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STUDY OF EVOLUTION OF LIVE IN RELATIONSHIP IN INDIA AND ITS LEGAL STATUS

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ABSTRACT

The word live-in relationship can be understood with certain other synonymous words, e.g., cohabitation or living together or de-facto-relationship or marriage like relationship etc. It might be in the mind of a legal researcher that what is the 'legal definition of live-in relationship' and what is the 'accepted definition of live-in relationship', however it is found in the research that there is no any legal definition of live-in relationship in India, but according to accepted definition of live-in relationship, it is a relationship with an informal arrangement between two heterosexual persons to live together without entering into the formal institution like marriage. Live-in relationship is a new social phenomenon which tagged with as a relationship of de facto marriage or informal marriage and recognized in some countries as a marriage though there is no legally recognized marriage ceremony is performed. Unlike India, it is very common in North America and Europe. It is not similar in meaning and nature and perhaps there are many differences between the concept of "non-marital relations (cohabitation)" and "marital relations". However, marital relations may continue despite marital unrest, where the parties may have stopped sharing a household, whereas in a live-in relationship it is primarily a mutual arrangement either in express or in implied terms between the parties to the relations which is very contrary to the concept of a legal marriage. Unlike a legal marriage, in a live-in relationship; once a party determines not to cohabit together, the relationship comes to an end.

KEY WORDS: Live In Relationship, Women, Judicial Trend Etc

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INTRODUCTION

Live-in relationship is in general, a kind of living set up. In this living arrangement unmarried heterosexual couples live together under the same roof to establish a long durable intimate relationship as similar as a marriage. However, the difference is the couples are not married legally. Live-in relationship doesn't create the typical kind of married life responsibilities on the partners towards each other and their family. Live-in relationship is a relationship, where an informal living arrangement is created between two heterosexual unmarried persons to live together in a non-marital status. Live-in relationship doesn't depend on any religious sanctity; as it's an intimate relationship between a man and a woman and they observe all marital activities without the tag of marriage. Though there is no definition as given in any statutes the live-in relationship may be defined as such, "it is an arrangement either in express or in implied terms to live together under the same roof followed by cohabitation without being legally wedded couples". In other words, live-in relationship is process of living together in which the agreed partners lives under the same roof followed by cohabitation as like legally wedded couple but in reality they are neither legally married nor married as per their respective personal laws. One of the many reasons of the emerging tendency of live-in relationship is individual freedom and modernization of thinking of the new generation. The newly developed concept of live-in relationship is a western concept and getting popular in the whole world.³

'Live-in Relationship' as explained in *Alok Kumar v. State & Another*⁴, that "Live-in relationship is a walk-in and walk-out relationship in which neither any strings are attached, nor it creates any legal bond between the parties to the live-in relationship. It is a mutual contract to live together which is renewed every day by the acts of the parties and the relationship can be ended by either of the parties without the consent of the other party and one party can walk out at his/her will at any time⁵."

1.1 EVOLUTION AND PRACTICE OF LIVE-IN RELATIONSHIP IN INDIA

It is always in presumption that the live-in relationship is a western culture where new style of non-marital cohabitation is prevailing in most of the western countries which is inspired and

³ Sonali Abhang, Judicial Approach to 'Live- In-Relationship' In India- Its Impact on Other Related Statutes, 19(12) IOSR-JHSS 34 (2014).

⁴ *Alok Kumar v. State & Another*, Cr. M.C. No. DL 299/2009 (India).

⁵ Dr. Swarupa N. Dholam, Socio-legal dimensions of 'live-In relationship' in India, (Feb. 25, 2017, 11:23 PM),

followed by India. Unlike other countries of the globe, the concept of live-in relationship is not a new system of intimate relationship in India. But if we have the notion that practice of live-in relationship is prevailing only in metro cities in India we might be wrong. Various practices of non-marital cohabitations are prevailing among tribes and in civil society in India. Some common types of live-in relationships are discussed as follows⁶

1.1.1 MAITRI KARAR (GUJRAT, MAHARASHTRA)

Mainly in Gujrat and Maharashtra there was a system started during 1950's and prevailed in noticed till 1980's, called as Maitri Karar, where a man and a woman can sign before a Magistrate, into a 'friendship agreement' and can legitimise the contract. Later however this agreement was turned into a 'service agreement', where a man could reside in his house with a female partner of his choice in the tag of a maid, a domestic helper or full time servant. It is important that the parties to the contract must be competent to enter into a contract, e.g. there must be two heterosexual parties, and both are major; sounds minded and have other competencies to a contract. In Ahmedabad it is known popularly as "kept-woman contract", and it has more responsibilities in action rather than just long lasting love as a promise. Essentially it also provides the 'legitimate' status to the child born during the continuance of the contract. Literally the term Maitri Karar means a 'friendship agreement' by expressing the terms and conditions in written form, registered followed by notarized, a man and woman agrees to enter into a non-marital cohabitation. However this 'friendship agreement' acts as a rule violator against the provision of compulsory monogamy of Hindu Marriage Act 1955. A Maitri Karar is basically a contract between a married man and an unmarried woman through formalizing the terms and conditions of maintenance, food, clothing, shelter and all other necessities of life between them for living together and usually by the man all the expenses are maintained for his companion. However, women contracted in Maitri Karar had a stronger status as compare to women in a live-in relationship.

1.1.2 NATA PRATHA (RAJASTHAN)

"Nata Pratha", the customary practice for centuries is still practicing among Bhil tribe who are residing in the regions of Rajasthan, Gujrat and Madhya Pradesh. This custom is a non-marital cohabitation and also promotes polygamy of both genders and consequence is of children being abandoned by their parents. The traditional term is that Nata must be between married or

⁶ Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India), Section 2(f).

widowed heterosexual persons but the custom has not been practiced properly. The woman basically follows the man to live with him by leaving her children from her previous marriage. However, a Bhil community is carrying this old custom by believing that it is for empowering of Bhil women by way of leaving her previous husband if they are not happy with them. This Nata relationship without marriage allows men and women to have non-marital cohabitation for number of times as much as they want. However, this custom has made it compulsory for a man to pay some amount of money to the woman with whom he wants to live-in without a legal marriage and the parents and members of the community will decide the amount but she will not receive the money, sometimes nor her consent will be taken for this relationship. So this is something depressing. Nata relationship is a similar concept of re-marriage which is widely practised as well as socially accepted among Bhil tribe but not legal. Similar to a marriage in every sense, the women in Nata relationship engage in cohabitation, child bearing, household works, care taking, nurturing of child, fieldwork in farms, any work of necessary and sexual relationship etc.⁷

1.1.3 COHABITATION AMONG KHASI TRIBES

The Khasis are one of the most popular and distinct tribe found in Meghalaya who has the social formation in the form of larger and smaller units, e.g. clan (kur), the larger unit and family (iing) the smaller unit. Each Khasi belongs to a particular clan and they have strong belief that all are descended from a common female ancestor. The strict exogamy is followed among Khasis, so any form of inter-marriage between the members of the clan is a grave sin which cannot be forgiven and against their morality. The clan members are considered as brothers and sisters and for them it is a sin if marriage between brother and sister will be happened. The marriage is not a compulsory need to be solemnised with ceremonies, it is sufficient for a conjugal life that if mutually a man and woman have decided to cohabit together and procreate by obeying the rule of prohibition of incest. Marriage among the Khasis is known as La-Poi Kha or La Shong Kha. It is not sanctioned by Khasi society if there is a polygamous or polyandrous marriage among Khasis. Marriages among Khasi within prohibited degrees are strictly banned, and the rule is governed by customary laws. By way of social sending to Coventry is sanctioned if any violation of these customary practices is observed. The couple will be punished by simply excommunicated from the clan instead of physical punishment and left to the mercy of supernatural powers for punishment. The Khasis and Jaintias are the two

⁷ Pragati Ghos, Essay on the Maitri Karar under the Hindu Marriage Act, (Jan. 23, 2017, 09:28 PM)

major tribes in Meghalaya which are prominent for its matrilineal inheritance, because the surnames of mother is taken by the children and daughters inherit the family property and youngest daughter gets the majority share and hold the family alone and among Khasis, women run most of the businesses.

1.1.4 NON-MARITAL COHABITATION AMONG ORAON, MUNDA AND HO TRIBES OF JHARKHAND

The men and women have equal rights in almost all tribal societies which also include the right to choose a life partner. So a tribal girl from Oraon, Munda and Ho tribes of Jharkhand can choose a non-marital relationship with her male partner without getting married to each other in the form of 'Dhuku' marriage and the women in such relationships are called 'Dhukua' or 'Dhukni' without having legal rights on property and any other assets because of non-social recognition of the relationship. For social recognition the couple must arrange a wedding feast in the village and to invite all villagers to participate, which a very expensive to bear. So they prefer live-in relationship status in the form of 'Dhuku' marriage. Many couples in live-in relationship for more than 20 years as they couldn't organize a wedding feast so they simply move in together and start a family. The tribal society approves the right to choose live-in relationship as an intimate relationship by female partner to live-in with her chosen male partner, but she will not get the status of a wife, and society tagged her the title 'Dhukni', which means in tribal language "one who has entered a man's house", so it means a woman who has a household and a family without a legally wedded one. Women in Dhuka relationships does not have any rights of a wife because in such living arrangement, couples live together not 'by choice', but 'by circumstances' or compulsion without getting married. These couples have poor backgrounds and doing really tough struggle to pay for a grand feast for the entire village. But they could not make it possible for many years, thus this leads to a legal problem in reality. The women do not have any legal or social rights to get ancestral property, and in some situations if the men die early and young, then women and children are left "empty-handed". Sometimes this waiting period becomes so long that many of these live-in couples having their grand children without a getting married. Dhukni or Dhukua relationship in the form of live-in relationships without marriage is a common practice among the extremely poor tribal people in Jharkhand, who are unable to arrange their wedding followed by a feast for the entire village

to make the wedding socio-legal recognition⁸.

1.1.5 NON-MARITAL COHABITATION AMONG GARASIA COMMUNITY OF RAJASTHAN

The Garasia tribe is an indigenous tribe from Rajasthan. From thousands of years this tribe has been practicing a different tradition. The indigenous Garasia tribe generally lives in the north-western state of Rajasthan and exclusively cohabiting in live-in relationship outside the marriage. The livelihood of Garasia tribal population depends on labour and farming of different crop; and the couples only get into marriage with their partners when they have sufficient amount of money until then they prefer live-in together. The living arrangement without a legal marriage is called as 'Dapa' and it is recognized in the Garasia society through some formal rituals where women retain a high status and very low occurrence of rape and dowry deaths among this tribe.³⁷ The lack of wealth makes the couples to continue living-in relationship for a number of years and even many a time they become parents without afraid to bear a child outside of legal wedlock, and so in their lives, marriage happens after many years. The region surrounded at Udaipur and Kotra, the Garasia tribe are resided the most, where these kind of live-in relationship are prevailing in their culture as a choice of intimate relationship.

1.2 LIVE-IN RELATIONSHIP AND ITS NEW DYNAMICAL ASPECTS IN INDIA

Marriage is a religious sacrament and a legal recognition of status which has civil as well as religious connectivity. However, today marriages are preferred to be solemnised more for legality rather than religious sanctity, but it can't be denied that the status of marriage has its historical traditional root as a religious institution. The new form of non-marital cohabitation has been emerged in 1960's in western countries which are gradually spread over in every corner of the world. Then question arises whether this kind of non-marital relationship existing in the ancient world also? Unlike the personal laws the concept of secularism is followed in live-in relationship, so religious foundation are not given priority while choosing partners. However, though institution of marriage is secular in nature, still it is associating with Personal Laws of the land and most of them are religiously, socially and legally developed and coded.

⁸ Vijay Sharma, Monogamy: It's Inefficacious Legal Imposition, In Protection to Women in Matrimonial Home, 116-117, (Deep and Deep Publications, 1994).

Between a man and a woman when married, the sacramental vows and ceremonies to make marriage legally valid is actually defending the sanctity of marriage. In almost every part of the world the concept and practice of non-marital relationship or pre-marital sex is not a new one.

Marriage and non-marital relationships both are based on social norms to continue the society. So it may be wrong if anyone recognises marriage alone. In the new era of individual liberty and freedom of choosing; it's all about behavioural expectations for spouses, commitment between the partners and contribution to the stability of their relationship. It may be right way that sociologists describe live-in relationship as a "under-institutionalized" concept. In non-marital or rather say informal relations, the couple's behavioural expectations are different according to their way of experienced in the relationships. There is no any definite system to regulate their behaviour like marriage laws.³⁹ The legality of marriage always holds the highest status as compare to non-marital relationship. The rights and obligations which arise on the basis of entering into the marriage institution are legally and socially enforceable and that also secures the substantial financial matters to dependent family members. Under marriage the family members share a standard social life, with care and support to each other in the family. The legal rights that provide for financial support and sharing of property are enforced after the dissolution of the union. These dissolution rules provide the spouse, who is a dependant, with certain measure of financial protection. Thus it is worth mentioning that the concept of legal rights and duties are generally uncommon in live-in relationships. The definition of "live-in relationship" in today's generation is, without the formal ceremonial marriage where two heterosexual persons cohabit together yet there is no any prohibition to enter into the marriage. However, such live-in arrangements are disapproved by the traditional Indian society for certain reasons. In live-in relationship it may create a submissive status for the woman if she was financially dependent on her male partner.⁹

1.3 SOCIO-LEGAL STATUS OF THE CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP

The term "solemnization of marriage" is symbolically essential criteria which can differentiate a valid formal marriage and a live-in relationship to occupy the legal status of a legitimate intimacy. There are an increasing number of couples from the young generation are choosing

⁹ A resource book, Rights in Intimate Relationships, 61-65, (Partners for Law in Development, 2010).

live-in relationships, not as an antecedent but as an ancillary of recognized marital institution in the present era of modern civilization. The term “live-in relationship” in its significant concept, is a relationship where two heterosexual persons cohabit with each other under the same household without marriage. Without codified law to regulate and govern this kind of relationship and as a consequence the partners are free to be separated from each other at any time. Legitimacy is a status conferred by law. A child enjoying such status is entitled to full recognition as a member of the family group in question and he or she has all the legal rights which such status involves. The child who does not enjoy such status is illegitimate and will suffer disadvantages as a consequence. In addition to legal disadvantages, there are social consequences which result from being classed as illegitimate, although the stigma attached is not as great as it formerly was. In recent years the general trend in most jurisdictions has been to reduce the consequences of illegitimacy, and some jurisdictions have even abolished the status of illegitimacy altogether. In ancient Roman family there could be no potestas (Family Unit as a Power) over an illegitimate child. It followed that a paterfamilias (Male family head) had no right to expose a newborn illegitimate child, nor he have any other of the rights associated with potestas. The illegitimate child was thus in a more favourable position (sui iuris) than the legitimate one in some respect, a curious consequence of a rigid rules of potestas. Nor could an illegitimate child be agnatically related to anyone since such a relationship depended on subjection to a common potestas. The child ‘belonged’ to the mother, but in a practical rather than a legal sense since a mother could not have potestas over anyone. Nevertheless, their relationship had legal consequences: the child took the mother’s status, was recognized as her blood relation, and acquired the right to succeed on her intestacy and vice versa, and could not sue her. Legitimizing of illegitimate children was generally not possible until the reign of Constantine. Constantine’s reforms, and those of subsequent Emperors, were applicable only to the children of concubines. Concubinage was a settled union; normally involving cohabitation but falling short of marriage because of the absence of the necessary marital intent.¹⁰

1.4 LIVE-IN RELATIONSHIP AND LEGITIMACY OF CHILDREN

It is settled law that “legitimacy in law” may not in fact legitimate but “legitimacy in fact” certainly in law legitimate. The question of legitimacy or illegitimacy always in trend to debate,

¹⁰ Annie Zaidi, What India's old and unusual marriage customs tell us about a woman's consent, 30th June 2015, Dailyo, (Sept. 20, 2019, 10:29AM), <https://www.dailyo.in/politics/childmarraige-natha-pratha-divorce-dowry-women-consent-inheritance/story/1/4683.html>.

as the term ‘illegitimacy’ is not a new concept and it has the roots with Roman law and termed as “Nullius Filius” and tramp to the common law and well entrenched its roots there. Again in Muslim law also has the procedure to legitimating illegitimate child in certain circumstances. Though the Muslim law holds the concept ‘illegitimacy’ very rigidly but concurrently adopted preventive measures to ensure that all born legitimate child does not befall as illegitimate. Therefore, Muslim law introduced the legal concept of “Acknowledgement of Paternity” and “Iddat”. In regard of recognition of children the Muslim law is a very strict kind. So according to it, a legitimate child is one who is the offspring between a man and his legally wedded wife. Thus, a child born out of any non-marital cohabitation is treated as “illegitimate” in the eyes of existing Muslim personal law.

The Andhra High Court in *S. A. Husain v. Rajamma*¹¹, held that “where the paternity of a child cannot be proved by establishing a marriage between the parents, Islamic law recognises ‘acknowledgement’ as a method whereby such marriage and such legitimate descent can be established as a matter of substantive law for the purpose of inheritance.” Under the Hindu Marriage Act 2005 also provides codified provisions to ensure the rights of the children born out of void or voidable marriage. Through interpretation of section 16 (3) of the Act 1955, if we analyse it is evident that rights of illegitimate children born out of only void or voidable marriages are protected in Hindu law. Therefore, under Section 16 of the Act 1955 the legitimacy of a child born out of void and voidable marriages is recognised through legal interpretation. But legislation assign a legal status as legitimate in law to children born out of live-in relations under Section 125 of Criminal Procedure Code 1973 and open a subject to debate with regard to the property and maintenance rights of the off springs born out of such non-marital cohabitation.

However, Supreme Court in *S.P.S. Balasubramanyama v. Sruttayana*¹², observed that if two heterosexual persons are living under the same roof and cohabiting for a reasonable period of time then there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will be presumed to be legitimate. The interpretation of the court with regard to the status of children born out of the live-in relations is to be construed in accordance with the Constitution of India, 1950 vide Article 39(f), which

¹¹ *S. A. Husain v. Rajamma*, AIR 1977 AP 152 (India).

¹² *S.P.S. Balasubramanyama v. Sruttayana*, 1994 AIR 133, 1994 SCC (1) 460 (India).

imposes the State a responsibility to provide the children with ample opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against any exploitation and safeguard their interests. As one of the landmark judgements, the Apex Court in this case for the first time recognised indirectly live-in relationship and also preserved the status of legitimacy of the children from such relationship¹³.

1.5 LIVE-IN RELATIONSHIP AND MAINTENANCE RIGHTS OF CHILDREN

The Hindu Adoptions and Maintenance Act 1956, states that a legitimate son, son of predeceased son or the son of predeceased son of predeceased son, so long as he is minor, and even after attained the age of majority if such child is by reason of any physical or mental abnormality or injury unable to maintain itself and a legitimate unmarried daughter or unmarried daughter of the predeceased son or the unmarried daughter of a predeceased son of predeceased son, so long as she remains unmarried, shall be maintained as dependants by his or her father or the estate of his or her deceased father will be made responsible. As a civil matter, maintenance is explained as the obligation to afford by one party for another party. To maintain the children born out of the live-in relationships without codified legal obligation is a matter of concern to cover up the ‘maintenance right of children born out of the live-in relations’. The ‘right to maintenance during the life time of his or her father or mother’ is always the situation which creates chaos with children from live-in relationships, so under section 125 of the Code of Criminal Procedure, maintenance is provided to children irrespective of his or her status as legitimate or illegitimate while they are minors or even when they become major, but unable to maintain himself by reason of any physical or mental aberration or injury from their parents.

In *Dimple Gupta v. Rajiv Gupta*¹⁴ Supreme Court upheld the right to up bring and maintain the offspring born out of a live-in relationship. The Supreme Court in this case held that “even an illegitimate child born out of an illicit relationship is equally entitled for maintenance under section 125 of the Code of Criminal Procedure, 1973 which provides maintenance to children irrespective of their legitimacy or illegitimacy till they attain the age of majority and in cases

¹³ Dr. Jeuti Barooah, Customary Laws of the Khasis of Meghalaya, 21-27, (Law Research Institute, Eastern Region, Gauhati High Court, 2007).

¹⁴ *Dimple Gupta v. Rajiv Gupta*, (2007) 10 SCC 30; (2008) 1 SCC (Cri) 567 (India).

where they are unable to maintain themselves due to any disability then even after their attaining majority they are also entitled to be maintained.”

The Supreme Court in *Sabitaben Somabhai Bhatiya v. State of Gujarat*¹⁵ made an exception that “the live-in partner had assumed the character of a second wife and therefore, not entitled to any maintenance but the child born out of the said relationship are entitled to maintenance.” Moreover, there are a number of cases which upheld the maintenance rights of live-in partners by Supreme Court as well as High Courts and the interpretation of the statutes are intriguing in a very inclusive manner to embrace female live-in partners as “legally wedded wife”.

Article 14 of the Constitution of India, 1950 deals the remedy for any unequal dealing of an issue born out of a live-in relationship and an issue born out of lawful wedding, though in both the cases children born are perceived as legitimate in the eyes of law. Human dignity is one of the essential and very fundamental rights enshrined to a child with his or her birth which is required to maintain. It cannot be denied merely at the whims of some technicality of laws; therefore, it is the jurisprudential philosophy which needs to be construed in a clearly liberal manner so as to ensure the upbringing of such children born out of the live-in-relations in a very dignified manner

1.6 LIVE-IN PARTNERS’S GUARDIANSHIP AND CUSTODIAL RIGHTS OF CHILDREN

The custody of a child in live-in relationship is significantly a legal obstacle as comparison to a married person. It is very difficult when a child is born out of such non-marital relationship without being a proper legislation. As there is no specific law dealing with the custody of an offspring born out of a live-in relationship therefore, the existing law for children born out of married couple is also applicable to such issues born out of a live-in relationship. The Hindu Minority and Guardianship Act, 1956 clearly states that the biological father is the natural custodian of his minor legitimate children and in cases where there is no father of such child alive or non-exist the mother becomes the natural guardian; that means when the father is unable to act as the natural guardian; the mother becomes guardian for such minor. However, in the case of an illegitimate boy or an illegitimate unmarried girl, the mother, and after her, the father is the natural guardian.

¹⁵ *Sabitaben Somabhai Bhatiya v. State of Gujarat*, AIR 2005 SC 1809 (India).

In the case of *Geeta Hariharan v. Reserve Bank of India*¹⁶ same has been laid down in a prescribed manner. Section 6(a) of the Hindu Minority and Guardianship Act 1956 provides that the father as the natural guardian for his minor legitimate children on the other hand the mother is the natural guardian in his absence i.e. where father is unable to act as the guardian. As per Hindu law; if a man legally married to a minor girl, then in that case the husband is the legal guardian of his minor wife and entitled to her custody. But where the couples are not legally wedded to each other and if any issues born to them, then only the mother has the parental responsibility including custody of the child and not the biological father. The interpretation of codified provision under Section 6(b) of the Hindu Minority and Guardianship Act 1956 which grants an indirect right to custody of a child born from non-marital cohabitation, to the mother in the tag of illegitimate relation. While the law is interpreted positively, it can be asserted that, if the live-in partners decide to put an end to their relation and there is any issues born out of them then being the natural guardian, naturally the biological father can acquire the custodial rights of the concerned child. Section 13 of the Hindu Minority and Guardianship Act 1956 provides that the welfare of the minor is the paramount consideration and thus to negate the consequence of previous provisions if they are by any means in contravention of the said provisions.

CONCLUSION

Marriage is necessarily the basis of social foundation from which important legal rights and obligations emerge. In ancient times, marriage was considered to be decided by the God and divinity was associated with it. It is considered to be a sacred social institution. Marriage according to the Hindu Law is a holy union for the performance of religious duties. It is not a contract but it is a sanskar or sacrament. Hindu marriage protects a woman by guaranteeing her legal rights for restitution of conjugal rights in case of desertion, legitimacy of the children, relief in case of cruelty, adultery, impotency, claim of maintenance and alimony etc The culture of India refers to the religions, beliefs, customs, traditions, languages, ceremonies, arts, values and the way of life in India and its people. The society is changing a lot in terms of acceptance of the many roles of women as professionals, as bread-earners in families and as independent thinking individuals. Women have proved themselves as equals in many professions as well as proved themselves even better suited than men in others. The situation for the changing role of women is improving fast. The traditional role of a man has been the one of earning the money

¹⁶ *Geeta Hariharan v. Reserve Bank of India*, AIR 1999 2 SCC 228 (India).

for the running of the home. This has changed to a great extent.

However with the changing role of women in Indian society another problem has arisen instinctively. Growing ratio & attitude of Indian society towards Live-in relationships has given birth to some intricate issues in the nature of cultural, legal and social perspectives. Ever since the male & female came in close contact of each other upon this earth, there has been mutual attraction due to certain biological and psychological causes resulting in the establishment of intimate relationship. The mutual attraction of male and female is a biological and psychological fact. Marriage is a more or less permanent association of one or more male with one or more female for the purpose of giving social sanction to progeny, satisfaction of biological and social needs and fulfillment of dharma. Live-in relationship does provide a remedy for a carefree life free from the hassles of responsibility and commitment which is the very prerequisite of the institution of marriage. The focus is on the changing attitude of the society in accepting the extra-marital relation. However it is a genus giving rise to many sociolegal issues.

REFERENCES

1. Dr. (Mrs.) Mamta Rao, Law Relating to Women and Children, (EBC Lucknow, 2005)
2. Ernestina Coast et.al. (eds.), Currently Cohabiting: Relationship Attitudes, Expectations and Outcomes, (Fertility, Living Arrangements Care and Mobility: Understanding Population Trends and Processes, Springer, Dordrecht, The Netherlands, 2009),
3. Goran Lind, Common Law Marriage- A Legal Institution for cohabitation, (Oxford University Press, 2008)
4. Kieran Scott, Cohabitation and Marriage as a Life-Process in Kieran Scott and Michael Warren (eds.) Perspectives on Marriage-A Reader (Oxford University Press, 3rd Ed., 2007),
5. N.V. Lowe and G. Douglas, Bromley's Family Law, (Oxford University Press, 10th ed., 2007)
6. S.N. Agarwal, The Law on Maintenance, (M/s Roop Publishers, Ludhiana, 1988)
7. Vivek Mathur, Live in Relationship, Sex and Beyond, (Kalpaz Publications, 2011)