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LIVE- IN RELATIONSHIP IN INDIAN PERSPECTIVE: LEGISLATIVE AND JUDICIAL RESPONSE

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Abstract:

Live-in-relationship denotes an arrangement in which a Man and Woman lives together like husband and wife or cohabits with each other without any legal sanction called 'Marriage'. This concept has not gained social acceptance and considered to be against the Indian culture and moral values. Today couples lives with each other without marrying, the reasons may vary people are becoming more and more individualistic as well hedonistic and career oriented. Today the jobs also demands more time in offices which results in spending less times at home and affecting nurturing of the family. Couple may want to test their compatibility before they marry or may want to maintain their single status. The craze for westernisation, changing lifestyles and defying our own culture is the ongoing trends in the culture of live-in relationship.

INTRODUCTION :

Live-in relationship is being taken as alternatives to marriage especially in the metropolitan cities. During the early stage the couples are excited, attracted and live happily with each other, but, as the relationship grows older several questions arise between them which involves several legal issues, that are hereinafter mentioned, for which the couples ultimately resort to law for seeking justice such major issues are:-

Right to have live-in relationship.
Maintenance of partners living/lived in live-in relationship.
Legitimacy of children born out of the live-in relationship.
Inheritance of estate by children and partners of live-in relationship.
Cruelty or ill-treatment arising out of live-in relationship.

Above being the major issues related with live-in relationship of which legal aspect is needed to be discussed under the present law and therefore attracts legal attention.

MEANING OF LIVE IN RELATIONSHIP AND ITS LEGAL STATUS IN INDIA:-

Live-in relationship i.e. cohabitation is an arrangement whereby couples decide to live together on a long term or on a permanent basis in an emotionally and/or sexually intimate relationship but does not include adulterous relations or living with each other as a friend for purpose of enjoying the company which may include sexual relations such as walk in and walk out relations, it is an agreement by which they lives with each other and enjoys all benefits similar to a married couple which also involves physical intimacy of

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the partners. The Constitution of India provide for all its citizen 'Right to life and personal liberty', No law in India prohibits the couple to live with each other which means the law is silent on this point and therefore it becomes the right of the parties to live together. Live-in relations may be immoral in the eyes of the society but it is not illegal in the eyes of law. The issue of legality of live-in relationship has gone further and is recognized by the Supreme Court of India, The Supreme Court through its Three Judge Bench comprising of Former Chief Justice of India K.G. Balkrishnan, 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 offence? Living together is not an offence, it cannot be an offence”. The Court further said, “There is no law which prohibits live-in relationship or pre-marital sex”, “Living together is a Right to life”

These observations were made by the court on a special leave petition filed by noted south Indian actress, Khushboo, the Apex court referred Article 21 of the Constitution which provides Right to Life and Personal liberty as a fundamental right. In Lata Singh V. State of U.P and onr, The Supreme Court said that two consenting adults engaging in sex is not an offence in law even though it may be perceived as immoral.

LIVE-IN RELATIONSHIP AS A PRESUMPTIVE MARRIAGE:-

Though no law at present deals directly with live-in relationship it does not mean that such relations are not regulated. Living in is not an absolute right it gives rise to certain rights and liabilities. The cases of prolonged live-in relationship are considered as a relationship equal to that of marriage. Couples having such relationship cannot escape from the liabilities arising from the prolonged live-in-relationship as the living of them with each other for a long period give rise to an implied implication of contract of marriage between them. Although relationship of marriage is created by the act of the parties expressly and impliedly, live-in relationship is covered by the latter which can also be said as a constructive marriage.

Section 2(f) of The Protection of Women from Domestic Violence Act, 2005 provides for all benefits that are bestowed on woman living in such kind of arrangement by reason of being covered within the term 'Domestic Relationship' and as such female live-in-partners have economic rights.

Section 114 of The Indian Evidence Act, 1872 lays down that “where the independent evidence of solemnization of marriage is not available, it shall be presumed to be a valid marriage by continuous cohabitation between the parties unless the contrary is proved” this provisions is very comprehensive in nature as it provides status of a valid marriage where the parties are living in together for a continuous long period that is deemed marriage and therefore the couples are entitled to claim the matrimonial rights against each other, but, the term longer period remains unelaborated.

The Protection of Women from Domestic Violence Act recognises the rights of the partners out of the domestic relationship and is of restrictive scope as compared to the Evidence Act because once the marriage is proved by either person then such person becomes entitled for all the rights arising there from the marriage and as such the Evidence Act is of broader aspect.

JUDICIAL APPROACH TOWARDS LIVE IN RELATIONSHIP:-

Law traditionally has been biased in favour of the marriage it protects the rights of the married person and encourages the institution of the marriage the role of the supreme court is also in the interest of society such purpose is also supported by the Apex Court by way of recognizing the rights of the peoples of live-in relationship.

APPLICATION OF DOMESTIC VIOLENCE ACT TO LIVE-IN-RELATIONSHIP TO WOMEN:-

The Supreme Court of India in its various decisions has recognized rights of couple living in live-in-relationship, in D Veluswamy V. D Patchaammal The Supreme Court has explained the definition of live-in-relationship with reference to Protection of Women from Domestic Violence Act, the Court in its judgment has given a broad interpretation to the term 'Domestic Relationship' under Section 2(f) of The Protection of Women from Domestic Violence Act, 2005 by holding 'Domestic Relationship' as a relationship between two persons who live or have at any point of time lived together in a share household, when they are related by consanguinity, marriage or through in the nature of marriage or by adoption or are family members living together in a joint family. This decision of the Supreme Court has opened the way for the persons living in live-in relationship to claim under the Act therefore a women who is in a live-in relationship can seek legal relief against her partner in case of abuse and harassment through protection orders, compensation and interim orders under Sections 18 to 23 of The Protection of Women from

Domestic Violence Act, 2005. The Court also mentioned that such relations should be in relation of marriage and should fulfill the following conditions;

- a. The couple must hold themselves out to the society as being akin to spouses for a significant period of time.
- b. They must be of legal age to marry.
- c. They must be otherwise qualified to enter into a legal marriage being unmarried.
- d. The parties should have lived together in a share household. Merely spending weekend together or a night stand would not make a Domestic Relation. It is also held that if a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not be a relationship in nature of marriage.

LEGAL STATUS OF CHILDREN BORN OUT OF LIVE-IN-RELATIONSHIP:

The Supreme Court on the issue of the legitimacy of children born out of live-in relationship protects the legitimacy of such children as they are considered to be legitimate. In *Bharat Matha & Ors V. Vijaya Renganathan & ors.* dealing with the legitimacy of the child born out of a live-in relationship and his succession of property rights, the Supreme Court held that child born out of such relationship may be allowed to succeed inheritance in the property of parents, if any, but doesn't have any claim against Hindu ancestral coparcenary property.

In January 2008 The Supreme Court bench headed by Justice Arijit Pasayat held that children who are born out of such relations will not be considered as illegitimate. In August 2010 the Supreme Court again held that such relations existed for a long time will be considered as marriage and the children born out of such relations will be legitimate. On the issue of inheritance rights the Supreme Court held that a child born out of such relations is not entitled to claim inheritance in a Hindu ancestral coparcenary property.

The above study reveals that long term live-in relationships are recognized and protected by law but the short term live-in relations and adulterous relation do not find any legal recognition. The Supreme Court in this respect clearly distinguishes so called live-in relations into live-in relations of longer duration and live-in relations of short term duration which are called as 'walk-in' or 'walk-out' relation.

RESPONSE OF INDIAN GOVERNMENT TOWARDS LIVE-IN-RELATIONSHIP:-

The Indian judiciary's efforts towards live-in relationship have highlighted the need for the law on the same. Several efforts on the government side also show the concern of them for live-in relationship. The National Commission for Women has recommended to the Ministry of Women and Child Development on 30th June 2008 that the definition of 'wife' as described in section 125 of Code of Criminal Procedure, 1973 must include women involved in live-in relationship. The Malimath Committee set up by the Supreme Court of India has also suggested that the word 'Wife' should be amended to include a woman living with the man like his wife so that women having a live-in relationship with a man would also be entitled for alimony.

The Maharashtra Government in October 2008 approved proposal suggesting that a woman involved in live-in relationship for a reasonable period should get the status of wife.

On 15th December 2008 during debate in Lok Sabha, in question hour, Mr. H. R. Bhardwaj, Union Law Minister on live-in relationship said if they are acceptable by society then government can make laws.

CONCLUSION:-

Live-in partners have legal right to claim inheritance, maintenance with this women also have right to claim remedies under the Protection of Women from Domestic Violence Act. Children born out of live-in relationship are also considered as legitimate as they also possess certain rights. This doesn't mean that law promotes or encourages such relationship but it protects the partners who have surrendered themselves for such relations out of an implied agreement between them. The above protection is available only in case of long term relationship but the long term relationship is not elaborated. Controversies have given rise to think over the enactment of legislation over live-in-relationship but the protection already exists in the case of an honest partner. Any specific enactment regarding live-in relationship may create presumptive rights as amongst the partners of live-in relationship which may bring within its ambit short term live-in relationship also that will give rise to numerous legal proceedings hence it is necessary to consider this aspect while legislating over the live-in relationship.

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