

COHABITATION- IS NEW CULTURE OF MARRIAGE IN INDIA

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Abstract :

Today, cohabitation is a common pattern among people in the Western world. In fact, cohabitation is increasingly becoming the first co-residential union formed among young adults

In a changing India, it's no crime to cohabit. The Supreme Court has held that if a man and a woman are residing together for a long time and have been accepted by the society as husband and wife, a presumption could be drawn that their marriage is valid.

Cohabitation or live-in relationships in India is though not illegal, is considered socially and morally improper. Cohabitation is prevalent mostly among the people living in metro cities in India. Traditionally, the Indian society might have frowned upon live-in relationships. But the growing number of such couples in India indicates a degree of acceptance.

Live in relationship directly affecting the status of wife, children, family and whole country. Our society has to play important role of watchdog to deny concept of live-in relationship and misinterpretation of marriage. Otherwise our identity, humanity and our rich ancient culture, tradition will be in grave danger.

The paper highlights whether cohabitation- Is a rebellion against traditional family forms, or experiment with new things in life? Or whether it is a striking a blow for freedom and independence or. becoming the new form of marriage in India; how cohabitation presents numerous troubles for the couple and what are legal protection to such marriages.

Key Words : Live-in-relationship, challenge, freedom, convenience.

Introduction

India is still looked by the world as a nation where **marriage occupies a sacramental position both philosophically and practically.**

Along with time, the **Indian society has witnessed substantial changes in the social and marital**

set up. Though most of the parents still remain staunch about their kind of arrange marriage, a wave of change has been brought by few parents, who whole-heartedly **welcome the choice of their kids in their family.** Unlike the West, where every kind of marriage is a love marriage, Indian society on a verge of transformation has three different kinds of marriages — the **arrange marriage**, which is perfectly arranged by the family of the bride and the groom; **the love marriage, solemnized by the choice of the life partners themselves** and the third- **love-cum-arranged marriage** where the life partner is selected by the boy or girl himself/herself but rest of the formalities of arranging it is done by their parents. (Love marriages were considered as a **taboo among many people in India**, who do **not have a modern outlook of life.** For them, two people should tie the wedding knot only with the consent of their parents and the blessings of their relatives.

Today, Indian economy is part and parcel of global economy; Live-in-relationships are not new in our society. The only difference is that now people have become **open about it.** Formally 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 change is **visible in our society** from **arranged marriages to love marriages and now to ‘live-in-relationships’.** If an analysis is made of need of such relationships, *avoiding responsibility* would emerge as the prime reason. **The lack of commitment, the disrespect of social bonds and the lack of tolerance in relationships have given rise to alternative to marriages.** 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.” 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 life-long companion is definitely dull .

Change in law for a small section would surely affect the country’s whole population. **Chances are fair that the coming generations might forget the importance of marriage and follow illegitimate relationships.**

Reasons for cohabitation

People may live together for a **number of reasons.**

- Cohabitants could live together in order to **save money**, because of the **convenience of living with another**, or a **need to find housing.**
- Lower income individuals facing financial uncertainty may delay or avoid marriage, not only

because of the difficulty of paying for a wedding but also because of **fear of financial hardship if a marriage were to end in divorce.**

- When given a survey of the reasons why they cohabit most couples listed reasons such as **spending more time together**, convenience based reasons, and **testing their relationships**, while few gave the reason that they **do not believe in marriage.**
- The extremely high costs of housing and tight budgets of today's economy are also factors that can lead a couple to cohabitation.
- Today sixty percent of all marriages are preceded by a period of cohabitation.
- Researchers suggest that couples live together as a way of trying out marriage to **test compatibility with their partners**, while still having the option of **ending the relationship without legal implications.**
- Couples who have plans to marry before moving in together or who are engaged before cohabiting typically marry within two years of living together. "**About 10 per cent of cohabiting unions last more than five years.**"
- Cohabitation can be an **alternative to marriage** in situations where marriage is not able to happen for financial or other reasons, such as same-sex, some interracial or interreligious marriages. Other reasons might include cohabitation as a way for **polygamists** or polyamorists to avoid breaking the law, **a way to avoid the higher income taxes** paid by some two-income married couples (in the United States), **negative effects on pension payments** (among older people), or seeing no need to marry.

Cohabitation, sometimes called de facto marriage, is becoming more commonly known as a **substitute for conventional marriage.** In some states which recognize it, cohabitation can be viewed legally as common-law marriages, either after the duration of a specified period, or if the couple consider and behave accordingly as husband and wife. (This helps provide the surviving partner a legal basis for inheriting the deceased's belongings in the event of the death of their cohabiting partner).

In today's cohabiting relationships, forty percent of households include children, giving us an idea of how cohabitation could be considered a **new normative type of family dynamic**

Cohabitation in Asia

- In **Bangladesh** cohabitation after divorce is frequently punished by the **salishi** system of informal courts, especially in rural areas.

- In **India** it had been taboo since British rule. However, this is no longer true in large cities, but is not often found in rural areas which are more conservative. **Live-in relationships are legal in India.** Recent Indian court rulings have ascribed some rights to long-term cohabiting partners. Female live-in partners have economic rights under *Protection of Women from Domestic Violence Act 2005*
- In **Indonesia**, an Islamic penal code proposed in 2005 would have made cohabitation punishable by up to two years in prison. The practice is still frowned upon, and many hotels and boarding houses have been raided by police for allowed unmarried couples to share a room.
- In **Japan**, according to M. Iwasawa at the National Institute of Population and Social Security Research, **less than 3 per cent of females between 25-29 are currently cohabiting, but more than 1 in 5 have had some experience of an unmarried partnership, including cohabitation.** A more recent Iwasawa study has shown that there has been a recent emergence of non-marital cohabitation. Couples born in the 1950s cohort showed an incidence of cohabitation of 11.8 per cent, where the 1960s and 1970s cohorts showed cohabitation rates of 30 per cent, and 53.9 per cent respectively. The split between urban and rural residence for people who had cohabited is indicates 68.8 per cent were urban and 31.2 per cent were rural.
- In the **Philippines**, around 2.4 million Filipinos were cohabiting as of 2004. The 2000 census placed the percentage of cohabiting couples at 19 per cent. The majority of individuals are between the ages of 20-24. Poverty was often the main factor in decision to cohabit.

Law and Live-in-Relationships in India :

- There is **no statute directly dealing with live-in-relationship in India.**
- The **Hindu Marriage Act, 1955, confers the legitimacy on child born** out of ‘void’ and ‘voidable’ marriages and establishes their succession and property rights. The **void marriage is not a marriage in the eye of law.**
- The Protection of Women from Domestic Violence Act, 2005 (**PWFDVA**) also provides some kind of **protection to the aggrieved parties** from any kind of atrocities faced by the females living in ‘relationship in the nature of marriage.’ This **Act has been widely hailed as the first legal Act to recognize** the existence of non-marital adult heterosexual relations. This Act defines an “aggrieved person” who will be covered under this Act as “any woman

who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.” Further the Act defines a ‘**domestic relationship**’ as ‘a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.’ In having used the idea of “**relations in the nature of marriage**”, the Act seems to have widened the scope of legally recognized domestic relationships between men and women.

- **Justice Mallimath 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**. The Committee also recommended the amendment of the definition of ‘wife’ under Section 125 of the Criminal Procedure Code (Cr.P.C) so that a woman in live-in-relationship can get the status of a wife. But there is a lack of consistency in the recommendations of the Committee. If all the recommendations of the committee were implemented, a **woman can simultaneously seek maintenance under Section 125 of the Cr.P.C and be charged with adultery under Section 497 of the IPC**. A man on the other hand may be susceptible to charges of adultery and bigamy at the same time as he pays maintenance to the woman with whom he is in a bigamous/adulterous relation!

Indian Judicial Treatment of Live-in-Relationships :

Indian judiciary is neither expressly encouraging nor prohibiting such kind of live-in-relationships in India. The judiciary is only rendering justice in accordance with law in a particular case. The main concern of the judiciary is to prevent the miscarriage of justice. The judiciary in deciding the cases keeps in mind the social mores and constitutional values.

Definitions :

- 1) To live together in a sexual relationship, especially when not legally married.
- 2) To coexist, as animals of different species.
- 3) (Noun) living together, when not married. Example=Most public-sector pension schemes do not recognize cohabitation.

Meaning :

Cohabitation is an arrangement where **two people who is not married** live together in an

intimate relationship, particularly an **emotionally and/or sexually intimate** one, on a **long-term or permanent basis**.

More broadly, the term *cohabitation* can mean any number of people living together A living arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage.

Theoretical Background :

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. 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.**

Supreme court bench, comprises of chief justice KG Bal Krishnan, justice Deepak Verma, and justice BS Chauhan, ruled that *pre marital sex/cohabitation is not at all sin* by citing the article Article 21, which guarantees the right to life and liberty as a fundamental right.

Supreme Court ruling triggered heavy flak and applause from different section of the people including right and left wings. **Indian law already guaranteed consent of sex to adults after completion of 15 years.** Law commission in her 248th report suggested that minimum age to have sex should be exceeded to 16 years. Supreme court, till now, gave contradictory judgments regarding cohabitation, pre marital sex, dating in various occasions..

In latest judgment, Supreme Court justified the practice of cohabitation by citing the intimate relationship of lord Sri Krishna and Radha claiming they have had cohabitation. Really,

*it hurts the sentiments of tens of millions of Hindus including me. Supreme Court should not have brought religion in this controversial judgment in the so called secular country. Supreme Court must go through the **platonic and divine love between Sri Krishna and Radha**. There is no way of comparing divine love with the present generation experimentation and lust.*

Research :

- **Cohabitation and free sex concept intensified in India due to the LPG** (liberalization, Globalization, Privatization)
- **Adoption** in the culturally complex India. Educated Indian elite have been influencing and imitating the western epicurean philosophy by applying in the Indian atmosphere.. **We can adopt western thought**, but it must be **filtered to fit** into Indian environment, rather than **dumping in raw**.
- **Indian educate elite stress much importance to this epicurean and hedonistic culture.**
- **Money and caste** have been playing crucial role in Indian matrimonial alliances. Majority Indian families, still, unable to welcome their kins proposals to marry their love citing **caste, money and status**. This kind of hypocrite attitude made fractures and strains to Vedic Indian culture.
- Recent survey observed that **more than a quarter of India's youngsters have premarital sex. Love and inter caste marriages without approval of parents are increasing day by day particularly in urban areas by questioning the validity of Hindu family and marriage system.**
- **Swami Dayananda Saraswathi**, predicted **this kind of family crisis in the very last century, encouraged inter caste and inter class marriages for uplifting the unity among Hindus**
- Today's generation are more open, avoids responsibility and cares for themselves.

Protecting the interest of the people's very civil and fundamental right to live according to their wish. But, legally, Supreme Court has played its role in decent and smooth way by ensuring freedom of right to live. But, people should remember ethics and social norms. We must understand the **very differences between ethics and law**. Law cannot prescribe how should we live, it was ethics and social norms which explain the essence of living in welfare model.(Refer 9).

Findings :

- **Avoiding the responsibility of marriage** is the major cause of cohabitation,
- In cohabitation **ending up the relationship** is very easy for male partner

- Living together will lead automatically to marriage, but that often is not the case. many **cohabitations break up.**
- For many other couples, cohabitation is **viewed as an alternative to marriage rather than a preparation for it.** However, this alternative is less likely than marriage to lead to a long-term stable commitment.
- **Cohabiting relationships are fragile.** They are always more likely to break up than marriages entered into at the same time, regardless of age or income.
- On average, cohabitations last less than two years before breaking up or converting to marriage. **Less than four per cent of cohabitations last for ten years or more.**
- Cohabiting also **influences later marriages.** The more often and the longer that men and women cohabit, the more likely they are to divorce later.
- **Both men and women in cohabiting relationships are more likely to be unfaithful** to their partners than married people
- The ‘live- in-relationship’ is a living arrangement in which an un-married couple lives together in a **long-term relationship that resembles a marriage.**
- At all **socio-economic levels, cohabiting couples accumulate less wealth** than married couples as there is no responsibility
- **Married men earn 10 to 40 percent more** than single or cohabiting men, and they are more successful in their careers, **particularly when they become fathers**
- **Married women without children earn about the same as childless single or cohabiting women.** All women who take time out of employment to have children lose some earning power-whether they are married or not.
- **Cohabiting and lone mothers often lack access to the father's income,** making it more difficult to balance their caring responsibilities with their careers.
- **Cohabitants have more health problems** than married people, probably because cohabitants put up with behavior in their partners which husbands and wives would discourage, particularly regarding **smoking, alcohol and substance abuse.** Cohabitants are also much more likely to suffer from **depression** than married people.
- **The Hindu Marriage Act 1955 does not recognize ‘live-in-relationship’. Nor does the Criminal Procedure Code 1973.**
- The Protection of Women from Domestic Violence Act 2005 (**PWDVA**) on the other hand

for the purpose of providing **protection and maintenance to women** says that an **aggrieved live-in partner may be granted alimony under the Act**

- In future, **claims for financial relief arising out of live-in link-ups would increase in India.**
- The Supreme Court of India has noted that **just any ‘live-in relationship’ does not entitle a woman to alimony.** To make a ‘live-in’ legal the Supreme Court says that the couple must hold **themselves out to society as being akin to spouses**; they must be of **legal age to marry**; they must be otherwise qualified to enter into a legal marriage, including being unmarried; and they must have **voluntarily cohabited for a significant period of time.**
- Judgment of the Supreme Court would exclude many women in live-in relationships from the benefit of the PWDVA, the apex court further said it is not for this **court to legislate or amend the law.**
- Parliament has used the expression **‘relationship in the nature of marriage’ and not ‘live-in relationship’.**

Considering the increasing number of live-in relationships in India, the Supreme Court wants the scope of the provision for maintenance under section 125 of the criminal procedure code (Cr.P.C.) expanded, so that women in such relationships do not face economic deprivation after living in a domestic set-up for long periods of time.

Real facts of Cohabitation :

- The **best relationships probably are made by people who don't really need them, just want them.** Needs leads into troubles.
- No partner is sure of their **long lasting relationship**
- The **life of cohabitants affects in many ways.** One **cannot plan for the future,** one cannot think of buying a car **together** or a house, to have a child,
- The **partners agree that they were wrong and they knew it.** All that stuff about freedom and independence are empty words (after a certain gap)... it did **offer convenience and freedom all right,.**
- Female partner realizes how this **relationship was putting her deeper into insecurity and exploitation.**
- **Live-in-relationship marriage is not a reward for couples contribution to their families**
- It is an **easy escape for males...**Living in this arrangement offers a lot of freedom to one

partner to exploit the other It can go on indefinitely. A lot of people will say we'll see how it goes and one year turns into five years and you see people with five kids and there's still **not commitment(Refer11)**

Suggestions :

- All the Indian families should seriously think over the new culture of marriage which exists **without legal backing** (cohabitation)
- The Indian families should **keep a close watch on their youngsters**
- Cohabitation carries none of those rights and privileges. It has been said in the context that **cohabitation has all the headaches of marriage without any of the benefits.**
- In India institution of marriage and issues that emerge from it is essentially a concept that needs to be perceived in a time frame and specific context.
- Today's India is changing at a pace that was socially unimaginable say 50 years ago. Issues like **'live-in relationship' that were taken up by the western society are gradually percolating into our social norms.** The most obvious contributing factor being the transformed urban life which itself is growing from factors associated with urbanization and increased income, long hours of work, often late in the night and virtually no time for family
- **The people of India should be aware** of changes in India and in universe.
- The Indian women will ultimately emerge as the most vulnerable and possibly the greatest losers.
- Children that result from such relationships are also to be kept in mind. The conventional argument that has always been cited in favor of India's unique concept of the family being responsible for looking after the young and the aged is also an issue of concern.
- **The PWDVA is silent on the status of children out of a 'live-in relationship'.** Finally it must also be appreciated that laws and legal obligations notwithstanding foundations of a relationship are based on **commitment.**

Conclusion :

This kind of relationship has emerged primarily out of **convenience.** The main element that works in such relationship is **'compatibility'** between such partners **The judiciary is equally aware of the fact** that the law must accommodate the changing scenario of the society. It is also very careful in taking its' stand with regard to live-in-relationship as its decisions are binding and they become the law of the land under the article 141 of the Constitution of India. **At the same time we**

should not ignore to consider the real pulse of our society in the light of day-to-day surrounding activities

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