to their will, establishing that they are right. They do not refrain from using coercive measures and taking law in their hands when a person commits something which according to them is immoral.

Moral police thus discards the freedoms and liberty provided by our constitution and tries to enforce a code of morality according to them and that is the ugly truth of even this technologically advanced 21st century modern India. Usually it is mostly seen in cases where conservative groups try to protect their culture and traditions and attack others even though they do not have any legitimate power of policing.

The incidents of moral policing show signs of theocracies, lawlessness and no respect to the statutory provisions. It rears its ugly head in its best form when the government sponsors it, police make arrests based on pure emotions and feelings, courts give judgments of jail sentences hinging on moral reasons and the media too supports it. Thus one or more pillars of a good democracy in one way or another assists it. Anyone can become victims of these moral police in the form of couples being shamed for holding hands and opposite genders not being allowed to sit together. Morality is outbreed of the value which has individualised personifications and cultural linkages attached, what is considered moral in one culture might not be so in another like; shaking hands in the west and doing Namaste in India. Moral policing is more like a policing act adopted by a section of society to uphold the subjective moral norms. Indian society is heterogeneous and has a varied value system. These systems often feed in the perception of morality.

Perpetrators behind it:

Apart from some cases where few cases where religious extremists, organisations, political parties, the government and Judiciary have played its role in furthering the moral policing too, under mentioned are few examples: Some instances of moral policing are shown by the Central Board of Film Certification (CBFC) which at times discards few scenes from movies stating it does not suit Indian culture for example; a kissing scene was snipped off from a James Bond movie. All over the country, there is a timing restriction on pubs and bars, in some states like Bihar complete ban is there on liquor.^[cvii] Though the counsel for Centre stated otherwise about the porn ban that they are not advocating for moral policing, still 857 porn websites were banned in 2015.^[cviii] Opposition of Sex education course by few states which was prepared by MHRD and National AIDS Control Organization (NACO).^[cix]

Reasons Behind Moral Policing:

Conservative families and rising Western culture: Indian parents tend to have a restrictive attitude towards their children from a young age and when these children try to emulate the food, dress, behaviours of western culture, it does not sit well with the families. The patriarchal mindset adds fuel to it because most of the time it's a woman who has to take the burnt. Human beings, a dominant species, love to assert their superiority and impose restrictions in terms of food, clothes, work, public behaviour for women, they upkeep their so-called morality.

Some Indian Laws: Laws which find its origin in back to 1860 like Section 292 in the Indian Penal Code (IPC) criminalised books and paintings which are deemed to be obscene, were supposed to tackle "obscenity," by the Britishers.^[cx] There is literally no explanation to it anywhere and thus used to moral police. The Immoral traffic (prevention) act (PITA) which was intended to fight human trafficking is used by the

police to raid closed rooms in hotels and harass, giving troubles to consenting as well as married couples.^[cxi]

Police, Politics and Slow judicial system: Some of the big parties fuel their vote banks on the basis of morality itself and though it's the duty of the police to maintain law and order but the lack of proper training and a good knowledge about the rights of citizens, they are initiators of the moral policing, often assisting the main culprits ignoring their moral policing crimes. In most of the cases, they are the main perpetrators raiding public parks and even closed hotel rooms to embarrass consenting adults.

Is Moral Policing Always Wrong?

Some moral policing when done in the right way can work for the betterment of the society. For example the public display of affection is not per se illegal but there should be some decency maintained in the public, not making others uncomfortable about it and same goes for smoking or drinking in open, the public domain is theirs as much as ours and one should not smoke in open, not because it's immoral but because the others around him is breathing the same air and might not be uncomfortable with it. A Gulabi gang is formed in UP which is a team of women activists working towards justice for oppressed and abused women.^[cxii] But statically speaking, the conditions are really worse and it is scary for the future as a developing country. It affects not only the social fabric of the society but it has often led to deaths, people being lynched, suicides and other serious issues. In most cases, it leads to serious hurts, deaths, suicides, and damage to property which threaten some minorities. Attacks at homosexual people and couples deprive of their rights of personal liberty and right to live with dignity. Curtailing artistic freedom, it at times demoralises the artists which are trying something new hindering their creativity. Sometimes with attacks on people from different regions of our country and foreigners, it also hampers the country's slogan of 'Unity in Diversity'.

Comparative Viewpoint; Live-in Relationships In Western Legal Systems:

Living in sin: that's how cohabitation or live-in relationships were defined in the 1960s in a lot of Western countries, such as the United States of America and many European countries. According to the United States Census Bureau, it is estimated that 17 million unmarried partners live together in the United States^[cxiii], amounting to 7% of the total adult population. In the United Kingdom, while married and civil partnered couple families remain the most common family, it is nonetheless a declining trend, "as more people choose to live together before, or without, getting married"^[cxiv]. It is in fact estimated that the number of cohabiting couples increased from 1.5 million in 1996, to 2.9 million in 2012 and finally to 3.5 million in 2020, resulting in an increase of 137%^[cxv]. This has been accompanied by an important cultural shift towards non-traditional family behaviours, which besides cohabitation without marriage further includes choosing to remain childless, working full-time with young children, divorcing with children, and children born outside of marriage.

Notwithstanding the high number of live-in relationships, some states in the USA still possess laws prohibiting cohabitation of unmarried couples in the books. For example, according to the North Carolina general statute 14-184^[cxvi], "if any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a Class 2 misdemeanor"^[cxvii], punishable by up to 60 days in jail. This 1805 law was ruled unconstitutional in 2006, in a case which involved an unmarried woman named Debora Hobbs, who worked as a 911 dispatcher with the Pender County Sheriff's Office and was told by her boss to marry her live-in boyfriend or quit her job^[cxviii]. The couple did not want to get married and consequently Ms Hobbs was forced to quit the job. The American Civil Liberties Union of North Carolina filed the case on her behalf. In July 2006, State

Superior Court Judge Benjamin Afford found the rule to be unconstitutional^[cxiix], as it violated the constitutional right to liberty enshrined in the Fourteenth Amendment of the U.S. Constitution^[cxxx]. In his ruling, Judge Afford further cited the 2003 U.S. Supreme Court case *Lawrence v. Texas*, 539 U.S. 558^[cxxxi] which involved two homosexual men, engaging in a private sexual intercourse, who were arrested and convicted of deviate sexual intercourse with another individual of the same sex, as enshrined in the Texas Penal Code, Title 5, Chapter 21, section 21.06.^[cxxxii] The Supreme Court ruled that the Texas Statute violated^[cxxxiii] the Due Process Clause^[cxxxiv] enshrined in the Fifth Amendment of the U.S. Constitution, protecting the petitioners' right to liberty and right to privacy^[cxxxv], as "the Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual"^[cxxxvi]. In both cases, it is clear the fundamental role played by the legal system in protecting the right to liberty and to privacy of individuals.

While the adoption of a legal point of view clearly contributes to the understanding of the subject in question, adopting a sociological framework further allows one to better comprehend how a change in the social norms governing individuals and communities' behaviour influenced the acceptance of live-in relationships.

In the latest report on British Social Attitudes carried out by the UK National Centre for Social Research^[cxxxvii], the changing attitudes towards non-traditional family behaviours were examined, setting a comparison between data from 2006/07 and 2018/19. As reported, the disapproval towards cohabitation has fallen sharply^[cxxxviii] especially in the UK and Western Europe, with the exception of Eastern Europe^[cxxxix]. The author of the report Eric Harrison remarks how the weakening of

more traditional and conservative stances “stems from the secularisation that was ushered in by a century of industrialisation and urbanisation”^[cxxx], further transforming the role of the family as an economic unit, partly influenced by the wider participation in the workforce of women. While the fact that “a phenomenon is widespread is not in itself a sign of moral approval”, the greater visibility in public life of these changing family-related behaviours and the more common this phenomenon becomes “as a personal experience, the more it becomes a de facto norm”^[cxxxii].

Nonetheless, some critical issues remain at stake, especially with regard to the legal rights granted as a live-in partner or married partner. In the United States, cohabitation does not automatically ensure rights and obligations with respect to property distribution, financial support or inheritance rights^[cxxxiii], and furthermore many states and courts are still reluctant and refuse to act judicially to recognize rights for cohabitants^[cxxxiv]. Live-in couples might seek to undertake a cohabitation contract, as to arrange legal and financial matters, for example if the relationship ends^[cxxxv] or for property’s rights. Still, the Institute for Family Studies argues that the number of cohabitants entering into such contracts remain limited^[cxxxvi].

While state legislatures have yet to agree on whether cohabitations hold the same legal equivalence to marriages, some advances in cohabiting couples’ rights were secured for example in *Siobhan McLaughlin for Judicial Review (Northern Ireland)*^[cxxxvii], where the UK Supreme Court ruled that unmarried couples have the same right to widowed parent’s entitlement (WPA) as married people or civil partners^[cxxxviii]. Other countries such as Australia, Canada, Ireland, New Zealand, Scotland have enacted legislation granting marital-like rights to live-in couples^[cxxxix], even though with many differences. In Italy, *Legge 20 maggio*

2016, n. 76^[cxxxix], usually referred as the Cirinnà law, has recognized live-in couples or *de facto* cohabitation as one of the family forms, besides marriage and civil unions, if: both individuals are over 18; regardless of whether heterosexual or homosexual; permanently united by emotional ties of a couple and mutual moral and material assistance; not bound by kinship, affinity or adoption, marriage or civil union (Article 1, section 36)^[cxl]. Another absolute novelty introduced by the Cirinnà law is the possibility that cohabitants regulate their patrimonial relationships by signing a contract (cohabitation contract com. 50) determined in form, requirements, and content. The cohabitation contract can be terminated by unilateral withdrawal, by marriage or other union, or by death.^[cxli]

Many challenges remain for live-in relationships, both from a social and legal perspective. Societal acceptance does not automatically translate into legal protection, and vice versa: it is evident that the two variables are mutually beneficial and intertwined, and cannot be taken into account separately.

Recommendations:

What could the Indian legal system draw from this comparative analysis? It is important that the right to privacy enshrined in article 21 of the Indian Constitution, as declared in *K.S. Puttaswamy (Retd) vs Union of India*^[cxlii], is uniformly applied throughout the whole territory, in respect to cases contesting live-in relationships brought before the Court. Under the right to privacy, all Courts should ensure and grant adequate protection to live-in couples, and prevent that they'd be discriminated against in any settings. As to mitigate both societal and legal apprehensions, the legal system should further incorporate the decision of the Supreme Court in *S.*

Khushboo vs Kanniammal & Anr^[cxliii], which granted legal recognition to live-in relationships by categorising them as “domestic relationships”.

Drawing from the Italian Cirinnà law, domestic relationships should be classified as one of the family forms, apart from marriages, ensuring that some key requirements are enlisted and applied, in order for the relationship to be recognized as such. It is important to mention the Supreme Court case *D.velusamy v. D.patchaiamma*^[cxliv], which defined live-in relationship as relationship in the nature of marriage, and thus “akin to a common law marriage which require that although not being formally married - the couple must hold themselves out to society as being akin to spouses; they must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried and they must have voluntarily cohabitated and held themselves out to the world as being akin to spouses for a significant period of time”^[cxlv].

A cohabitation contract, as a means to regulate patrimonial relationships, could also be foreseen by law as one of the requirements for the domestic relationship to be lawfully accepted. This might also serve as an instrument for both gaining greater recognition by society and for live-in couples to obtain more marriage-alike rights.

Conclusion:

The judicial outlook towards live-in relationships in India is non-linear and complex. With differing judgments of law existing at various levels of the judiciary as well as different demographics, the judicial outlook is not a simple shade of black or white. There are multiple Supreme Court precedents existing legitimising live-in relationships, yet simultaneously there also exist numerous high court precedents that frown upon and sometimes even discredit live-in relationships. Under such circumstances, the generally accepted principle appears to be that in the persisting absence of specific laws established by the legislature in addressing live-in relationships, there is considerable leeway for courts of law to interpret fundamental and natural rights to apply in given situations. As such however, due to the binding nature of Supreme Court judgments, consensual live-in relationships, (subject to certain prerequisites such as both parties being of the age of the majority) are in themselves not barred by law and are hence not illegal.

The Indian Judiciary has been known to pass several morally driven judgments, but is it truly entitled to the same? Firstly, we must draw a clear distinction between legality: which is largely binary, and morality: which is full of contestations and grey areas. A judge must not be guided by his personal moral views but rather by the law of the land, his duty is to uphold the existing law, not create a new one. At most, a court's moral assessment can be restricted to the moral principles already envisaged under a particular law. This is where the idea of Constitutional Morality comes in which holds the constitutional with its essential principles, basic structure, and tenets as sacrosanct. This concept has been cited in judgement countless times to secure several important rights and embrace a progressive notion of morality. Assessing morality becomes unwarranted as soon as one enters a sphere of individual choice and agency, under Article-21 which the state is duty bound to protect. A dangerous trend is set when the keepers of law themselves, i.e. the judiciary or law enforcement agencies indulge in moral policing. Examples include the Mumbai Marine Bay Case

or the Aksa Beach Hotel Raid. Such incidents begin to create tangible legal and logistical consequences for live-in couples while also creating problematic societal precedents granting legitimacy to the reductionist agendas of orthodox individuals.

Drawing from a comparative analysis, the Indian legal system should uniformly apply the right to privacy enshrined in article 21 of the Indian Constitution throughout the whole territory of India, as a means to grant legal protection to live-in couples. Additionally, it is recommended that live-in couples should be recognized as domestic relationships if they fulfil the requirements set forth in the Supreme Court case *S. Khushboo vs Kanniammal & Anr*, that is to say if cohabiting couples are in a relationship in the nature of marriage. Furthermore, the legal system could provide the possibility to conclude cohabitation contracts both as a measure to regulate patrimonial relationships and for the domestic relationship to be lawfully acknowledged.

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