

S.B. Criminal Writ Petition No. 2183/2024

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[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]



Versus

1. State of Rajasthan, Through P.P.
2. Director General of Police, Rajasthan, Jaipur.
3. Superintendent of Police, Sikar, District Sikar (Raj).
4. S.H.O. Police Station Khatu Shyamji, District Sikar (Raj).
5. Balwan Son of Shri Ramjilal, Resident of Banawali, District Fatehbad (Hariyana).
6. Manoj Son of Shri Manilal, Resident of Banawali, District Fatehbad (Hariyana).
7. Naresh Son of Shri Ransingh, Resident of Banawali, District Fatehbad (Hariyana).
8. Sher Singh Son of Shri Ramjilal, Resident of Banawali, District Fatehbad (Hariyana).
9. Dharampal Son of Not Known, Resident of Banawali, District Fatehbad (Hariyana).
10. Mahendra Son of Not Known, Resident of Banawali, District Fatehbad (Hariyana).
11. Kuldeep Payal Son of Krishan Payal, Resident of Banawali, District Fatehbad (Hariyana).
12. Narendra Beniwal Son of Shri Mehar Singh, Resident of Tarkawali, Nathusari Kalan (21) Sirsa (Hariyana).
13. Vikash Son of Shri Narendra Beniwal, Resident of Tarkawali, Nathusari Kalan (21) Sirsa (Hariyana).
14. Anil Son of Shri Jai Prakash, Resident of Tarkawali, Nathusari Kalan (21) Sirsa (Hariyana).



- 15. Sandeep Son of Shri Jai Prakash, Resident of Tarkawali, Nathusari Kalan (21) Sirsa (Haryana).
- 16. Anita D/o Shri Narendra Beniwal, Resident of Tarkawali, Nathusari Kalan (21) Sirsa (Haryana).

----Respondents

Connected with

S.B. Criminal Writ Petition No. 2057/2024

1.
-

----Petitioners

Versus

- 1. State of Rajasthan, through Secretary, Department of Home Secretary, Jaipur.
- 2. The Superintendent of Police, Karauli.
- 3. Station House Officer, Police Station Kaila Devi, District Karauli.
- 4. Anuj Sharma S/o Resh Pal, R/o A-78, Jagdamba Colony, Joharipur, Dayalpur, North East, Delhi - 110024.

----Respondents

S.B. Criminal Writ Petition No. 1951/2024

1.
-

----Petitioners

Versus

- 1. State of Rajasthan, through Secretary, Department of Home Affairs Govt. Secretariat Jaipur.
- 2. Director General of Police, Police Head Quarter, Lal Kothi, Jaipur.

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- 10. Smt. Satyawati W/o Mintu, Resident of Nagla Mamon, Gorha, Kasganj, Uttar Pradesh.
- 11. Suraj Pal Son of Unknown, Resident of Nagla Mamon, Gorha, Kasganj, Uttar Pradesh.



For Petitioner(s) : Mr. Mahesh Jatwa
Mr. Parmeshwar Pilonia
Mr. Ajit Singh
Mr. Anoop Kumar
Mr. Mukesh Kumar Goyal
Mr. Satish Kumar Balwada
Mr. Ankit Khandelwal
Ms. Sonal Gupta
Mr. Vichitar Choudhary

For Respondent(s) : Mr. Rajesh Choudhary-GA Cum AAG
assisted by Mr. Aman Kumar
Mr. Jitendra Singh-Addl.G.A
Mr. Vivek Choudhary- Dy.G.A
Mr. Manvendra Singh-Dy.G.A
Ms. Neha Goyal
Mr. Vinod Sharma

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on 06/01/2025

Pronounced on 29/01/2025

Reportable

- 1. India is a country, which is slowly opening its door for western ideas and lifestyles and the most crucial aspect amongst it, is the concept of 'Live-in-relationship'.
- 2. The live-in-relationship is an agreement in which two persons live together in a short or long term relationship. The Hindu Marriage Act, 1955 (for short, 'the Act of 1955') does not recognize the concept of live-in-relationship. Even in Muslim Law, no recognition has been given to such relationship as such type of



relationship, without or outside the marriage, is treated as 'Zina' and 'Haram'. Such relationship is not permissible in Islam.

3. The idea of live-in-relationship may seem to be unique and appealing but in reality the problems likely to arise are many, as well as challenging. The status of a woman in such relationship is not that of a wife and lacks social approval or sanctity.

4. The right to live with a partner of one's choice is a necessary component of the right to life and personal liberty, guaranteed under Article 21 of the Constitution of India. The Hon'ble Apex Court on several occasions has held that live-in-relationships are not illegal. In **S. Khushboo vs. Kanniammal and Anr.** reported in **2010 (5) SCC 600**, it has been held that living together is an aspect of the right to life and personal liberty. In **Indra Sarma vs. V.K.V. Sarma** reported in **2013 (15) SCC 755**, the Hon'ble Apex Court has observed that 'Live-in or marriage like relationship' is neither a crime nor a sin, though socially unacceptable in our country. The decision to marry or not to marry or to have a heterosexual relationship is immensely personal. Similarly, in the case of **Lata Singh vs. State of UP and Anr.** reported in **2006 (5) SCC 475**, it has been held by the Hon'ble Apex Court that a live-in-relationship between two consenting adults of heterosexual sex does not amount to any offence, even though it may be perceived as immoral.

5. The Constitution has given certain fundamental rights and freedom to the people. Under Article 19, citizens have a fundamental right to freedom of speech and expression and to



reside and settle in any part within the territory of India. Similarly Article 21 of the Constitution of India confers right to life on every person. A person's wish to reside with a partner of his or her choice and establish a relationship is governed by the above mentioned rights and freedom.

6. The concept of such relationship was considered by the Hon'ble Apex Court in the case of **D. Velusamy vs. D. Patchaiammal** reported in **2010 (10) SCC 469**, and it has been held in para 33 which reads as under:

"33. In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:-

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. "

7. Thereafter, the distinction between 'relationship in the nature of marriage' and 'marital relations' was discussed and considered by the Hon'ble Apex Court in the case of **Indra Sarma (Supra)** and it has been held in paras 37 and 38 as under:

"37. The distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in- relationship determines that he/she does not



wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".

38. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

a) Domestic relationship between an unmarried adult woman and an unmarried adult male:

Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".

d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

e) Domestic relationship between same sex partners (Gay and Lesbians): The DV Act does not recognize such a relationship and that relationship



cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship. "

8. Thus, the legal status of live-in-relationship in India has been evolved and determined by the Hon'ble Apex Court in catena of judgments. However, there is no separate legislation which lays down the provision of live-in-relationship and provides legality to this concept. Though the concept of live-in-relationship is considered immoral by the society and the same is not accepted by public at large, it is not treated as illegal in the eyes of law. It has been held by the Hon'ble Apex Court that living together is a part of right to life and personal liberty, therefore, it cannot be held to be illegal and against any law.

9. The children born out of such relationships would be the sufferer and hence, their well being is required to be addressed. Minor children born out of such relations are expected to be maintained by their parents and specially by the father, because women from such relations may often be found to be sufferers as well. Though, directions in this regard can be issued by the Courts having jurisdiction, however a moral obligation is required to be fastened upon the male partner of such 'live-in-relationship', who is required to discharge his moral duty to maintain the children born out of such relationship.



10. Several couples are residing in 'live-in-relationship' and are facing threat and danger from their families and the society for not accepting their relationship. Hence, they are approaching the Constitutional Courts by way of filing writ petitions under Article 226 of the Constitution of India, seeking protection of their life and liberty under Article 21 of the Constitution of India. As a result, Courts are inundated with such petitions. Every day dozens of petitions are being submitted under the similar prayer of protection of life and liberty from the danger and threats faced by such couples.

11. This Court in the case of **Suman Meena and Anr. Vs. State of Rajasthan** while deciding S.B. Criminal Writ Petition No. 792/2024 vide order dated 02.08.2024 has directed the State to designate the Police Officer as 'Nodal Officer' to look into the grievances of such couples seeking protection by allowing them to file representation before such Officers and a time limit has also been fixed to decide such representations. Several persons including the petitioners are still approaching this Court for redressal of their grievance after filing of representation before the designated Nodal Officer because their grievances still remain unaddressed for the reasons best known to the State authorities. Hence, once again dozens of petitions are being filed before this Court everyday seeking protection orders.

12. It appears that the Police agencies are overburdened with investigation and the responsibility of maintaining law and order, hence, they hardly get any time to redress the grievance of the



aggrieved, but certainly this cannot be a ground for denial, on their part, to look into the matter and decide the representation of such persons by passing appropriate orders.

13. There is no separate legislation which lays down the provisions for live-in-relationship or which provides legality to this concept or protection to the female partners and the children born out of such relationships. Hence, appropriate legislation is required to be enacted and implemented by the Central as well as the State Government.

14. Recently, Uttarakhand State has enacted the Uniform Civil Code of Uttarakhand, 2024 which lays down certain procedure for such live-in-relationships. Part III and Clauses 378 to 388 of the said Code deals with the entire process and procedure with regard to such relationships and it also deals with the liabilities of the couples residing in such relationships.

15. Thus, the Parliament and the State Legislature have to ponder and bring a proper legislation or make proper amendments in the law over this issue, so that the couples residing in such relationship may not face any harm and threat at the hands of their family, relatives and members of the society at large. Sometimes the female partners in such relationships suffer a lot whenever such relationships are broken. The female partner in such relationships should not be allowed to become sufferer and the children born out of such kind of relationship are required to be protected, even if such relationship might not be a relationship in the nature of marriage. The children born out from such



relationship should not be allowed to suffer only because the two persons have entered into such relationship.

16. In absence of any legislative frame-work in relation to the relevant subject matter, many people get confused due to the different approaches of the Courts. Although the Courts attempt to fill the vacuum in law, still there remains the uncertainty and fragmented application of law.

17. The need of the hour is to take a step to bring out a law or enact a new legislation which would look into the matter of live-in-relationship and would grant rights and impose obligations on the part of the couples in such relationship. A separate legislation should be competent enough to grant assistance to the children and female partners who become sufferer in such relationship.

18. Until a legislation is framed by the Centre as well as the State Government, a scheme of statutory nature is required to be formulated in legal format. Let a format be prepared by the appropriate authority making it necessary for the couples/partners desiring to enter into such live-in-relationship, to fill the format, with the following terms and conditions, before entering into such live-in-relationship:

- (i) Fixing liability of the male and female partners in the form of child plan to bear the education, health and upbringing responsibility of the children born out of such relationship.
- (ii) Fixing liability of the male partner for maintenance of the non-earning female partner residing in such relation and children born out of such relationship.



19. The live-in-relationship agreement is liable to be registered by the Competent authority/ Tribunal, which is required to be established by the Government.

20. Till enactment of the appropriate legislation by the Government, let competent Authority be established in each district of the State to look into the matter of registration of such live-in-relationships, who will address and redress the grievances of such partners/couples who have entered in such relationship and the children being born out therefrom. Let a Website or Web-portal be launched in this regard for redressal of the issue arising out of such relationship.

21. Let a copy of this order, be sent to the Chief Secretary, State of Rajasthan, Principal Secretary, Department of Law and Justice as well as to the Secretary, Department of Justice and Social Welfare, New Delhi to look into the matter for doing the needful exercise for compliance of the order/ direction issued by this Court. They are further directed to send a compliance report to this Court on or before 01.03.2025 and apprise this Court about the steps being taken by them.

22. Now, this Court proceeds further to deal with the other issue involved in these petitions, **"whether a married person living with an unmarried person, without dissolution of his/her marriage and/or whether two married persons with two different marriages living in live-in-relationship, without dissolution of their marriages, are entitled to get protection order from the Court ?"**



23. The ideal condition of every happy married life is that both husband and wife should maintain their loyalty towards each other. Sexual intercourse by a person with the wife of another person with her consent is an offence of 'adultery' and the same is punishable under Section 497 IPC with imprisonment which might extend to five years or with fine or both, but in such cases the wife could not be punished as an abettor.

24. The constitutional validity of Section 497 IPC was challenged before the five Judge Constitutional Bench of the Hon'ble Apex Court in the case of **Joseph Shine Vs. Union of India** reported in **2019 (3) SCC 39**, and the said provision was struck down. Now, adultery is no more a criminal offence but is considered to be a civil wrong and it can be a ground for divorce under Section 13 of the Act of 1955.

25. Large number of petitions have been filed by several couples who have entered into "live-in-relationship" wherein one of the partners is married and the other one is unmarried or both are married with different partners, and such couples/partners are seeking protection order from this Court, but there is no clarity on this issue inasmuch as several conflicting orders have been passed by different co-ordinate Benches of this Court in such like matters.

26. In the case of **Leela Bishnoi and Anr. Vs. State of Rajasthan**, (S.B. Criminal Misc. Petition No. 5045/2021) decided on 15.09.2021, the protection was sought by one married and another unmarried partner residing in 'live -in- relationship' and the same was granted by the Co-ordinate Bench of this Court at



the Principal Seat at Jodhpur with the following observations and directions in paras 30, 31, 32, 33, 34 and 37 and the same are reproduced as under:-



"30. It is sufficiently clear to this Court that the Hon'ble Apex Court's standpoint is that there exists a duty of the State to protect and safeguard all fundamental rights, unless taken away by due process of law. Even if any illegality or wrongfulness has been committed, the duty to punish vests solely with the State, that too in attune with due process of law. In no circumstance can the State bypass due process, permit or condone any acts of moral policing or mob mentality. When the Right to life and liberty is even guaranteed to convicted criminals of serious offences, there can be no reasonable nexus to not grant the same protection to those in an "legal/illegal relationships".

31. Had there been a question before this Court with regards the morality/ legality of live- in relationships and matters connected thereto, then perhaps the answer would have required more deliberation along those lines. However, in the context of the limited question this Court is posed with pertaining to the application of [Article 21](#) of the Constitution of India and it is clear that the right to claim protection under this Article is a constitutional mandate upon the State and can be availed by all (16 of 17) persons alike. There arises no question of this right to be waived off even if the person seeking protection is guilty of an immoral, unlawful or illegal act, as per the precedent law cited of the Hon'ble Apex Court. However, in this case, this Court does not wish to delve into the sanctity of relationships.

32. This Court finds itself firmly tied down to the principle of individual autonomy, which cannot be hampered by societal expectations in a vibrant democracy. The State's respect for the individual independent choices has to be held high.

33. This Court fully values the principle that at all junctures constitutional morality has to have an overriding impact upon societal morality.

This Court cannot sit back and watch the transgression or dereliction in the sphere of fundamental rights, which are basic human rights.

The public morality cannot be allowed to overshadow the constitutional morality, particularly



when the legal tenability of the right to protection is paramount.

34. This Court is duty bound to act as a protector of the rights of the individuals, which are under siege with the clear intention of obstructing the vision of Constitution.

37. Thus, in view of the above, the present petition is disposed of, with a direction to the petitioners to appear before the Station House Officer, Police Station, Feench, Luni, District Jodhpur alongwith appropriate representation regarding their grievance. The Station House Officer, Police Station, Feench, Luni, District Jodhpur shall in turn hear the grievance of the petitioners, and after analyzing the threat perceptions, if necessitated, may pass necessary orders to provide adequate security and protection to the petitioners."

27. Similarly, in the case of **Manisha Devi and Another Vs. State of Rajasthan and Ors.**, (S.B. Criminal Writ Petition No. 394/2023) decided on 07.08.2023 the protection was granted to one of such couples by the Co-ordinate Bench of this Court observing as follows in paras 5 to 9:-

"5.The law is well settled that privacy and liberty of individuals cannot be infringed by taking the law in one's hands. If there is allegation of violation of law by the aggrieved person then legal recourse should be adopted and recourse can never be at the whim of anyone.

6. In Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1, The Supreme Court said as follows:-

"The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State's respect for the capacity of the individual to make independent choices. The right to privacy may be construed to signify that not only are certain acts no longer immoral, but that there also exists an affirmative moral right to do them.



7. In *Shafin Jahan Vs. Asokan K.M.* 2018 (16) SCC 368, The Hon'ble Supreme Court said that " the social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible.

8. In *Navtej Singh Johar Vs. Union of India* (2018) 10 SCC 1, The Supreme Court said as follows:-

"131. The duty of the constitutional courts is to adjudge the validity of law on well-established principles, namely, legislative competence or violations of fundamental rights or of any other constitutional provisions. At the same time, it is expected from the courts as the final arbiter of the Constitution to uphold the cherished principles of the Constitution and not to be remotely guided by majoritarian view or popular perception. The Court has to be guided by the conception of constitutional morality and not by the societal morality.

132. We may hasten to add here that in the context of the issue at hand, when a penal provision is challenged as being violative of the fundamental rights of a section of the society, notwithstanding the fact whether the said section of the society is a minority or a majority, the magna cum laude and creditable principle of constitutional morality, in a constitutional democracy like ours where the rule of law prevails, must not be allowed to be trampled by obscure notions of social morality which have no legal tenability. The concept of constitutional morality would serve as an aid for the Court to arrive at a just decision which would be in consonance with the constitutional rights of the citizens, howsoever small that fragment of the populace may be. The idea of number, in this context, is meaningless; like zero on the left side of any number.

133. In this regard, we have to telescopically analyse social morality vis-a-vis constitutional morality. It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the



constitutional courts to ensure, with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality.”

9.Considering the constitutional right of the petitioners, let the State respondents ensure protection to the personal life and liberty of the petitioners.”

28. Likewise in the case of **Manisha Rani and Anr. Vs. State of Rajasthan and Ors.,** (S.B. Criminal Misc. Petition No. 6375/2020), decided on 04.01.2021 it has been held by the Co-ordinate Bench of this Court in paras 7, 8 and 9 as under:-

“7. It is well settled legal position as expounded by the Hon’ble Supreme Court of India in Lata Singh Vs. State of UP [AIR2006 SC 2522], S. Khushboo Vs. Kanniammal [(2010) 5SCC 600], Indra Sarma Vs. VKV Sarma [(2013) 15 SCC 755]and Shafin Jahan vs. Asokan KM & Ors. [(2018) 16 SCC368] that the society cannot determine how individuals live their lives, especially when they are major, irrespective of the fact that the relation between two major individuals may be termed as immoral and unsocial. Thus, life and personal liberty of the individuals has to be protected except according to procedure established by law, as mandated by Article 21 of the Constitution of India. Further, as per Section 29 of Rajasthan Police Act, 2007every police officer is duty bound to protect the life and liberty of the citizens.

8. Therefore, in light of above legal position and having regard to the above submissions but without expressing any opinion on the genuineness or correctness of the allegations made by the petitioners, this petition is disposed of with the direction that learned counsel for the petitioners shall send a copy of the petition along with its annexures to the Station House Officer of concerned Police Station through e-mail, and on receipt of the same, the Station House Officer concerned shall treat it as a complaint and after due enquiry, he shall take necessary preventive measures and other steps to ensure safety and security of the petitioners in accordance with law.

9. However, as a precautionary note, it is made clear that this order shall not come in the way of



civil/criminal case, if any, and such case would take its own course as per law."

29. But, at the same time, contrary views have been taken by the Co-ordinate Benches of this Court in catena of cases. In the case of **Rashika Khandal and Anr. Vs. State of Rajasthan and Ors.**, reported in **2021 SCC OnLine Raj 4296** and it has been held that such couples are not entitled to get any protection order from this Court. It has been held in para 1 to 4 as under:-

"1. Petitioners have preferred this Criminal Miscellaneous Petition seeking protection of life and liberty.

2. From perusal of the record, it is revealed that Petitioner No.2 is already married. A live-in-relationship between a married and unmarried person is not permissible.

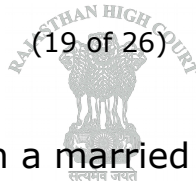
3. The pre-requisites for a live-in-relationship as held by the Apex Court in "D.Velusamy vs. D. Patchaiammal (2010) 10 SCC 469" is that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage, including being unmarried.

4. Criminal Miscellaneous Petition is accordingly dismissed."

30. Similar view has been taken by the other Co-ordinate Bench of this Court in the case of **Suman Kumari and Anr. Vs. State and Ors.**, (S.B. Crl. Writ Petition No. 1686/2023) decided on 03.11.2023 and protection order has not been passed in favour of such couples and it has been held in para 1 to 4, which reads as under:-

"Petitioners have preferred this petition seeking protection of life and liberty.

From perusal of the record, it is revealed that Petitioner No.1 is already married. A live-in-



relationship between a married and unmarried person is not permissible.

The pre-requisites for a live-in-relationship as held by the Apex Court in "D.Velusamy vs. D.Patchaiammal (2010) 10 SCC 469" is that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage, including being unmarried.

Considering all the factual position, this petition is liable to be dismissed. Hence, the criminal writ petition is accordingly dismissed."



31. Relying on the same, several other petitions of similar nature were rejected by the Co-ordinate Benches of this Court in the cases of **Krishan Prajapat and Anr. Vs. The State of Rajasthan**, (S.B. Criminal Writ Petition No. 2270/2023) decided on 19.10.2023; **Vinita Gujar and Anr. Vs. The State of Rajasthan and Ors.**, (S.B. Criminal Writ Petition No. 2148/2023) decided on 06.10.2023; **Guddi Keer and Anr. Vs. State of Rajasthan and Ors.**, (S.B. Criminal Writ. Petition No. 2142/2023), decided on 06.10.2023; and **Priyanka and Anr. Vs State of Rajasthan and Ors.**, (S.B. Criminal Misc. Petition No. 8651/2022) decided on 01.11.2023.

32. Recently, the Punjab and Haryana High Court in the case of **xxxx Vs. State of Punjab and Ors.**, reported in **2024 PHHC-168063** was of the similar view that no protection order would be granted in favour of such couples living in such illicit relationship and it has been held in paras 8 to 10 and 12 and 13 as under:-

"8. The pre-requisites for a live-in-relationship as held by the Apex Court in "D.Velusamy vs. D. Patchaiammal" (2010) 10 SCC 469 is that the couple must hold themselves out to society as being akin to spouses and must be of legal age to



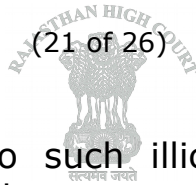
marry or qualified to enter into a legal marriage, including being unmarried.

9. Further the same view of this Court has been reiterated by various other Benches wherein the Court has refused to grant the protection to the couples living in live-in-relationship on the ground that if such protection as claimed, is granted the entire social fabric of the society would get disturbed. Reference regarding this can be placed upon *Simranjeet Kaur and another v State of Haryana and others*(2021), wherein the Court refused protection to couples in living relationship as one of the petitioners was married and had not obtained a legal divorce from the respondent. It was held that the petitioners entered into an unholy alliance and there is no valid and convincing material in the writ petition for exercising the extraordinary writ jurisdiction.

10. Another observation was made by a Single-Judge Bench of this Court in *Kavita and another v State of Haryana and others* (2021) wherein both the petitioners were married to the respective respondents and without seeking divorce from their respective spouses they were living in a lustful and adulterous life with each other and relied upon a vague document i.e., representation wherein it was nowhere stated that from whom they were apprehending threat to their life and liberty. While dismissing the petition, the Court remarked that it cannot be presumed that both the petitioners have any apprehension from their spouses and this petition has been filed just to obtain a seal of this Court on their so-called live-in relationship. In view of this, dismissing their plea, the Court noted thus:

"It is worth noticing here that in the absence of any allegation by not naming anyone in the representation, it cannot be presumed that both the petitioners have any apprehension from their own spouses and this petition has been filed just to obtain a seal of this Court on their so-called live-in relationship."

12. In view of the above discussions and reading of the above clearly indicates that to attach legitimate sanctity to such a relation, certain conditions are required to be fulfilled by such partners. Merely because the two persons are living together for few days, their claim of live-in-relationship based upon bald averment may not be enough to hold that they are truly in live-in-relationship and directing the police to grant protection to them may indirectly



give our assent to such illicit relationship, and, therefore, the orders cannot be passed under Article 21 of the Constitution of India which guarantees freedom of life to all citizens, but such freedom has to be within the ambit of law.

13. Resultantly, this Court does not find it to be a fit case for exercise of extra ordinary writ jurisdiction. Hence, the same is dismissed.”



33. The Division Bench of the Allahabad High Court has also penned down its thoughts in **Smt. Aneeta and Anr. Vs. State of U.P. and Ors.**, (WP(C) No. 14443/2021) decided on 29.07.2021, stating that the Court is not against granting protection to people who want to live together irrespective of the fact as to which community, caste or sex they belong to. But no law abiding citizen, who is already married under the Act of 1955, can seek protection of this Court if he/she is in illicit relationship, which is not within the purview of the social fabric of the society. The Court held that it cannot permit the parties to such illegality, as tomorrow such couples may claim to have sanctified their illicit relationships. A live-in-relationship cannot be protected at the cost of the social fabric of this country. Directing the police to grant protection to such couples may amount to the Court indirectly giving its assent to such illicit relationships.

34. Relying upon the judgment passed by the Division Bench of the Allahabad High Court in the case of **Smt. Aneeta** (Supra), the Co-ordinate Bench of this Court in the case of **Smt. Maya Devi and Anr. Vs. State of Rajasthan and Ors.**, (S.B. Criminal Misc. (Petition) No. 3314/2021) decided on 13.08.2021 held that live-in-relationship cannot be protected at the cost of social fabric of this



country and no protection should be granted to such couples living in such illicit relations.

35. Again the Co-ordinate Bench of this Court in the case of **Vakeela and Anr. Vs. State of Rajasthan and Ors.** in S.B. Criminal Misc. Petition No. 4271/2020 dismissed such petition with cost of Rs. 10,000/- vide order dated 06.11.2020 and it has been observed and held as follows :-

"Counsel for the petitioners states that petitioner No.1 is a lady, who shown to be wife of petitioner No.2 - Umardeen Khan. However, it is informed that petitioner No.1 - Vakeela was married to respondent No.5 - Talim and petitioner No.2 - Umardeen Khan is also a married person. Now, wife of respondent No.5 - Talim, Vakeela wants to live with petitioner No.2 - Umardeen Khan, who is already married under the Muslim Law. A married muslim woman cannot get married again unless she has been divorced. Petitioner No.2 - Umardeen Khan is also married and the documents, which have been placed on record, do not show that a valid Nikah has taken place between the couple and only a Nikahnama has been executed on the stamp paper of Rs.500/-without being before any Mutwali nor there is a Nutfah read by any Maulvi. There is Maulvi (Priest) to the Nikahnama, who has signed the said Nikahnama. In the contents of the Nikahnama, it is mentioned that the petitioners were living in live in relationship.

In the opinion of this Court, the married persons living with somebody else spouse would be amount into committing an immoral act and a seal of approval cannot be given by this Court by directing the police to give them protection. Learned counsel for the petitioners has relied on the two orders passed by this Court in Munni Vijay Dhurve & Anr. Versus State of Rajasthan & Ors.: S.B. Criminal Misc. Petition No.7040/2019 decided on 15.11.2019 and Smt. Vakila & Anr.Versus State of Rajasthan & Ors.: S.B. Criminal Writ Petition No.304/2017 decided on 23.2.2018. However, from the perusal of both the aforesaid judgments, I find that the facts of those cases were altogether different. In the first case (supra), the petitioner No.1 had married with the petitioner No.2 and there was no other existing spouse living of both couples. Similarly in the second



case (supra), there is no such mention of previous marriage of the petitioners therein.

In view thereof, the contention of the learned counsel for the petitioners' counsel is not made out. The misc. petition is misconceived and the same is, therefore, dismissed with cost of Rs.10,000/- to be deposited with the Rajasthan High Court Bar Association within a period of 30 days, failing which, the concerned authorities shall take necessary steps for recovering the said amount from the petitioner Nos.1 and 2."

36. On the same issue, conflicting views have been taken by different Co-ordinate Benches of this Court, hence, it is difficult for this Court to follow a particular view i.e. either in favour or go against such partners/couples, residing in such live-in-relationship.

37. The judicial decorum and legal propriety demands that where a Single Bench or Division Bench does not agree with the decision of the Bench of co-ordinate jurisdiction, the matter should be referred to a Larger Bench. This view has been taken by the Hon'ble Apex Court in the case of **Sundaradas Kanyalal Bhathija & Ors vs. The Collector, Thane, Maharashtra**, reported in **AIR 1990 SC 261** and similarly, in the case of **Ayyaswami Gounder V. Munuswamy Gounder**, reported in **AIR 1984 SC 1789**, the Hon'ble Apex Court has held that the Single Bench of the High Court or the Division Bench of the High Court if does not agree with the view taken by some other Single Bench or the Division Bench of the same High Court respectively, it should refer the matter to a Larger Bench and the judicial propriety and decorum do not warrant him/them to take a different view.



38. In the case of **S. Kasi Vs. State Through the Inspector of Police, Samaynallur Police Station Madurai District**, reported in **2021 (12) SCC 1**, the Apex Court has held that:

"It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a Larger Bench. The judicial discipline ordains so. This Court in *State of Punjab and another versus Devans Modern Breweries Ltd. and another*, (2004) 11 SCC 26, in paragraph 339 laid down following:-

"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a Larger Bench. (See *Pradip Chandra Parija Vs. Pramod Chandra Patnaik*, (2002) 1 SCC 1 followed in *Union of India Vs. Hansoli Devi*, (2002) 7 SCC 273. But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. *Kalyani Stores (supra)* and *K.K. Narula (supra)* both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority."

39. Ordinarily, this Court would not go into the merits of the case once the position of law is settled with regard to the controversy on a particular issue, but the difficulty before this Court is that which view has to be followed, more particularly when there are two different conflicting views on the same issue by the different Division Benches of this Court of equal strength. The Apex Court in the case of **Central Board Of Dawoodi Bohra Community**



and Ors. vs State Of Maharashtra & Anr reported in **2005 (2)**

SCC 673 has held in para 12, which reads as under:

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in



Raghubir Singh & Ors. and Hansoli Devi & Ors.
(supra)."

40. There is no exact and settled decision of this Court on the legal issue involved in this petition, rather there are conflicting opinions and views of different Co-ordinate Benches of this Court, hence, the same is required to be decided for all times to come, so that there should be uniformity in the orders on the said legal issue involved in these petitions.

41. In a situation like the present one, where two conflicting views have been taken by the different Co-ordinate Single Benches of this Court, this Court has no other option but to refer the matter to the Special/Larger Bench so that the controversy is put to rest in accordance with law.

42. This Court accordingly refers this case to the Special/Larger Bench to answer the following question:

"Whether a married person living with an unmarried person, without dissolution of his/her marriage or/and whether two married persons with two different marriages living in live-in-relationship, without dissolution of their marriages, are entitled to get protection order from the Court ?"

43. Let the matter be placed before Hon'ble the Chief Justice on the administrative side for constitution of Special/Larger Bench to answer the aforesaid question, referred by this Court.

(ANOOP KUMAR DHAND),J

Ashu/451, 471-473