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GRT LIVE IN RELATIONSHIP - AN INDIAN PRESPECTIVE

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Abstract:- In India, marriages bestow a sacramental position. With the advent of liberalization and globalization, India faced an enormous amount of western transfusion in its culture, tradition and life styles. This transfusion to a great extent got along, the very famous Live-In System which is given a legal recognized in many countries, but still faces challenges in a country like India. Live- In system is a provision wherein a woman who has not entered into the wedlock with a man or vice versa, shares with him an intimate, emotional, spiritual and physical relationship like that of a wife with her husband. Whether or not this transfusion deserves a welcoming treatment and legal recognition in India is a big question. The present article deals with the Socio-Legal Dimensions of Live-In Relationships in India and whether this kind of relationship is threat to the institution of marriage or not.

Key words: liberalization and globalization , Socio-Legal Dimensions , spiritual and physical .

INTRODUCTION:-

Live-in-relationship is a de facto union in which couple shares common bed-room without solemnizing marriage. In fact it is non-marital relationship prevailing in West with the name of common law marriages, informal marriages or marriage by habit, deemed marriages etc. It is a form of interpersonal status which is legally recognized in some jurisdictions as a marriage even though no legally recognized marriage ceremony is performed or civil marriage contract is entered into or the marriage registered in a civil registry. These deemed marriages are legally binding in some countries but have no legal consequences in others. The term live-in-relationship is defined neither in dictionary nor in law. Live-in-relationship means a woman living with a man as husband and wife for a reasonable period, without marrying him. In the words of an American Anthropologist "living together at least five days a week for at least three months, not legally or religiously married, yet sexually intimate, with or without the goal of marriage in the future." These relationships are called and stigmatized as socially ambiguous and sexually exploitative relationships.

Some people believe that Live-in-relationships are not new in our society. The only difference is that now people demand legal recognition of the same in all aspects of life. Terminologically they were known as "maitray karars" in which people of two opposite sex would enter into a written agreement to be friends, live together and look after each other. A drastic obvious change is now visible in our society from arranged marriages to love marriages and now to 'live-in-relationships'. It is believed that avoiding shackles to personal freedom may be the prime reason for people to appreciate such a relationship but on the contrary such people later experience lack of commitment, the disrespect of social bonds and the lack of tolerance in relationships which has given rise to a lot of experienced opponents of this system. Joel D Block, a leading Psychologist at New York has differentiated between three kinds of relationships on the basis of assumed obligations. "Going together implies sexual exclusivity; living together adds to this an agreement to combine living routines and marriage the implication of permanence. Living arrangements are the midpoint between the least restrictive (going with someone) and the most complex (the marriage). The very nature of the closeness allows a couple to provide with feedback so that they may recognize and modify relationship-defeating behaviors. It contains an element of convenience." When we apply living relationships to an average class of people, we find it less prevalent as this class is scrutinized more in the society. On the contrary both the high income group and the lower income group are in a position to readily accept newer kinds of relationships. A girl from a poor family that is in need of shelter without much hesitation can consider no harm in living with a man of a slightly higher financial status without marrying him. Now-a-days even parents have slowly started giving sanctions to living arrangements for the sake of happiness of their children. The busy lives do not permit us to look into background of couple if they decide to live in a new

place or city. The cities in India are examples of continuance of faith in marriages on one hand and attraction towards living arrangements on the other. In most of the cases, people agree to live together so that at a later stage it may take shape of marital relationship. Still inspite of bonafide intentions of the couples taking “out way decision”, most of living arrangements do not take the shape of eternal bonding. Someone has rightly opined that the world as God created was a kingdom of right relationships. There was right relationship between God and people. There was right relationship between people. There was right relationship between people and the rest of creation. Now relationships that lack any sanctity are even being termed as right by the policy makers, what more we can expect in God's beautiful and pure kingdom. No relationship can ever be equated with a relationship as eternal as marriage. Hence the option of live-in-relationships may seem attractive but the real side may not be that fancy. They may be practically possible but their success in life which some day requires a life-long companion is definitely dull. Experts believe from analyzing the relationships, it becomes evident that live-in couples are still largely from professions like entertainment, advertising, modeling and media. Samindara Sawant, clinical psychologist, Disha Counselling Clinic, Mumbai has found that the trend of live-in relationships has not really caught on in India, especially in the middle and upper middle classes, where marriage is still very much the norm. Ashis Nandy, fellow with the Centre for the Study of Developing Societies, Delhi is of the opinion that if relationships are becoming more cross-cultural, they are also more contractual now, probably leading to more clear-cut expectations from each other. According to a survey by The Journal of Marriage and the Family, live in' relationships are weak commitments. Social geographer Soma Das says that people who opt for live-in relationships do so because they do not believe in marriage. Similarly Priya Florence Shah, Internet entrepreneur and blogger has observed being against such relationships – living-in would be equivalent of lowering standards and settling for less than what one deserves. For most, living together is not an end, it's just a fun thing to do - perhaps a rebellion here and now notes Damayanti Datta, Deputy Editor with India Today. Living in helps you get a better idea about your partner before marriage.

The law introduced in 1999 in France makes provisions for “civil solidarity pacts” allowing couples (even of same sex) to enter into a union and be entitled to the same rights as married couples in such areas as income tax, inheritance, housing and social welfare. Couples, who want to enter into such a relationship may sign up before a court clerk and can revoke the contract unilaterally or by bilaterally with a simple declaration, made in writing, which gives the partner three months' notice.

Article 147, of the Family Code, Philippines provides that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

Some characteristics of live-in-relationship are:

1. These marriages are not solemnized.
2. Cohabitation alone does not constitute such marriage.
3. The couple must hold themselves out to the world as spouse for a significant period of time.
4. There must be mutual consent of the parties to the relationship constituting a deemed marriage.
5. Both parties must be of legal age to enter into a marriage.
6. Both parties must be otherwise qualified to enter into a marriage.

In India these marriages have place neither in statutory law nor in personal laws but the instances of such relationships are growing day by day in the modern age of globalization.

In India

No law at present deal with the concept of live-in-relationships and their legality. Still even in the absence of a specific legislation on the subject, it is praise-worthy that under The Protection of Women from Domestic Violence Act, 2005, all benefits are bestowed on woman living in such kind of arrangement by reason of being covered within the term “domestic relationship” under Section 2(f). If we propose to enact a law to regulate live-in-relationships, though it would grant rights to parties to it but at the same time it would also impose obligations on them.

Couples prefer to choose it only to have no responsibility of any sort, but if it is guided by some law, then it would not be so readily preferred. To consider of enacting a law on the lines of provisions in other countries may not be successful as their relationships are granted sanction mainly to legalize gay relationship. In India, since it would not be socially permissible to have relationship between persons of same sex, the law enacted for them by the countries cannot act as guiding force.

Rights of a Child Born Out Of a Live-In-Relationship

Need for a legal provision is felt to secure the future of a child born from a relationship which has not taken the shape of marriage. The Hindu Marriage Act, 1955 gives the status of a legitimate child to every child whether result of void, voidable or valid marriage. So, we don't require a legal provision to grant legitimacy to the child, but to grant property and maintenance rights.

In case the parties to live-in-relationship decide to move out of it, to secure rights of child whom none of the parents want to keep, there must be a provision that any of them would be responsible to look after the child. To ensure that his rights are actually given, Court may appoint a guardian. The child is entitled to get a share in the property of both the father as well as the mother.

Evaluation of the decision of the Maharashtra government

Justice Malimath Committee as well as the Law Commission of India states that if a woman has been in a 'live in' relationship for a reasonable period, she should enjoy the legal rights of the wife. On 8th October, this recommendation was accepted by the Maharashtra government.

Though the government accepted recommendations of Malimath Committee, but have we thought that the same government some time ago prohibited bar dancers. It looks that government has adopted double standards and taken contradictory stands on women's rights. According to few though live-in relationships are expressions of love but they also deserve legal protection.

Any decision to bring change in Section 125, CrPC with regard to live - in - relationship invites amendments in other laws as well including law of evidence, succession, adoption, bigamy, marriage etc. We must not forget that one enters into living arrangements to effectively deal with a career without any sort of personal obligations of family.

Therefore, if even inspite of no relationship in the eyes of law (marriage), one has to be made liable to pay maintenance after a reasonable time period, aren't we disturbing the concept of virtual arrangements (existing without tension about other)? It may appear that the decision of Maharashtra Government favours women's rights, but the consequences may be harsh. We may find a decline in marriages as both would require monetary responsibility, so why not prefer live in relationships. An increase in child abandonment is a possibility when both parents deny any responsibility.

With the weakening of marriage as an institution, there are possibilities that not only would social offences increase but also independence of people would get manifested by indulging in live-in-relationships.

Courts and Grant of Validity to the Live-In-Relationships

The legal status of such live in couples lacks a definition. The rights and obligation which such couple have towards each other and the status of children born out of such a tie exudes a blurred shadow. No law on the subject has been formulated; the law is adumbrated in the court rooms via myriad cases. When it comes to live in relationships, in earlier cases the court tended to presume marriage based on the number of years of cohabitation.

In the cases prior to independence like *A Dinohamy v. WL Blahamy*, the Privy Council laid down a broad rule postulating that, "Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a The right of woman in such relationship is also not very certain, though court has shown willingness in recognising their rights, law like Protection of Women from Domestic Violence Act, 2005 recognises right of woman in such relationship, nonetheless various other laws such as law of marriage, succession etc. needs to be changed to give full protection to woman in live in relationship. As far as the right of child born under such relationship is concerned, under Hindu Marriage Act, 1955 such child will be legal, nevertheless there is no such law apart from HMA, 1955 that endorses presumption of legality of child born out of live in relationship, valid marriage and not in a state of concubinage." The same principle was reiterated in the case of *Mohabhat Ali v. Mohammad Ibrahim Khan*. After independence the first case that can be reviewed is *Badri Prasad v. Dy. Director of Consolidation* wherein the Supreme Court recognised live in relationships as valid marriage, putting a stop to questions raised by authorities on the 50 years of life in relationship of a couple. Moving on from the initial time when the court recognised live in relationship which were of considerably long period, court in recent cases have postulated that live in relationship are not illegal per se. The Allahabad High Court, in 2001, in *Payal Sharma v. Superintendent, Nari Niketan*, and others, stated that a live-in relationship is not illegal. Sharma had approached the Allahabad High Court when she was forced to live in Nari Niketan at Agra, following her arrest, along with Ramendra Singh, with whom she had a live-in relationship. The Agra police arrested her and Singh on the basis of an FIR lodged by her father, accusing Singh, an already married man, of kidnapping Sharma. Payal Sharma produced documentary evidence evincing the fact that she was 21 years old. On the basis of this evidence, the court directed the authorities to set her free. Justice M Katju and Justice R.B. Mishra stated, "In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality." In *Patel and others case*, the Supreme Court observed that live-in-relation between two adults without a formal marriage cannot be construed as an offence. It also stated that there is no such statute which postulates that live in relationships are illegal. The same proposition was upheld in the case of *Tulsa v. Durghatiya*, where the long term live in relationship was recognised as equivalent to marriage. The further sanction to live in relationship was granted by judgement of Supreme Court on 23rd of March, 2010 in the *Khushboo case*. The case of the prosecution was that the comment of the actress Khushboo allegedly endorsing pre-marital sex will adversely affect the moral fabric of society. The Court, while quashing the charges framed on Khushboo, commented that there is no law that prohibits pre-marital relationships. A three judge bench comprising of Chief Justice K.G. Balakrishnan, Justice Deepak Verma and Justice B.S. Chauhan observed, "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". The court further said "Please tell us what is the offence and under which section. Living together is a right to life", thereby referring to the right to life guaranteed under Article 21. Though this was an obiter dictum, it provided a positive impetus to live in relationships. However, this position is not all binding. The Delhi High Court, in a recent case, observed that a live in relationship is a walk in and walk out relationship. Justice S.N. Dhingra noted, "There are no legal strings attached to this relationship nor does this relationship create any legal-bond between the partners". The court further added, "People who choose to have live-in relationship cannot complain of infidelity or immorality as live-in relationships are also known to have been between a married man and unmarried woman or vice-versa". Hence, though more or less uniformity has been exuded in a positive direction by the court when it comes to live in relationships, the law does not cut a clear picture as can be observed from the recent Delhi High Court judgement.

Debate in the Lok Sabha

On 15th December, 2008 in the question hour, Mr.H.R.Bhardwaj, Hon'ble Union Law Minister while answering to the question related to live-in-relationships said that if live-in- relationships are acceptable by society, then the government can make laws. Laws are made keeping in view societal trends. It is hypothetical to ask a question whether we are contemplating a law to govern live-in relationships. Less than one percent of the people are in such relationships. If a law is enacted, it will only be misused.

Live in relationships - are they a threat to the institution of marriage?

In recent years there has been a remarkable increase in the number of people opting for living-in relationships instead of marriages. Though this trend has been popular in western countries for a long time now, it is catching up in India as well with more and more couples choosing to live in, because of the space, choice and personal freedom it gives them. It might be immensely appealing to young people of today, leading hectic and stressful lives and do not have the time or patience to deal with all the emotional issues that a marriage entails. Apart from the space it gives, there is no problem of surrendering rights or obligations in a live-in relationship. The partners are pretty clear about what they are in for, and if the relationship does not work out, they can leave anytime. There are no legal or financial complications involved unlike a marriage, where splitting up are not so easy. But even in a live in relationship, the situation becomes more complex if children are involved. Since there are no binding relationships between the partners, the issue of taking up responsibility for bringing up the children get more complicated. Since there is no emotional security offered, it becomes difficult to sustain a long term relationship and there is a high risk of breaking up. The moment couples hit a rough patch, they find it easier to split than make efforts to make the relationship work.

Though marriages also have their pros and cons, no relationship enjoys the social and legal recognition as a marriage does. The obvious merits of a marriage are the emotional commitment and the support that the partners have for each other. Since a marriage is protected by law, couples expect loyalty and fidelity from each other. Further, marriage is an incentive to develop staying power in a relationship. There is a lot of emotional investment in the relationship. Though marriages also have their ups and downs with an increasing number of couples going for divorces in recent years, when it comes to commitment and security, no relationship can match a marriage. It is a bond that can last a lifetime.

One development that has caught everyone's attention in recent times has been the amendment to section 125 of CRPC proposed by The National Commission for Women to include women involved in live- in relationships to be eligible for alimony from their live-in partners. Granting women involved in live-in relationships, a right to claim alimony is a serious insult of the most sacrosanct social institution, as in India, a marriage is a solemnized vow to support each other through thick and thin taken in the presence of community elders and with their blessings, but, in contrast, a live-in relationship is initiated by the couple just as a means to stay together. But unlike marriage, the commitment factor in a live in relationship is very low as the ties are very easy to break and there are no liabilities involved from either side.

There is no denying that live in relationships are proving to be extremely popular, particularly among educated urban classes, for whom living in is a declaration of independence, as a way of keeping away from the restrictions and inequalities of institutionalized marriages. But a live-in relationship can never replace marriage. It can never offer the kind of security and emotional fulfillment that a marriage does. Marriage- it is a word that makes some jittery and yet there are others who still believe in the sanctity of such a union and respect it. It's been a few years since the concept of live-in got introduced to our society and even though the Supreme Court may have granted the relationship all legalities equivalent to that of a marriage, our society may still not be ready to welcome it with open arms.

It is hard to deny a fact that in a country like ours, family plays a huge role and marriage seemingly is the stepping stone or rather the foundation of nurturing this concept. The reason why marriage has been and still is to a certain extent, a popular institution is because it provides an individual with companionship, security and stability in life. Marriage, as argued lends a sense of responsibility in life. But the traditional arguments and beliefs have not been able to restrain the current fast paced generation from finding a convenient solution. ?Live-in?, a concept initially viewed as one of the adverse affects of westernization has now carved a niche in some strata of the society. It is no more a mere rebellious statement made by young adults but a mature decision. Some people feel that there is no harm in a live-in relationship if it is a prelude to marriage, as it helps one to know the better half better. Though such a relationship or an arrangement has always been under the ethical radar

and vigil of moral police, these days it is just a matter of saving money. For many, Live-in relationship is the preference because it is time to change and evolve with the changing times, though it might seem socially incorrect.

It might offer one space, help us understand our companion more but at the end of the day, many who are not against the idea of live-in still feel marriage is their first or rather only preference. Even though such practices are not alien to our history and our present, the fact remains, that as a society for the general middle class population, living without a customary authorization isn't and wouldn't be acceptable for a long time to come. So marriage is a must. Besides there is also the opinion that someone who opts for a live-in might get bored or satisfied and leave for no concrete reason. However in case of a marriage people at least try to work it out. The pros and cons of both arrangements have always been before us. For those who believe live-in is a cultural violation, it would never gain respect and for those who are moving with the times, it is the perfect arrangement. Either ways the choice is ours. Like it is said, nothing is right or wrong: Thinking makes it so, if you feel you can't handle the responsibility, the apparent monotonous tone of married life and you need space, freedom, live-in is the answer. And the debate of which is a better deal, still continues though a live-in relationship can never be a threat to an age old institution like marriage. In the end, whatever relationship one chooses, it should be an arrangement where interests of both the partners are kept in mind and there is an understanding and commitment between the two. It is just a matter of perception; one can take a marriage as a live-in arrangement or have a live-in like marriage

Certain practical grounds of involving in such a relationship are:

Young men and women, away from home, settled abroad without any family or local guardians for studies or work find it suitable and are therefore desirous to enter into such relationships to gain emotional/ physical/ financial desires.

In India this trend is prevalent mostly in cosmopolitan cities I circles where people work in advertising, hotel, airlines or people in the art industry - music, theatre etc. Some time couples move in together mainly because they are in love and they want to spend more time together. But they know that their partners are not a good match for a long-term relationship. Others want to make sure that they are compatible before a lifetime commitment. Some couples who are engaged and soon to be married also decide to move in together before the wedding to save the money for a wedding and do not want to pay two rents. Some try to avoid addressing their legal complications in marriage, and find it convenient to live-in throughout their life.

Legal Perspective:

A man and woman of major age can live together without marriage and can share the same room and bed without violating the provisions of criminal law. From the criminal law perspective it is said that cohabitation is not a crime in India, if it is with their free consent. A person had induced a lady to have sexual intercourse with promise to marry her but subsequently refused to marry, it was held that no offence is committed because the cohabitation has taken place with the consent of the girl. If a full grown up girl voluntarily agrees to cohabit on assurance of marriage, it is not rape. Justice Malimath Committee as well as the Law Commission of India states that if a woman has belief in a live-in-relationship for a reasonable period, she should enjoy the legal rights of the wife. The Committee also recommended the amendment of the definition of wife under Section 125 of the Criminal Procedure Code so that a woman live-in-relationship can get the status of a wife. The Maharashtra cabinet, under the chairmanship of the then Chief Minister Vilasrao Deshmukh, had approved the recommendations of the Committee amidst of controversies. Although many have appreciated, others opposed it saying that it will demolish the sanctity of marriage; government has adopted double standards and taken contradictory stands on women's rights. The same government some time ago prohibited bar dancers who also deserve legal protection. But still it is not a law even in Maharashtra. Live-in-relationship before marriage resembles "taking a car for a test drive". Recently the Honorable Supreme Court of India held in the case of *Tulsa v/s. urghatiya* that a live-in-relationship should be treated as equivalent to marriage is a clear proof that judiciary set to change the dynamics of such relationships and has provided a base to accept such relationship. The Mumbai and Delhi High Courts also upheld recently to sanctify live-in-relationship. There is no marriage in the eye of law if it is not solemnized with necessary ceremonies (Section 6, Hindu Marriage Act 1955). Marriage cannot be proved by long cohabitation with each other, even the acceptance of society that the parties live as husband and wife. The illegitimate child can inherit the property to his mother only though the child of void and avoidable marriage is entitled to inherit the property. The offspring's of such relationship are as illegimates so they cannot inherit. The Protection of Women from Domestic Violence Act 2005, under Section 2(f), all benefits is bestowed on woman living in such kind of arrangement by reason of being covered within the term "domestic relationship." Under the provision of section 27 of IPC when continuous cohabitation for a number of years between a male and a female is proved they are presumed as husband and wife.

CONCLUSION:

In Indian traditional society the concept of live-in relationship should be analyzed in the light of patriarchy, gender equality and sacramental nature of marriage. The legal sanction for live-in relationships is meant to work to the advantage of women who become victims of their circumstances, even if it was a matter of choice, it is based on the assumption that the relationship is not between equals; therefore women need protection by the courts from the patriarchal definition of marriage and such relationships too. So far as the legitimacy of children by live-in-relationship is concerned, these children will have a

right to their parent's property. The stigma attached to illegitimacy has often prevented the acknowledgement of such a child and hence accorded a socially peripheral status to such children. In many countries it is sanctioned mainly to legalize gay relationship. In India, since it is not socially permissible, the law enacted for them by those countries cannot act as guiding force. The last two to three months have been influential in arousing response on the matter of live-in-relationships in India. It should not be denied that our culture does need a legislature to regulate relationships which are likely to grow in number with changes in the ideology of people. The right time has come that efforts should be made to enact a law having clear provisions with regard to the time span required to give status to the relationship, registration and rights of parties and children born out of it.

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