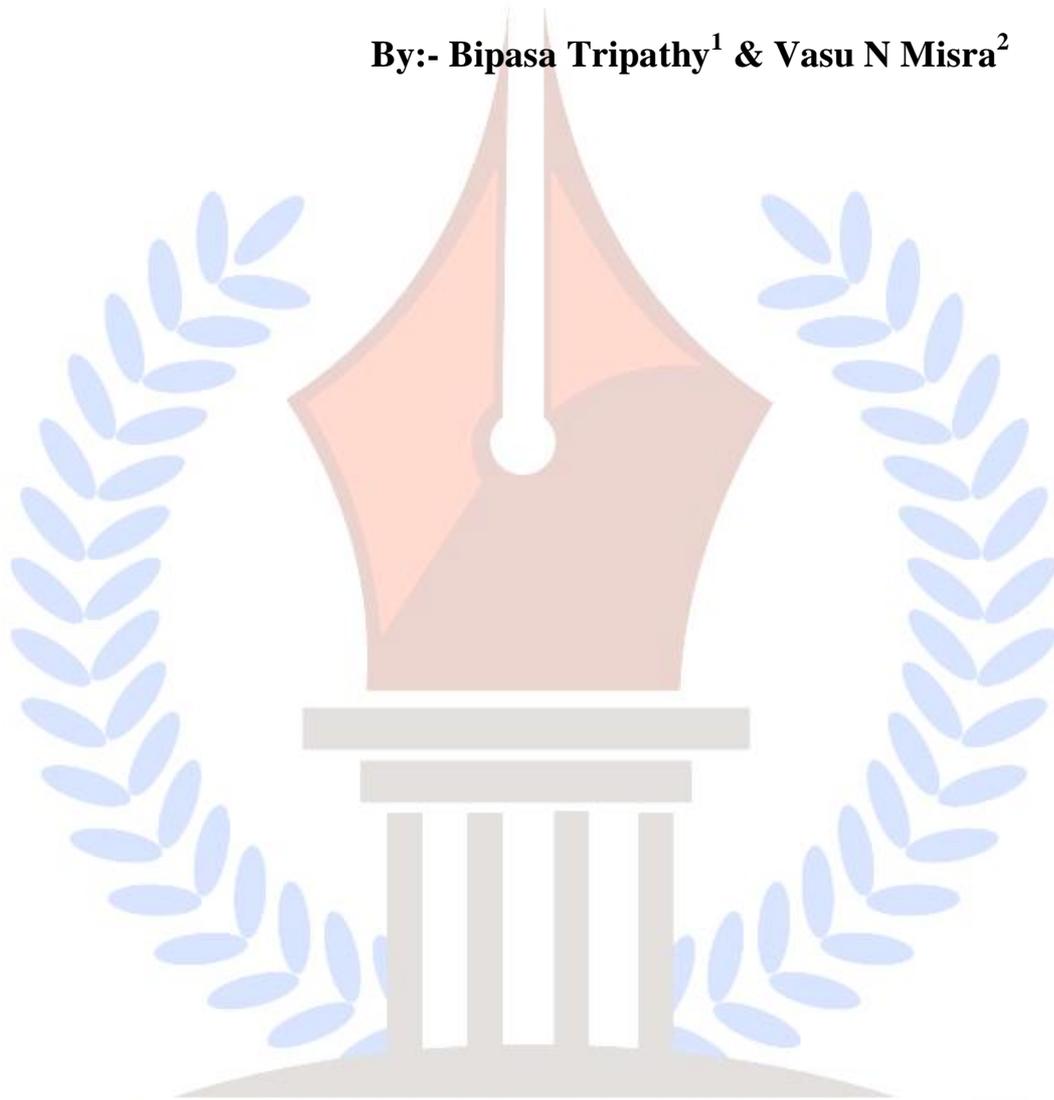


**LIVE IN RELATIONSHIPS AND ITS IMPACT ON INDIAN TRADITIONAL  
SOCIETY: A CRITICAL SOCIO- LEGAL STUDY**

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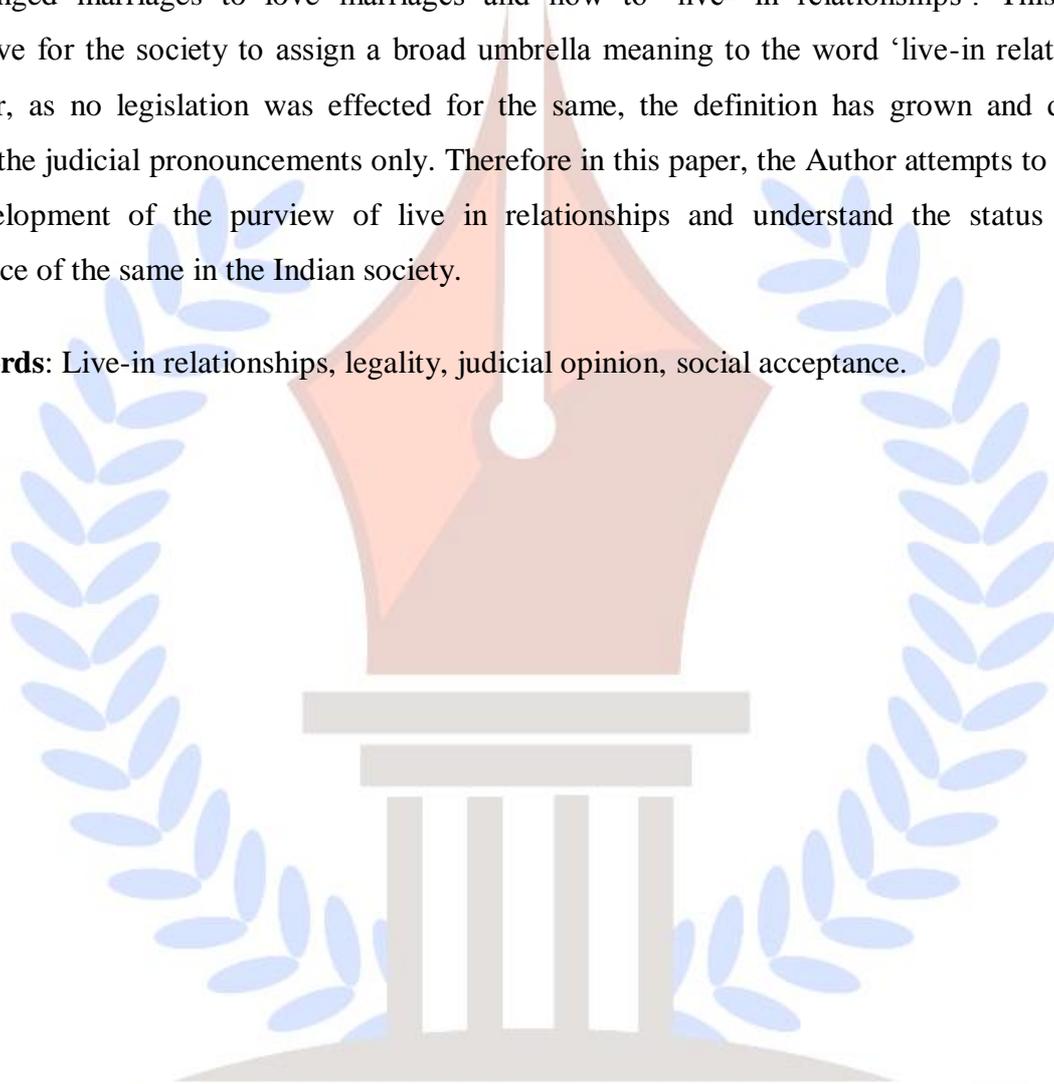
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**ABSTRACT**

In the eyes of the world, India is such a country where marriage occupies a sacrosanct position or sacred union; philosophically, practically and traditionally. In our Indian traditional society, live-inrelationships are not a very new concept. The only difference in the contemporary time is that now people have become open about it. With the changing time, a change is visible in our society i.e. arranged marriages to love marriages and now to 'live- in relationships'. This made it imperative for the society to assign a broad umbrella meaning to the word 'live-in relationships'. However, as no legislation was effected for the same, the definition has grown and developed through the judicial pronouncements only. Therefore in this paper, the Author attempts to showcase the development of the purview of live in relationships and understand the status of social acceptance of the same in the Indian society.

**Key Words:** Live-in relationships, legality, judicial opinion, social acceptance.



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## INTRODUCTION

Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae' which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, succession, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship<sup>3</sup>. The "live-in-relationship" is a living arrangement in which a un-married couple lives together in a long-term relationship that resembles a marriage. "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. The expression "relationship in the nature of marriage" which is included within the definition of "domestic relationship" has not clearly been defined in the Protection of Women from Domestic Violence Act, 2005 (PWDVA).

Law and society are not alien to each other. They are the two faces of the same coin. One needs the other. Changes in society demand that law should move with the time. When this concept rooted in Indian society, then it urges for its meaning in the eyes of law. Hence the various High Courts of the country and the Hon'ble Supreme Court in a number of decisions tried to explain the concept of live in relationship.

## AIMS AND OBJECTIVES

The aim of this research paper is to analyze the response of Indian judiciary to "live-in-relationship" and examine the broadening of the term itself. The paper also analyses the social aspect of live-in relationships in lieu of the changing society.

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<sup>3</sup>Skinner v. Oklahoma, 316 US 535 (1942); Perez v. Lippold 198 P.2d 17, 20.1 (1948); Loving v. Virginia 388 US 1 (1967)

## RESEARCH METHODOLOGY

The research methodology used in this paper is both primary and secondary. While analysis of existing literature and judgments was done to formulate the Author's opinion on the judicial approach to live-in relationships, the Author also conducted empirical research with a sample size of 42 participants and asked the participants the same questions as a survey conducted on the same topic in 2002. The results of the two have then been compared and analysed.

## LIMITATIONS

While addressing the expansion of the purview of live in relationships as developed by the Courts of Law in India over time, the Author has stuck to an analysis of mainly cases from 2010-2018, barring a few landmark cases that occurred previously.

In the second part of the paper, wherein the social acceptability is tested by empirical research, the sample size has remained fairly small and has mainly comprised of Respondents of the age 20-25. The same must be kept in mind while accepting the findings and analysis in the Paper.

## THE DEVELOPMENT OF THE PURVIEW OF LIVE IN RELATIONSHIPS: AN ANALYSIS OF JUDICIAL OPINIONS OVER THE YEARS

The legal status of such relationships lacks a definition. The rights and obligation which such couples have towards each other and the status of children born out of such a tie exudes a blurred shadow. No law on the subject has been formulated; and the law is therefore adumbrated in the court rooms via myriad cases.

In the cases prior to independence like *A Dinohamy v. WL Blahamy*<sup>4</sup> the Privy Council laid down a broad rule postulating that, "*Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together*

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<sup>4</sup> AIR 1927 P.C. 185

*in consequence of a valid marriage and not in a state of concubinage.”* The same principle was reiterated in the case of *Mohabhat Ali v. Mohammad Ibrahim Khan*<sup>5</sup>.

After independence the first case that can be reviewed is *Badri Prasad v. Dy. Director of Consolidation*<sup>6</sup> wherein the Supreme Court recognised live in relationships as valid marriage, putting a stop to questions raised by authorities on the 50 years of life in relationship of a couple.

Moving on from the first time when the court recognised live in relationship which were of considerably long period, courts across the country in recent cases have postulated that live in relationship are not illegal *per se*. The Allahabad High Court, in 2001, in *Payal Sharma v. Superintendent, Nari Niketan, and others*<sup>7</sup> stated that a live-in relationship is not illegal. Sharma had approached the Allahabad High Court when she was forced to live in Nari Niketan at Agra, following her arrest, along with Ramendra Singh, with whom she had a live-in relationship. Payal Sharma produced documentary evidence evincing the fact that she was 21 years old. On the basis of this evidence, the court directed the authorities to set her free. Justice M Katju and Justice R.B. Mishra stated, *“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.”*

With this broad-minded view, the floodgates had now opened in the social structure of the Country and the morality of these relationships was now in question. A survey conducted by a Tamil newspaper in 2000 gave an insight as to what the common man understood of the term “live-in relationship” and what he thought of the same.

A further sanction to live in relationships was granted by the judgement of the Supreme Court in 2010, in the *Khushboo case*<sup>8</sup>. The case of the prosecution was that the comment of the actress Khushboo allegedly endorsing premarital sex will adversely affect the moral fabric of society. The Court, while quashing the charges framed on Khushboo, commented that there is no law that prohibits pre-marital relationships. A three judge bench comprising of Chief Justice K.G. Balakrishnan, Justice Deepak Verma and Justice B.S. Chauhan observed, *“When two adult people want to live together what is the offence. Does it amount to an offence? Living together is not an offence. It cannot be an offence”*. The court further said *“Please tell us what is the offence and under which section. Living together is a right to life”*, thereby referring to the right to life

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<sup>5</sup> AIR 1929 PC 135

<sup>6</sup> AIR 1978 SC 1557

<sup>7</sup> 2001(3) AWS 1778

<sup>8</sup> S. Khushboo vs. Kanniammal and Ors., AIR2010SC3196

guaranteed under Article 21. Though this was an obiter dictum, it provided a positive impetus to live in relationships.

However, this position is not all binding and the diversity in opinions could be felt in the courtrooms across the country. Justice S.N. Dhingra noted, "*There are no legal strings attached to this relationship nor does this relationship create any legal-bond between the partners*". The court further added, "*People who choose to have live-in relationship cannot complain of infidelity or immorality as live-in relationships are also known to have been between a married man and unmarried woman or vice-versa*"<sup>9</sup>

Despite opposition, setting the tone for acceptance of live in relationships in the country, the Supreme Court in 2010 first laid down the prerequisites for a live in relationship to be considered valid in *Velusamy vs. D. Patchaiammal*<sup>10</sup>. 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. The court held that not all relationships will amount to a relationship in the nature of marriage and get the benefit of the Domestic Violence Act. It further clarified that, if a man keeps women as a servant and maintains her financially and uses mainly for sexual purposes, such relationship would not be considered as marriage in the court of law. Therefore to get such benefit the conditions mentioned by the Court must be satisfied, and has to be proved by evidence.

A major girl is free to marry anyone she likes or "live with anyone she likes"<sup>11</sup>. The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, leading unimpeachable evidence can rebut such presumption. The live-in- relationship if continued for such a long time, cannot be termed in as "walk in and walk out" relationship<sup>12</sup>.

In every relationship there are hiccups and if we can term it as live-in relationship, it has also its own share of problems<sup>13</sup>. Though live-in relationship as husband and wife is now considered and recognized by Courts<sup>14</sup>, where presumption of marriage can also be raised, on account of leading a

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<sup>9</sup> Alok Kumar v. State CrI.M.C.No. 299/2009

<sup>10</sup> 2010 AIR SCW 6731

<sup>11</sup> S. Khushboo vs. Kanniammal and Ors., AIR2010SC3196

<sup>12</sup> Madan Mohan Singh and Ors. vs. Rajni Kant and Ors., AIR2010SC2933

<sup>13</sup> Baljeet Kaur vs. State, 185(2011)DLT692

<sup>14</sup> Smt. Sonam Pandey and Others vs. State of U.P. and Others, 2011(3)ACR3490

life of husband and wife, for a long number of years, there is no legislation, legitimizing the birth of child born before marriage, by subsequent marriage and it is for the legislature to consider standards of living and whether it would be about social reforms, affecting the sanctity attached to the marriage<sup>15</sup>.

A cumulative reading of the above precedents would unambiguously and unequivocally highlight and spotlight the fact that the court should be in favour of upholding the marriage rather than picking holes in the evidence relating to the proving of the marriage and label or dub the lady as an illegitimate wife and also the children as illegitimate children unless there is any clinching evidence to that effect<sup>16</sup>.

Only evidence as to nature of marriage needs to be produced<sup>17</sup>. If one is sui juris, no fetter can be placed upon choice of the person with whom she is to stay nor any one can restrict him or her<sup>18</sup>.

### **THE DOMESTIC VIOLENCE ACT'S ROLE IN MAKING LIVE IN RELATIONSHIPS ACCEPTABLE**

Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

- (a) Consanguinity
- (b) Marriage
- (c) Through a relationship in the nature of marriage
- (d) Adoption
- (e) Family members living together as joint family.

The definition clause mentions only five categories of relationships, which exhausts itself since the expression "means", has been used. It is in that context we attempt to examine the meaning of the expression "relationship in the nature of marriage".

<sup>15</sup>General Manager, Southern Railway vs. R. Thangaraja, 2012 1 LW189

<sup>16</sup> M. Gangabai vs. The Principal Chief Post Master General, (2011)6MLJ141

<sup>17</sup> Pratibha v Bappusaheb, 2012 Bom CR (Cri) 605

<sup>18</sup> Ashish Sharma and Another vs. State of U.P. and Others, 2012ACR2866

The Court in the *Indra Sarma case*<sup>19</sup> enlisted a number of criteria on basis of which a subjective analysis of the relationship should be undertaken by the Court in order to determine if it constitutes a live-in relationship under the purview of “relationship in the nature of marriage” in the Domestic Violence Act. The grounds listed were neither strictly binding, nor exhaustive. They, however, provided an insight into the aspects, which would bring live-in relationships under the definition of ‘relationships in the nature of marriage’. The guidelines are:

(1) Duration of period 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 fact situation.

(2) Shared household

The expression has been defined Under Section 2(s) of the DV Act and, hence, need 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 the 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 material affection, caring etc.

(6) Children

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.

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<sup>19</sup>*Indra Sarma v. V.K.V. Sarma*, AIR 2014 S.C. 309

(8) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship

These guidelines are the founding stone of maintaining a basic framework to adjudge live in relationships across the country and thus reducing subjectivity of the judges in the same scenario.

**A SOCIAL ANALYSIS OF LIVE IN RELATIONSHIPS**

As referred to above, a Tamil Nadu regional newspaper conducted a survey in the year 2000 where they asked their readers to give their opinions on live in relationships. The Author asked the same 5 questions to the sample size and recorded their responses as a comparison to the findings of the survey in 2000. The findings are represented graphically, below:

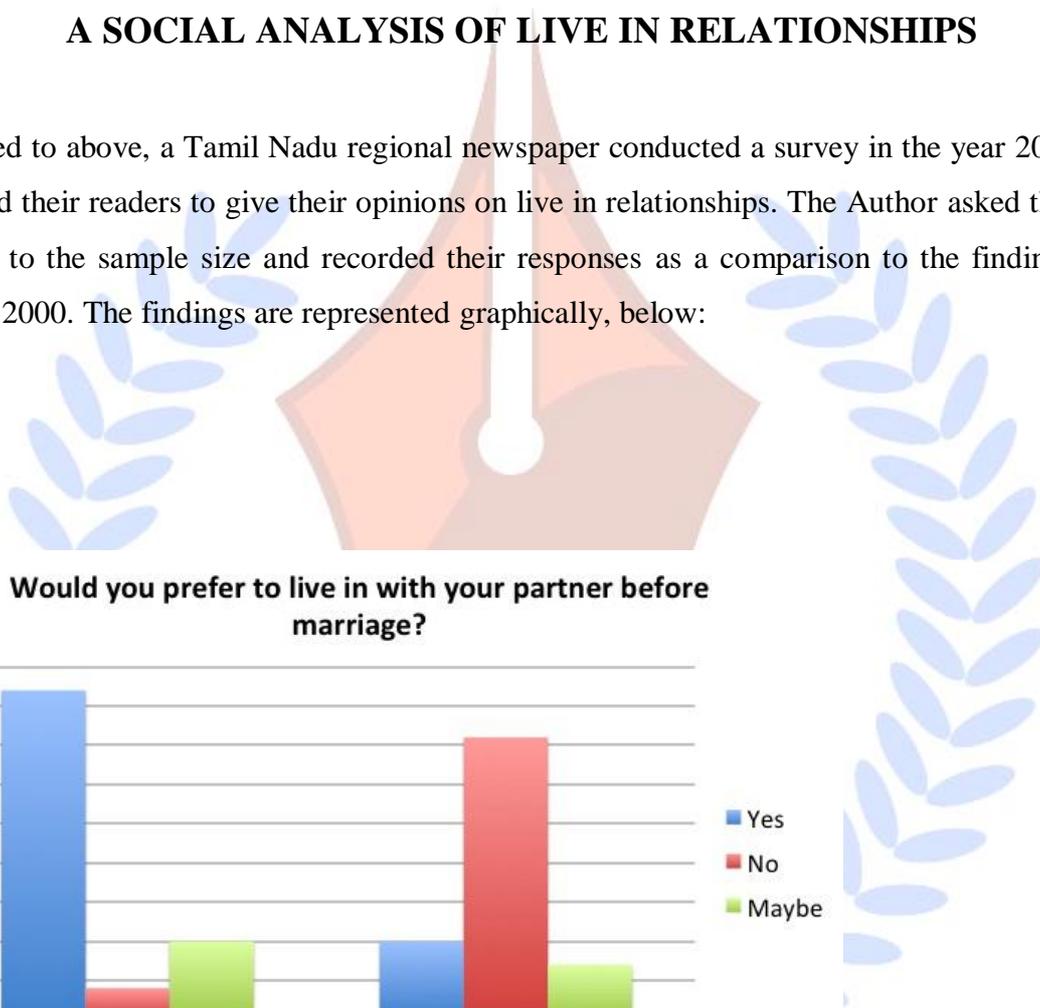


Figure 1.

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**Does living in deteriorate the sanctity of marriage?**

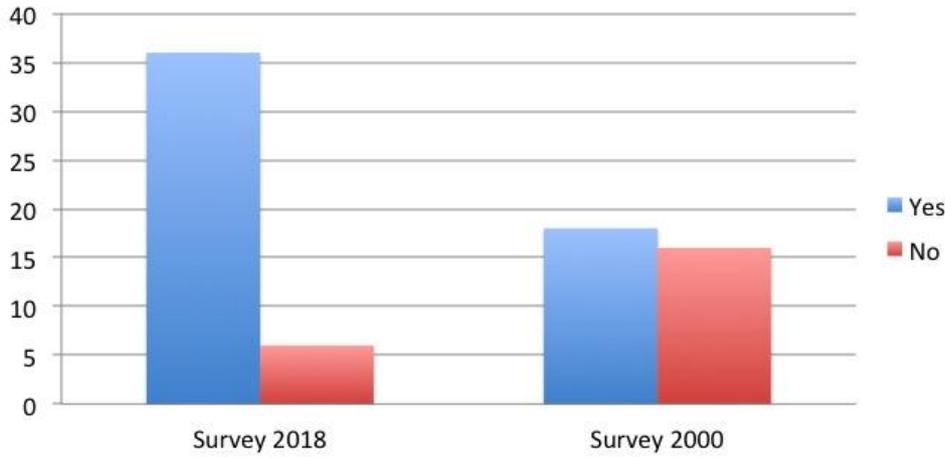


Figure 2.

**Does living in before marriage increase the likelihood of marital failure?**

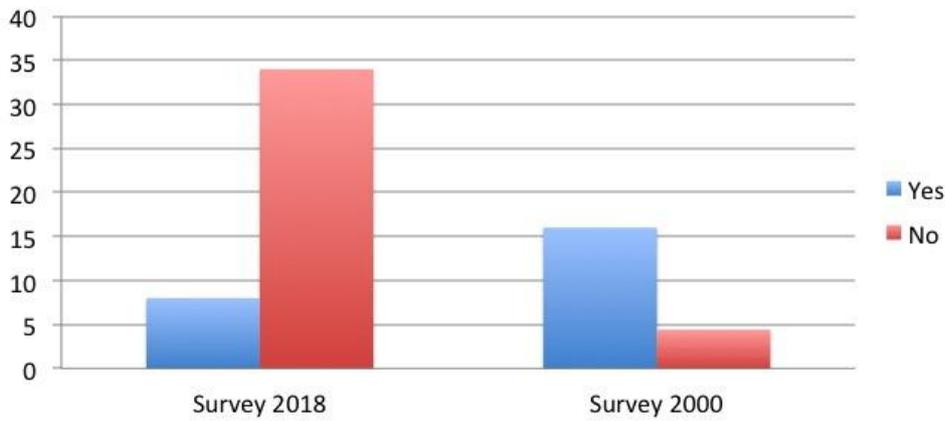


Figure 3.

**How would your parents react if you decided to live in with your partner?**

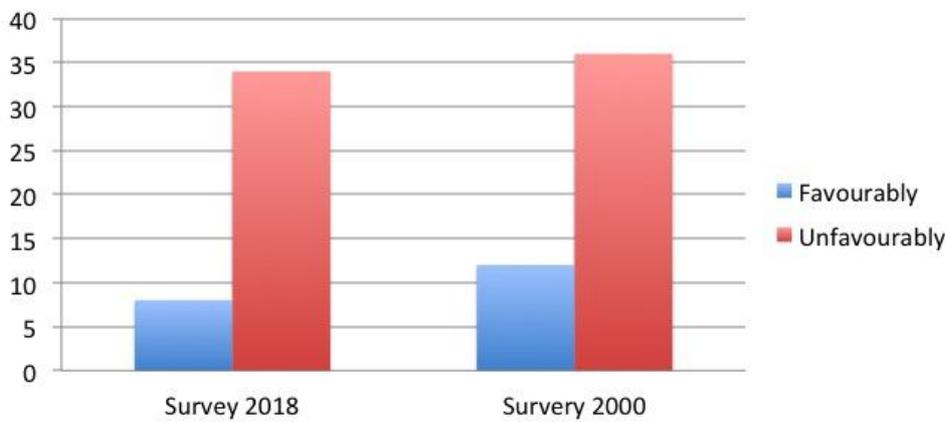


Figure 4.

### Do you think the Indian society is ready to accept Live In Relationships?

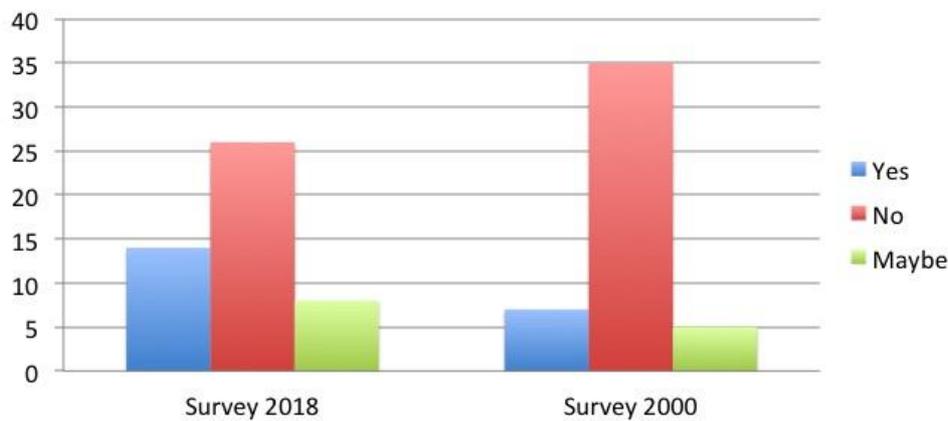


Figure 5.

This comparison between the Survey of 2018 and 2000 is aimed at showcasing how the thoughts, beliefs and opinions of the society has changed or not changed. One would like to believe that as a dynamic society in such a culturally rich and diverse country, we would always be progressive with our views. However, the same might not be fully true.

Figure 1 showcases the tremendous acceptance of live-in relationships as a natural course of relationships before marriage with more young couples wanting to live in with their partners for reasons that may vary from testing compatibility, to securing financial responsibility.

This brings our attention to the fact that maybe, the reason to test a relationship out properly before entering in to a marriage is a reflection of the youth of India's willingness to be sure of their commitments and thus reduce failure of marriage. The same is supported by Figure 3 whereby, maximum respondents of the survey in 2018 said that living in with your partner does not increase the likelihood of marital failure at all.

Addressing the moral dilemma engulfing live-in relationships, in 2000, the respondents to the survey had mixed feelings about whether living together before marriage deteriorated the sanctity of marriage. However in 2018, the answer to that is an astounding no.

However a close look at Figure 4 and Figure 5 makes us realize that a distinction must be drawn between our generation and the generation before us. When asked whether their parents would react favorably to them living in with their partner, maximum Respondents in both 2000 and 2018 said no. While in the modern society that is today, pre-marital sex, sex beyond castes, late marriage, etc. are increasingly becoming the norm, yet, our parents or the parents of the generation above us are still a far cry away from accepting live in relationships.

The same could be attributed to the viewing of marriage as a sacrament in the Indian society even today. The protection of the institution of marriage is considered as one of the primary goals of the lawmakers while drafting divorce, separation, maintenance laws. The same is also reflected in Figure 5, whereby when asked whether the Indian society is ready to accept live-in relationships, the answer was no.

## CRITICISMOF LIVE IN RELATIONSHIPS

Judicial separation creates rights and obligations. Hence, when hiccups occur in live-in relationships, what legal recourse do they have<sup>20</sup>. A live-in relationship essentially means that there would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended<sup>21</sup>. Even though the law has begun to presume that when a couple has proven that they have been living together the same will be considered a relationship in nature of marriage<sup>22</sup>, but the same legal protection, safeguards, etc. in matters of maintenance, guardianship, custody are not yet laid down in black and white. In reference to the beginning of the paper, it is undisputable that the law on live-in relationships has been adumbrated through law and has thus been formulated in the courtrooms.

The question of the duration of cohabitation by a couple to showcase live in relationships is also one which needs to be addressed immediately. For example, while living together in Canada is legally recognized as a 'common law marriage', a duration of minimum 12 months continuous cohabitation is considered necessary. The same has been set as 3 years in Ireland.

The live-in-relationship come what may, must unify with the institution of marriage, separation, status etc. Thus Law Commission of India in its 71th report, 1978 recommended for the amendment of Hindu Marriage Act 1955 and Special Marriage Act 1954 for the divorce provision, because it is also a cause to adopt live-in relation by the parties. The sweetness of marriage among them already becomes departed without any one's fault. Thus it may lead to an easy "walk in walk out relation" with other party.

Again the Malimath committee Report 2003 recommended for the amendment of Section 125 of Criminal Procedure Code to include women in a void marriage or women in live-in- relationship to

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<sup>20</sup>Jeet Singh and Ors. v. State of U.P., (1993) 1 SCC 325

<sup>21</sup>Krishna Bhattacharjee vs. Sarathi Choudhury and Ors., 2016(1) AJR 545

<sup>22</sup>Hiral P. Harsora and Ors. vs. Kusum Narottamdas Harsora and Ors., AIR2016SC4774

claim maintenance. Thus it is a call to legislate a new law to remove all the clouds of difficulties and protect the social values without infringing the individual liberties with the change of society.

## CONCLUSION

### Are you in favour of Live In Relationships?

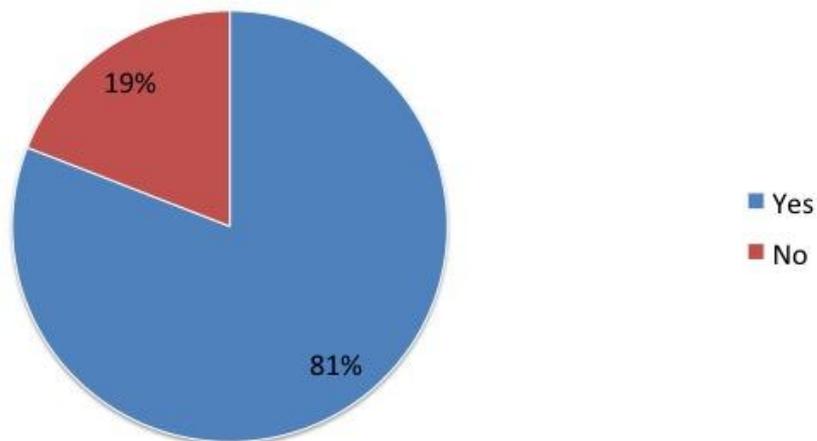


Figure 6.

The “live-in-relationship” is no longer a novelty to Indian society. It has come to stay as can be evidenced by the increased number of youngsters favoring the same. Live-in-relationship couples are multiplying in number; at the same time institution of marriages stays unaffected. Time was when institution of marriage was sine qua non of Indian society but not now. Emergence of live-in-relationship seems to pose a challenge to the solid rock on which institution of marriage has been built up and nurtured. Break up of joint family system has given rise to satellite families. Spread of education of women has led to formation of an army of Indian woman who are earning and ably assisting their husbands resulting into emergence of double income families. As an impact of globalization, families are broken up and life partners are bound to stay alone in different countries of the world away from their life partners. It might be that this societal change has given rise to the growth of “live-in-relationship”. Irrespective, it’s a change for the better.

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