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Pros and Cons of Live-In Relationship in Indian Scenario**Dr. S.D. Moharana***Principal, G.M. Law College, Puri, (Odisha) India***Abstract**

Live-in relationship is a living arrangement in which an unmarried couple live together in a long term relationship that resembles a marriage. In many developed countries like USA (23% in 2003), Denmark, Norway, Sweden (above 50%) and Australia (22 %) etc live-in relationship are very commonly practiced, accepted and are not considered to be illegal. In Scotland, the Family Law Act, 2006, for the first time identified & in process by default legalized live-in relationship over 1, 50, 000 cohabiting couples in the country.

National Commission for women in India has recommended that women in live-in relationship should be entitled to maintenance if she is deserted by her man. The Commission also recommended that the definition of 'Wife' in Section 125 of CrPc would be amended so as to include women involved in live-in relationship. India's Supreme Court threw its weight behind live-in relationship. In a number of cases the Hon'ble Apex Court opined that a man & women living together without marriage cannot be constructed as offence. The Apex court evolved certain guidelines for testing under what circumstances, a live-in relationship will fall under the expression "relationship in the nature of marriage" U/S 2(f) of Domestic Violence Act, 2005. In Indian context this newly evolved forms of marriage system gives ample freedom to man & woman to enjoy modern conjugal life.

Key Words: Concubine, Cohabitation, Domestic violence, Sec. 125 of Cr.PC, Mali math Committee

Introduction:

Indian Society is seriously concerned about the protection and empowerment of women, more so due to illiteracy, lack of safety and security. Recently women's issues are mostly related to the core of organization of human society, economic & political structures and relationship gender bias is chiefly responsible for the backward state of women which tends to drive women into desperation and destitution. This position of women prompts men to lure them into live-in relationship. The live in relationship is a new legal concept in India, though tradition has it for centuries. Live in relation is such relationship not acceptable in the Indian

society. Most of the parents feel bottlenecked when they hear about such relationship.

They feel unsafe & take it as a matter of prestige. They sometime try to encroach the freedom of their children. They think that it is an erosion of traditional values. Some people hold that live-in-relationship is creating formula for democratic living. It creates a scope to choose a life partner for carrying life pursuit smoothly. So couples would now like to find out whether they are really made for each other by living together for some time. Live-in-relationship is a living arrangement in which an unmarried

couple live together in a long term relationship that resembles a marriage.

Concept of Live in Relationship: a Bird's Eye View:

Literally live in relationship means walk-in walk-out relationship and it is living arrangement and involves co-habitation of two partners who decide to live together on a long term or on a permanent basis in an emotionally or sexually intimate relationship.

A marriage is governed by a separate set of laws in all countries which safeguard the interest of both the parties who enter into the union. Live in relationship on the other hand have received due recognition in a few countries such as France & Philippines. In India, presently there is no law defining the maxims of live in relationship. The Supreme Court however, has observed in a current ruling that a woman who has lived in a living relationship for a long period of time should enjoy the same rights that a married woman is entitled to.

In the country like India the conception of individualism is impracticable in every sphere of life. Take for a traditional instance from a novel written by Bhagwati Charan Verma that once Bijugupta a feudal ruler after got spelled down by excellent dance performance of chitrolekha replied that nothing is personal. Everything is social and individual has no autonomous existence (Doshi, 2003:104). Therefore 'Concubine', 'Kept' (Rakhhail in Hindi) and mistress also procreate offspring to whom their male partners may develop soft edges and may provide moral and financial support. It is so and if women in live-in relationship are

assumed to have far better status than that of concubine, keep and mistress then why cannot they hold back their men for their children's emotional or financial support. In regard to Rohit Sekhar's paternity suit when he argues that there are no illegitimate children, only illegitimate fathers, is an befitting example that they may help recognizing women partners right to maintenance at least for the sake of their children in Live-in relationship (Indian Express, 2002). The Protection of Women from Domestic Violence Act, 2005 followed suit in accordance with formal recognition. This relationship has given rise to a number of conflicting legal issues so far as the children right to protection (in property) and concept of legitimacy specifically with regard to Hindu family.

Concept of Live In Relation in Other Countries:

It is seen that this live-in relationship have different stand in different countries. For instance cohabitation after divorce is frequently punished by the Salishi System of informal courts, especially in rural areas. In Indonesia, an Islamic Penal Code proposed in 2005 would have made cohabitation punishable by up to two years in prison.

As lives getting hectic & busier, nobody has time to take up additional responsibilities. In such a case, living in with a person whom you love without bothering about responsibilities & financial issues is worth to give a try. Couples cohabit, rather than marry for a variety of reasons. In some cases, the law does not allow the marriage between two people like. Lesbian couples or gay couples or individuals already married.

Similarly when couple faces opposition to their marriage from society & their family on the basis of caste which is very crucial issue in India, they find solace in live in relationship. It is also found that Cohabitation is illegal according to Sharia Law in countries where it has been practiced. On the other side in many developed countries like USA (23% in 2003), Denmark, Norway, Sweden (above 50%) and Australia (22%) etc. live in relationship are very commonly practiced, accepted and are not considered to be illegal.

In Scotland, the Family Law Act 2006, for the first time identified, & in process by default legalized live in relationship of over 1, 50,000 cohabiting couples in the country.

United States of America: The American legal history was then witness to several consensual sex legislations, which paved the way for living together contracts & their cousins, the “prenuptial agreements”. The country later institutionalized cohabitation by giving cohabiters essentially the same rights & obligation as married couples, a situation to Sweden & Denmark. Those living together are not recognized as legal parents.

Canada: Live in relationship is legally recognized in Canada also

Section 54 (1) of Family Law Act, R.S.O 1990 says that, two persons who are cohabiting or tend to cohabit & who are not married to each other may enter in to an agreement in which they agree on their respective rights & obligations during cohabitation or on ceasing to cohabit or on death, including –

(a) Ownership in or division of property

(b) Support obligations

(c) The right to direct the education & moral training of their Children, but not the right to custody of or access to their children & further Sub-Section 2 of Section 53 says that if the parties to cohabitation, agreement marry each other, the agreement shall be deemed to be a marriage contract.

United Kingdom: It is covered under the Civil Partnership Act 2004. Though a man & woman living together in a stable sexual relationship are also referred to as “common law spouses, the depression is not wholly correct in law in England & Wales. In U.K. as per 92010 notes from Home Affairs Section to the House of Commons, unmarried couples have no guaranteed rights to ownership of each other’s property on break down of relationship. If a co-habiting couple separates, the courts have in power to override the strict legal ownership of property & divide it as they may do on divorce.

France: The French National Assembly passed civil solidarity Pact on

Oct. 13, 1999. Live in relationship; is governed by civil solidarity pact in France. The civil solidarity pact is a contract binding two adults of different sexes or of the same sex in order to organize their common life; contractors may not be bound by another pact, by marriage, sibling or lineage. Adult under custody cannot contract.

Indian Scenario:

The traditional Indian Law has also been biased in favour of marriage which is the foundation of family, as such a unity of society. Every public policy supports

marriage as necessary to the stability of family. To preserve & encourage marriage, the law reserve many rights & privileges to the married persons. Cohabitation carries none of these rights & privileges. However there is a way to address such issues before enter into live in relationship and that too by way of making a written agreement, similar to premarital agreement. The contract should outline how the couples will divide expenses & own property, whether they will maintain joint or separate bank accounts & how their assets will be distributed, if one partner dies or leaves the relationship. But making such contact before entering into live in relationship; is a rare phenomenon in India. However such contracts are popular in Western countries so as to avoid future hassles.

The National Commission for Women:

Even National Commission for women has recommended that a woman in live in relationship should be entitled to maintenance if she is deserted by her man. The commission also recommended to the Ministry of Women & Child Development, that the definition of 'wife' in Section 125 of Cr.P.C. would be amended so as to include the women involved in live in relationship. This is a stepping stone which aims to harmonize the other section of law with protection of women from Domestic Violence Act, that treats a couple in live in relationship at par with the legally married couple.

Role of Judiciary:

When an India courts first began examining this aspect they had little support except a California Supreme Court's ruling [Marvin

Vrs. Marvin 18 Cal 3rd 660 (1976)]. The case was about the famous film actor Lee Marvin, with whom a lady Michelle lived for many years without marrying him and was then deserted by him and she claimed palimony. However the American family Law does not govern distribution of property required in a relationship outside the marriage & such relationship remains subject solely to judicial discretion. The court was in dilemma & came up with concept of palimony – Pal Talimony. The court also observed that in a palimony suit, the plaintiff must prove that the agreement of financial support is not a meretricious agreement, that is, one made in exchange for a promise of sexual relation as court refuse to enforce meretricious contracts because of their similarity to contracts for prostitution,. Subsequently in many decision of the courts in USA, the concept of palimony has been considered and developed.

India's Supreme Court is considered to be the guiding sentinel which preserves the rule of law. The root of its high regard is known for its independence, impartiality and integrity, so Supreme Court threw its weight behind live-in relationship. On 23.3.2010 the Hon'ble Apex Court in Khushboo's case opined that a man & woman living together without marriage cannot be construed as offence. "When two adult people want to live together what is the offence. Does it amount to an offence? Living together is not an offence. It cannot be an offence, a three Judge Bench of Chief Justice K.G. Balakrishnan's, Deepak Verma & B.S. Chauhan observed. The court said even

Lord Krishna & Radha lived together according to mythology.

Live-in relationship suffered in set back with the bar imposed by Supreme Court in its recent judgment delivered on 7th May 2010 in a family dispute in Matter of Bhaansthama Vrs. R. Vijaya Ranganathan: The Supreme Court held that a child born out of a live in relationship was not entitled to claim inheritance in Hindu ancestral coparcenary property.

In S.P.S. Balsubramanyam Vrs. Suruttayan Andalli Padayachi & others, the Supreme Court allowed presumption of marriage U/s. 114 of Evidence Act out of live in relationship & presumed their children were legitimate. Hence they were rightfully entitled to receive a share in ancestral property.

In Radhika Vrs. States of M.P. the S.C. observed that a man & woman are involved in live in relationship for a long period, they will treat as a married couple & their child would be legitimate.

In Patel and others case (2006) 8 SCC 726 Supreme Court observed that live in relationship adults without formal marriage cannot be construed to be an offence.

In Payal Katara Vrs. Superintendent, Nari Niketan Kendra, Vihar, Agra & others AIR 2002 Allahabad High Court ruled out that a lady about 21 years of age being a major has a right to go anywhere that anyone man & women even without marriage can live together if they wish.

In Abhijeet Bhika Seth Auti Vrs. State of Maharashtra & others on 16.09.2009 Supreme Court observed that it is not

necessary for a woman living in such type of relationship can claim maintenance.

On 21st October 2010, in special leave petition (Cr.L) D. Velusamy V. D. Patchaiammal lays down some parameters for live in relationship, according to which, a woman in a live in relationship is not entitled to claim maintenance from their former partner unless she comply with certain factors. Supreme Court Bench comprising Justice Markendey Katju & T.S. Thakur, while observing that merely spending weekend together or staying only for sexual reasons would not make it domestic relationship. It was further observed that if a man has keep whom he maintains financially & uses mainly for sexual purpose & as a servant, would not be a relationship in the nature of marriage.

The Supreme Court set certain parameters which a woman, even if not married has to fulfill in order to get maintenance. These are -

- The couple must hold themselves out to society as being akin to spouses
- They must be of legal age of marry
- They must be otherwise qualified to enter in to a legal marriage including being unmarried.
- They must have voluntarily cohabited & held themselves out to the world as being akin to spouses for a significant period of time.

In Chanmuniya Vrs. Virendra Kumar Singh and another 2011 Cr.L.J. 96 the Supreme Court opined that a broad and expansive term should be give to the term wife for reasonably long period of time and a strict proof of marriage should not be precondition

to claim maintenance U/s- 125 of Cr.P.C. & it is a principle enshrined in preamble of constitution namely social justice and upholding the dignity of individual.

Indra Sharma Vrs. K.V. Sharma AIR 2014 SC 304 the following are some of the representative guidelines for testing under what circumstances, a live in relationship will fall under the expression "relationship in the nature of marriage" U/s-2(f) of Domestic Violence Act, 2005. The guidelines are not exhaustive, but will definitely give some insight to such relationships.

1. Duration of period of relationship:

Sec.2 (f) of Domestic Violence Act has used the expression "at any point of time" which means a reasonable period of time to maintain a relationship depending upon the facts & situation.

2. Shared Household.

3. Pooling of resources & financial arrangements i.e sharing bank accounts, acquiring immovable properties in joint name. 4. Domestic arrangements. 5. Sexual relationship. 6. Children. 7. Socialization in public. 8. Intention & conduct of the parties.

When a person knowingly enters into live-in relationship with other knowing that he was married person the general proposition that they are man & woman and they prove to have lived together as husband and wife. The law presumes that they are living tighter in consequences of a valid marriage will not

apply and hence the relationship between them would not be a relationship in the nature of a marriage and the status of the lady would be a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusive & will not be monogamous in character. The continuous co-habitation of a man & woman as husband and wife may rise a presumption of marriage, but the presumption which may be drawn from a long co-habitation is rebuttable one and if there are circumstances which weaken & destroy that presumption, the Court cannot ignore them. Polygamy or polyandry that is a relationship or practice of having more than one wife or husband at the same time or relationship by way of bigamous marriage, that is marrying someone which already married to another &/or maintaining a adulterous relationship that is having voluntary sexual intercourse between a married person who is not husband or wife cannot be said to be a relationship in the nature of marriage.

The Malimath Committee had also suggested that the word 'wife' under Cr.P.C. be amended to include a woman living with a man like his wife which means the woman would also be entitled to alimony.

Lastly amidst this contradiction through, the legal system is going to recognize an unusual marriage or a typical family in live in relationship but with the help of the principle of freedom, self respect and conjugal responsibility.

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