JOINT ADOPTION BY COUPLES IN A LIVE-IN RELATIONSHIP IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

The Indian Judiciary is recognizing cohabitation of unmarried couples or partners in live-in relationships in India as valid through its interpretation and judgment. Though there are no explicit and unilateral provisions related to live-in relationships in India, section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 specifies the words 'relationship in the nature of marriage'. In recent days due to the increasing number of cases relevant to recognition of live-in relationship in courts, the state of Uttarakhand as enacted the Uniform Civil Code of Uttarakhand, 2024. This state Act clearly recognizes and defines live-in relationship in section 3(4)(b) and also have clear provisions for regulations to be followed by the partners in live-in relationships in Part III of the Act from section 378 to 389. Even the state of Gujarat as passed a bill 'The Gujarat Uniform Civil Code 2026' which also defined live-in relationships in section 3(3)(a) and provisions for regulations in Part III from section 384 to 395. It is clear that, India has started recognizing live-in relationships through judiciary and legislations.

This recognition with lack of uniform codified statues or legal provisions in India has raised concerns on adoption of children by couples in live-in relationships. Section 57 of the Juvenile Justice (Care and Protection of Children) Act 2015 and regulation 5 of the Adoption Regulation 2022 of the Central Adoption Resource Authority, has provided who can adopt the children or the eligibility of the prospective parents to adopt, which clearly states only either of the three- married couples, single or divorced persons can adopt. Though Uttarakhand enacted the Uniform Civil Code of Uttarakhand, 2024 and the bill passed by the Gujarat have recognized and provides provisions for live-in relationships, there is no provision for adoption.

This doctrinal research critically analyses the legal frameworks: the Adoption Regulation 2022 of the Central Adoption Resource Authority and the Juvenile Justice (Care and Protection of Children) Act 2015, and the landmark supreme court judgment in Supriya Chakraborty v. Union of India. This research analyses requirement of legal provisions in India for joint adoption of child and the consideration of child's welfare in adoption. When both the Central Adoption Resource Authority and the Juvenile Justice (Care

and Protection of Children) Act 2015, recognized that single person can adopt children, it must also recognize the joint adoption by couples in live-in relationships. The assumption that only child adopted by married couple can be loved and safe is wrong. This study concludes that joint adoption by couples in a live-in relationship must be permitted in India considering the child's welfare and interest, stability of the relationships between the partners and their health and financial stability of the couples in live-in relationship.

I. Introduction

Cohabitation of unmarried couples or live-in relationship is now becoming a common practice in India[1]. Live- in relationship are being recognized by both judiciary and through legislations. One of the significant statutes which has recognized and has a provision for live-in relationship is the Protection of Women from Domestic Violence Act, 2005. Section 2 (f) of the Act have specified the words 'relationship in the nature of marriage'. Even Indian judiciary started recognizing live-in relationship are legally valid and as a right to life and liberty in many cases through its interpretation. Recently many Indian states are bringing state laws and bills recognizing live-in relationships and rights of the couples. When the cohabitation of unmarried couples is being recognized it raises certain issues in determination of maintenance, child born out of live-in relationship, inheritance right of the child. In addition to that it also raises a question whether the partners in live-in relationship possess the right to joint adoption of a child.

Adoption is a process through which a child is being separated from their biological parents and becomes a lawful child to the adoptive parent with all rights, privileges and obligation similar to that of the biological parent[2]. Adoption of a child must be primarily based upon key factors like child's interest and welfare, the ability of the prospective parents: physically fit, emotional stability and financial stability to take care of the child. In many cases Indian judiciary has highlighted the consideration of child's interest and welfare is significant in adoption. The Juvenile Justice (Care and Protection of Children) Act 2015 and the Adoption Regulation 2022 of the Central Adoption Resource Authority (CARA) are the primary statues which deals with adoption. Section 57 of the Act and regulation 5 of the Adoption Regulations 2022 deals with eligibility of the prospective adoptive parents. Section 57 (1) of the Juvenile

1 Chatterjee, S. (2020), Legal Recognition of Live-In Relationship: An Emerging Trend of Social Transformation in India, Indian Journal of Law and Justice, available at: https://ir.nbu.ac.in/handle/123456789/3988 (last accessed on 10 November, 2026).

2 Section 2(2) of the Juvenile Justice (Care and Protection) Act 2015

Justice (Care and Protection of Children) Act 2015 has enlisted the eligibility criteria for adoption, section 57(2) and 57(3) states who are eligible to adopt and regulation 5(3) of the Adoption Regulation 2022 specifies the requirement of mandatory two years period of stable married relationship. Further, the judicial reasoning by the Supreme Court in the case Supriyo @ Supriya Chakraborty v. Union of India [3]has laid a foundation for consideration of joint adoption by couples in live-in relationships.

This research paper critically analyses the necessity to permit the joint adoption by couples in live-in relationships in India. It analyses whether the eligibility of the adopting prospective parents should be determined based upon the status of their relationship or based upon the ability to take care and safeguard the child's interest and welfare. The study emphasizes that the eligibility of the persons who can adopt must solely be determined based upon their potential in safeguarding the child's interest and welfare and not based upon the status of their relationships.

II. Recognition of Live-in Relationships in India

In India there is no unified central statue having explicit provision for live-in relationship. A significant statute which impliedly recognizes cohabitation of unmarried couples or live-in relationship is the Protection of Women from Domestic Violence Act, 2005[4]. Section 2(f) of the Act has defined the term domestic relationship as a relationship between two persons who lives together in a shared household, when they are related by consanguinity, marriage or relationships in the nature of marriage, adoption or are family members living together as a family. The words 'relationships in the nature of marriage' is pointing towards live-in relationships or cohabitation of unmarried couples. Indian judiciary recognizes live-in relationship by interpreting this section in many relevant cases[5]. In the landmark case D. Velusamy vs. D. Patchaiammal[6] the court gives a clarity on what relationships are falling in the ambit of "relationships in the nature of marriage". The court opines that "relationships in the nature of marriage" is akin to the common marriage and it must satisfy the following:

[3] AIR 2023 SC 5283

[4] Anuja Agarwal (2012) Law and 'Live-in' Relationships in India, Economic & Political Weekly, available at: https://www.jstor.org/stable/41720191 (last accessed on 10 November 2026).

5 Shrey Puri, Recognition Of Live-In Relationships In India: Judicial Trends And Legal Challenges, Indian Journal of Law and Research, available at: https://www.ijllr.com/post/recognition-of-live-in-relationships-in-india-judicial-trends-and-legal-challenges (last accessed on 10 November, 2026)

[6] (2010) 10 SCC 469

a) The couple must portray themselves as spouses to society.

b) They must be of legal age to marry.

c) They must be qualified to enter into a legal marriage which includes being unmarried.

d) They must be voluntarily cohabitated in a shared household for a significant time period and shows themselves to the world as spouses.

Through this judgment by the Supreme Court of India, live-in relationships satisfying all the above pre-requisites are considered as 'relationship in the nature of marriage' and it points out that the parliaments intent in including the words for the purpose of the recognition of such relationships and enforcement of the legal rights in the country.

In the case Indra Sarma vs. V.K.V. Sarma[7], the Supreme Court clearly pointed out live-in relationship which are not considered in the ambit of 'relationship in the nature of marriage'. The court in its judgment opined that not all live-in relationships are relationships in the nature of marriage. In this case the court finds out that the Appellant has entered relationship with the Respondent intentionally with a knowledge that the respondent is already married, thus the appellant had an intention to break the marriage and separate the respondent from his wife, committing an intentional tort. The court held that this kind of live-in relationships will not fall under the ambit of 'relationship in the nature of marriage' as specified in the section 2(f) of the Protection of Women from Domestic Violence Act, 2005.

Due to the absence of the provision for live-in relationships and constant rise in the cases before the courts in determining the status of live-in relationship and the legal rights of the persons associated in such relationship, some states in India are recognizing live-in relationship through state laws and bill. The state of Uttarakhand has enacted the Uniform Civil Code of Uttarakhand 2024 has defined live-in relationship in the section 3(4)(b) and also have clear provisions for regulations to be followed by the partners in live-in relationships in Part III of the Act from section 378 to 389. The state of Gujarat as passed a bill 'The Gujarat Uniform Civil Code 2026' which also defined live-in relationships in section 3(3)(a) and provisions for regulations in Part III from section 384 to 395.

[7] (2013) 15 SCC 755

III. Legal Frameworks governing Adoption in India

In India the Juvenile Justice (Care and Protection of Children) Act 2015 and the Adoption Regulation 2022 of the Central Adoption Resource Authority (CARA) are the primary statutes dealing with adoption of children in India and inter-country.

a) The Juvenile Justice (Care and Protection of Children) Act 2015

According to Section 2(2) of the Act, Adoption is a process through which a child is being separated from their biological parents and becomes a lawful child to the adoptive parent with all rights, privileges and obligation similar to that of the biological parent. Section 57 of the Act deals with the eligibility of the prospective adoptive parents. Section 57(1) emphasized the eligibility criteria for the prospective adoptive parents that the parents must be physically fit, financially stable, mentally alert and highly motivated to adopt a child for providing and upbringing to him. Section 57(2) states in the case of married person, the consent of both the spouses are required and section 57(3) specifies the single or divorced person are also eligible to adopt. Section 57(4) specifies that single male cannot adopt a girl child and finally section 57(5) mentions that any other criteria which may be specified in the adoption regulation will be followed. In the case Welfare Home for Children v. E. Naveen Kumar[8], the Delhi High Court opined that the adoptive parents must be physically fit, financially stable, mentally alert and highly motivated to adopt a child for providing and upbringing him and should have an emotional bond with the child. In Welfare Home for Children v. Zachary Arlyn Wabeke[9], the Delhi High Court recognized that single or divorced person also possess the eligibility to adopt a child, if they are physically fit, financially stable, mentally alert and highly motivated to adopt a child for providing and upbringing him and able to love the child.

b) The Adoption Regulation 2022

Regulation 5 of the Adoption Regulations 2022, framed by the Central Adoption Resource Authority (CARA), also deals with the eligibility criteria of the prospective adoptive parents. Regulation 5(1) specifies that the parents shall be physically, mentally, emotionally and financially capable and they must not have any life- threatening medical conditions, additionally, they should be convicted of any criminal charges or be an accused of child rights

[8] Delhi High Court, W.P.(C) No. 11040 of 2019
[9] Delhi High Court, W.P.(C) No. 7801 of 2019

violation. Regulation 5(2) states that any person can adopt irrespective of their marital status, whether or not they have a biological son or daughter. Regulation 5(3) emphasize that the couples in marriage must have two years of stability in their marital relationship in adopting a child except for relative or step- parent adoption.

On analyzing the both legal frameworks, it can be construed that either of the three- single person, married couples or divorced persons are only eligible to be prospective adoptive parents and that they must be physically and mentally fit, financially stable and emotionally strong to uplift and nurture a child, and both the frameworks doesn't recognize the joint adoption by couples in live-in relationships.

IV. Judicial Reasoning in Supriyo @ Supriya Chakraborty v. Union of India (2023)

Supriyo @ Supriya Chakraborty vs. Union of India[10], is the Supreme Court's landmark judgment pertaining to same-sex marriage, civil unions and joint adoption, decided by five-judge bench. In this case, the petitioner has challenged the regulation 5(3) of the Adoption Regulations 2022, framed by the Central Adoption Resource Authority (CARA) which mandates that the couples in marital relationship must have at least two years of stable marital relationship to adopt a child, except the relative or step-parent of the child. The majority- Justices Ravindra Bhat, Hima Kohli, and P.S. Narasimha has upheld the regulation 5(3) of the Adoption Regulations 2022, with the following reasonings:

i. The inclusion of the word "unmarried couples" in Regulation 5(3) for the purpose of eligibility to adopt requires legislative action. Questions related to maintenance, child's support, protection and inheritance right of the child can better be answered by legislative and executive only.

ii. Marriage has been well-recognized and well-structured in all the legal frameworks, thus possess a clarity and certainty towards responsibility of the parents toward the child, custody, maintenance, inheritance and long-term child's welfare and protection.

iii. The word "marital relationship" in regulation 5(3) of the Adoption Regulations 2022 is constitutional and not beyond the ambit of the Juvenile Justice (Care and Protection of

[10] 2023 INSC 920

Children) Act 2015. The word marital must be viewed in a broader context.

On the other hand, Chief Justice D.Y. Chandrachud and Justice S.K. Kaul dissented on the issue relevant to adoption, with the following judicial reasonings:

i. The Adoption Regulations 2022, framed by the Central Adoption Resource Authority (CARA) has ultra-vires the parent legislation, the Juvenile Justice (Care and Protection of Children) Act 2015. The purview of the section 57 has recognized single and divorced persons eligible to adopt, but the regulation bars the intention of the Act by adding the word marital.

ii. The regulation violates the Article 14, which deals with right to equality. The regulation creates a distinction between married and unmarried couples, failing to consider the primary objective of the state "child's interest, welfare and protection".

iii. Marriage by itself do not guarantee the child's interest, welfare and protection. Married couples can be violent, lacks parental responsibility, be emotionally unavailable. Primary consideration must be given to whether the prospective adoptive parent can love, protect and fulfill the child's interest and welfare.

iv. The Regulation must be read in manner excluding the word "marital" in the regulation 5(3), which would allow unmarried couples as an eligible prospective adoptive parent, for the purpose of joint adoption.

V. Eligibility of Couples in Live-in Relationship for Joint Adoption: A Critical Analysis

The Juvenile Justice (Care and Protection of Children) Act 2015, is framed and enacted with a crucial objective to provide a family to the child to show love, care, protection and for nurturing the child. The intent of the Act can be perceived through Section 57 on eligibility of the prospective adoptive parents. The Act legally allows adoption of the child by single and divorced person along with the married couples. The Act only focuses on one question whether the prospective parents can nurture and upbring the child with love and care. For the same, the Act itself sets standards in Section 57(1) to be fulfilled to accept the as a prospective parent. The determination of the eligibility is surrounded on the ability of the prospective parents – physically fit, mentally capable, emotionally strong, financial stability and must not possess

life-threatening disease. All these standards indicate the relationship status of the person are not a factor for adoption rather it's the ability to meet the child's interest and welfare.

Live-in relationship couples are potentially can be an eligible prospective adoptive parent if their relationships are stable, and fulfills all the standards specified in section 57(1) of the Juvenile Justice (Care and Protection of Children) Act 2015[11]. The courts are concerned with one main question whether the relationship between the couples in live-in relationships are stable? To answer this the courts can have a test on the stability of the relationship by fixing a minimum period of stable relationship between the couples. Many countries like Belgium, Netherlands, Bermuda, UK, Wales allows joint adoption by unmarried couples who cohabits together based on their stability of their relationships and consideration of child's interest and welfare. All these countries consider primarily on two factors, first whether the couples are in the legal age to marry and secondly, a duration of stable relationships ranging from one year to three years or more. India should adopt a broader perspective by considering solely in achieving the child's interest and welfare, which is the significant responsibility of the state as a whole.

VI. Child's Interest and Welfare in Adoption

The foundation of the laws for adoption all over the world is revolved around child's interest and welfare. Indian judiciary in many cases keeps reiterating the importance of child's interest and welfare in adoption. The landmark judgment in Lakshmi Kant Pandey vs. Union of India[12] as clearly iterated that welfare of the child is the prime and overriding consideration. The adoption must be decided upon the child's interest and welfare, which is paramount consideration in adoption. In Shabnam Hashmi vs. Union of India[13], the court recognized adoption as a welfare- oriented statutory mechanism designed to secure a family for a child.

VII. Recommendations

Indian adoption law should prioritize the welfare and best interests of the child as the main consideration. The law should clarify the eligibility criteria for unmarried or cohabiting couples wishing to adopt jointly, contingent upon a thorough evaluation of their relationship stability,

[11] Divyansh Jain, Adoption Rights of Live- In and Same Sex Couples, Indian Journal of Integrated Research in Law, available at: https://ijirl.com/wp-content/uploads/2024/01/ADOPTION-RIGHTS-OF-LIVE-IN-AND-SAME-SEX-COUPLES.pdf (last accessed on 10 November 2026).
[12] (1984) 2 SCC 244
[13] (2014) 4 SCC 1

parenting capacity, financial resources, and the suitability of their home environment. Measures such as social worker assessments, court approval, and post-adoption monitoring should be reinforced.

VIII. Conclusion

The prime statute of adoption in India, The Juvenile Justice (Care and Protection of Children) Act 2015 is drafted with a vital consideration of child's interest and welfare and as a mechanism to secure a lovable family for a child. The laws recognize the single, divorced and married persons as a potential prospective adoptive parent if they have the ability to meet the child's interest and welfare, but fails to recognize live-in relationship couples without considering the key to the Act "child's interest and welfare". The assumption of child's interest and welfare will be achieved only by the persons who are married is by itself a wrong conception. Marital status is irrelevant to the adoption and the purpose behind the adoption of a child. Marriage does not by itself guarantees a safe, lovable home and family to a child. Joint adoption of live-in relationship couples should be legally recognized as a legal right. Indian legislation and judiciary have recognized live-in relationship like marriages, and it is significant to recognize the adoption rights surrounding it.