

# Right Of Maintenance To Women In Live-In Relationships

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## Abstract:

It is well established legal fact that under Section 125 of Criminal Procedure code, section 24 of Hindu Marriage Act and under the protection of Muslim women (Protection of Rights) Act 1986 the married women are facilitated by the maintenance, such maintenance may be of interim. or of permanent nature but no existing law has provisions to provide Maintenance to such woman who has been in love in relation and facing the breakup with his partner. However, under the protection of women from domestic Violence Act 2005 the term relationship under the nature of marriage" includes the live in relation to in its meaning and consequently the woman who is facing the break-up from live in relation. may also claim maintenance from his ex. partner, some cases have been decided by the hon'ble Supreme Court and High Courts in the favour of above ideology.

**Key-word:** Maintenance, Live-In-Relationship, Marriage, Legitimate.

## INTRODUCTION:

Marriage according to the Hindu Law is a holy union for the performance of religious duties. It is not a contract but it is a Sanskar or sacrament. Hindu marriage protects a woman by guaranteeing her legal rights for restitution of conjugal rights in case of desertion, legitimacy of the children, relief in case of cruelty, adultery, impotency, claim of maintenance and alimony etc. Currently in India, marriage as a lifelong social bond is being questioned. There is a rising tendency to enter into live- in-relationship instead of marriage which leads to conjugal disloyalty and disquiet. The live in relationship is a living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage. In every day parlance, it is cohabitation. Live-in-relationship/Cohabitation, sometimes called consensual union or de facto marriage, and refers to unmarried heterosexual couples living together in an intimate relationship. Cohabitation is defined as a situation in which opposite-sex couples live together outside the bond of marriage. In some jurisdictions cohabitation is viewed as legal as common law marriage, either for a specified period, or after the birth of a child, or if the couple holds themselves out to society as being akin to spouses. Live-in-relationship is neither recognized by The Hindu Marriage Act, 1955 nor by The Criminal Procedure Code, 1973, nor by The Indian Succession Act 1925. However, the expression 'Relationship in the nature of marriage' which is included within the definition of 'domestic relationship' has been defined in the Protection of Women from Domestic Violence Act, 2005 (PWDVA) as follows:

*Section 2(a) "Aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;*

*Section 2(f) "Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or*

*through a relationship in the nature of marriage, adoption or are family members living together as a joint family;*

In India, only those relations between a man and a woman are considered to be Legitimate where marriage has taken place between the two based on existing marriage laws otherwise all other sort of relationships is deemed to be illegitimate. The reason behind people choosing to have a live-in relationship is to check the compatibility between couples before getting legally married. It also exempts partners from the chaos of family drama and lengthy court procedures in case the couple decides to break-up. Whatever the reason, it is very evident that in a conventional society like ours, where the institution of marriage is considered to be “sacred” an increasing number of couples choose to have a live-in relationship, even as a perpetual plan, over marriage. In such circumstances, many legal and social issues have arisen which have become the topic of debate. With time many incidents have been reported and seen where partners in live-in relationships or a child born out of such relationship have remained vulnerable for the very simple reason that such relationships have been kept outside the realm of law. There has been gross misuse by the partners in live-in relationships since they do not have any duties and responsibilities to perform.

#### **RIGHT TO MAINTENANCE:**

Maintenance is an amount payable by the husband to his wife who is unable to maintain herself either during the subsistence of marriage or upon separation or divorce. Various laws governing maintenance are as follows:

1. For Hindus – Hindu Marriage Act, 1955; Hindu Adoption and Maintenance Act, 1956
2. For Muslims – Muslim Women (Protection of Rights on Divorce) Act, 1986
3. For Parsis – Parsi Marriage and Divorce Act, 1936
4. For Christians – Divorce Act, 1869 5. Secular laws – Criminal Procedure Code, 1973; Special Marriage Act, 1954

There are mainly two types of Maintenance

1. Temporary Maintenance (Pendent elite)
2. Permanent Maintenance

**Temporary maintenance** is granted by the court during the pendency of proceeding for divorce or separation to meet the immediate needs of the petitioner. Under Section 24 of Hindu Marriage Act, 1955 either of the spouses, husband or wife can be granted relief if the court is satisfied that the applicant has no independent income sufficient for his or her support and necessary expenses of the proceedings pending under the Act. Interim maintenance may also be claimed under Section 125 CrPC by the wife during the pendency of proceeding for regarding monthly allowance for maintenance under Section 125(1) CrPC. Furthermore, Section 36 of Special Marriage Act, 1954 also makes provision for the wife to seek expenses from the husband if it appears to the district court that she does not have independent income sufficient for her support and necessary expenses of proceedings under Chapters V or VI of that Act. Still further, under Parsi Marriage and Divorce Act, 1936 either Parsi wife or husband is entitled to claim expenses where the proceeding is pending under the Act. Section 39 of the Act which is substantially the same as Section 36 of the Special Marriage Act makes a provision in this behalf. Also, under Section 36 of Divorce Act, 1869 which applies to persons professing Christian religion, a wife is entitled to expenses of proceeding under the Act and maintenance while the suit is pending. All these provisions specify that the application for interim maintenance has to be disposed of within sixty days of service of notice on the respondent. Object of Section 24, Hindu Marriage Act, 1955, this provision is intended to sustain the indigent Party (wife or husband) during litigation for any of there lies under the Hindu Marriage Act. This Right arises with the start of the proceedings and ends with the proceedings under the Hindu Marriage Act. The award of maintenance under Section 18, Hindu Adoption and Maintenance Act creates no bar for filing an application under Section 24, Hindu Marriage Act .The only limitation is that the maintenance awarded under Section 18, Hindu Adoption and Maintenance Act should be kept in view while passing an order under Section 24, Hindu Marriage Act.

**Permanent maintenance** is granted permanently after the disposal of the proceeding for divorce or separation. *Hindu Marriage Act, 1955*, Section 25 – Applicant, either wife or husband is entitled to receive from the spouse for his/her maintenance and support a gross sum or monthly or periodical sum for a term not exceeding the applicant's lifetime or until he/she remarries or remains chaste. *Hindu Adoption and Maintenance Act, 1956*, Section 18 – Hindu wife is entitled to be maintained by her husband during her lifetime. Wife also has a right to separate residence and maintenance if any of the condition in Section 18(2) [desertion, cruelty, leprosy, any other wife/ concubine living in the same house, conversion of religion or any other reasonable cause] is fulfilled until she remains chaste or does not convert to other religion. It may also be noted that Section 19 of this Act makes a provision for a widowed wife to be maintained by her father-in-law. Criminal Procedure Code, 1973, Section 125 – This section provides for maintenance not only to the wife but also to child and parents. Court may order a husband who has sufficient means but neglects or refuses to maintain his wife who is unable to maintain herself to provide monthly maintenance to her. However, wife shall not be entitled to receive maintenance if she is living in adultery, or refuses to live with husband without any sufficient reasons, or living separately with mutual consent. Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3 – A divorced Muslim woman is entitled to a reasonable and fair provision and maintenance to be paid to her within the iddat period by her former husband; an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends. If husband fails to provide her the above mentioned, then Magistrate can order for payment of the same. Parsi Marriage and Divorce Act, 1936, Section 40 – A Parsi husband or wife may apply to the Court under this section whereupon the Court at the time of passing any decree under the Act or anytime subsequent thereto order that the defendant pay the plaintiff a gross or monthly sum for his/her maintenance and support. Such order may also be modified subsequently if the Court is satisfied that change in circumstances warrants so. The order may also be rescinded or modified if the party in whose favour the order was made remarries; or in case of wife, she does not remain chaste; or in case of the husband, he has sexual intercourse with any woman outside the wedlock. Special Marriage Act, 1954, Section 37 – This section is also similar to Section 40 of the Parsi Marriage and Divorce Act. The difference being that under this section maintenance may be claimed only by a wife against the husband from a court exercising jurisdiction under Chapters V or VI of the Act. An order made under this section may be modified or rescinded by the district court at the instance of the husband if it is shown that the wife has remarried or is not leading a chaste life. Divorce Act, 1869, Section 37 – This section empowers the district court to order the husband to secure a reasonable gross sum to the wife or annual sum not exceeding her lifetime when a decree of dissolution or decree or judicial separation is obtained by the wife. While passing such order, the court may have regard to fortune of the wife, ability of the husband and conduct of the parties. The court may also order the husband to pay such monthly or weekly sum to the wife for her maintenance as the court may think reasonable. If subsequently, the husband becomes unable to make such payments, the court may discharge or modify such order.

#### **DIFFERENCE BETWEEN MARRIAGE AND LIVE-IN RELATIONSHIP**

Marriage, also called as matrimony or wedlock, is a socially/ritually recognized union or contract between spouses that establishes certain rights and legal obligations towards each other. Considering the diverse culture in India, different laws have been framed which lay down the procedures and guidelines for proper execution of marriages in various religions. Marriage laws have been framed to provide remedies for disputes arising out of wedlock in different religions. Individual Acts were framed for individual religion due to the different customs and traditions followed by each of them. In case of inter-cast marriages, the Special Marriage Act shall be applicable. Apart from maintenance under personal laws, Section 125 of the Code of Criminal Procedure, 1973 also provides for maintenance inter alia a wife is unable to maintain herself. Women can seek for additional maintenance apart from the maintenance received by her under any other law as per Section 20(1) (d) of the Protection of Women from Domestic Violence Act (DV Act), 2005. Which states,

*“20. Monetary reliefs-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-*

*(a) the loss of earnings; (b) the medical expenses; (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force”*

Live-in relationship in simple terms can be explained as a relationship in the nature of marriage where both the partners enjoy individual freedom and live in a shared household without being married to each other. It involves continuous cohabitation between the parties without any responsibilities or obligations towards one another. There is no law tying them together and consequently either of the partners can walk out of the relationship, as and when, they will to do so. There is no legal definition of live in relationship and therefore the legal status of such type of relationships is also unsubstantiated. The Indian law does not provide any rights or obligations on the parties in live relationship. The status of the children born during such relationship is also unclear and therefore, the court has provided clarification to the concept of live in relationships through various judgments. The court has liberally professed that any man and women cohabiting for a long term will be presumed as legally married under the law unless proved contrary. The right to maintenance in live in relationship is decided by the court in accordance with the Domestic Violence Act, 2005 and the individual facts of the case. Though the common man is still hesitant in accepting this kind of relationship, the Protection of Women from Domestic Violence Act 2005, provides for the protection and maintenance thereby granting the right of alimony to an aggrieved live-in partner.

#### **LAWS IN INDIA RELATED TO LIVE-IN RELATIONSHIP**

There is no particular law regarding the matter of live-in relationship in India. There is no enactment to lay down the rights and commitments for the parties in a live-in relationship, and for the status of children born to such couples. There is no legal definition of live-in relationship and in this way the lawful status of such sort of connections is likewise unverified. The Indian law does not give any rights or obligations to the parties of live-in relationships. However, court has clarified the concept of live-in relationship through various judgments. Though law is still unclear about the status of such relationship yet few rights have been granted by interpreting and amending the existing legislations so that misuse of such relationships can be prevented by the partners

#### **Domestic Violence Act, 2005**

For the very first time in Protection of Women from Domestic Violence Act, 2005, the legislature has acknowledged live-in relationships by giving rights and protection to those females who are not legally married, but rather are living with a male individual in a relationship, which is in the idea of marriage, additionally akin to wife, however not equivalent to wife. Section 2(f) of the Domestic Violence Act, 2005 defines:

*“Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”*

Though live-in relationship is not categorically defined in the Act but left to the courts for interpretation. By virtue of aforementioned provision, the court interpreted the expression “relationship in the nature of marriage”. The provisions of Domestic Violence Act are presently made applicable to the individuals who are in live-in relationships. Courts presume live-in relationships to be covered under the ambit of the expression as the words nature of marriage and live-in relationship stand on the same line and meaning. This gives women some basic rights to protect themselves from the abuse of fraudulent marriage, bigamous relationships.

### **Criminal Procedure Code, 1973**

Section 125 CrPC was incorporated in order to avoid vagrancy and destitution for a wife/minor child/old age parents, and the same has now been extended by judicial interpretation to partners of a live-in relationship. The Malimath Committee (on Reforms of Criminal Justice System, 2003) made several recommendations in Part IV, Chap.16 under the Head "Offences against Women" (Pg.197) has observed; *"that the definition of the word „wife" in Section 125 should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage."*

Owing to this alteration, a revision was made and now the expression "wife" incorporates the ladies who were previously in a live-in relationship and now her accomplice has abandoned her at his will so a lady in live-in relationship can now get the status of a wife. Basically, it expresses that if a female has been in a live-in relationship for a sensible period of time, she ought to have the legitimate privileges as that of a spouse and can claim maintenance under Section 125 CrPC. However, in a debate it was recently observed that it is a divorced wife who can be treated as wife under Section 125 CrPC and can claim maintenance and as for partners when they are not legally married, they cannot give divorce to each other and hence cannot claim maintenance under this section.

### **Indian Evidence Act, 1872**

The court may presume the existence of any fact which it thinks likely to have happened, regard being given to the common course of natural events, human conduct and public and private business, in a relation as to the facts of the particular case. Therefore, where a man and a lady live respectively for a long spell of time as a couple then there would be an assumption of marriage. Section 112 of the Indian Evidence Act, 1872 provides that legitimacy of a child is proved only if any person was born during the continuance of a valid marriage between his mother and any man. Muslim law also recognizes only those children as legitimate, who are the offspring of a man and his wife. Thus, children born out of live-in relationship were illegitimate in the eye of the then existing law. However, the Supreme Court in *Revanasiddappa & Anr. Vs Mallikarjun & Ors* observed that irrespective of the relationship between parents, birth of a child out of such relationship has to be viewed independently of the relationship of the parents. It is as plain and clear as sunshine that a child born out of such relationship is innocent and is entitled to all the rights and privileges available to children born out of valid marriages. This is the crux of Section 16 of the amended Hindu Marriage Act, 1955. **Hindu Marriage Act, (Section 16)** On 17th May 2010 a Bench of the Supreme Court of India consisting of Hon'ble Justice B.S. Chauhan and Justice Swatanter Kumar (JJ) in *Bharatha Matha & Anr vs R. Vijaya Renganathan & Ors* held that; *"20. Thus, it is evident that Section 16 of the (Hindu Marriage) Act intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object."*

### **JUDICIAL RESPONSE TO LIVE-IN RELATIONSHIP**

In *A. Dinohamy v. W.L.Blahamy* the Privy Council took a stand that, *"where a man and a woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage."* And the same stand was also resorted to in the case of *Mohabhat Ali v. Md. Ibrahim Khan*, when the Privy Council stuck to their position that when a man and a woman cohabitated continuously for a number of years, the law presumes that they are a married couple and are not in a state of concubinage.

*Badri Prasad v. Dy. Director of Consolidation* was the first case in which the Supreme Court of India recognized live in relationship and interpreted it as a valid marriage. In this case, the Court gave legal validity to a 50 year live in relationship of a couple. It was held by Justice Krishna Iyer that a strong presumption arises in favour of wedlock where the partners have lived together for a long term as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy. In this case the S.C. laced their judgment by observing that, *"The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon a basterd."* In *Gokal Chand v. Parvin Kumari* observed that



even though it may tempt it to presume the relationship in the nature of marriage, certain peculiar circumstances do occur which may force the S.C. to rebut such a presumption.

Before 2000, no courts in the country ever uttered the word live-in-Relationship, but not thereafter. In 2001 Payal Sharma vs. Superintendent, Nari Niketan, Agra, C.M. Hab. Corp. the Bench consisting of justice M. Katju and justice R. B. Mishra of Allahabad High Court observed that “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.” The Supreme Court in the case of Vidyadhari v. Sukhrana Bai, issued a Succession Certificate in favour of the live-in partner, who was nominated by the deceased. In Koppiseti Subbharao Subramaniam v. State of A.P, the Supreme Court provided the protection cover against dowry under Section 498 A of the Indian Penal Code, 1860<sup>32</sup> by including a person who enters into marital relationship under the colour of feigned status of husband. No legislation has ever been enacted by Indian Parliament which denounces any live-in-Relationship ‘as illegal’. After 2010 various issues are discussed and clarified by the Supreme Court and High Courts by delivering various guidelines in numerous judgments on validity of live-in-Relationship.

On 28 April, 2010 Special Bench of the Supreme Court of India consisting of K.G. Balakrishnan, Deepak Verma, B.S. Chauhan in Khushboo vs Kanniammal & Anr posed a question *“If two people, man and woman, want to live together, who can oppose them? What is the offence they commit here? This happens because of the cultural exchange between people.”* The S.C. held that live-in-Relationship is permissible. The court also held that living together is a part of the right to life u/Art.21 of the Indian Constitution and it is not a “criminal offence. The Supreme Court in this case dropped all the charges against the petitioner who was a south Indian actress. The petitioner was charged under Section 499 of the IPC and it was also claimed that the petitioner endorsed pre-marital sex and live in relationships. The court held that living together is not illegal in the eyes of law even if it is considered immoral in the eyes of the conservative Indian society. The court stated that living together is a right to life and therefore not ‘illegal’. The legal right to maintenance for women involved in live-in-Relationship has been adjudicated upon by the Supreme Court in the following two cases;

1. Virendra Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha and Anr -the facts of the case were that the appellant woman contended that she was re-married, as per the prevalent custom and usage, to the younger brother (Respondent) of her deceased husband. They lived together as husband and wife for a pretty long time. Thereafter, surprisingly and unfortunately the husband (respondent) started harassing the appellant wife and also refused to provide her maintenance u/S.125 of CrPC. In this case, the High Court held that the appellant wife was not entitled to maintenance on the ground that only legally married woman can claim maintenance u/S.125 of CrPC. But the Supreme Court turned down the judgment delivered by the High Court and awarded maintenance to the wife (appellant) saying that provisions of Sec. 125 of CrPC must be considered in the light of Sec. 26 of the PWDVA, 2005.<sup>49</sup> In brief, the S.C. held that women in live-in Relationship are equally entitled to all the reliefs which are available to legally wedded wife

2. Velusamy vs. D. Patchaiammal The judgment determined certain pre-requisites for a live in relationship to be considered valid. It provides that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage, including being unmarried. It was stated that the couple must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. Here, the court relied on the concept of ‘palimony’ which was used in the USA for grant of maintenance in live in relationships. The concept of palimony was derived in the case of Marvin vs. Marvin, a landmark judgment of the California Superior Court.

3. The Supreme Court examined the definition of “aggrieved person” and “domestic relationship” taken together and opined that the expression “Relationship in the nature of marriage” which is included within the definition of domestic relationship has not clearly been defined in the PWDVA, 2005. Hence the Supreme Court said an authoritative decision is required to be taken to elucidate what is and what is not a

relationship in the nature of marriage'. The S.C. commented in the course of its judgment that the Indian Parliament while establishing the two distinct categories viz. Relationship of marriage and relationship in the nature of marriage intended that the enactment should protect and benefit women in both these relationships. Therefore the S.C. held that "Relationship in the nature of marriage" is akin to a Common Law Marriage. Common Law Marriages require that although not being formally married: -

1. The couple must hold themselves out to society as being akin to spouses,
2. They must be of legal age to marry,
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried,
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time."

The judgment further clarified the essentials of a Common Law Marriage and stated that not all "live-in relationships" will amount to "a relationship in the nature of marriage." The judgement notes by way of illustration that —merely spending weekends together, "a one-night stand" in a case where the man has a keep whom he maintains financially but uses her merely for sexual purposes and/or as a servant, would not qualify for protection under the Act within the definition of '*domestic relationship*'.

On 26th November 2013 a two-judge Bench of the Supreme Court constituting of K.S. Radhakrishnan and Pinaki Chandra Ghose, JJ in Indra Sarma v. V.K.V. Sarma held that when the woman is aware of the fact that the man with whom she is having living-in-relationship and who already has a legally-wedded wife and two children, is not entitled to various reliefs available to a legally wedded wife and also to those who enter into a "relationship in the nature of marriage" as per provisions of PWDVA, 2005. But in this case, the Supreme Court felt that denial of any protection would amount to a great injustice to victims of illegal relationship who are poor, illiterate and also to their children who are born out of such relationship and has no source of income of her own. Therefore, the S.C. remarked that there is a burning need to expand the connotation of Sec. 2 (f) which defines 'domestic relationship' in PWDVA, 2005 with a view to include there in victims of illegal relationship who are poor, illiterate along with their children who are born out of such relationship and who do not have any source of income. In this case the appellant admittedly entered into a relationship with the respondent despite knowing that the respondent was a married man with two children born out of the wedlock who opposed the live in relationship since the inception. The Court further added, "If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship.

Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act, as there is also no evidence of a live-in relationship between the appellant and the respondent as per the given guidelines". The Court held that the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. Furthermore, the Domestic Violence Act does not take care of such relationship which may perhaps call for an amendment of the definition of section 2(f) of the DV Act, which is restrictive and exhaustive.

During the course of its judgment, the Supreme Court has given the following guidelines based on which the Parliament may pass a new legislation:

- (1) Duration of relationship** – Section 2(f) of the DV Act has used the expression "at any point of time", which means 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** – The expression has been defined under Section 2(s) of the DV Act and, hence, needs no further elaboration.
- (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.”

In the case of *Tulsa & Ors vs. Durghatiya & Ors*, The Supreme Court provided legal status to the children born from live in relationship. It was held that one of the crucial pre-conditions for a child born from live-in relationship to not be treated as illegitimate are that the parents must have lived under one roof and co-habited for a considerably long time for society to recognize them as husband and wife and it must not be a “walk in and walk out” relationship. Therefore, the court also granted the right to property to a child born out of a live in relationship.

Recently, it is held that a woman in a live-in relationship has an efficacious remedy to seek maintenance under Protection of Women from Domestic Violence Act, 2005 even if it is assumed that she is not entitled to the same under Section 125 CrPC. In fact, under the Domestic Violence Act, the victim would be entitled to more relief than what is contemplated under Section 125 CrPC, *Lalita Toppo v. State of Jharkhand*.

## CONCLUSION:

The Researcher fully agrees with the bold initiative taken by the Supreme Court in its judgment delivered in respect of the two cases namely *Velusamy vs. D. Patchaiammal* and *Indra Sarma v. V.K.V. Sarma*, which recommended to the Indian legislature broadening of the definition of domestic relationship contained in Sec.2 (f) of PWDVA, 2005, with a view to include therein victims of illegal relationship who are poor, illiterate and also their children who are born out of live-in-relationship and who do not have any source of income of their own. In addition to the above recommendations, the Researcher suggests that the Parliament passes a new legislation as suggested by the S.C. in its guidelines given in the course of its above mentioned two judgments.

Criminal Procedure Code, 1973 (Section 125) The Researcher suggest that the definition of the term wife contained in Section 125 of CrPC. should be amended so as to include a woman having relationship in the nature of marriage for a reasonably long period of time. The Indian Evidence Act, 1872 (Section 112) Section 112 of the Indian Evidence Act, 1872 provides that legitimacy of a child is proved only if any person was born during the continuance of a valid marriage between his mother and any man. Muslim law also recognizes only those children as legitimate, who are the offspring of a man and his wife. Thus, children born out of live-in relationship were illegitimate in the eye of the then existing law. However, the Supreme Court in *Revanasiddappa & Anr. vs Mallikarjun & Ors.* remarked that irrespective of the relationship between parents, birth of a child out of such relationship has to be viewed independently of the relationship of the parents. It is as plain and clear as sunshine that a child born out of such relationship is innocent and is entitled to all the rights and privileges available to children born out of valid marriages. This is the crux of Section 16 of the amended Hindu Marriage Act, 1955.

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