

# Status of a Child Born Out A Live-In Relationship

**Abinaya Ashok**

Student

Saveetha School of Law, Saveetha Institute of Medical and Technical Science, (SIMATE), Chennai

adv.abinayaashok0305@gmail.com

**Abstract:** *With the passage of time and urbanization, India's social dynamics have seen some favorable improvements. Whereas a small percentage of the Indian populace has accepted it, a sizable portion remains opposed. Even while films like 'Luka Chhuppi' have helped to mainstream it in Bollywood and regional cinema, there is still hesitation. The objective of this research is whether the Indian society and the judiciary are welcoming about the new age concept and whether a child born out of such relationship is legitimate or not. The research method followed here is a descriptive method (empirical research). A total of 200 samples have been collected out of which all the samples have been collected through field visits by picking the general public at random. The results from the research are majority of the sample population are welcoming and aware about the living relationship concept however they feel it can affect oneself negatively and another finding is that child born out of living relationship is legitimate under the law. It is safe to assume that, given the current legal situation, the child of a live-in relationship will inevitably face a lack of clarity in life in terms of his or her legal position, ancestry, and eventual rights. This might lead to mental and emotional instability in the child's life. To prevent this, explicit rules should be enacted, as well as revisions to unclear wording in existing laws, to provide clarification on the status and rights of children born in a live-in relationship. This will maintain consistency and help the youngster create emotional, mental, and physical stability.*

**Keywords:** Living relationship, legitimacy, child, marriage, Domestic cohabitation

## I. INTRODUCTION

With the passage of time and urbanization, India's social dynamics have seen some favorable improvements. And a slew of progressive rulings over the previous decade are proof of that. In the case of **KS. Puttaswamy v. Union of India**, the Supreme Court recognised privacy as a basic right in 2017. In **NALSA v. Union of India**, the Supreme Court of India upheld transgender people's rights in 2014. In **Navtej Singh Johar v. Union of India**, it decriminalized S. 377 of the Indian Penal Code in 2018. The antiquated beliefs of Indian society have been challenged in a number of court decisions. Certain social truths, however, remain unaccepted and are viewed through the prism of patriarchal morality; for example, live-in partnerships are a classic example.

Whereas a small percentage of the Indian populace has accepted it, a sizable portion remains opposed. Even while films like 'Luka Chhuppi' have helped to mainstream it in Bollywood and regional cinema, there is still hesitation. Following two contentious decisions by the Punjab and Haryana High Courts in May 2021, the topic acquired prominence. First, the Court rejected extending protection to couples cohabiting in a live-in relationship in **Gulzar Kumari v. State of Punjab and Ujjawal v. State of Haryana**, finding that such partnerships are morally and socially wrong, capable of undermining the moral structure of Indian society.

Thankfully, the Punjab and Haryana High Court, in a different case, stated that the ability to choose whether to marry or engage in a non-formal way of live-in partnerships is inherent in the right to life and personal liberty, just days following these judgments. In a similar vein, several High Courts have recently awarded police protection to a live-in couple, supporting their fundamental right to life and personal liberty as outlined in Article 21 of the Indian Constitution.

In India, the legality of live-in relationships is mostly unknown. While there is no legislation in India that defines live-in partnerships, the judiciary has been open to the idea. So, despite the fact that it is rather popular nowadays, couples



are not afforded any legal protections because the state does not recognise their relationship. The topic is a puzzle for marriage, and it frequently acts as a barrier to obtaining social security benefits.

### **Meaning And Legal Status Of Live-In Relationship In India**

Although there is no specific definition for the word "live-in relationship," it refers to domestic cohabitation between two unmarried people. Couples are increasingly embracing the concept of live-in relationships. However, it is possible to say that the prevalence is higher in metros and tier 1 cities, particularly among upwardly mobile youth. For a variety of reasons, people choose live-in relationships over weddings.

The Supreme Court ruled in **Payal Sharma v. Nari Niketan** that a man and woman could live together without getting married if they wanted to. The Court clarified the distinction between law and morality, stating that while live-in relationships are considered immoral by society, they are neither illegal nor an offense. Two people who cohabit and stay in a live-in relationship are not committing a crime. It stressed that, while live-in relationships are socially unpleasant in some parts of India, they are neither a crime nor a sin.

### **The Right to Maintenance under Section 125 of the Cr.P.C.**

Palimony is a term that is widely used to describe maintenance in live-in relationships. The right to maintenance is covered by Section 125 of the Cr.P.C. in India. This law, which was enacted to help 'destitute' wives, helpless minor children, and infirm parents attain social justice, is now applicable to the needy partner of live-in partnerships.

An amendment was made in response to the Malimath Committee on Criminal Justice Reforms' suggestion to update Section 125 of the Criminal Procedure Code and change the definition of "wife" therein. The Supreme Court overturned an earlier decision in **Chanmuniya v. Virendra Kushwaha**, upholding a woman in a live-in relationship's entitlement to maintenance under Section 125 of the Cr.P.C. The rationale for granting such a privilege to a woman in a live-in relationship is to ensure that a male does not take advantage of legal loopholes by enjoying the benefits of a de facto marriage while failing to fulfill the marriage's obligations.

### **OBJECTIVE**

Whether the respondents are aware about livin relationships

Does a child born out of a livin relationship have a legal status ?

Weather the indian society and the judiciary are welcoming about the new age concept

## **II. LITERATURE REVIEW**

**1.Choudhry laxmi 2021** Live-in relationship, that is, living together as a couple without being married to each other in a legally accepted way, is considered a taboo in India. But recently, such relationships are becoming increasingly common due to a variety of reasons. In absence of any specific legislation, rules, or customs on the subject, the Supreme Court has issued certain guidelines in its judgment for regulating such relationships. This article tries to figure out the current legal positions governing the live-in relationships in India after making a systemic assessment of these judgments.

**2.Divya singh May 2020** Under all societies in the world, the status of a child i.e. whether it is born legitimate or illegitimate has great consequence. The inheritance rights of children are majorly associated and dependent upon the tag of legitimacy and illegitimacy in Indian laws. There is the present need of the time to explore and throw light upon the legitimacy and inheritance rights of the children born from the relationship other than the marriage. The research paper aims to explore the status of the legitimacy of the children and their inheritance rights who are not born in the legal marital wedlock, instead are born from a live-in relationship.

**3.Camile Oliveira, Erin Baines 2020** In this article, we look at rare cases where males who father children as a result of conflict-related sexual violence take complete or partial responsibility for their children's well-being. In relevant international policy frameworks, children ``born of war" are increasingly acknowledged as a specific victim group. Their social status is midway between their mother's victimization and their father's perpetration. They frequently face



social rejection and loss of identity as a result of their birth circumstances, which has a long-term influence on their well-being. Previous research has mostly focused on the issues that their mothers confront as caregivers and victims of sexual assault during warfare.

**4.Nurlaelawati, E., & Van Huis, S. (2019)** The goal of this article is to show how the notions of biological fatherhood, derived from the human-rights framework, and adoption, derived from the customary law framework, have been adapted into Indonesian Islamic family law through the cases of children born out of wedlock and adopted children. We believe that introducing external notions into Muslim family law necessitates an adaptation process that determines the relationship between these external concepts and core Islamic family law concepts. This adaptation to core Islamic standards means that biological fatherhood does not lead to a full legal father-child relationship in the case of children born out of wedlock.

**5.Ali N, Phillips R, Chambers C2019** When thinking on and managing personal relationships, young Muslims in the UK are creating room to have greater control over their personal lives by using the terms 'halal' and 'haram.' The significance of 'halal dating' within the lived experiences and sexual relationships of young British Muslims is explored in this article. It is based on 56 in-depth interviews with young (16–30 years old) British Muslims with Pakistani ancestry. According to this study, many young British Muslims date or have dated, despite popular stereotypes and expectations.

**6.Orón, J.VAkriovou, KScalzo, G. 2019** The relationship between science and faith is not a given, nor is it objectively defined, but rather depends on personal ways of approaching this relationship. Accordingly, it can be lived as a conflict, i.e. as an agency striving to master independent and separate domains or as a process of dialogue or an integral relationship.

**7.Luis 2018** In recent years there has been increased interest in couples Living Apart Together (LAT) within the sociology of the family in Europe. One of the main questions concerns understanding their evolution over time. Given the lack of longitudinal data, the present study focuses as a proxy to study the perception LATs hold of their future and the influencing factors.

**8.Garcia Quiroga 2016** Currently, a big number of youngsters are in Alternative Care. The relationship they form with their temporary caretakers can have a big impact on their growth. However, little research on attachment with temporary caregivers has been published. The purpose of this review is to look at the existing research on attachment types in children in alternative care settings (Children's Homes and Foster Care). In all contexts, the review examines rates of attachment styles and associated factors (such as setting characteristics, children, and caregivers).

**9.Stephans April 2015** Because marriage has been denied to same-sex couples, it is likely that the meaning and significance ascribed to non-marital cohabitation may be unique. Further, it is unclear whether same-sex couples view marriage as important to their relationships, and if they do, why. Using qualitative data from 526 individuals in cohabiting same-sex relationships across 47 states, we explored (1) the meaning and significance of cohabitation and (2) the perceived importance of legal marriage to the relationship.

**10.Kerry H Robinson 2012** Children's challenging citizenship is discussed in this conversation, which takes place in the heated backdrop of children being considered sexual citizens. The relationship between childhood and sexuality is fraught with difficulties, controversies, and complexities; it is one that is openly and officially based on exclusion, with children constituted as needing protection from sexuality, which is considered a 'adults-only' domain, dangerous to children.

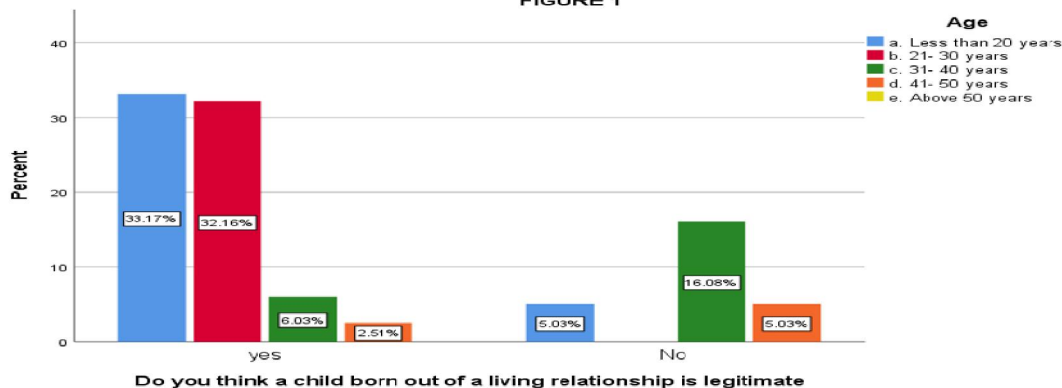
### III. METHODOLOGY

The research method followed here is a descriptive method ( empirical research). A total of 200 samples have been collected out of which all the samples have been collected through field visits by picking the general public at random. The samples are taken from many parts of India. The statistical tool used in this study is graphical representation. An extensive synthetic review of literature has been conducted to map the status of a child born out of a living relationship in India.



#### IV. ANALYSIS

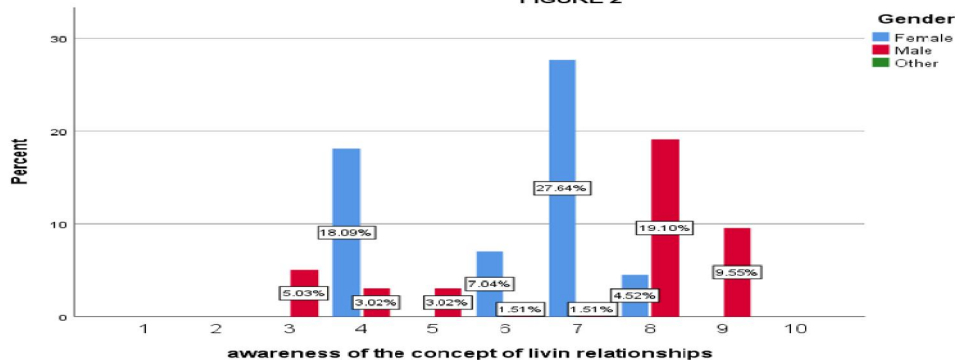
FIGURE 1



#### LEGEND:

Figure 1 represents the dependent variable whether a child born out of a living relationship is legitimate.

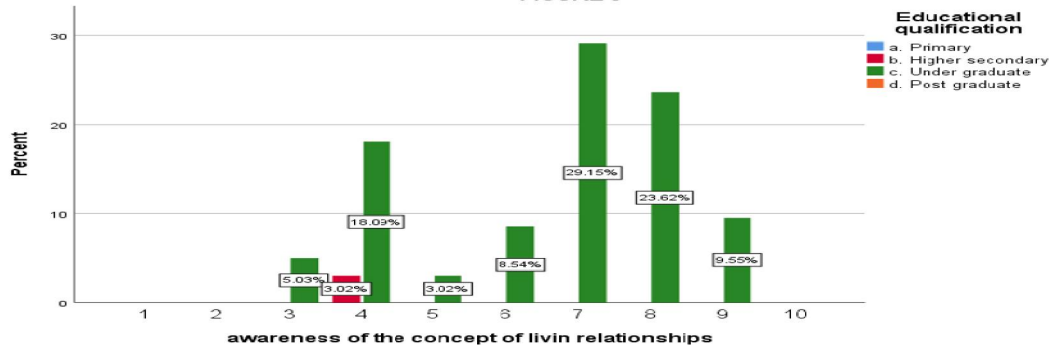
FIGURE 2



#### LEGEND:

Figure 2 represents the graph on the awareness of the concept of living relationships and independent variable gender.

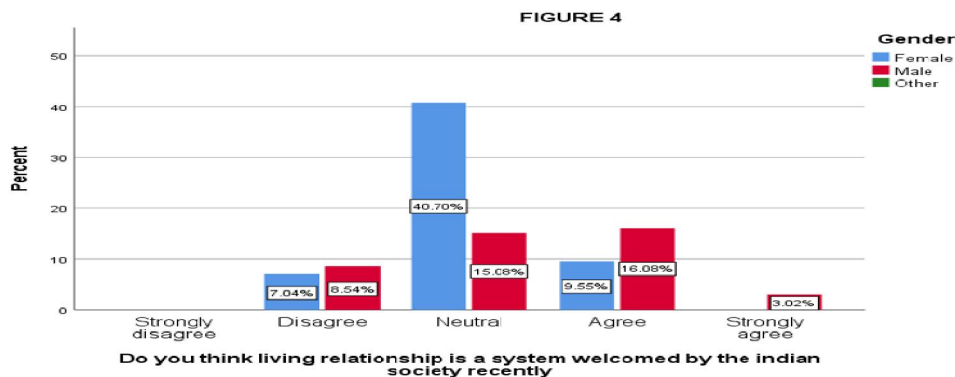
FIGURE 3



#### LEGEND:

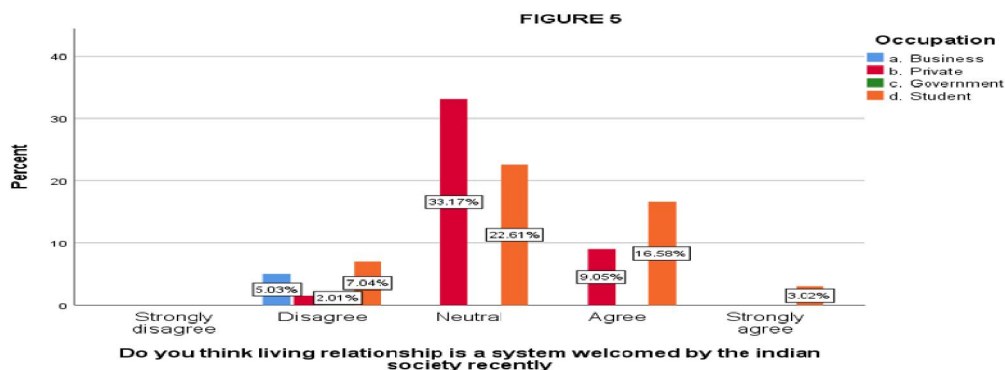
Figure 3 represents the graph on the awareness of the concept of living relationships and independent variable educational qualifications.





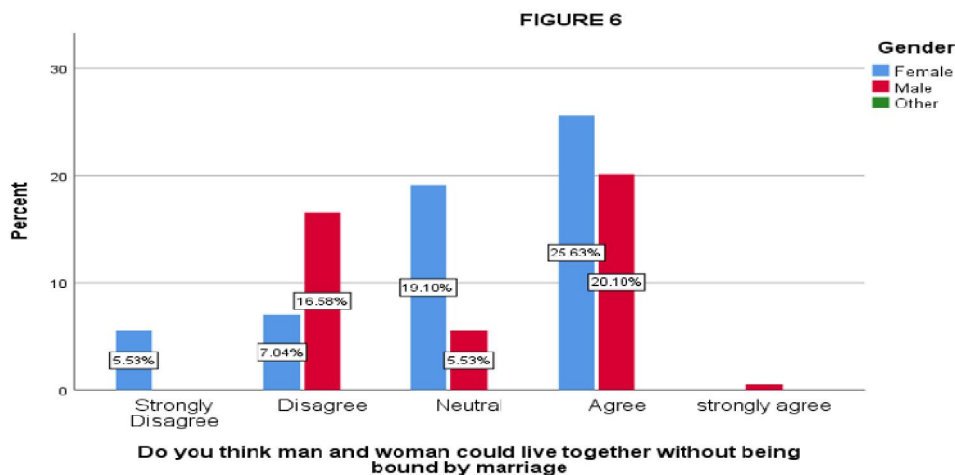
**LEGEND:**

Figure 4 represents whether the living relationship is welcomed by the Indian society and the independent variable gender.



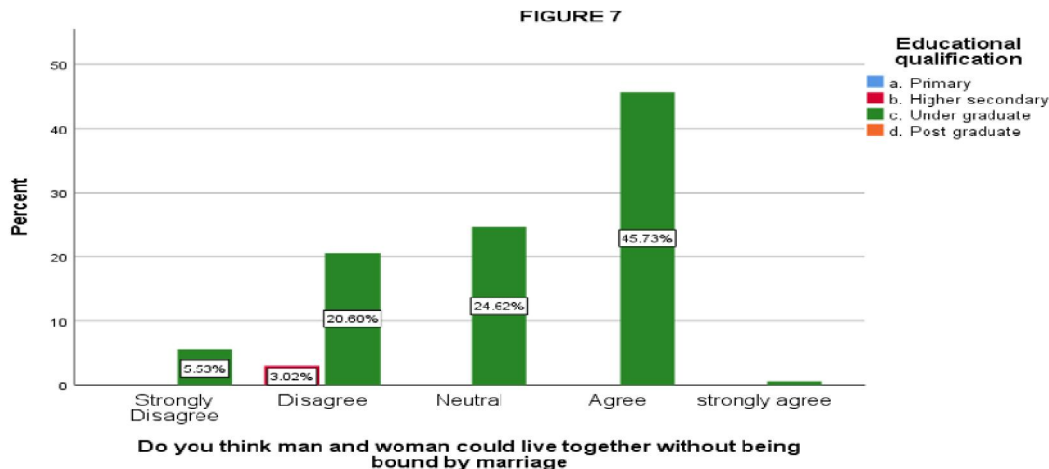
**LEGEND:**

Figure 5 represents whether the living relationship is welcomed by the Indian society and the independent variable occupation.



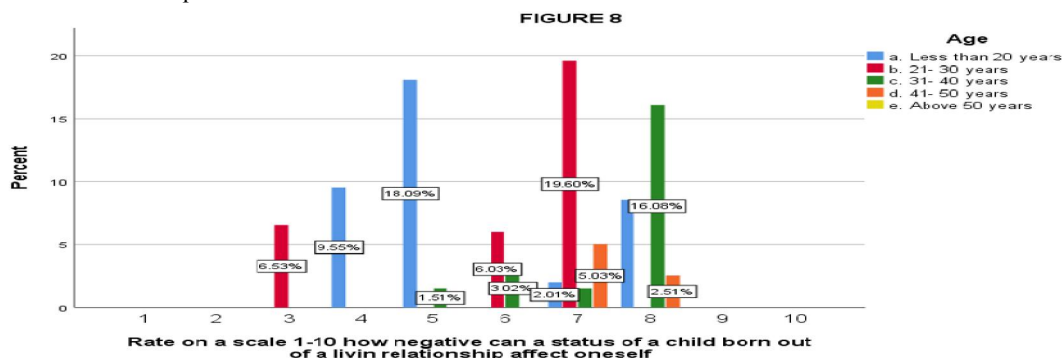
LEGEND:

Figure 6 represents whether a man and woman could live together without being bound by marriage and independent variable gender.



LEGEND:

Figure 7 represents whether a man and woman could live together without being bound by marriage and independent variable educational qualification.



LEGEND:

Figure 8 represents the rating of 1-10 how negatively a status of a child born out of a living relationship affects oneself along with the independent variable age of the sample population.

## V. RESULTS

(FIG 1) Majority of the sample population say yes that a child born out of a living relationship is legitimate. 32% Respondents under the age category of less than 20 years say yes and 30% of respondents under the age category of 21-30 years. ( FIG 2) Represents the awareness of the concept of living relationship. The graph shows that the majority of females and males are well aware about this concept in this new age.(FIG 3) Represents the awareness of the concept of living relationship. The graph shows that 23% of undergraduates are well aware about this concept in this new age.(FIG 4) represents whether the living relationship is welcomed by the Indian society and 40% of female respondents are neutral and male respondents are more welcoming about this concept .(FIG 5) represents whether the living relationship is welcomed by the Indian society and majority of students and sample population belonging to the private sector are welcoming about the concept of living relationship.(FIG 6) represents whether a man and woman could live together without being bound by marriage. 16% of male disagree and 20 % of male agree that that relationship can exist. 25% of female respondents are also agreeing with that statement. (FIG 7) represents whether a





man and woman could live together without being bound by marriage. 45% of respondents who are undergraduates accept that man and woman could live together without being bound by marriage. **(FIG 8)** represents the rating of 1-10 how negatively a status of a child born out of a living relationship affects oneself. Looking at the graphical representation, the majority of the sample population feels that being in a living relationship can create a negative impact in one's life in this society.

## **VI. DISCUSSION**

**(FIG 1)** Majority of the sample population say yes that a child born out of a living relationship is legitimate. 32% Respondents under the age category of less than 20 years say yes and 30% of respondents under the age category of 21-30 years. In 2008, through the case of *Tulsa & Ors vs. Durgatiya & Ors*, the Supreme Court established legal status for children born in a live-in relationship. One of the important preconditions laid down by the court for a child born in a live-in relationship to be treated as legitimate is that its parents must have cohabited under one roof for a long period portraying themselves to society as being similar to husband and wife. In simple words, it must not be a 'walk in and walk out' relationship. The court further stated that a child born in a live-in relationship shall have rights over its parents' property. Since the respondents belonging to the 21-30 age category they belong to the millennial category therefore they are more accepting and forward thinking. **(FIG 2)** Represents the awareness of the concept of living relationship. The graph shows that the majority of females and males are well aware about this concept in this new age. live-in relationship is considered taboo. The conservative Indian society considers the concept of live-in relationships immoral but the Indian law is liberal enough to not view them as illegal relationships. The Supreme Court of India has played a significant role in establishing a legal basis for the children born out of live-in relationships through its pronouncements. Recently, the Kerala High Court also took a step forward in eliminating the uncertainty revolving around the legal status of a child born in a live-in relationship. **(FIG 3)** Represents the awareness of the concept of living relationship. The graph shows that 23% of undergraduates are well aware about this concept in this new age. A live-in relationship is considered taboo. The conservative Indian society considers the concept of live-in relationships immoral but the Indian law is liberal enough to not view them as illegal relationships. **(FIG 4)** represents whether the living relationship is welcomed by the Indian society and 40% of female respondents are neutral and male respondents are more welcoming about this concept. In view of the contradictory findings of various courts on the matter concerned, it is laudable that the Punjab and Haryana High Court is the first court which has recently constituted a larger bench to consider the above stated vexed position of the law. **(FIG 5)** represents whether the living relationship is welcomed by the Indian society and majority of students and sample population belonging to the private sector are welcoming about the concept of living relationship. A live-in relationship is a continuous cohabitation for a longer period between two people who are not legally married to each other but share a common household. Thus, despite being married they live like a couple. In India, no specific legislation or customs is governing the same. **(FIG 6)** represents whether a man and woman could live together without being bound by marriage. 16% of male disagree and 20 % of male agree that that relationship can exist. **(FIG 7)** represents whether a man and woman could live together without being bound by marriage. 45% of respondents who are undergraduates accept that man and woman could live together without being bound by marriage. Since the respondents belong to the millennial category therefore they are more accepting and forward thinking and more aware due to the new generation build up. **(FIG 8)** represents the rating of 1-10 how negatively a status of a child born out of a living relationship affects oneself. Looking at the graphical representation, the majority of the sample population feels that being in a living relationship can create a negative impact in one's life in this society. This might lead to mental and emotional instability in the child's life. To prevent this, explicit rules should be enacted, as well as revisions to unclear wording in existing laws, to provide clarification on the status and rights of children born in a live-in relationship. This will maintain consistency and help the youngster create emotional, mental, and physical stability.



## VII. CONCLUSION

As a result, a live-in relationship is frowned upon in India. Live-in relationships are considered sinful by conservative Indian society, yet they are not considered criminal by Indian law. Through its declarations, the Supreme Court of India has played a vital role in establishing a legal basis for children born out of live-in partnerships. The Kerala High Court recently took a step toward resolving the ambiguity surrounding the legal status of a kid born in a live-in relationship. A child born to a live-in couple must be accorded the same legal standing as a child born to a married couple. In the eyes of the court, such a child will be regarded as a legitimate child.

In light of the current situation, it is reasonable to infer that, while certain laws, such as Section 16 of the HMA 1955, offer legitimacy to children born out of live-in partnerships, their rights to ancestral property and support remain contested and vary from case to case. This is in violation of Article 39 (f) and creates ambiguity in the existing situation. Similarly, despite the presence of Section 6 (b) of the HMGA 1956, custody of a child born out of a live-in relationship is up to interpretation. This might lead to mental and emotional instability in the child's life. To prevent this, explicit rules should be enacted, as well as revisions to unclear wording in existing laws, to provide clarification on the status and rights of children born in a live-in relationship. This will maintain consistency and help the youngster create emotional, mental, and physical stability.

## REFERENCES

- [1]. Nurlaelawati, E., & Van Huis, S. (2019). THE STATUS OF CHILDREN BORN OUT OF WEDLOCK AND ADOPTED CHILDREN IN INDONESIA: INTERACTIONS BETWEEN ISLAMIC, ADAT, AND HUMAN RIGHTS NORMS. *Journal of Law and Religion*, 34(3), 356-382. doi:10.1017/jlr.2019.41(Nurlaelawati and van Huis 2019)
- [2]. Camile Oliveira, Erin Baines, Children 'born of war': a role for fathers?, *International Affairs*, Volume 96, Issue 2, March 2020, Pages 439–455, <https://doi.org/10.1093/ia/iaa007>(Oliveira and Baines 2020)
- [3]. Almack K. What's in a Name? The Significance of the Choice of Surnames Given to Children Born within Lesbian-parent Families. *Sexualities*. 2005;8(2):239-254. doi:10.1177/1363460705050857(Oliveira and Baines 2020; Almack 2005)
- [4]. Ali N, Phillips R, Chambers C, Narkowicz K, Hopkins P, Pande R. Halal dating: Changing relationship attitudes and experiences among young British Muslims. *Sexualities*. 2020;23(5-6):775-792. doi:10.1177/1363460719850113(Ali et al. 2020)
- [5]. Robinson KH. 'Difficult citizenship': The precarious relationships between childhood, sexuality and access to knowledge. *Sexualities*. 2012;15(3-4):257-276. doi:10.1177/1363460712436469(Robinson 2012)
- [6]. Adam, Barry D. 2006. "Relationship Innovation in Male Couples." *Sexualities*. <https://doi.org/10.1177/1363460706060685>.
- [7]. Ali, Nafhesa, Richard Phillips, Claire Chambers, Kasia Narkowicz, Peter Hopkins, and Raksha Pande. 2020. "Halal Dating: Changing Relationship Attitudes and Experiences among Young British Muslims." *Sexualities*. <https://doi.org/10.1177/1363460719850113>.
- [8]. Almack, Kathryn. 2005. "What's in a Name? The Significance of the Choice of Surnames Given to Children Born within Lesbian-Parent Families." *Sexualities*. <https://doi.org/10.1177/1363460705050857>.
- [9]. Ayuso, Luis. 2019. "What Future Awaits Couples Living Apart Together (LAT)?" *The Sociological Review*. <https://doi.org/10.1177/0038026118799053>

