

## “Live in Relationship: What was Illegitimate in the Past can be Legitimate today”

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### **ABSTRACT**

Live in relationship forms a characteristic feature and style of living of metropolitan areas. However, the definition and ambit of live in relationship is not very clear, there is no specific legislation on this area in India and the laws are in the form of court verdicts which varies from case to case. The right of women is also not very certain, though court has shown willingness in recognizing their rights, law like protection of women Domestic Violence Act, 2005 recognizes right of women in such relationship, nonetheless various other laws such as law of marriage, succession etc. needs to be changed to give full protection to women in live in relationship. As far as right of child born under such relationship is concerned under the Hindu Marriage Act such child will be legal nevertheless there is no such law apart from Hindu Marriage Act, 1955 that endorses presumption of legality of child born out of live in relationship.

### **INTRODUCTION**

*“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”*

*— Honourable Justice A.K. Ganguly in Revanasiddappa v. Mallikarjun<sup>1</sup>*

In India marriage has always been regarded a sacrament. The husband and wife are considered together within the eyes of law. The legal consequences of marriage that follow increase the sanctity of this relationship. Marriage legally entitles both the persons to cohabit; the youngsters born out of a legal wedlock are the legitimate children of the couple; the wife is entitled to maintenance during the subsistence of marriage and even after the dissolution of marriage and lots of more.

The benefits of marriage accompany with many responsibilities. The marital obligations towards the spouse, towards the family, towards the children and towards the marital house are an inseparable a part of the Indian marriage. To avoid the obligations of a standard marriage and on the opposite hand to enjoy the advantage of cohabiting together, the concept of live in relation has inherit picture. Live in relationships provide for a life free from responsibility and commitment which is an important element of marriage. The concept of live in relationships isn't new the Indian society, the sole difference is that

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<sup>1</sup>(2011) 11 SCC 1

earlier people were hesitant in declaring their status could also be due to the fear of the society but now the people are openly during this kind of relationship.

It is being truly said that the only thing which is constant in this world is change. The Indian society has observed a drastic change in its living pattern within the past few years. People are slowly and gradually opening their minds towards the idea of pre-marital sex and live-in relationships. However, this change has been continuously under criticism and highly discussed as such concepts lack legality and acceptance by the society. Unlike marriage, in live-in relationships couples aren't married to every other but live together under an equivalent roof that resembles a relation like marriage. In other words, we can say it is a cohabitation. In India, only those relations between a man and woman is taken into account to be legitimate where marriage has taken place between the two supported existing marriage laws otherwise all other sort of relationships is deemed to be illegitimate.

The reason behind people choosing to possess a live-in relationship is to see the compatibility between couples before getting legally married. It also exempts partners from the chaos of family drama and lengthy court procedures just in case the couple decides to break-up. Whatever the reason, it's very evident that during a conventional society like ours, where the institution of marriage is taken into account to be "sacred" an increasing number of couples choose to have a live-in relationship, whilst 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 are reported and seen where partners in live-in relationships or a toddler born out of such relationship have remained vulnerable for the very simple reason that such relationships are 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. This article seeks to analyse the judicial response to the concept of live-in relationships so far. It also talks about the rights available to live-in partners in India and also, what's the status of children born out of such relationships.

India has a rustic of cultural values and rituals; ceremonies cannot afford to plunge into western society. But since growing economy and other people getting more and more aware, India finally has got to step ahead and walk with the rest of the world by legalizing Live-in relationship. Yeah it sounds absurd that country like India would allow its citizens to do that that, but its fact the state cabinet gave its green signal to amend Section 125 of Criminal Procedure Code which seeks to protect the pecuniary interests of the other women. However, it would need the centre's stamp of approval to become a law. The definition of the word wife would need to be change which is under section 125. The amendment done would be sort of a woman who believes in Live-in relationship or wants to possess a polygamous relationship is legal. The state has proposed a fairly long

period for that woman to remain with the mate, but has not defined duration of that period specially.

In a country like India this is often one among the odd steps taken, but still its better one.

### **MEANING OF LIVE-IN RELATIONSHIP**

Live-in relationship in simple terms are often explained as a relationship within the nature of marriage where both partners enjoy individual freedom and live in a shared household without being married to each other. It involves continuous cohabitation between the parties with no responsibilities or obligations towards each other. There is no law which bonds 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 thus the status of such kind of relationships is additionally unsubstantiated. The Indian law doesn't provide any rights or obligations on the parties in live relationship. The status of the children born during such relationship is also not clear and thus, the court has provided clarification to the concept of live in relationships through various judgments. The court has liberally stated that any man and women cohabiting for a long term will be presumed as legally married under the law unless proved contrary.

Live-in relationships are the new trend of the 21st Century generation which does not want to enter into a legal relationship per se. Today's generation is more career oriented and therefore do not consider the prospect of marriage as a viable option. These relationships are also more viable towards providing financial stability to the partners such as cost sharing. It allows both of them to explore the possibilities of compatibility towards a permanent relationship in the guise of marriage in the future.

When it comes to Hindu personal laws, there seems to possess no explicit provisions concerning live-in relationships and its consequences. However, the eminent courts of our country have occasionally given its interpretations suiting the circumstances of the cases coming before it. However, it continues to be a battle field of dispute which is mystified by the fogs of ambiguity.

The definition and ambit of live-in relationship is not clear. 'Live-in relationship' means those relationships where there's no marriage between the parties, within the sense of solemnization of a wedding under any law. Yet the parties live as couple, represent to the world that they're few and there's stability and continuity within the relationship. Such a relationship is also known as a 'common law marriage.'

India has witnessed a drastic change in the way the present generation perceive their relationships. The stigma that used to haunt partners in live-in relationships has also begun to dissolve with society opening up about the thought of pre-marital sex and live-in relationships.

This improved mindset may be a result of freedom, privacy, profession, education and also globalisation. Moreover, for many of us – it's not an escape from responsibilities but how to know our partner and to see if in the least we are compatibility.

A live-in relationship gives the couple an option to understand the partner without having to become involved into a legally binding relationship as well as keeps out the chaos of family drama and lengthy court procedures just in case the couple decides to interrupt up.

It involves continuous cohabitation between the partners with none responsibilities or obligations towards each other. There is no law tying them together, and consequently, either of the partners can walk out of the connection, as and once they want.

### **INTERVIEW PARTICIPANTS – PEOPLE'S OUTLOOK**

As part of a larger nationwide research in which the authors are trying to explore the uncertainty of the legal and social environments that challenge live-in relationship couples and the child born out of such relationship, the authors did a survey research. We went on asking people of almost all ages and professions (see the Appendix for interview details) to collect their perspective to analyse the survey and draw a meaningful research conclusion. We found that the live-in relationship couples were and are also the targets of increasingly virulent and public anti live-in relationship behaviour. Our interview participants represent two generations of people and there is a contrast in their thinking process.

By examining the perspectives of two generations we can determine whether overall progress towards greater acceptance of live-in relationships in the country dramatically altered how live-in relationship couples should lead their life and raise the child born out of this relationship. Our study contextualizes live-in relationship, their status and the child born out of such relationship to suggest how these couples and the society respond to the legal and social transitions, gaps and obstacles.

Despite generational differences, our cohorts share some of the important characteristics. First being the taboo that they are facing from the society. There is a fear that the society won't accept such relationship and so either to let it go else just hide it and lead the life. Second, the fear whose name will the child born out of such relationship will bear. Will the society consider the child to be legitimate or not? While the context of planning everything varied. For instance, there were people who mainly thought of the legitimacy of the child and not the mother, again there were people who accepted everything. Even there are certain people who belong to the young generation but still are stuck to the stigmas of the society.

The majority of the people we interviewed are middle-class Indian students. In addition to that, many of the interviewees are service professionals – accountants, analysts, engineers, fashion designers, lawyers, communication professionals, models, entrepreneurs, homemakers, consultants, e-commerce operators, teachers – and some of them understood how to navigate through this. They are educated and are politically and ideologically liberal thinkers. They have the knowledge, resources and support such relationship and the child born out of it even when the broader legal and social context did not fully legitimize their choices. This makes some of our interviewees inclined to have a positive outlook of the capacity for law to protect the interests of these couples.

These interviews have revealed about the consistent consternations about the strength and stability of law in the country. As in the interest of justice, equality and good conscience, the judiciary of India has given a number of judgments favouring the live-in relationship and it is only on the society to come forward, broaden their minds and accept the concept of live-in relationship. Our interviews revealed that majority of the people want a proper legislation regarding the Live-in relationship in India.

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

*Marriage*, also called as wedlock, is a socially recognized union which defines several rights and legal obligations and duties towards one another. Considering the various culture in India, different laws were framed which lay down the procedures and guidelines for proper execution of marriages in several religions. Marriage laws are framed to provide remedies for disputes arising out of wedlock in different religions. Individual Acts were framed for individual religion because of the different customs and traditions followed by each of them. In cases of conditions like 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 when a wife is unable to maintain herself after the separation. Women can seek help for additional maintenance aside 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**.

*Live-in relationship* in simple terms are often explained as a relationship within the nature of marriage where both 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 kind of responsibilities or obligations towards each other. There is no law which binds them together and consequently it is upon the partners that they can walk out of the relationship.

There is no legal definition of live in relationship and thus the legal status of such type of relationships is also unsubstantiated. The law of our country 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, various clarification has been provided by the court to the concept of live in relationships through various judgments. Any man and women cohabiting for a long term will be presumed as legally married under the law unless proved contrary according to circumstances as declared by the court.

The court will decide the right to maintenance in live in relationship in accordance with the **Domestic Violence Act, 2005** with the facts and circumstances of the case. Thus, 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.

Live-in relationships refer to a cohabitation of a male and a female without being bound by the legal obligations of marriage. Marriage is considered as sacrament under the Hindu Personal laws. It comprises of centuries old customs and usages which have been continuously and uniformly been observed from a very long time ago and has obtained the force of law among Hindus in some of the local area, tribe, community, group or family.

In other words, marriage is governed by a separate set of laws in all countries which safeguards the interests of both parties who enter into the union. Live-in relationships on the other hand have received much importance in a few countries such as France and Philippines. In India, presently there is no law defining the maxims or any concept of a live-in relationship. The Supreme Court however, has observed in a recent judgment that a woman who has lived in a live-in relationship for a long period of time should enjoy the same rights as compared to a married woman.

Live-in relationships do guarantee full financial freedom for both parties. In a marriage however, it is generally noticed that the married couple share their earnings and enter into joint financial venture. However, these rules are not carved in stone. In present situation, married couples tend to keep their financial matters separate and many live-in couples decide to share their individual earnings.

Despite the fact that there are many of couples who decides for live-in relationships, the society still attaches a taboo to such relationships in our country. The majority looks at live-in relationship as a dissolution of morals and more importantly tradition. Marriage on the other side is still venerated by most despite the alarming rise in the number of divorces and problems in relationship. Therefore, the primary difference between live-in relationships and marriage is that marriage has received the societal stamp of approval and live-in relationships are still to do so and, on the path, to get such recognition.

## LEGALITY OF LIVE-IN RELATIONSHIP

The concept of a live-in relationship was a practice not accepted by Indian society for a long time. Living together before tying the knot is an offence or crime to the Indian culture previously. Most importantly, the Hindu Dharma prefers ‘**One man, one wife**’ due to the most sacred kind of matrimony. But as people start to evolve mentally, the successive generations are able to accept a couple of refusing practices. For instance, taking the case of decriminalisation of homosexual cohabitation. The recent judgements, just like the decriminalizing section 377 and 497 of the IPC, shows how the Indian laws have also evolved along with society.

One need not to follow strict rules while during a live-in relationship. Statistics reveal that 80% of Indians now support the concept of live-in relationship and fewer than half per cent prefer living during this kind of life. Dealing with family is one of the main hurdles that our Indian couples face. No wonder that the majority couples living in live-in relationships in India hide this fact from their family. In this blog, we'll see what's live in relationship, what does live in relationship in India mean, how does the Indian law for live in relationship define it and also the legal provisions.

In most of the western countries there is a broader understanding of the concept during a relationship, which has clear legal recognition of prenuptial agreements, civil and domestic union of couples etc. However, it is not the same in India.

The Apex Court in numerous of its judgments has stated that if a man and woman “lived like husband and wife” during a long-term relationship and even had children, the judiciary would presume that two were married and same laws would be applicable.

In another instance, the Apex court even declared that for a man and women in love to live together is part of the proper to life and not a “criminal offence”. Therefore, live-in relationships are legal in India.

The Supreme Court in the case of *Indra Sarma vs. V.K.V. Sarma*<sup>2</sup> defined live-in relationships in five different ways- A domestic cohabitation between an adult unmarried male and an adult unmarried female. This is the simplest kind of relationship.

A domestic cohabitation between a husband and a wife (entered mutually). A domestic cohabitation between an adult unmarried man and a wife (entered mutually).

These two are the foremost complex grey areas of acknowledging live-in relationship.

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<sup>2</sup> Special Leave Petition (CRL) NO.4895 OF 2012

Furthermore, the second kind of relationship mentioned is adultery which is punishable under Indian Penal Code, 1921.

A domestic cohabitation between an unmarried woman and a married male in which they enter unknowingly is punishable under Indian penal code also. A domestic intercourse between two homosexual partners, which cannot lead to marriage in India as no marital laws against homosexuality are not defined yet.

There is no particular law regarding the matter of live-in relationship in India yet. 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 kind of connections is likewise unverified. The Indian law doesn't give any rights or obligations to the parties of live-in relationships. Though law is still unclear about the status of such relationship but few rights have been granted by interpreting and amending the existing legislations so that misuse of such relationships can be prevented by the partners. Various legislations are discussed below—

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

In the Protection of women from violence Act, 2005 (Pwvda), the legislature has acknowledged live-in relationships by giving rights and protection to those females who are not legally married, but rather live with a male individual during a relationship, which is within the idea of marriage, additionally like wife, however not like wife.

Section 2(f) of the violence Act, 2005 defines: -

Domestic relationship is defined as a relationship between man and woman who live or have, lived together in a shared household, when they are related by consanguinity, or by marriage, or through a relationship within the nature of marriage, adoption or are family members living together as a joint family.

Though live-in relationship isn't categorically defined within the Act but left to the courts for interpretation. By virtue of above explained provision, the court interpreted the expression “relationship within the nature of marriage”. The provisions of Pwvda are presently made applicable to the individuals who are in live-in relationships in our country. Courts presume live-in relationships to be covered under the ambit of the expression because the word's nature of marriage and live-in relationship stand on an equivalent line and meaning. This gives women some basic rights to guard 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.<sup>3</sup>

In the month of November 2000, the Malimath Committee was instituted which was the Committee on Reforms of Criminal Justice System. When the Malimath Committee submitted its report, it made numerous recommendations and suggestions under the head “offences against women”.<sup>4</sup> One of its recommendations was to amend Section 125 CrPC so as to alter the meaning of “wife”. Owing to this alteration, a revision was made and now the expression “wife” incorporates the women who were previously during a live-in relationship and now her accomplice has abandoned her at his will so a woman in live-in relationship can now get the status of a wife. Basically, it expresses that if a female has been during a live-in relationship for a reasonable period of your time, she needs to have the legitimate privileges as that of a spouse and can claim maintenance under Section 125 CrPC. Where a presumption would arise in favour of wedlock<sup>5</sup> when they live together. However, during a debate it had been recently observed that it's a divorced wife who are often treated as wife under Section 125 CrPC and may claim maintenance and as for partners once they aren't legally married, they can't give divorce to every other and hence cannot claim maintenance under this section.

**❖ Evidence Act, 1872**

The court may presume the existence of any fact which it thinks likely to possess, where importance is to be given to the common course of natural events, human conduct and public and private business, during a relation on the facts of the actual case. Therefore, where a person and a woman live respectively for a long-term time as a few then there would be an assumption of marriage.<sup>6</sup>

There are several personal laws like the Hindu laws, Muslim laws, Christian Laws, etc. which governs and protect the bond of relation of marriage of a recognized couple. Live-in relationships, being an alien concept to the Indian legislature doesn't have any legal implications for the couples who live together without marriage involved within the relationship. In present situation living relationships also support pre-marital sex, therefore there are high chances of a child being born. These children, unlike the successors born out of wedlock, don't have any rights over the inheritance. Society treats

<sup>3</sup> *Ajay Bhardwaj v. Jyotsna*, 2016 SCC OnLine P&H 9707

<sup>4</sup> Justice V.S. Malimath Committee Report, available at <[https://mha.gov.in/sites/default/files/criminal\\_justice\\_system\\_2.pdf](https://mha.gov.in/sites/default/files/criminal_justice_system_2.pdf)>, pp. 181-194.

<sup>5</sup> *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141

<sup>6</sup> S. 114 of the Evidence Act, 1872.

them as illegitimate children, and they don't accept them. However, the Hon'ble Supreme Court cleared them of this ill-fated according to several judgments. And granted them the status of a legitimate child along with the right to property.

Live-in relationships were legally considered void-ab-initio. But during a judgement in 1978, such relationships are valid for the primary time due to the Supreme Court. If the requisites of a wedding like mental balance, the fulfilment of the majority of marriage, consent, etc. are all satisfied, the couple is taken into account to be during a legal live-in relationship. The couple also considered married if they live together for a considerably long period until proven otherwise.

In a case the Supreme court has given five different types of living together in the excellent judgement of *Indra Sarma Vs V.K.V.Sarma*<sup>7</sup> in 2013. It also stated that such relationships fall within the ambit of Section 2(f) of the Protection of Women Against Domestic Violence Act,2005 that provides an insight into the said concept. In living relationships, the facets of the connection might come to a conclusion, regardless of any decision made by the couple.

The definition of live in relationships isn't clear that the status of the couples during a live-in relationship. There is no specific law on the topic of live in relationships in India. There is no legislation or any law to define the rights and obligations of the parties to a live-in relationship, the status of children born to such couples. The Courts have come forward to give clarity to the concept of live in relationships where the Courts have taken the view that where a man and a woman living together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary.

The first case it was explained by the Supreme Court of India first recognized the live-in relationship as a legitimate marriage was that of *Badri Prasad vs. Dy. Director of Consolidation*,<sup>8</sup> which says that the Court gave legal validity to a Fifty-year live-in relationship of a couple. The Allahabad High Court again recognized the concept of live in relationship within the case of *Payal Katara vs. Superintendent, Nari Niketan and others*<sup>9</sup>, wherein it held that live in relationship is not illegal. The Court said that man and women can live together as per their wish even without getting married. It further said that it's going to be immoral for the society but isn't illegal.

Again, within the case of *Patel and others*<sup>10</sup> the Supreme Court has held that live in relationship between two adults without marriage can't be construed as an offence. It further held that there is no law which postulates that live in relationships are illegal. The concept of live in relationship was again recognized within the case of *Tulsa v. Durghatiya*.<sup>11</sup>

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<sup>7</sup> Special Leave Petition (Crl.) No.4895 Of 2012

<sup>8</sup> 1978 AIR 1557

<sup>9</sup> AIR 2001 All 254

<sup>10</sup> 2006) 8 SCC 726

<sup>11</sup> (2008) 4 SCC 520

In the case of *S. Khushboo vs. Kanniammal & Anr.*<sup>12</sup>, the Supreme Court held that living together may be a right to life. Live in relationship could also be immoral within the eyes of the conservative Indian society but it's not “illegal” within the eyes of law. In this case, all the charges against Khushboo, the south Indian actress who endorsed pre-marital sex and live in relationship were dropped. The Court held that how can it's illegal if two adults live together, in their words “living together can't be illegal”.

However, in one of its judgment *Alok Kumar vs. State & Anr.*,<sup>13</sup> the Delhi High Court has held that live in relation is walk in and walk out relationship and no strings are attached to it. This kind of relationship doesn't create any legal bond between the partners. It was also held that in case of live in relationships the partners cannot complain of infidelity or immorality.

Again, giving recognition to live in relationships, the Supreme Court within the case of *D. Velusamy v. D. Patchaiammal*<sup>14</sup> has held that, a ‘relationship in the nature of marriage’ under the 2005 Act must also fulfil some basic criteria. Merely spending weekends together or a one-night stand wouldn't make it a ‘domestic relationship’. It also held that if a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose it would not, be regarded as a relationship in the nature of marriage.’

The court made it clear that if the man has a live-in arrangement with a woman for sexual reasons, none of them can claim benefits of a legal marriage in the court of law. In order to be eligible for ‘palimony’, a relationship must include certain conditions, the Supreme court said. The following limitations were laid down by the apex Court:

- The couple must hold themselves together out of the society as being akin to spouses;
- They must be of age of majority or legal age; they must be otherwise qualified to enter into a legal marriage, including being unmarried;
- They both must have consented voluntarily cohabited for a significant period of time.

Conscious of the very fact that the judgment would exclude many women in live-in relationships from the advantage of the violence Act, 2005, the apex court said it's not for this court to legislate or amend the law. The parliament has used the expression ‘relationship within the nature of marriage’ and not ‘live-in relationship’ and the court explained that they cannot change the language of the statute.

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<sup>12</sup> AIR 2010 SC 3196

<sup>13</sup> CrI. M. C No. 299/2009

<sup>14</sup> (2010) 10 SCC 469

## **LEGAL STATUS OF CHILD BORN TO COUPLES WHO ARE IN A LIVE-IN RELATIONSHIP**

Since there's no specific law that recognizes the status of the couples in live in relationship, hence the law on the status of children born to couples in live in relationship is also not very clear.

The Hindu marriage Act, 1955 gives grants the status of legitimacy to each child regardless of his birth out of a void, voidable or a legal marriage. But there's no specific law that raises any presumption of legitimacy in favour of children of live in partners. The future of children of live in partners becomes very insecure just in case the partners exit of their relationship. There comes the need of a important provision to safeguard the rights of such children. There must be provision to secure the future of the child and also entitling the children to a share in the property of both the parents.

Again, within the absence of a special legislation, the Supreme Court of India took the initiative to safeguard the interest of children of live in couples. In the case of *Bharata Matha & Ors. vs. R. Vijaya Renganathan & Ors*<sup>15</sup>, the Supreme Court of India has held that child born out of a live-in relationship could also be allowed to succeed inheritance within the property of the parents, if they have any, but doesn't have any right to claim as against Hindu ancestral coparcenary property.

Although Supreme Court of India has granted the legal status to Live-in Relationship, but what happens if one partner decides to steer out. Could the other partner be left homeless? Will the child be born into live-in relationship be recognized by the law? Will it empower women with the proper to Inheritance, right to maintenance, and Right to demand Alimony? Will the law give an equivalent standing status to live-in relationship as that of Marriage? Answers to these questions are changing on a regular basis. According to the recent judgment of Supreme Court of India laid down that, child born out of live-in relationship have a right to inherent the properties left behind by the partners. Bench of Justice P Sathasivam and B S Chauhan said that if a man and a woman live under an equivalent roof and cohabitation for quite a few years, there'll be presumption under Section 114 of the Evidence Act that they live as husband and wife and therefore the children born to them won't be illegitimate. Delhi High Court case (*Arvind Yadav Vs Renu Sharma*, dated 19 January, 2011) wherein an 18 years old unmarried girl chose a path for herself to live with a married man. The court protected their live-in relationship but alerted them that they're going to not be entitled to claim Maintenance and Alimony just in case one of them later walks out of this wedlock. It is so because they are doing not qualify condition No. 3 of live-in relationship. They both must be unmarried.

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<sup>15</sup> 2010 AIR SCC 2685

Even in UK also child born out of such relationship has right to take care of himself/herself. At the top of a relationship, both partners are going to be liable for supporting children financially, no matter which one among you the child accept. The court can make order about who the youngsters should accept. The order will usually allow contact between the kid and therefore the parent with whom the kid isn't living unless there are exceptional circumstances. In Canada there's no difference in law within the status of a child born to someone who is legally married, to one mother, to an individual in a common-law relationship, or to a few during a same-sex relationship or an opposite-sex relationship. A child born out of wedlock is treated within the same way as a child born inside marriage.

Partners living for a long time may have kids together. However, live-in relationship couples aren't allowed to adopt kids as per the rules and regulations Governing the Adoption of children as notified by the Central Adoption Resource Authority. In case of dispute with reference to custody of the kid, you'll also have to consult a Child Custody Lawyer.

In Section- 16 of the Hindu Marriage Act Inheritance rights of children are explained, where the status of legitimacy is provided even to illegitimate children (those born out of marriage) for the sole purpose of inheritance. Therefore, inheritance rights are granted to children born out of a live-in relationship. These rights are available in both ancestral and self-bought properties.

The position on the maintenance rights of children out of marriage are different in personal marriage laws. For instance, under the Hindu Law the father has duty to maintain the kid, whereas under the Muslim Law the father has been absolved of such an obligation.

However, under Section- 125 of the Criminal Procedure Code, remedy is available for children who are unable to claim maintenance under personal laws. Section- 125 provides a legal right of maintenance to wife and children.

Mental trauma affects children who are born out of in such a relationship. There might be custody problems or maintenance problems when the child grows. And these children will be treated as a legitimate according to the decision of the court. Additionally, they need the proper to property, not just ancestral but also self-bought property. Since there's no special law for the upkeep of maintenance of a child born out of such relationships, the law decides to provide children with protection. Thus, evolved the section 125 of the CrPC. It is the provision for all children who are not able to claim remedies in their laws. The Indian law also doesn't allow the couples living to adopt a child as per the terms laid down by CARA.

Therefore, though live-in relationships became legally valid, it's still not legally binding on the partners. It might be a benefit also as an obstacle depending on the expectations of the couple. In a society that shamed premarital sex, accepting a practice like live-in may be a big breakthrough. There are no specific personal laws governing these relationships. However, the Indian Law is trying to bring a change in the nation. And also, it's trying to widen the legal prospect relevant to the present foreign concept. India has a wider idea of what live-in relationship actually defines.

In comparison to formal marriage, the legitimacy of the children born within the live-in relationship is usually questioned. Despite the increasing trend of couples entering in informal relationships, children born out from these relationships have serious legal implications in our country.

Section 112 of the Indian Evidence Act 1872 recognizes a legitimate child, as long as it had been born during the continuance of a legitimate marriage between the mother and therefore the father. An until recent children born from a live-in relationship were considered illegitimate within the eyes of law. But in the case of *Tulsa v. Durghatiya*<sup>16</sup>, the Supreme Court awarded status to the children born from a live-in relationship. Having said that the court also mentioned that the couple should have lived under a roof for an inexpensive amount of your time.

Besides, Section 125 CrPC provides maintenance to children whether or not they are legitimate or illegitimate, till they're minors or after majority if the kid is unable to take care of himself.

Nevertheless, the court in the case of *Dimple Gupta v. Rajiv Gupta*<sup>17</sup>, held within the furtherance of the above-stated view that children from live-in relationships have the right to maintenance.

In the month of June 2018, the Central Adoption Resource Authority (CARA) has barred couples who has a relation in live-in from adopting a child, when its Steering committee held that couple having intercourse without marriage is not considered a stable family in India.

As there are no specific laws that recognize the status of couple in live-in relationship. Hence the law to the status of children born out of live-in relationship is also extremely uncertain. Under the Hindu Marriage Act 1955, For a child born out of live-in relationship there are four rights important which are-

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<sup>16</sup> (2008) 4 SCC 520

<sup>17</sup> 2008 (1) SCC (Cri) 567

- Legitimacy
- Custody
- Maintenance
- Property

The first time when the Supreme Court held the legitimacy of children born out of live-in relationship was in *S.P.S. Balasubramanyam v. Suruttayan*<sup>18</sup>, the Supreme Court had said, “*If a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.*”<sup>19</sup> In addition to this, the court interpreted the status and legislation to an extent that it shows conformity from Article 39(f) of the Constitution of India which sets out the obligation of the State to give the children adequate opportunity so that they develop in proper manner and further safeguard their interest.

Dealing with the recent case on the legitimacy of children of such relationships, Supreme Court in *Tulsa v. Durghatiya*<sup>20</sup> has held that a child born out of such relationship will no longer be considered as an illegitimate child. The important precondition for the same should be that the parents must have lived under one roof and cohabited for a significantly long time for the society to consider them as spouse and it should not be a “*walk-in and walk-out*” relationship.<sup>21</sup>

In another case *Bharatha Matha v. R. Vijaya Renganathan*<sup>22</sup>, the Supreme Court held that a child born out of a live-in relationship may be allowed to inherit the property of the parents (if any) and therefore be given legitimacy in the eyes of law. We have seen that Indian judiciary in the absence of specific legislation have been protecting the rights of the children by giving law a broader interpretation so that no child is “bastardised” for having no fault of his/her own.

G.S. Singhvi, Asok Kumar Ganguly constituted a Special Bench of the Supreme Court on 31<sup>st</sup> March, 2011 in *Revanasiddappa v. Mallikarjun*<sup>23</sup> 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 crystal clear that a child born out of such relationship is not guilty and is authorised to all the rights and privileges that are given to a child born out of a valid marriage. This is the very essence of the Section 16 (3) of the Hindu Marriages Act, 1955 (amended).

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<sup>18</sup> (1994) 1 SCC 460 : AIR 1994 SC 133.

<sup>19</sup> *Ibid.*

<sup>20</sup> (2008) 4 SCC 520 : AIR 2008 SC 1193.

<sup>21</sup> *Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209 : AIR 2010 SC 2933.

<sup>22</sup> (2010) 11 SCC 483 : AIR 2010 SC 2685.

<sup>23</sup> (2011) 11 SCC 1 : (2011) 2 UJ 1342.

**LIVE-IN RELATIONSHIP IN OTHER COUNTRIES – A COMPARATIVE STUDY****❖ United States of America**

Prior to 1970, live-in relationship i.e. Cohabitation was illegal in US, but went on to gain status as a Common Law, subject to certain requirements prescribed under law. The American legal history has been a witness to many consensual sex legislations, which paved the way for cohabitation contracts and their cousins, the "prenuptial agreements".

In USA, the expression 'palimony' was coined which denotes grant of maintenance to a woman who has lived for a considerable period of time with a man without marrying him, and is then deserted by him. Partners during a live-in relationship don't have any right to inherit each other's property, as is that the case for married couples. However, property can be willed to each other.

In Unites States in 1976, the California Supreme Court decided *Michelle Marvin v. Lee Marvin*<sup>24</sup>, holding that agreements between cohabiting couples to share income received during the time they live together can be legally binding and enforceable. The highly publicized suit between actor Lee Marvin and his live-in companion, Michelle Triola Marvin, was the primary of a series of "palimony" suits that became more numerous since the 1980s. After their breakup, Michelle Triola legally adopted the surname Marvin despite never having been married to him, and claimed he had promised to support her for the remainder of her life. The California Supreme Court in *Marvin v. Marvin*, ruled that the presence of a contract between both them gave her an interest in his property. Thus, the common law rule applied to things without alteration, and she or he took far away from the connection and therefore the household what she delivered to it.

**❖ Canada**

Canada has given the official recognition to cohabitation as "common law marriage". In many cases, the countries with federal law allows same rights to common law couples as married couples. Legal sanctity is enjoyed by all common-law live-in couples provided, they have lived together for at least twelve consecutive months or might have given birth to a baby or might have adopted a child.

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<sup>24</sup> 18 Cal.3d 660 (1976).



**❖ France**

In France, a *pacte civil de solidarité* or a civil pact of solidarity commonly referred to as a PACS, is a sort of marital status between two adults (same-sex or opposite-sex) for organising their joint life. It brings rights and responsibilities, but less than marriage. From a legal standpoint, a PACS is a contract involved between the 2 individuals, which is stamped and registered by the clerk of the court. Since 2006, individuals who have registered a PACS are not any longer considered single in terms of their legal status. Their birth records are going to be amended to point out their status as *pacsé* (in a PACS) also.

**❖ Philippines**

In Philippines, the co-ownership rule governs the couples', who are in live-in relationship, right to each other's property. Moreover, according to the Article 147 of the Family Code, when a man and a woman who are qualified to marry each other and are living exclusively with each other as husband and wife but without the benefit of marriage or under a void marriage then both of them have equal shares in the wages and salaries owned by them and any kind of property acquired by both of them shall be under the governance of the rules on co-ownership. It mainly focuses on the properties that were acquired by their actual joint contribution, which in turn could be in terms of money, property or industry. The Family Code expressly governs the property of persons cohabiting without the benefit of marriage. It is required, however, that both must be capacitated, or have no legal impediment, to marry each other.<sup>25</sup>

**❖ United Kingdom**

In United Kingdom, both parents are financially responsible for the children whether they were married, co-habiting or separated. Parents do not generally have the inheritance rights over each other's property unless they are in the Will. This, however, can be contested. Live-in couples are not legally obliged to support each other financially even if they are sharing a house or raising a family together. Unlike married couples, they are not entitled to receive Maintenance from their partners even if they have lived together for a number of years or given up their career to look after the home and children. An unmarried couple can formalise aspects of their status by drawing up a cohabitation contract or living together agreement, which outlines the rights and obligations of the partners toward each other. The Lesbian, Gay, Bisexual and Transgender (LGBT) community which doesn't have marriage rights can enter into a civil partnership. Every child born to

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<sup>25</sup> <http://www.legalservicesindia.com>.

a married woman is assumed to be her husband's child and both have parental responsibility whereas in the case of a live-in relationship, either of the unmarried mother or father has the responsibility of a child but they can also enter into a parental responsibility agreement with the partner for sharing the responsibility. Married as well as cohabitating couples can apply to adopt a child jointly.

#### ❖ **Scotland**

The live-in relation was conferred legal sanctity in Scotland under Family Law (Scotland) Act 2006. Section 25 (2) of the Act postulates that a court of law can consider a person as a cohabitant of another by checking on three factors, namely,

- a. The length of the period during which they lived together,
- b. The nature and kind of the relationship during that period and
- c. The nature and coverage of any financial arrangements.

#### ❖ **Ireland**

In Ireland, the couple living in live-in relationship has been given legal recognition but the public opinions are strictly against any kind of legislation that will provide legal rights for “separated” cohabitating couples who in turn can demand maintenance and/or may share their property with the financially dependent partners. The legislation is applicable to same sex unmarried couples as well as couples from opposite sexes, provided they have been cohabitating for at least 3 years (or 2 years if they have children). The government, with this new legislation, plans to fetch financial and legal protection for financially dependent and vulnerable cohabitants in the event of break up or death.

#### ❖ **Australia**

The Family Law Act of Australia declares that a “de facto relationship” can persist between two people of same or different same sex and that a person can be in a de-facto relationship irrespective of the fact that even if one of the partner or both are legally married to another person or in a de facto relationship with someone else.

#### ❖ **China**

In China, there is no legal procedure required to end a live-in-relationship. Children born out to wedlock have equal rights to those born to parents who are married. Contracts are made between couples in a live-in relationship.

## **RECOMMENDATIONS**

1) Most of the problems relating to live-in relationship arise because of the no statutory definition of the term live-in relationship. Unless and until the concept is not been defined people will remain in confusion of what actually the concept is and will lead to include the extramarital and adulterous relationships under the term live-in relationship. The vulnerable position of woman has led courts to protect woman caught in such relationships by circumstance that sometimes are been presented by media to society as protection of live-in relationship. Such uncertainty of concept of live-in relationship leads to recognize the relationship of married man and an unmarried girl a live-in - relationship.

2) Further, five specific eligibility criteria for the establishment of a non-marital relationship may be adopted or selected to determine the legality of a live-in relationship, namely: exclusivity, sex, age, prohibited degrees of relationship and, competency to consent. The principle of exclusivity consists of two discrete facets. Firstly, the relationship must only consist of two persons, and secondly the parties are not able to possess a status in combination with another status of the same type. Polygamous non-marital relationships will thus be prohibited. The French model of exclusive relationship may be adopted in India. It provides that the existence of a non-marital relationship and marriage form a prohibition to enter into other non-marital relationship. However, if a non-marital relationship has already been registered it will be automatically and immediately terminated upon the celebration of a marriage. As a result, both institutions remain independent of each other. The fact that the parties cannot be involved simultaneously in a non-marital registered relationship and marriage signifies that these two institutions are independent and kept exclusive of each other. The lack of convincing arguments to treat marriage and nonmarital registered relationships differently is the best argument to treat them equally. Thus, the requirements relating to sex of the partners, legal age to enter in intimate relationships, competency to give valid consent and prohibited degree relationship may also be extended for the requirement of validity of live-in relationships.

3) In India we can adopt the model of registration of non-marital live-in relationships as provided in France. The procedure of registration may be provided through a special legislative enactment. Such legislation may also provide for the requirements of registration, place of registration. Researcher suggests that in such legislation the place of registration shall be the place fixed for common residence by such couple. Further, the registration may also be kept open to couples if one of the partners is Indian citizen. Through registration live-in couples shall be allowed to conclude their rights and duties. Mutual termination of live-in relationships may also be allowed under such legislations.

4) To protect the interests of the unmarried partners the provisions of The Philippine Civil Code may be copied in India i.e. the property acquired by both (man and woman) capacitated to marry each other, through their work or industry shall be governed by the rules of co-

ownership and their wages and salaries shall be owned by them in equal shares, unless proved otherwise. Further, when a man and a woman who are not capacitated to marry each other under law lives together as husband and wife the rule of co-ownership shall not apply to properties acquired by them and the properties acquired by both through their joint contribution of money, property or industry shall only be owned by them in common in proportion to their respective contribution, unless proved otherwise.

5) Scottish law relating to intestate succession governing non-married couples may be copied in India. If a partner dies without leaving a Will, their estate shall be distributed according to the rules of intestacy. Surviving partner shall not automatically inherit unless, as a couple, they owned property jointly. Surviving partner shall be allowed to apply to court for a share in deceased partner's estate.

6) Right of child born out of an unmarried relationship to inheritance may be amended by taking inference from Scottish law i.e. even if there is no will, a child of unmarried and married parents can inherit from both parents and the families of both parents like a child born within marriage can inherit automatically from both parents and the extended family of both parents. And researcher further suggests that French law i.e. the estate may be divided into equal shares among child born from such relationship and their legitimate siblings specifically and protecting child from being disenfranchised from parent's estate by restricting parent freely disposing of any part of la réserve, which must be held for children shall be incorporated in Indian law.

7) Section 125 of Code of Criminal Procedure may be amended. Section 125 of Code of Criminal Procedure specifically uses term 'wife' and courts through judicial activism to protect vulnerable women have in many cases extended the protection of this provision. It is of utmost importance here to state that it is not the rights of second wife but the position of vulnerable women which has led courts to protect such women. In many cases courts have shown its helplessness to protect women under this provision which make it necessary to amend Section 125 so that all sections of vulnerable women could be protected. This can be done by amending term 'wife', explained by Explanation (b) to Section 125(1), as to include 'woman in long-term relationship that is presumed a marriage' and 'unmarried woman living-in with a married man on the pretext of man being unmarried, widower or divorcee'.

8) Domestic relationship as defined by Section 29(f) of the Act includes also a relationship in nature of marriage the term that has been extended to protect unmarried couples. However, with the interpretation of this term court has left out of the protection of Act the relationships which are not in nature of marriage. For a relationship to be in nature of marriage it has to be long term and appearance of the couple in society as husband and wife. As it is not necessary that all live-in couples present themselves to society as married and not all the live-in relations may be of such a long-term that can be termed as a relationship in nature of marriage, many women in live-in relationships has been left-out of the protection of the Act. To overcome this lacuna and extend the protection of Act to these women researcher suggests to amending Section 2(f) of the Act by inserting words Unmarried Domestic Partnership

along with term relationship in nature of marriage. Researcher further asserts that Act must be extended to all women whether they are in domestic relationship or any other extra-marital or adulterous relationship irrespective of the moral-status of their relationship.

9) Statutory extension of protection of Section 304B of Indian Penal Code to women in non-marital relationships may be made. To extend protection statutorily to women in non-marital relationships it is necessary to make appropriate amendment in the Section 304B of Indian Penal Code. As the court had felt limitations in the absence of definition of term husband for the purpose of Section 304B of IPC researcher suggests that for attaining the object of this provision i.e. protection of women, the protection can be extended to all women either by inserting words live-in partner or Unmarried Domestic Partner along with word husband in Section 304B of IPC or by inserting an explanation to the term husband i.e. defining husband for this Section including non-marital partner as well.

10) Section 375 of Indian Penal Code may be specifically amended to include live-in partners. An explanation to Exception 2 of Section 375 IPC may be added to the effect that term wife included under this exception does not include female under live-in relationship. There is large number of cases of rape allegations under such relationships on the termination of relationship. This amendment may give clarity to the younger generation about the consequences of their actions.

11) Section 498A of Indian Penal Code may be amended. The courts had observed that protection of Section 498A of Indian Penal Code shall also be available to women and in the absence of marriage the cohabitant cannot escape from the penal consequences of his acts. Following the observation of the court researcher - 361 - suggests that either words live-in partner or Unmarried Domestic Partner may be inserted after word husband in Section 498A Indian Penal Code, or, an explanation to term husband that husband for the purposes of this Section include live-in partner or Unmarried Domestic Partner, may be inserted.

12) Section 21 of the Hindu Adoptions and Maintenance Act, 1956, may be amended. Section 21 of The Hindu Adoptions and Maintenance Act, 1956, defines the dependants of a deceased Hindu. Researcher suggests that term live-in partner or Unmarried Domestic Partner may be inserted as one of the categories of dependants of a deceased Hindu. Such a person may be eligible for maintenance until remains unmarried.

13) Section 16 in The Hindu Marriage Act, 1955, relating to legitimacy of children of void and voidable marriages may be amended. For the protection of rights of children and confer legitimacy on the children it is necessary to extend Section 16 of Hindu marriage Act to children born out of non-married parents. The purpose of the Section i.e. to confer legitimacy on 'children with no fault of their own' could not be fulfilled leaving out the children born out of such relations. Courts have extended the protection of Section 16 of Hindu Marriage Act to child born out of long-term relationships of married man with unmarried woman. Researcher suggests that Section 16 may be amended to include child born out of non-marital relations or unmarried domestic partnership.

14) Law relating to custody and adoption of child may be amended. The Law relating to custody of child of - 362 - unmarried couple should be statutorily equalled with that of married couples. At present as there is no specific legal provision with regard to child of unmarried couple, the custody issues on separation of couple seems to be dealt as child of single mother. Researcher suggests that personal laws should be amended to that effect. Further, the child can be given in adoption by unmarried mother solely. Here researcher wants to suggest that the father of that child should also be involved in the surrender process and mother alone should not be allowed to give a child in adoption if father of child is desired to take the custody of child, keeping in view the best interest of child.

15) Finally, media should not liberally use the term live-in relationship for extramarital relationships. Researcher have observed that print media generally misguided the people by presenting extra-marital relationship as live-in relationship and discussed about the protection of vulnerable women in such circumstances. This is creating a wrong interpretation of the concept of live-in relationship among people.

### **CONCLUSION**

Live-in relationships, common-law marriages, de-facto relationship all terms though are used interchangeably among common people and they have different connotations as all are practiced in different cultures and different legal regimes. The study of these relationships makes the one thing clear that all cultures have its own form of non-marital relationship and further these relationships have different legal and social status as well.

Relationship formation in India has changed tremendously, at least in urban areas. Incited by anything from movies and soap opera to lives of Bollywood persons, the younger generation has started leading a very liberal lifestyle. To know their partners, they denounce the marriage and get down to living-together arrangements. Law and society are two faces of the same coin. Law should progress with society. In the absence of any statutory definition of this concept and law to deal with such relationships Indian judiciary tried to define the concept firstly as a walk-in and walkout relationship where neither any strings are attached, nor does it creates any legal bond between the parties that is renewed every day by the parties and can be terminated by either of the parties without the consent of the other party and one party can walk out at his/her own will at any time. With the increasing litigation by vulnerable women in live-in relationships Indian judiciary tried to iron out certain ambiguous situation by protecting women in 'relationship in nature of marriage'. The concept of live-in relationship in India is still undefined and ambiguous. Further, this ambiguity increases the impacts of non-marital and pre-marital relationships on Indian culture and values. Such relationships have impacts on the institution of marriage and family. The non-marital relationship of parents also impacts the status of children and their rights. These relationships increase the vulnerability of the women and child caught in difficult circumstances.

The rapid increase in non-marital relationships among couples is crucial to our understanding of changing marriage patterns. There is no single answer to whether such relationship is a step towards marriage or an early stage of marriage. Just as cohabitation have multiple meanings for the couples involved, the cohabitation revolution is likely to have had multiple causes. However, it seems that unmarried couples simply do not have a true category in the structures of our Indian society and until it takes its own concrete place this ambiguity will continue to baffle the couples deciding to cohabit and possibly negatively affect their overall quality of the relationship. The lack of classification contributes to cohabitation being a part of the limbo relationships, where it must either lead to something like marriage eventually or not exist at all. The change in a couples' status from dating to live-in and the time and resources that the couple begins to share can become significant factors that negatively affect the relationship overall. In India the couples who enter in non-marital relationship have not any specific provision in any of the statutes which leads us to suggest few amendments in the existing statutes in India so that these non-marital couples could be statutorily benefitted.

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## APPENDIX

<b>INTERVIEW #</b>	<b>AGE GROUP</b>	<b>PROFESSION</b>	<b>DATE</b>
<b>Interview 1</b>	18-25	Student	8 June, 2020
<b>Interview 2</b>	18-25	Law Student	8 June, 2020
<b>Interview 3</b>	26-40	Accountant	8 June, 2020
<b>Interview 4</b>	18-25	Model	8 June, 2020
<b>Interview 5</b>	18-25	Analyst	8 June, 2020
<b>Interview 6</b>	26-40	Job	8 June, 2020
<b>Interview 7</b>	26-40	System Engineer	8 June, 2020
<b>Interview 8</b>	18-25	Working in Ecommerce	8 June, 2020
<b>Interview 9</b>	18-25	Medical Student	8 June, 2020
<b>Interview 10</b>	18-25	Fashion Designer	8 June, 2020
<b>Interview 11</b>	18-25	Practice of Law	8 June, 2020
<b>Interview 12</b>	18-25	Communication Professional	8 June, 2020



<b>Interview 13</b>	18-25	Entrepreneur	8 June, 2020
<b>Interview 14</b>	18-25	Judiciary	8 June, 2020
<b>Interview 15</b>	18-25	Student	8 June, 2020
<b>Interview 16</b>	18-25	Service	8 June, 2020
<b>Interview 17</b>	18-25	B.Tech Student	8 June, 2020
<b>Interview 18</b>	26-40	Advocate	8 June, 2020
<b>Interview 19</b>	41-60	Professor	8 June, 2020
<b>Interview 20</b>	41-60	Home-maker	8 June, 2020
<b>Interview 21</b>	18-25	Chef	8 June, 2020
<b>Interview 22</b>	26-40	Business	8 June, 2020
<b>Interview 23</b>	18-25	Service	8 June, 2020
<b>Interview 24</b>	18-25	Student	8 June, 2020
<b>Interview 25</b>	26-40	Teacher	13 June, 2020
<b>Interview 26</b>	Above 60	Advocate	13 June, 2020
<b>Interview 27</b>	26-40	Consultant	13 June, 2020
<b>Interview 28</b>	26-40	E-commerce Operator	13 June, 2020
<b>Interview 29</b>	41-60	Home-maker	13 June, 2020
<b>Interview 30</b>	18-25	Medical Student	14 June, 2020