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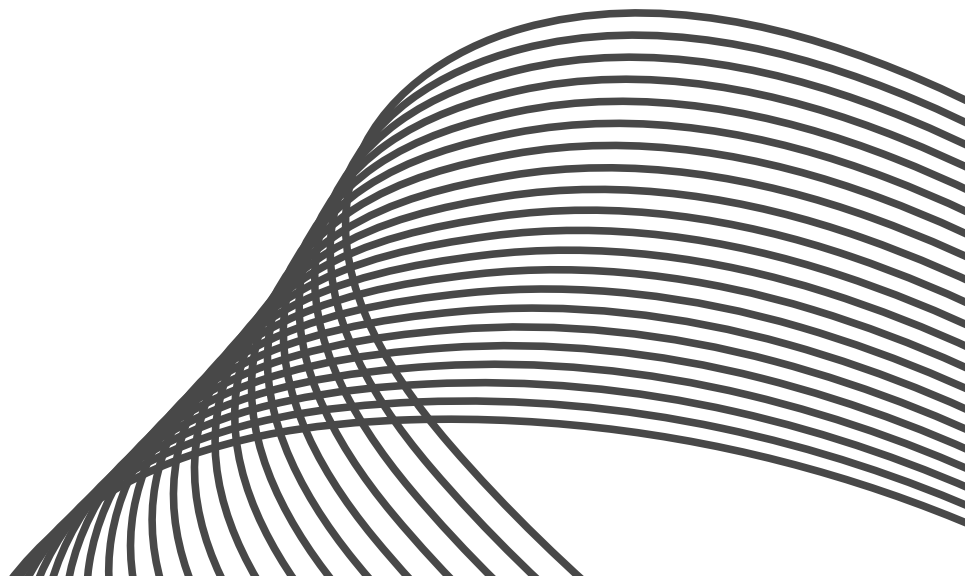
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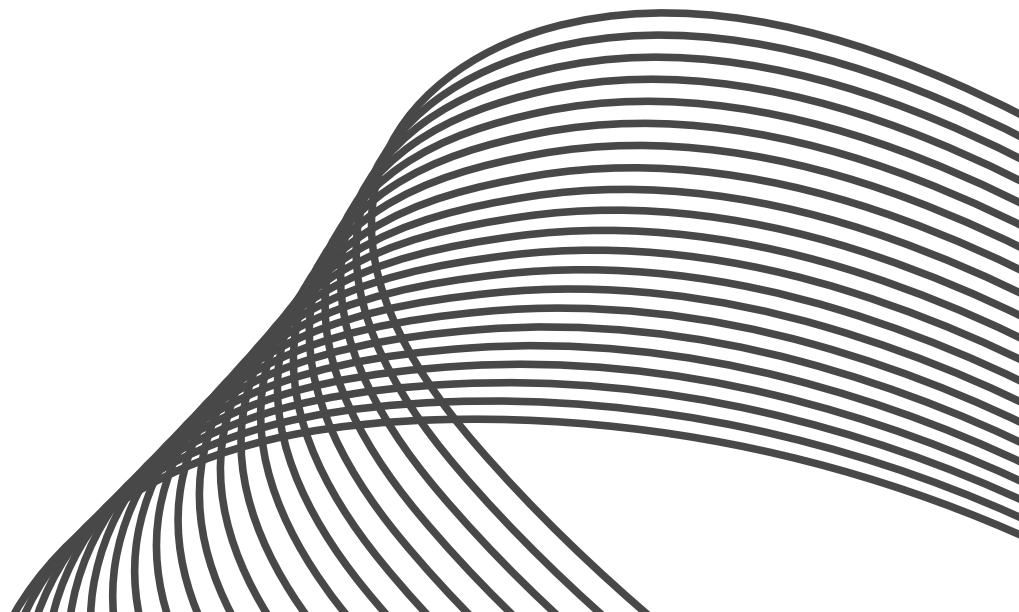


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LIVE-IN RELATIONSHIP IN INDIA: ISSUES AND CHALLENGES

~ Shreya Chatterjee & Tania Dasgupta ¹

Abstract

The Indian culture has adopted Western cultural norms due to globalization, leading to the rise of the live-in partnership. This term refers to a nonmarital adult couple living together, which may seem like a stress-free partnership. However, it has its own challenges. Efforts have been made to regulate it under existing laws, with the Apex Court issuing judgments outlining child support, property division, and a child's official status. This article aims to provide an understanding of a live-in relationship using secondary materials. It discusses the rights of women in a live-in relationship, including their claim to financial support and inheritance, and the rights of any children born of the partnership. The research analyzes the concerns and obstacles faced by couples, focusing on key judgments that have significantly impacted India's live-in relationship issue. The report concludes by advocating for a separate, secular law considering gender equality for couples who wish to cohabit.

Keywords

Live-In Relationship, Property, Maintenance, Judgments, Child Rights, Marriage.

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INTRODUCTION

Marriage in India has been regarded as a sacred institution from the time of the Vedic scriptures. When a man and a woman are married, they legally commit to spending their lives together and caring for one another. It calls for a wide range of obligations in the event of an inheritance, the transfer of ownership, or other legal issues.² In India, the novel concept of live-in couples is on the rise, challenging the traditional notion that marriage is the only legal and socially-acceptable basis for domestic partnership. When two people decide to start living together as a pair, they are said to be in a live-in relationship. This has generated a lot of discussion and controversy in Indian society, just like any other unconventional and non-conformist concept. The concept of live-in relationships has never been well received in Indian society.³ Without being subject to marriage ceremony, shared cohabitation has long been a topic of discussion. Live-in relationships have not been explicitly recognized by the law. In our morally conservative culture, living together before marriage is strictly forbidden.⁴ Also, the majority of the population of the nation disapproves of the existence of these partnerships in society. Because to this idea, numerous legal concerns about the legitimacy of such partnerships and their effects on Indian society have been brought up in court.

The meaning and scope of such a relationship are unclear because no laws specifically address this issue. However, the Courts have always been active and played a significant role in defending the rights and interests of those in such partnerships through a variety of rulings. Yet, the biggest concern with such unions lies in the legal acknowledgment they receive. The meaning and scope of such a relationship are unclear because no laws specifically address these issue.⁵

CONCEPT OF LIVE-IN RELATIONSHIP IN INDIAN CONTEXT

A. MEANING AND DEFINITION

² Dr. Krushna Chandra Dalai, “Live- In Relationship: A Comparative Analysis on Issue and Challenges in India” “1(4) *Journal of Law and Judicial System* 34-38 (2018).

³ Ashpreet Kaur, “Favouring or fawning live-in relationships?”, “*IPLADERS BLOG*, available at: <https://blog.iplers.in/live-in-relationships-3/> (last visited on June 06, 2023)”.

⁴ Dr. Nitish Nawsagaray, “Live in relationship or relationship in the nature of marriage: A Judicial Quandary”, “*ACADEMIA.EDU*, available at: https://www.academia.edu/36194340/Live_in_relationship_docx (last visited on June 19,2023)”.

⁵ Rajagopal, Krishanadas (2010), “Living together a part of Right to Life, not an offence: SC.” *The Indian Express*, 24.03.2010, available at < <http://indianexpress.com/> > (last visited on March 20,2023).

When two individuals with a strong emotional and sexual connection make the decision to share living quarters, they are said to be in a live-in relationship. A live-in relationship is legally defined as “*a living arrangement in which an unmarried couple lives together to conduct a long-term relationship that resembles marriage.*”

In *A. Dinohamy v. W.L Blahamy*⁶, the Privy Council established the rule that: “If a man and a woman are shown to have lived together as a man and a spouse, the law will presume, unless the contrary is clearly demonstrated, that they were living together as a result of a substantial marriage and not in a state of concubinage.” Traditionally, India has been averse to the concept of live-in relations as the society condemns the same .

Live-in relationships, often known as de facto marriages, are becoming more popular and accepted among younger generations. It is viewed as a viable alternative to marriage. Young people often prefer such relationships to marriage, either to test the compatibility of the couple or simply because such partnerships avoid the difficulties of a legal marriage. Individuals in such relationships choose to remain together “by choice” or “by circumstance.”⁷ Whilst it appears to be a tranquil, comfortable, and relaxing friendship with no legal obligations to each other, it in fact involves many problems, duties, and legal liabilities. To have a live-in spouse is protected by Article 21 of the Indian Constitution, which also protects the right to life and personal liberty.

B. EVOLUTION OF LIVE-IN RELATIONSHIP IN PRESENT TIME

Live-in relationships are more of a contemporary western idea with minimal application in Indian culture. The Supreme Court has taken it upon itself on numerous occasions to discuss and rule on the legality of live-in relationships. Marriage is considered a sacrament in India. In many rural communities, the idea of the husband, wife, and family is still highly valued. When it comes to Indian culture, it is well known that the vast majority of Indians live conventional lives. Indian culture holds that unmarried couples only stay together to indulge in sexual activity. Many individuals decide to live together before getting married to determine whether they are

⁶ AIR 1927 P.C. 185.

⁷ “Mr. Yuvraj D. Patil, Socio-Legal Perspective of Live-in-Relationship in India (2011), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1926477 (last visited on August 26, 2023)”.

compatible, despite the fact that marriage is a lifelong commitment and everyone should have the option to pick the appropriate spouse for themselves.⁸

When it comes to live-in relationships and the Indian perspective on them. Dr. Ram Manohar Lohia, a prominent figure, an activist from the Indian Independence movement, and a socialist leader, famously stated. “*Anything is permitted between a man and a woman, as long as there is no use of force or breach of promise.*”

LEGAL POSITIONS OF LIVE-IN RELATIONSHIP IN INDIA

In a number of precedent-setting judgments, the Supreme Court has ruled that a man and a woman who have been cohabitating for a significant period of time and are raising children as husband and wife will be treated as married by the court. In *Payal Katara vs. Superintendent Nari Niketan Kandri Vihar Agra and Ors*,⁹ the Allahabad High Court with the Bench consisting of Justice M. Katju and Justice R.B. Misra held that, “In our opinion, a man and a woman can live together if they wish to, even without getting married. This may be regarded as immoral by the society but is not illegal. There is a difference between law and morality.” Afterwards, in the case of *S Khushboo Vs Kannaiamal and Another*¹⁰, the Supreme Court observed that, “A live-in relationship between two adults without a formal marriage cannot constitute an offence. Further, it is added that there was no law prohibiting live-in relationships or pre-marital sex. Article 21 of the Constitution guarantees to each person the right to life and personal liberty as a fundamental right.”¹¹

Yet, there are unique concerns concerning its legitimacy, and hence the court in the case of *D. Velusamy v. D. Patchaiammal*¹² found various pre-requisites to be regarded genuine.

The essential prerequisite for entering a live-in relationship is as follows:

1. The two people need to act like a married pair in public.
2. They need to be of legal age to get married.
3. They must meet the legal requirements for being married, which includes not being married to anybody else.

⁸ Aishwarya Pandey, “A Comparative Study of Live in Relationship in India with Other Countries” 4 *I.J.L.M.H.* 261, 262 (2021).

⁹ AIR 2001 All 254.

¹⁰ “CRIMINAL APPEAL NO. 913 of 2010 [Arising out of SLP (Crl.) No. 4010 of 2008]

¹¹ Prof. (Dr) Priya Sepaha, “Live-in Relationship in India: Laws and Challenges” 1 *L.C.J.L.S.* 1, 3 (2021).

¹² (2010) 10 SCC 46.

4. They must have freely shared a home for quite some time.

According to the Malimath Committee and the Law Commission of India, a woman should be given the legal status of a wife if she has been in a long-term live-in relationship. Recent research, however, has shown that although a divorced wife is regarded to be a wife under Section 125 of the Cr.P.C, live-in partners are not eligible for divorce and so cannot claim maintenance under that section.¹³

LAWS RELATING TO LIVE-IN RELATIONSHIP IN INDIA: -

There are no regulations or protections for domestic partnerships under Indian law. Existing legislation have been used by the courts to define what constitutes a live-in relationship. The applicable laws and provisions include Article 21 of the Constitution, Section 125 of the Code of Criminal Procedure, and the Protection of Women from Domestic Violence Act of 2005.¹⁴

I. CRIMINAL PROCEDURE CODE,1973- SECTION 125¹⁵

In order to prevent atrocities against women, the Malimath Commission brought up the issue of live-in relationships. Under the heading 'offences against women,' this committee proposed many amendments. The first and most crucial suggestion was to expand the ambit of Section 125 of the CrPC to include cohabiting couples. The wife and children have a right to support from the husband if he refuses or fails to provide it, as outlined in Section 125 of the Criminal Procedure Code.¹⁶ In *Chanmuniya Vs Virendra Kumar Singh Kushwaha*¹⁷, the court held that, “The fact that a man and a woman have been living together for a long period of time is a sufficient proof for assuming that they are married.”

II. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,2005¹⁸

Before the “Protection of Women from Domestic Violence Act” (PWDVA) was passed in 2005, cohabitation was not recognized under the law. A legally “aggrieved person” must meet certain criteria set down in statute. If a woman who is or was in a domestic relationship with the defendant

¹³ Dr. Pradeep Kumar, “Live in Relationship Neither a Crime nor a Sin: A Study with Reference to Right to Marriage” 2 *J. Leg. Stud.* 46, 48 (2014)

¹⁴ *Supra*, note 2 at 3

¹⁵ “The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 125.

¹⁶ *Id.*, s. 125.

¹⁷ (2010) arising out of SLP Civil No.15071 of 2009 (India).”

¹⁸ “The Protection of Women from Domestic Violence Act, 2005 (Act 43 OF 2005).”

raises claims of domestic violence against the defendant, she is considered a “aggrieved person” under the law. Consanguinity, marriage, a partnership in the form of marriage, adoption, or cohabitation are all examples of domestic connections recognized by the law as either current or past ties between individuals who share a household. Legal recognition of a domestic relationship between unmarried people has been expanded with the inclusion of the words “connection in the nature of marriage” in the statute.¹⁹

III. SECTION 114 OF THE EVIDENCE ACT, 1872²⁰

Section 114 of the 'Indian Evidence Act' (1872) deals with the court's “presumption” of the presence of any fact that it considers likely to have occurred, given the ordinary course of natural occurrences, human behaviour, and public and private business as they relate to the circumstances of the case at hand.

In the absence of direct evidence, Indian law will accept additional circumstantial evidence pointing to the existence of a relationship between the spouses as sufficient to establish the validity of the marriage. The case of *S Khushboo vs. Kannaiammal and Others*,²¹ demonstrates this position. The Supreme Court ruled in this instance that maintaining a continuous household with another person does not constitute a crime. This is because of the assumption of marriage based on the parties' lack of marriage.²²

IV. ARTICLE 21 OF THE INDIAN CONSTITUTION, 1950²³

The Supreme Court has often ruled that an individual has the right to choose his or her own spouse and to engage in conduct akin to that of a married couple without actually being married. Considering that this is a matter of individual discretion, Article 21's protection of “Life and Personal Liberty” applies.²⁴

CASE LAWS RELATING TO LEGALITY OF LIVE-IN RELATIONSHIP

¹⁹ Vishakha Gupta, “Live-in relationships and emerging legal issues in India,” *IPLEADERS BLOG*, available at: <https://blog.ipleaders.in/live-in-relationships-and-emerging-legal-issues-in-india/> (last visited on March 17, 2023)

²⁰ The Indian Evidence Act, 1872 (Act 1 OF 1872), s. 114.

²¹ *Supra* Note 7 at 5

²² *Supra* Note 2 at 3

²³ The Constitution of India, art. 21.

²⁴ The Constitution of India, art. 21. Cl. 1.

Live-in relationships are not illegal in India yet, they are frowned upon by society. In India, such business collaborations are not automatically deemed illegal by the law. The court made its decisions in *A. and B.* before the United States declared independence. *Dinohamy vs. W. L. Blahamy*²⁵ (1928) and *Mohabhat Ali vs. Mohammad Ibrahim Khan*²⁶ (1929) that living together for an extended period of time as husband and wife should be treated as marriage unless proved otherwise.

In the case *Badri Prasad vs. Deputy Director of Consolidation*, the Supreme Court first acknowledged live-in partnerships and, in doing so, recognized a fifty-year live-in relationship.²⁷

In the case *Muhammad Riyad vs. State Police Chief*, the Kerala High Court ruled in favor of a young adult male and female, ages 18 and 19, who were seeking permission to live together.²⁸, while the father of the women's petition for a writ of habeas corpus was denied.

Other unusual circumstances have also been addressed by the courts, and such couples have been granted legal protection. In the case of *Chinmayee Jena vs. State of Odisha & Others*, the Orissa high court ruled in favor of a same-sex live-in pair²⁹. Separate but identical opinions were written by the two judges on the division bench who heard the case: S. K. Mishra and Savitri Ratho. Both ruled in favor of the woman's continued partnership with her same-sex spouse.

In the landmark decision of *Chanmuniya v. Virendra Kumar Kushwaha and Others*, the Supreme Court ruled that cohabiting partners are entitled to support as well³⁰.

It was held “...in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.”

²⁵ (1928) 1 M. L. J. 388 (PC).

²⁶ AIR 1929 PC 135.

²⁷ 1978 AIR 1557.

²⁸ Trivandrum, WP(Crl.) No. 178 of 2018.

²⁹ Writ Petition (Criminal) no. 57 of 2020.

³⁰ (2011) 1 SCC 141.

RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP

It has long been understood that the law is fluid, evolving to meet the needs of the community in which it is applied. The Hindu Marriage Act (HMA) was first passed in 1955, and it did not permit non-marital partnerships or homosexual unions. As the number of non-marital unions has grown in today's society, marriage rules have become murky. Due to the lack of regulations pertaining to live-in couples, the legal status involving the capacity to inherit property remains uncertain and complex. However, children born of such partnerships are still legally allowed to inherit from both parents. Children born outside of marriage are considered legitimate by the law. However, there are conditions that must be met before a kid may be considered genuine. First, the child's parents must have lived together for a considerable amount of time. Secondly, they must be legally acknowledged as husband and wife in order for their marriage to be more than a “walking in” and “walking out.”³¹

Legally, a live-in spouse cannot adopt a child under the standards set by the “Central Adoption Resource Authority” in 2011. To refuse support to children born of such unions would be a blatant violation of their basic rights and may be challenged in court. It has long been the norm to regard children of unmarried parents less favorably than those born into legally married families. In a number of rulings, the courts have affirmed that all children, including those with special needs, should be treated equally and without prejudice.

It has long been the norm to regard children of unmarried parents less favorably than those born into legally married families. In a number of rulings, the courts have affirmed that all children, including those with special needs, should be treated equally and without prejudice. There should be no distinction made between their children and the children of legally married couples. Failure to do so constitutes discrimination in violation of Article 14 of the Constitution³², which lists the “Right to Equality” as one of the Basic Rights.³³

ISSUES AND CHALLENGES OF LIVE-IN RELATIONSHIP

For many reasons, the live-in relationship has impacted all of society's youth. Despite the fact that the live-in relationship has been legitimized and backed by several judicial rulings, there are still

³¹ Supra note 1 at 3

³² The Constitution of India, art. 14. cl. 1.

³³ Supra note 6, at 4.

many challenges that need a fundamental conversation. This document outlines some of the more complex areas of ambiguity that should be settled peacefully.

1. **Marriage institution dismantling:** Marriage is a legal and social compact that creates a family unit between two individuals. This cultural or subcultural institution acknowledges a wide range of interpersonal connections, many of which are sexual in nature. The legal union between a man and a woman is called “matrimony” and is often established via marriage. It follows logically that a live-in relationship diminishes the value of marriage, as the latter is a societal union while the former comprises just two people.
2. **Social and moral acceptance:** A live-in relationship may be legal in India, but it is often condemned as immoral and unethical by the country's general populace. Indian culture is often unsupportive of couples who want to live together, and as a consequence, many couples who choose to do so face animosity from family, friends, neighbors, coworkers, and the like.
3. **A one-sided relationship:** A live-in relationship is a daily contract between the parties to cohabitate, which either party may end without the other's consent. As a result, those who choose to live together cannot accuse their partner of being unfaithful or immoral. Thus, we can only refer to it as satisfaction.
4. **Cultural differences:** The many cultures and religions of India are well-known. The impact of globalization on American families and communities has been extraordinary. Traditional family structures and norms are rapidly evolving. There is no universally accepted religious stance on cohabitation. The Special Marriage Act of 1955 is the only law that recognizes civil unions between people of different faiths. Encouraging a practice accepted by Christianity but condemned by Hinduism and Islam.
5. **Property rights pertaining to the LGBT community different religion:** Inheritance and property rights are the main issues in live-in relationships. A kid born within a live-in relationship now has legal protections under only Hindu law, and even then, only with regard to property the child has earned independently and not inherited. No efforts have been made, as of this writing, to promptly initiate a discussion concerning the mechanism for assigning property under Muslim law. There is no protection for either property rights or the LGBT community. No property or bequests may be granted to the live-in partner of an LGBT couple.

6. **Gender Biased:** A woman who has shared a household with a man for at least ten years is legally recognized as his wife under the PWDVA of 2005. This status entitles her to her husband's assets and other advantages. Unfortunately, it does not accommodate gay partnerships or men. Men are routinely blamed for sexual assault and exploiting women by pitching fake marriages, it has been reported. In the case of a war, no other provision is more protective of males. Same-sex relationship sexual assault is similarly unaccounted for. The sensitivity of these issues in romantic partnerships calls for a distinct body of legislation regulating live-in partnerships.

SUGGESTIONS AND CONCLUSION

The following suggestions are a few on how live-in relationships should be recognized legally in India: -

- Legislation that would grant rights to all those involved, instill obligations with duties, and limit the scope of such relationships is urgently needed to recognize live-in couples.
- The following concerns about the individuals involved in “live-in relationships” should be addressed by legislation that is passed by Parliament:
 - Rights of Maintenance of the Parties
 - Definition and Characteristics of a Live-in Relationship
 - Protection from Dowry Demand & Domestic Violence
 - Rights of Child Custody.
 - Concerns of Legitimacy as well as Inheritance by Children.
- Family lawyers recommend that unmarried couples put their agreements on such topics as child custody, financial support, and other shared responsibilities in writing. Separate or shared bank accounts, how property and debts will be divided, and what will happen to assets in the event of one partner's death or the termination of the relationship should all be laid out in the Agreement. Property acquired during cohabitation, such as a residence, home furnishings, movable goods, etc., may be challenged in the event of a divorce or the death of a spouse. In order to prevent legal complications, the agreement must clearly indicate who is entitled to what.

- Legal sanctity should not be granted to a married individual who cohabitates with another person while remaining married to her husband. The law should have certain reasonable restrictions in place to protect the interests of the affected party.
- Furthermore, for such laws to be successful, live-in relationships must be required to be registered, giving the parties concrete proof of their relationship and enabling them to pursue legal remedies.

Live-in relationships are increasing in popularity in India, despite the fact that they may be seen as contentious and unusual outside of the country. This new way of life, which is developing in part as a result of the fast effect of globalization, has many people unprepared to take on responsibilities and participate in a full-time committed relationship. Attractive to today's youth is an evolving social norm that includes prenuptial agreements, education on cohabitation, and tolerance of different sexual orientations. Having a live-in partner may seem like a better option than getting married, but it really involves a lot more responsibility and an awareness of socio-legal viewpoints. Live-in relationships are not illegal, although society generally frowns upon them. Article 21 of the Constitution protects an individual's "life" and "personal liberty," which the Supreme Court has interpreted to include the freedom to select one's life partner and to engage in marriage if so desired. This implies that all forms of domestic partnership are protected under the law, even those involving roommates. Due to the similarity between marriage and the need of a man and a woman to share a home for a significant period of time, the presumption is in favor of marriage. The PWDVA of 2005 safeguards some of a woman's rights in a conjugal relationship that is recognized by law. There are, however, several unclear spots that need to be addressed. Because of the continuing complexities of live-in relationships, a new legislation is needed that places equal emphasis on socio-legal and secular concerns.

