

Golden Research Thoughts



COHABITATION: RELATIONSHIP IN THE NATURE OF MARRIAGE



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Abstract:-

The cohabitation is not very common in the society. It has many advantage as well having its biggest disadvantage. Though cohabitation are a rising trend in urban India, our society is yet to accept it open-heartedly The paper is supporting to present the way of a cohabitation which makes people so comfortable. This paper focuses upon some of the legal moves which have brought adult heterosexual non-marital cohabitation patterns, popularly termed “live-in” relations, into public focus in India.

Keywords:

Cohabitation, Customs, Live-in-Relationship.

INTRODUCTION

In the Hindu 'Vedas' which were instituted in Indian culture at least a millennium and were in existence much before the composition of the famous epic "Mahabharata" the marriage defines marriage as an instrument through which man becomes householder and bears children. Large part of the Hindu population in the peninsular India. This concept originates from the verses in Shatapath Brahman Grantham - a treatise of the Vedic period.

The Hinduism began in the Ancient India thousands of years ago. Our Hindu customs differ greatly from the ones we practice in the western world. The customs expected from men to marry in this concept to carry on the family lineage and on the other hand Women are encouraged to marry to help relieve their financial burden from their parents.

Marriage is a union which is committed in that person who are agreed to forsake others means a man and a woman. It unites two people for the sake of producing children. All cultures and history have shown us what marriage is; a man and a woman starting and raising a family, and so on, for each generation. This is the first step to make the building blocks of society. It has stood the test of time. It's about rights as well as about the duties.

The live-in-relationship is not fresh concept in India because firstly it was accepted in the certain parts of Gujarat. This was known as "Maitri Karar". In this Karar a married men and other women will entered into with sense of security to registered themselves with District Collectrate. The only difference is that earlier people were hesitant in declaring their status may be due to the fear of the society but now the people are openly in this kind of relationship. and now it is seen mostly in the metro cities because our society slowly opening its doors for western ideas and lifestyles. In this regard one of the most crucial episodes amongst is the concept of Live-in relationships. We have discussed many times and also did debate on this concept of Live-in relationships in India. It is important to understand the said concept from legal view point

COHABITATION: MEANING AND DEFINITION

Cohabitation or Liveinrelationship, this expression has come in its ordinary sense that two people living who are a man and a woman live together without intending to establish any kind of permanent relationship between them.

In another sense the arrangement in which couple lives who is unmarried live together under the same roof in a long period of years that relationship will be resembles and known as a live-in-relationship.

The legal words defines "live in relationship is an arrangement of living under which the couples who are unmarried, live together to conduct a long-going relationship similarly as in marriage." Live in relationships provide for a life which is free from responsibility and commitment.

This form of living together is not legalized and recognized by Hindu Marriage Act, 1955 or any other statutory law. This form of relationship has become an alternate to marriage in metropolitan cities because there individual freedom is the top most priority amongst the youth. No person wants to get entangled into the traditional and typical type of married life responsibilities.

In our Indian culture marriage has always been considered a sacrament. The couple who are husband and wife are considered as one in the eyes of law as well as in the society. The legal consequences of marriage that follow add to the sanctity of this relationship. The legal marriage gives legal entitlement for both the persons to cohabit, the wife is entitled to get maintenance during the subsistence of marriage, and the children born out of a legal wedlock are the legitimate children of the couple.

The legal institution of marriage requires adjustment, lots of responsibilities, marital obligations towards the spouse, family, and children and towards the marital. This kind of responsibilities is inseparable part of the Indian marriage. While the foundation of live in relationships is individual freedom. In the religious society of India the common man is still not accepted and hesitant of this kind of relationship. To avoid the obligations of a traditional marriage and on

The other hand to enjoy the benefit of cohabiting together, the concept of live in relation has come into picture.

This type of mentality has emerged primarily out of the convenience, lack the commitment with each other and the 'compatibility' between such partners. Different kind of persons like unmarried man and unmarried woman or married man and unmarried woman or persons of same sex may live together.

In the Indian and Global Perspectives

Justice Malimath Committee decided that "if a man and a woman are living together as husband and wife for a reasonable long period of time, the man shall be deemed to have married the women." The amendment of the word wife should also in CrPc.

In Australia this type of relationship is called a "de facto relationship". In Canada if two persons are living together they are recognised as "common law marriage" but for this recognition the partners must have conjugal relationship at least for 12 months continuous months. This also a very important issue for being in common law marriage that if the couple is having a child or by adoption or by custody then this relation will become a legal sanctity.

In the Scotland this type of relationship is legalised only on the basis of the duration in which they

lived together, the nature of relationship and financial arrangements.

In the United Kingdom it covered by the civil partnership act 2004. In this country these type of partners are not having rights of ownerships of each other's property when they separate from each other and they will be considered as unconnected individuals for taxation purposes.

In France the live in relationship is defined as a "de facto stable and continuous relationship". The partners will be considered as "contractants" It will bind "two adults of different sexes or of the same sexing order to organise their common life."

Live in Relation: Questions raised by the Court

A Bench of Justice G S Singhvi and Justice Ashok Kumar Ganguly requested the Hon'ble Chief Justice to refer the following, amongst other, questions to be decided by a larger Bench.

The questions are:

Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C.? Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C. having regard to the provisions of Domestic Violence Act, 2005? Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C.?

The Bench said "We are of the opinion that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C., so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125.

We also live that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual".

Live in relation: Recognition by the judgements through Apex court of India and High Courts

1. Badri Prasad vs. Dy Director of Consolidation was the first case in the recognition given by the sc that this type of relationship is valid because the couple was living together past 50 years.
- 2 Patel and Others. the Supreme Court has held that when this type of relation will be continuing between two adults without marriage then it is not considered as an offence and till date no law made by the parliament says that this type of relationship is illegal.
- 3 Payal Katara vs. Superintendent, Nari Niketan and others, in this the Allahabad High Court gave recognition to this concept of live in relationship. The court said that according to society concern this type of relationship is immoral but in the eye of law it is not illegal.

Live in relationship: The Constitution of India and Domestic Violence Act

Right to Life and Liberty it says everyone is free to live in his own way which he or she wants. The Fundamental right under Article 21 of the Constitution of India grants to all its citizens. Live in relationship may be immoral in the eyes of the conservative Indian society but it is not "illegal" in the eyes of law.

Protection of Women from Domestic Violence Act, the legislator first time the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship.

In case of S. Khushboo vs. Kanniammal & Anr., the south Indian actress who was having pre-marital sex and lives in relationship, the SC quashed all the appeals and said words "living together cannot be illegal. "And status of the partner remains vulnerable because she is behind exploited physically as well as mentally. The Domestic Violence Act gives protection to those partners who live in this relationship like a marriage. The basic criteria must be fulfilled in the live in relationship.

Not accepted in the eye of law.

1. If the live in partners spending only weekends together or a one night stand would not make it a 'domestic relationship'.
- 2 if a man is having a 'keep' whom he is maintaining financially and he is having relation only for sexual purpose or as a servant it would not, in our opinion, be a relationship in the nature of marriage'.
3. if divorced wife who is treated as a wife in context of Section 125 of CrPC and if a person has not even been married i.e. the case of live in partners, they cannot be divorced, and hence cannot claim maintenance under Section 125 of CrPC.
4. if a woman in a live-in relationship is not entitled to maintenance unless she fulfils certain parameters like the couple must hold akin to spouses, legal age to marry, must have voluntarily cohabited.

Securities: Maintenance in the Live in Relationship

In the case *Abhijit Bhikaseeth Auti v. State Of Maharashtra and Others* has supported by the court, the suggestion given by the National commission for Women and child development in the June 2008 that the live in partner is also having the right to get maintenance under section 125 of Cr.P.C.

The positive opinion in favour of live in relationship was also seconded by Maharashtra Government in October, 2008 when it accepted the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife.

In the Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe. It has been commented upon by Supreme Court in *S. Khushboo vs. Kanniammal & Anr.*

Securities : status of the Children in live in relationship

The securities related with the children who born out of the live in relation are not having specific laws that recognizes the status of the children. The future of the children is insecure in case the partners quit from this relation. The Hindu Marriage act, 1955 gives guarantee to those children who born out from the void and voidable marriages but no laws that raises the presumption of legitimacy in favour of children.

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There comes the requirement of a strong provision to safeguard the rights of such children. The must be provision to secure the future of the child and also entitling the children to a share in the property of both the parents. For this feeling the sc has taken the initiative to safeguard the interest of the children in the case *Bharata Matha & Ors. vs. R. Vijaya Renganathan & Ors.* may be allowed to succeed inheritance in the property but not in the ancestral property..

The important legal points which are very important to give legal relief to the sufferer. The Supreme Court highlighted some major issues which are formulated the following guidelines relating to live-in relationship on following points:

A) Live in relationship: Duration and sharing households

According to section 2(f) of the domestic Violence Act, A reasonable period of time to maintain and continue a relationship that is called 'at any point of time'. must be there in the live in relationship but it depends upon the facts and situation and moves from case to case. Sharing Household is defining in the Domestic Violence Act under section 2(s).

B) Live in relationship: Collaboration in financial Arrangements

In the live in relationship if the partners are shearing all the financial arrangements made by them like a married couple and also acquiring immovable properties in the joint names are the major basis and support to their relation legally.

C) Live in relationship: Domestic Arrangements

this type of relationship the women partner will perform all the domestic work like a legal married wife . This type of work and responsibility show that they are residing together and having trust on each other.

There are many reasons for which I can say that live in relationship should be encouraged because:

1. In this type of relationship no social obligations are there
2. The couple understand each other very much because they know each other from long time. No compulsion for marital tie.
- 3.No need for the legal help if the couple is not compatible with each they can be separated. Maturity level is high to maintain this kind of relationship
4. No marriage expenses.
5. No In laws responsibility.

But much positive argument in favour of live in relationship but still easily our Indian society is not accepting it. There are ample of reasons for not accepting this relationship they are

“Partner changing mentality “may run in this kind of relationship because of no social bindings.

- 1.Partner is socially and legally free.

2. No communities will accept this kind of relation.
3. Spread up the discomfortness in the society.
4. No security of children born out from the live in relationship.
5. Property issues will arise but no legal securities are there in law.

CONCLUSION

In India Live-in relationships have still not received by the entire society. Very less percentage of the social consent is giving to the live in relationship. They are still considered a taboo to the Indian society? The majority of the people consider it against the religion and society. This type of relationship is considered as an immoral relationship.

Uncommitted relationships can cause an enormous amount of insecurity in people.

Presently there is no specific legislation that deals with the concept of live in relationship and the rights of the parties and the children of the live in partners because it is not a crime. Through its various decisions the judiciary has tried to accord legality to the concept and protect the rights of the parties and the children of live in couples. This concept is very unambiguous. There must be clear cut provisions for registration for this kind of relations. The future of the children born out of this marriage is not secure so the utmost requirement is to make laws for the sake of the children.

In the landmark judgement, a bench headed by Justice K S Radhakrishnan framed "Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage," the bench said. Live-in relationships are not being treated entirely on par with marriages because the evidence is rebuttable. Cohabitation is now a demand of the super-fast lifestyle of modern India. This change is inevitable and society has now accepted this but one should get in to this relationship with full maturity, dedication, faith and after accepting it he or she should consider all the legal, social and more importantly personal aspects.

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