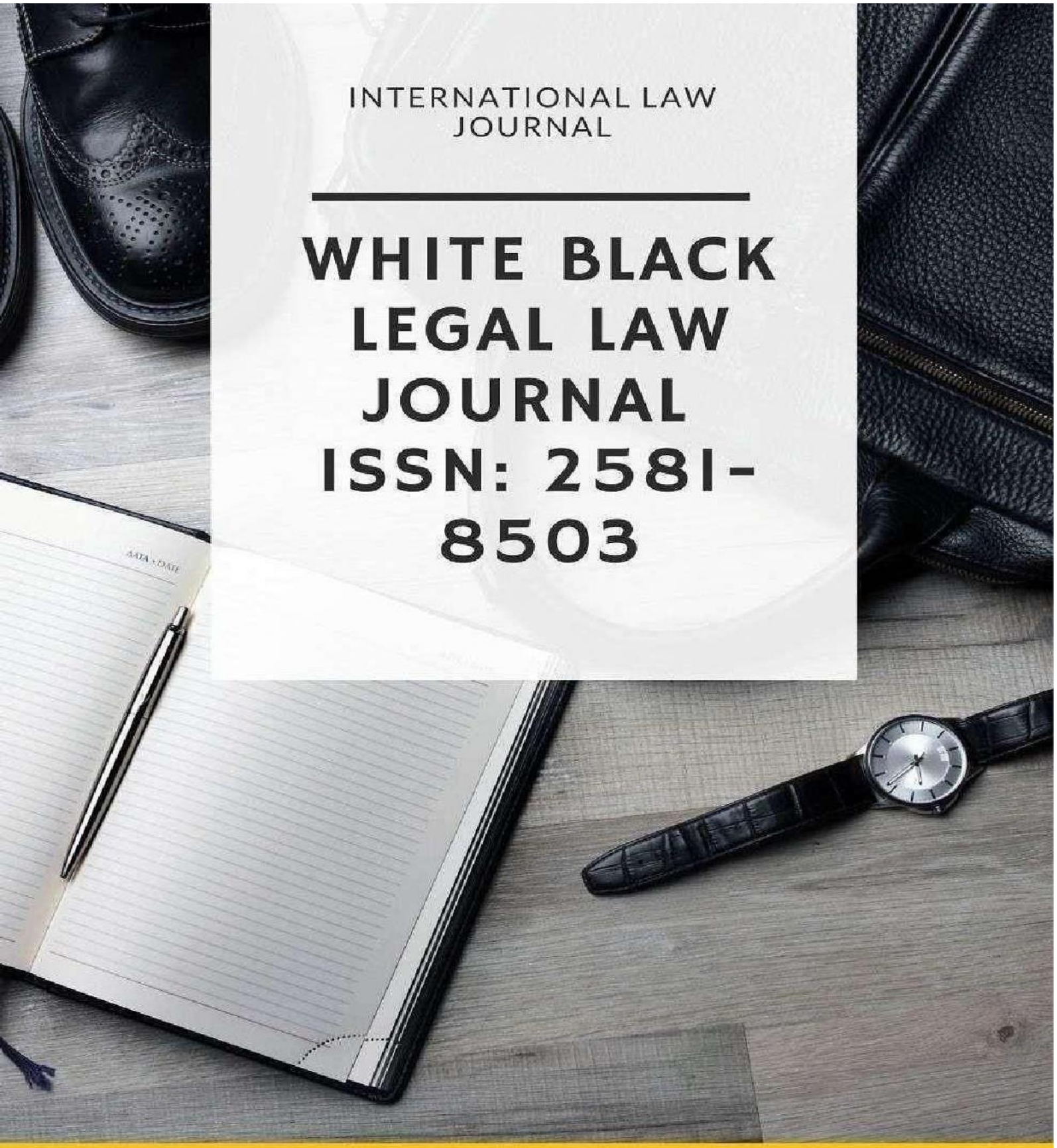


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DOMESTIC VIOLENCE IN LIVE - IN RELATIONSHIP: A JUDICIAL DISCOURSE

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ABSTRACT

Live – in relationships are increasing worldwide. Other countries are legally more comfortable with live – in relationships but India is facing many challenges in accepting live – in relationships. Earlier women in live – in relationships were not getting the protection as well as the status of a wife but the PWDV Act of 2005 provided protection to women who are in relationships 'in nature of marriage' based on some conditions. Domestic violence is also seen in live – in relationships nowadays and cases of domestic violence remain unnoticed and unreported due to lack of knowledge of the rights woman have. The Judiciary tries to give the decisions in favour of live – in relationships and due to judicial decision live – in relationships have been legalised in India.

This article talks about legality of live - in relationships, protection and rights provided to women in live – in relationships, domestic violence in live – in relationships and judicial decisions in support of live – in relationships.

Keywords: - Domestic violence, live- in relationships, Marriage

INTRODUCTION

Live - in relationships are becoming common in India nowadays. But still, in some areas of society, it is considered taboo. Live - in relationship is a relationship in which two consenting adults usually male and a female live together without getting married. They want to avoid restrictions and societal responsibilities that exist in traditional marriage. [1]Live - in relationships are evolving in India specifically among younger youth and urban areas. The idea of living together without marriage is widely accepted in Western countries as compared to India. For this reason, there is no statute or specific law defining live - in relationship legally. There are no legally framed specific rights and obligations for people in live – in relationship.

[1] https://www.dehradunlawreview.com/articles/domestic- violence- in- live- in- relationship/Pallavi gusian,2022

Later it started getting recognition through existing laws and judicial decisions. But still relationships without marriage have not been accepted by society.

In present time, as in marriage there are cases of domestic violence, maintenance and protection. Similarly, it is now observed in live - in relationship in India. Specifically domestic violence. Domestic violence is physical, sexual or psychological abuse by one person to another to show and maintain their power. [2]It is now increasing in couples who are living without marriage.

Basically, people think that there is no violence in a relationship by choice as they are not married. However, courts have thrown some light on these issues by providing some rights to them from existing legislation. But violence in live - in relationship is still increasing day by day in Indian society even after getting partial recognition in existing laws.

Legal status of Live – in relationships:-

Live - in relationship in India have still not been given proper recognition in Indian laws. But somehow now in modern society, they have got partial recognition through judicial decisions and existing laws. Earlier our society believed that live - in relationship is illegal as there is no specific law present but the Supreme court in **Khushboo v. Kanniammal** [3]held that live - in relationship is not a crime or illegal; instead it is a right under Article 21 of the Indian Constitution.[4] Basically Judiciary tries to defend these relationships.[5]

Earlier in the case of **A.Dinohamy v. W.L. Balahamy** [6]which was decided by the Privy council in 1927 the court held that two people living together as husband and wife for a long term can create a presumption of marriage. Similarly in case **Mohabbat Ali khan v. Muhammad Ibrahim khan** [7]the privy council again considered it and made it stronger. Basically, the court wanted them to live together for a number of years as husband and wife but the minimum years are not cleared or fixed by the court; it depends on the facts and circumstances of the case. But the Supreme court said that the presumption created by long cohabitation is rebuttable and the burden of proof lies on the person denying it.

[2] https://pmc.ncbi.nlm.nih.gov/research paper/ domestic violence and abuse in intimate relationship from public health perspective/rakovec- felser Z,2014
[3] AIR 2010 SC 3196
[4] Constitution of India, 1950; Article 21:" Protection of Life and Personal Liberty: No person shall be deprieved of his life or personal liberty expect according to procedure established by law".
[5] https://www.dehradunlawreview.com/articles/domestic violence in live in relationship: a judicial discourse/Pallavi gusian,2022
[6] AIR 1927 PC 185
[7] AIR 1929 PC 135

The court always tried to legitimise the live - in relationship. As Justice Mallimath Committee report in 2000 recommended to broaden the meaning of wife as they wanted to include women's living as wife for a long period of time. They wanted to make changes in section 125 CrPC (now it is known as Section 144 BNSS)[8]. In 2008 the Maharashtra government made a similar proposal for women's living as a wife with a man for a reasonable period. They also wanted to make changes in Section 125 CrPC. But there was an issue with the recommendation that the broad meaning of wife can be linked with secondary relationships of men who are already married.

Now live - in relationship is recognized under the Protection of woman from Domestic violence act, 2005 (PWDVA). Basically, women in a qualifying relationship "in nature of marriage" may seek remedies under this act. Live - in relationship have also been legalised under various personal laws like the Hindu marriage act. There is also a state - level law in Uttarakhand that requires registration of live - in relationships. Failure to register can lead to penalties. Now women in live - in relationship can claim maintenance and children born under this relationship are treated as legitimate. The couple can also seek police protection directed by the court from threats under Article 21 (right to life and liberty)

Basically, live - in relationship is getting recognized in some laws but direct or proper legal recognition is still pending in India which creates confusion among society about the rights and responsibilities of living partners as the rights are uncertain.

Domestic violence and live - in relationships in India:-

Live - in relationships have got some legal recognition in the PWDV (protection of women from Domestic violence) act, 2005. This act grants rights to females in live in relationships as a wife but not legally married for the first time. Under this Act section 2(f)[9] provides protection to women's in residing in relationship "in nature of marriage'. The section doesn't mention live - in relationships particularly but the court interpreted it.

Basically, the protection under this section is given to females in relationship' in nature of marriage'. Not every relationship is considered under this; the court looks at the circumstance and facts of the case. The court in **D.Velusamy v. Patchaiammal (2010)[10]** clarified the conditions for relationships to be considered in relationship "in nature of marriage'. the

[8] https://theadvocateleague.in/research paper/ live in relationship in India: A socio- legal study
[9] Section 2(f) "domestic relationships 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 nature of marriage, adoption or are family members living together as a joint family."
[10] (2010) 10 SCC 469

conditions were:- the couple must present themselves to society as husband and wife; they must be of legal age to get married, shared household, pooling of resources and financial arrangements, domestic arrangements, sexual relationship, children and socialising in public. Relationships like bigamous, adulterous and relationships with minors are not included in this; relationships like these can. If th me couple follow these conditions then only they can seek protection under section 2(f) (one night stand relationship not included). Relationships face circumstances in court [11]as happened in the case of **Indra Sarma v. V.K.V. Sarma (2013).** [12]In this case Supreme court determined whether a woman who is in a living relationship with a man who is already married can claim protection under Section 2(f) of PWDV Act, 2005, the court held that the woman can claim protection and gave some conditions to fulfil the relationship 'in nature of marriage'.

Section 2(f) under PWDV Act, 2005 includes the definition of domestic relationship to provide protection to women's who are in the relationship 'in nature of marriage', it means when they share the same household. It includes consanguinity, marriage, relationship in nature of marriage, adoption and joint family. As there was domestic violence in marriage before but now domestic violence is increasing in live in relationship and only PWDV Act, 2005 provides protection to woman. Violence is increasing as man think there is no right to protect woman who are in live – in relationship but only PWDV act provide protection and recognition to woman in live – in relationship. There is no specific act only for woman in live in relationship in case of domestic violence as it is present for married women but due to Section 2(f) of PWDV ACT they are considered like married woman's only by fulfilling some conditions mentioned. Not only protection from domestic violence females in live in relationships but also getting right to maintenance[13] under Section 20 of the PWDV act when requirements are fulfilled as in the case of **Lalita Toppo v. State of Jharkhand (2019)[14]**, the right to child custody and support, the right to property, right to legal action against harassment and abuse. One idea which could be smarter move for decision on maintenance and property rights and rights and responsibilities of male and female is prenup agreements or cohabitation agreements[15]. These are agreement that can be signed by couples before living together as husband and wife without getting married to have clear understanding of their rights and

[11] https://www.dehradunlawreview.com/articles/domestic- violence- in- live- in- relationship/Pallavi gusian,2022
[12] AIR 2014 SC 309
[13] https://www.ijlra.com/ live in relationship and its legal impact on right of women/nikita Mahajan.
[14] (2019) 13 SCC 796
[15] https://www.dehradunlawreview.com/articles/domestic violence in live in relationship:- a judicial discourse/Pallavi gusian,2022

responsibilities and property rights so that if they get separated the prenup agreement can help to make a clear and fast decision. These agreements can also help in case of domestic violence in live – in relationships. But in India, it is not followed as people think that it is not right to discuss about separation before starting a life together as it could create negative impact on the relationship of couples. There is also word palimony introduced in the United states for live in relationship similarly to alimony which is enforced for married couples. As in the case of **Marvin v. Marvin (1976)** [16]it was a American case decided by California supreme court. It was related to the legal discussion of financial and property rights between unmarried partners after their relationship ends. But it is not enforced in India.

Along with domestic violence in live - in relationship there is also sexual abuse and rape in live in relationships. this is increasing and there is no law to provide protection. Partners have to understand the term consent as it is very important before sexual relationship. If you are living together as husband and wife, it doesn't mean that consent is not required. So courts should focus on these matters also. At last, I want to say that domestic violence physical and mental is increasing in live - in relationships because one partner wants to control the other just like happening in married life but the partners should live peacefully and happily and should understand each other and love each other. Society should accept these relationships which are legally valid because immorality will not affect the legality of the relationship. We should grow as society to run this country properly.

Judicial Perspective:-

As live - in relationships were not accepted morally by society but judiciary always tries to defend these relationships. As in **S. Khushboo v. Kanniammal (2010),** [17]it was held by the court that live - in relationships are legal. Also, in the case of **Revanasiddappa v. Mallikarjun (2011[18])** Justice A.K. Ganguly said that what was illegal in past may be legal today because social norms of right and wrong change over time.

As in PWDV Act, 2005 there was no direct mention of live - in relationship specifically in Section 2(f) but the judiciary interpreted live in relationship in relationship 'in nature of marriage'. And not all live - in relationships are considered under this; the partners must fulfil the conditions given under **Indra Sarma v. V.K.V. Sarma.**[19] Some of the conditions were

[16] 18 CAL. 3d 660
[17] AIR 2010 SC 3196
[18] (2011) 11 SCC 1
[19] AIR (2014) SC 309

that they must be sharing the same household as married couple; they should be of legal age to marry, one - night stand and walk - in and - out condition is not considered in household relationship. Adulterous and relationship with minor relationship is also not considered but if the women wasn't aware of the marriage of the male and she has done the marriage in good faith then the woman will be protected as specified in **Badshah v. Urmilla Badshah Godse (2014).**[20]

Along with this Judiciary tried to provide maintenance to women living as a wife for a long period confirmed by the court in **Lalita Toppo v. State of Jharkhand (2018)**[21], child protection rights and property rights. The courts also provide police protection under Article 21 to live - in couples from threats.

Not only this, as there is no legal recognition of same sex live in couples so this matter is still being argued in Delhi High court. So the Indian Judiciary has always supported live - in relationships in many cases and has always tried to bring peace and justice to society. Indian judiciary gave partial recognition to live - in relationship through its judicial decisions in different cases and clearly declared its legality.

Conclusion:-

Live - in relationship are relationships in which man and woman share the same household as they live together like husband and wife without marriage. These relationships are considered legal by the judiciary if they are in 'nature of marriage' and follow the conditions of a valid marriage. Along with that several other rights are provided to couples in live - in relationship. Domestic violence in live - in relationship is increasing as the men consider themselves superior and beat women so much that they can't even walk properly. They think that is no laws for women who are not married to them as live in relationship is still considered taboo in some areas so they think they have the right to domestic violence and even women's in household relationships are not aware of their rights and many women's are in guilt because of these relationships that's why many of the cases are still unknown. Some of them are also worried about their child as they don't know that the court decided that the child will be considered legitimate child.

[20] (2019) 13 SCC 796

So proper knowledge should be given to people who are uneducated about the rights of women in live - in relationships and there should also some legal recognition given to same sex living relationship and domestic violence in it. The parliament should make a proper law or act for live - in relationship so that in the upcoming generation there is no confusion based on this and everyone can take their responsibilities seriously in household relationships.

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