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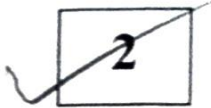
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'जिनिअस' या सहाय्य प्रसिध्द झालेली मते मुख्य संपादक, संपादक मंडळ व सल्लागार मंडळास मान्य असतीलच अस ताही, या नियतकालिक प्रसिध्द करण्यात आलेली लेखकाची मते ही त्याची वैयक्तिक मते आहेत. तसेच शोधनिबंधाची जबाबदारी स्वतः लेखकावर राहिल.

हे नियतकालिक मालक, मुद्रक, प्रकाशक विनय शंकरराव हातोलें यांनी अजिंठा कॉम्प्युटर अॅण्ड प्रिंटर्स, जयसिंगपूर, विद्यापीठ गेट, औरंगाबाद येथे मुद्रित व प्रकाशित केले.



Live-In-Relationship: A Socio- Legal Perspective

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Preface

Today we are living in 21st century. It marks the era of liberalization, privatization and globalization. We Indians, since independence, have seen various changes in every walk of life especially in sociological, economic and political fields. During the passage of time, we have adopted, knowingly or unknowingly, western culture in one or another field of life. Under the garb of modernization and urbanization the trademarks of western culture such as live- in-relationship, pub cultures etc. have been introduced in our rich culture. In fact, the concept of live- in- relationship is not new but some recent judgments and media brought it into limelight. In this research work the author has honestly tried to throw light on the issue of live- in-relationship and its aftermath.

Concept of Marriage

Marriage is one of the most important aspects of human life. In the opinion of *Mazumdar* marriage is a "socially sanctioned union of male and female or as a secondary institution devised by society to sanction the union and mating of male and female for the purpose of establishing household, entering into sex relations, procreating and providing care for the offspring"¹. Amongst Hindus it is a sacrament but in Muslim, Parsis and Christians it is a contract. Essentially, in all religions in India marriage are considered important and its ultimate object is the cohabitation and procreation. By marriage, cohabitation between husband and wife becomes lawful. It means both of them become spouse in the eyes of society and law. They are entitled to beget children and such children begotten out of such marriage are considered as legitimate.

What Is Live-In-Relationship?

"Live-in-relationship" is the modern "*Avatar*" of the concept of "Cohabitation", "Concubine", "Mistress", "Keep" or "Rakhail" wherein a woman lives with a man in a situation which is similar to marriage, although without all of the privileges of marriage. It is the hostile disposition of social and legal concept of "Marriage" recognized and accepted in every civilization and culture for the prescribed behavior for sexuality in human beings.²

A live- in- relationship is not practiced only for the materialistic help to each other but also it may impliedly have physical or sexual relationship

Social Perspective of Live In Relationship

In the above we have discussed the concept of marriage. After marriage a couple lives together and enjoys the rights and liabilities of and for each other. While maintaining a matrimonial life a couple practices celibacy, keeping the family tradition and practice culture. Hence the physical relationship only with the wife does not damage the personality or manhood or womanhood to the extent of fragility, hence the society and nation do not suffer. Moreover where the matrimonial life regulated by recognized social norms and practice gives the country strong men and women with ability or knowledge and serve according to their capacity fairly and honestly to meet the object of life and participate in nations building³. The concept of live- in- relation sets a dash to this. Following are the pros and cons of living in relationship-

I) Pros of Living in Relationship

- 1) It allows the partners to find out compatibility between them, without admitting themselves in marriage.
- 2) It serves as a perfect rehearsal for a married life. The partners get to know whether they have common interests and views on about religion, politics, sex and money.
- 3) It allows the partners to think beyond the sexual pleasure and provides space for free thinking, taking decisions on vital issues and acting accordingly.
- 4) It leaves the option of partition open for the partners if harmony seems not possible between them.

II) Cons of Living in Relationship

- 1) It is nothing but familiarity without security which is quite harmful. It may lead to weaken the relationship between the partners as they get to know each other.
- 2) As there is no security in such relationship, the extent of quarrels and disagreements tend to increase resulting into separation between them.
- 3) Unlike marriage, as scripted in tradition and culture, it is not possible in such relationship to achieve the highest degree of mental and spiritual satisfaction.
- 4) A statistical study shows that most people who marry after a live in relation end up in a hasty divorce.⁴

The main issues of live in relationship are of pregnancy of woman and maintenance and inheritance of children. The pregnancy of an unmarried woman is a social taboo, disrespected,

problematic and a matter of grave embarrassment for the woman and her family. Live-in relationship is treated in the society as a sign of loose moral character. It frequently results into sexual abuse.⁵ On the other hand, the children born out of such relationship are known as bastards or illegitimate. It also creates serious issues of their inheritance and maintenance too.

Legal Perspective of Live In Relationship

After the separations of partners in live-in relationship the woman and children suffer the most in terms of maintenance and property rights. According to Section 125 of the Criminal Procedure Code, 1973, if any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor child whether married or not unable to maintain itself or his legitimate or illegitimate child (not being a married daughter) who has attained majority where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, can claim maintenance. Section 125 to 128 of this Code make provision for maintenance of wives, children and parents. It is natural and fundamental duty of every person to maintain his wife and children so long as they are not able to maintain themselves. The basis of an application for maintenance of a child is the paternity of married. The fact of legitimacy or illegitimacy of a child is an irrelevant consideration in awarding maintenance. Even an illegitimate child can claim maintenance but if the paternity is not established, the child is not entitled to maintenance.⁶

The phrase "wife" used under law means a legally wedded wife according to Section 125 of Criminal Procedure Code. There ought to be a marriage according to religion or customs prevalent amongst their community. A marriage carries a legal, social or religious sanction behind it. It can be dissolved in the manner prescribed either by law, religion or custom of the parties. It provides a guarantee and also a sense of security to the woman who enters into such marital bondage especially.

In *A. Dhanam v. W. L. Babany*⁷, the Privy Council held that, where a man and woman were proved to have lived together as husband and wife, the law would presume, unless the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage. Again in *Mohabbat Ali v. Md. Ibrahim Khan*⁸ held that the law would presume in favour of marriage and against concubinage when, a man and woman have cohabited continuously for number of years and such a presumption could be drawn under Section 114 of the Evidence Act.

In *Gulzar Chand v. Parvati Kumari*⁹ it was held that continuous cohabitation of woman and man as wife and husband and their treatment as such for number of years may raise presumption

of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore the

In *Badri Prasad v Dy. Director of Consolidation and Others*,¹⁰ the Supreme Court held that where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy.

In *Krishna Chandra Jerai v. State of Jharkhand and Another*,¹¹ the parties admitted before the court that, both of them lived together as husband and wife for pretty long time and out of their relationship three children were born. But the court held that there was no dispute with regard to the fact that both the parties lived together as husband and wife and three children were born out of their relationship but it rejected the prayer for the grant of maintenance under Section 125 of Criminal Procedure Code on the ground that she failed to prove that she was legally wedded wife. In this case the court relied on the decision in *Dwarika Satpathy v. Bidyut Prava Dixit and Another*¹² wherein it was held that the standard of proof of marriage in a proceeding under Section 125 of Criminal Procedure Code is not as strict as is required in a trial of offence under Section 494 of Indian Penal Code and if claimant in proceedings under Section 125 of Criminal Procedure Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses. It was further held in the aforesaid decision that the provision under Section 125 of Criminal Procedure Code is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are the victims of social environment and the strict proof of marriage in a summary proceeding like the present in nature was not required to be proved by the opposite party.

The real and crux issue is of the children born out of live in relationship. Significantly, Section 125 of Code of Criminal Procedure, 1973 takes care that no legitimate or illegitimate child is left unattended by the biological father. It provides that a man must maintain his legitimate or illegitimate child and casts an obligation on the biological father and to probe that demands a DNA test should the court order it. It is now well settled that the child born out of live in relationship, he or she, is entitled to claim maintenance however certain conditions are to be satisfied and he or she also entitled to succeed in the property of his or her parent. The law protect such child and in cases of controversy as to the legitimacy as to parenthood of a child

may be determined by scientific test. On the other hand social complications would arise in case of love child, the right to maintenance and right to property as Indian society is conservative and where social values and morality still recognized in case of matrimonial matter or an illegitimate relationship.¹³

Conclusion and Suggestions

Marriage relationship is based on the feelings, social recognition; and equal rights, protection of all human rights of spouses including right to privacy, faith in understanding capacity, rights to fulfill obligations by both parties. It strengthens the society by maintaining peace and order. The institution of marriage plays an important role in society and matrimonial relationship demands mutual understanding, trust, love and affection as well reasonable adjustment with the spouse.¹⁴ Live in relationship is an exception to an orderly society. The society will prevail when the principles of morality are very well followed by its members. Though the concept of personal liberty as mentioned in Article 21 of Indian Constitution is of wider amplitude, the concept of live-in-relationship seems unconscionable as keeping in the mind the morally crafted social structure of India. But it is a matter of two person's will and satisfaction, law seems to be silent on such issue. The actual role of law starts only when there is some dispute or bitterness or unlocking of plight of woman or children. The suitable and specific provisions dealt with this issue are desired to be enacted in the Criminal Procedure Code. It is to be noted that, living in partners have little knowledge about their legal obligations such as maintenance, custody and care of children; and legal rights such as property, ownership, survivorship etc. So it is suggested that such partners should write down all these issues in an agreement so that future bitterness might be avoided

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