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A Socio-Legal Study on Status of Unwed Mothers Vis-À-Vis Live In Relationship in India

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Abstract:

The humans lived a nomadic lifestyle wherein paternity was not ascertainable. So to determine paternity, the need for an exclusive union of men & women was felt through social regulation, namely marriage. Thus, the idea of the institution of marriage took over the herd-instinct type of marital relationship. The institution of marriage not only resulted in the stability and development of an individual in their personal lives, family life, and society, as a whole; also, it also conferred the matrimonial rights and duties upon the spouses regarding sex, maintenance, inheritance, etc. And thereafter concepts like legitimacy and rights of children came into the picture. In India, the institution of marriage acquires a prominent and significant place. The unregulated sexual relation (especially without marriage) makes it intolerable and immoral in Indian society. Especially, women who live without marriage and are blessed with motherhood have not only been the continuous subject matter of societal critique but they are also deprived of legal and human rights on this land. Recent developments like live-in relationships have added to the new dimensions of the institution of marriage. The Government, being paren patriae has also made endeavors to protect them and uplift the interests of such unwed mothers and their children through various schemes but the gravity of this issue is neither acknowledged nor any special provisions for them have been made to secure them socially and legally. The social-legal challenges faced by unwed (single) mothers and their children in the era of human rights are ironic. Marriage has grown into a popular and vital institution in India. In Indian society, unrestrained sexual relations (particularly without marriage) are unacceptable and unethical. Women who live without marriage and have children are denied their respective human rights in this country. Despite years of liberal legislation, women lacked equal access to the rights granted to them because of lack of awareness, peer pressure from society, lack of access to legal aid and economic inability, etc. The present

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article decodes the dynamics of unwed motherhood via issues & challenges in the contemporary legal scenario.

Keywords: Unwed Mother; Live- In Relationship; Marriage; Child born Out of Wedlock; Rights of Unwed Mothers & their Children

1. Introduction:

The ‘Man-outshined’ laws give a base understanding of societal patriarchy that is ill-equipped and has been ruling the roost since time immemorial. India is a patriarchal structured society that has always frowned upon premarital relationships and pregnancy outside marriage, due to its marriage-centric approach. Here, marriage still occupies a sacramental position both philosophically and practically. But with the change in time, India is opening its doors to western culture and lifestyles and thereby India has been witnessing one of the most crucial episodes of a substantial social and marital setup. Unwed motherhood, in the contemporary Indian scenario, signals a catastrophic severance from traditional society and normal filial aspirations. Indian society has been in a state of transition, from the old world to the new, altering old customs and traditions in light of the cultural changes and the influence of the west.² The trend of live-in relationship is producing a cultural transformation that has profound ramifications for both people and public policies. As cohabitation precedes marriage, this temporary arrangement displaces marriage as the locus of sexual intimacy. The sanctity of marriage is still deeply guarded by the society but that is not to say that people don’t adopt alternative forms of living arrangements. A live-in relationship is just such an alternative arrangement which is gathering momentum and acceptance today. It would be incorrect to state that live-in relations are new to our society. Formerly, the concept of “Maitray Karars”³ was popular, in which two people of the opposite sex would enter into a written agreement to live together and look after each other. This devised the mechanism for live-in relationship⁴ in India.

2. Concept and Meaning of Live In Relationship:

A live in relationship is a living arrangement in which an unmarried couple lives together under the same roof in a long term relationship that resembles a marriage. In other words it may be defined as “a relationship between a man and women who are living together on a *bona-fide* basis, but who are not married to one another according to law. In popular parlance such relationships are referred to as “*common-law*” or “*de- facto*” relationships.” This practice has familial implications and can be socially destructive.⁵ There is no legal definition of living together; it generally means to live together

² Indian Society and Social Change, BA Sociology, School Of Distance Education (University Of Calicut)

available at: http://www.universityofcalicut.info/SDE/BA_sociology_indian_society.pdf (last accessed on 01 march, 2022)

³ Article on “Socio Legal Aspects of Live- in Relationship- A Comparative Approach.” Available At <http://www.lexvidhi.com/article-details/socio-legal-aspects-of-live-in-relationship-a-comparitive-approach-752.html> (last accessed at 9 April 2022)

⁴ Live- in relationship may be defined as a living arrangement in which an unmarried couple lives together in a long term relationship that resembles a marriage.

⁵ Cohabitational Relationships: Toward A Reform of the Law, Government of Trinidad and Tobago, A Green Paper, July 1996.

as a couple without being married. This is also known as trial marriage or domestic partnership or cohabitation relationship. Why live in relationship/ reasons? This is a general question which can strike at anybody mind that why couples who are in love with each other are leaning towards the live in relationship. 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 Supreme Court bench consisting of Chief Justice KG Balakrishnan, Justices Deepak Verma and BS Chauhan observed that there was no law that prohibited live-in relationship. Even though people will not agree but it can be seen from our past that live-in is not a recent phenomenon. Yet there have been instances when the partners have agreed to live together having an equal say in all forms of the domestic decisions. Thus, the basic principle of live-in relationships is based on the idea of independence, liberty and space.

3. International Scenario:

Under International Human Rights Law, States have an obligation to ensure that all women have access to comprehensive reproductive health services. Human Rights Committee in its Concluding Observations on Poland Report⁶ of the Human Rights Committee to the General Assembly, 66th Session in its UN Doc. CCPR/C/79/Add.110 1999, (Para 10, 11) mentions about the Sexual and reproductive health issue that are critical to a woman's overall health and well-being. Similarly, CEDAW Committee, General Recommendation No. 24, delineates about Women and Health.⁷ The CESCR, General Comment No. 1 in its UN Doc. E/C.12/2000/4, 11 May 2000, (Para 14, 20, 21) advocates about the Right to the Highest Attainable Standard of Health.⁸ Likewise, Under UNFPA advises for the Right to Contraceptive Information and Services for Women and Adolescents. Also, the Reproductive health services should include sexual health information and education, family planning, maternal healthcare, and STI/HIV testing and treatment. Correspondingly, CESCR, General Comment No. 14, promotes the Right to the Highest Attainable Standard of Health. The UN Doc. E/C.12/2000/4, 11 August 2000, Para 20 maps out that the States should utilize a gender-based approach to healthcare policies and management, so that barriers do not unduly restricts women's access to sexual and reproductive health services. Also, the CEDAW Committee, General Recommendation No. 24, in its UN Doc. A/54/38/Rev.1 (I), 1999,⁹ Para 21 knocks down the barriers preventing equal access to healthcare including high fees for health care services, the requirement for

⁶ UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations: Poland, 29 July 1999, CCPR/C/79/Add.110, available at: <https://www.refworld.org/docid/3ae6b00918.html>

⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I, available at:

<https://www.refworld.org/docid/453882a73.html>

⁸<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJ2c7ey6PAz2qaojTzDjMCOy%2B9t%2BsAtGDNzdEqA6SuP2r0w%2F6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL>

⁹ UN Committee on the Elimination of Discrimination against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I, available at:

<https://www.refworld.org/docid/453882a73.html>

preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and absence of convenient and affordable public transport. The human rights to privacy and to non-discrimination have been interpreted to protect women's sexual rights. The UN Human Rights Committee has stated, "Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment." The Human Rights Committee, General Comment No. 28¹⁰, Article 3 advocates the equality of rights between men and women. In other areas, however, international human rights law continues to develop and evolve with regard to the specifics of sexual and reproductive rights. The various regional and United Nations human rights bodies have interpreted States' obligations and individuals' rights differently and have not yet addressed many issues related to contraception, conception and family planning. Article 16 of the Universal Declaration of Human Rights describes the family as a "natural and fundamental group unit of society that is entitled to protection by society and the State." International human rights law, CEDAW, Art. 16(1) (e),¹¹ protects the equal rights of women within a family as well as women's right to choose whether or not to have family. Should a woman elect to have a family, she is entitled to choose both the number and the spacing of children. Therefore, women's access to family planning and reproductive health services are closely connected to the right to family. Today, the term family is understood broadly to include unmarried couples with children, married couples with children, and single parents. Historical or traditional practices in family relationships, such as naming rights, when enforced by the State, may infringe upon women's rights to equality. Regardless of the form that a family takes, international human rights law requires that "the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people." The CEDAW Committee, General Comment No. 21,¹² advocating about Equality in marriage and family relations, in its document UN Doc No. A/49/38(SUPP), 1994,¹³ Para 13 requires States parties to ensure that women and men have the same rights and responsibilities in the family as parents, "with regard to guardianship, wardship, trusteeship and adoption of children," in choosing a family name and profession, and in owning and administering property (CEDAW, Art. 16).

There have been number of instances where in the courts in the international sphere have exhibited the doctrine of not recognizing single women's right to family. European Court of Human Rights in *Cusan and Fazzo v. Italy*¹⁴ (2014), found the 'rule on automatic transmission of fathers surname to the child' to be discriminatory and contrary to the convention because it lacked any legitimate aim for distinction based on gender. Therefore, the Court held that the decision to name a child based on transmission of the father's

¹⁰ UN Human Rights Committee (HRC), CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), 29 March 2000, CCPR/C/21/Rev.1/Add.10, available at: <https://www.refworld.org/docid/45139c9b4.html>

¹¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

¹² UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994, available at: <https://www.refworld.org/docid/48abd52c0.html>

¹³ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=27&ctl00_PlaceHolderMain_radResultsGridChangePage=3

¹⁴ (<https://ijrcenter.org/2014/01/15/ecthr-finds-mandatory-transmission-of-fathers-surname-to-child-is-discriminatory-in-cusan-and-fazzo-v-italy/>)

surname was based solely on discrimination on the ground of the parents' sex, and was incompatible with the principle of non-discrimination but it doesn't offer any solution when parents disagree; each of them have an equal right to give their own surname.

Identically, in case of *Atala Riffo and Daughters v. Chile*¹⁵ (2012) a Judge in Chile who lost custody battle for her children after she came out as a lesbian. This case is remarkable because it is one of the first to address squarely LGBTQ rights and discrimination on the basis of sexual orientation. Eventually, in 2012, the Court found Chile in violation of the American Convention and the IACHR ruled in favor of the mother. Supplemental, Chile fully complied with the order and implemented sweeping legislative changes to move towards a more inclusive society.

Similarly, in case of *Marckx v. Belgium*¹⁶ (1979) the European Court determined that Belgian laws requiring unmarried women to establish a legal relationship with their children after birth and limiting their capacity to bequeath property to their children violated the right to respect for private and family life as well as the right to be free from discrimination.

4. National Legal Scenario:

The most widespread change in family structure in recent years is the emergence of single-parent families. The most dramatic index of weakening of ties between marriage and family patterns is the widespread increase in the incidence of live-in relationships and thereby stemming from unwed mothers. Although no law on the subject has been formulated so far via judicial decisions certain rights have been outlined and duties have been crafted upon the benefit seeker.

The patriarchy of a child decides his legitimacy, as a known fact, often tends to corrupt the very existence of a child born out of the premarital union. Also degrades the surviving capacities of the mother of such a child who is born out of the live-in relationships. Unlike western countries, India still continues with its old traditional values when it comes to marriage and family motifs. Although the big cities have cracked up the stereotype of premarital cohabitation; thus precipitating unwed motherhood. Due to a lack of a specific law or policy, in particular, backing up the socio-legal protection of unwed mothers as resultant of live-in relationships often treats them as verboten. Also, the child born out of such union lacks socio-legal protection. But there are other legislations that secure the rights of such unwed mothers and their children, these are as following:

¹⁵ Inter-American Court Of Human Rights, Judgment Of February 24, 2012
(https://www.corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf)

¹⁶ 6833/74 [1979] ECHR 2 (13 June 1979) (<https://ihrda.uwazi.io/en/entity/fwd0oh87z8d?page=1>)

I. **Guardians and Wards Act (GWA), 1890**¹⁷

The GWA is a secular law regulating questions of guardianship and custody for all children within the territory of India, irrespective of their religion. It authorizes District Courts to appoint guardians of the person or property of a minor when the natural guardian as per the minor's personal law or the testamentary guardian appointed under a Will fails to discharge his/her duties towards the minor. Section 7 of the GWA authorizes the court to appoint a guardian for the person or property or both of a minor if it is satisfied that it is necessary for the welfare of the minor. Section 17 lays down factors to be considered by the court when appointing guardians. Section 17(1) states that courts shall be guided by what personal law of the minor provides and what in the circumstances of the case, appears to be for the welfare of the minor. Section 17(2) clarifies that while determining what constitutes the welfare of the minor, courts shall consider the age, sex, and religion of the minor; the character and capacity of the proposed guardian, and how closely related the proposed guardian is to the minor; and any existing or previous relationship of the proposed guardian with the person or property of the minor. Section 17(3) states that if the minor is old enough to form an intelligent opinion, the court may consider his/her preference. Section 19 of the GWA deals with cases where the court may not appoint a guardian. Section 19(b) states that a court is not authorized to appoint a guardian to the person of a minor whose father or mother is alive, and who, in the opinion of the court, is not unfit to be a guardian. The earlier Section 19(b) prevented the court from appointing a guardian in case the father of the minor was alive. Section 25 of the GWA deals with the authority of the guardian over the custody of the ward. Section 25(1) states that if a ward leaves or is removed from the custody of the guardian, the court can issue an order for the ward's return if it is of the opinion that it is for the welfare of the ward to be returned to the custody of the guardian. Reading the above provisions together, it can be concluded that, in appointing a guardian to the person or property of a minor under the GWA, courts are to be guided by concern for the welfare of the minor/ward. At the same time, the implication of Section 19(b) is that unless the court finds the father or mother to be particularly unfit to be a guardian, it cannot exercise its authority to appoint anyone else as the guardian. Thus, the power of the court to act in furtherance of the welfare of the minor must defer to the authority of the parent to act as the guardian.

II. **Hindu Marriage Act, 1955**¹⁸

The live-in relationship arrangement is not recognized by the Hindu Marriage Act, 1955, or any other statutory law in India. Section 16 of the Hindu Marriage Act provides, "Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the

¹⁷ Sonali Abhang, "Guardianship and Custody Laws In India- Suggested Reforms from Global Angle", IOSR Journal of Humanities and Social Sciences, Volume 20, Issue 7, Version VI (July 2015). Available at: <http://iosrjournals.org/iosr-jhss/papers/Vol20-issue7/Version-6/G020763958.pdf>

¹⁸ Paras Diwan, Modern Hindu Law, 9th Edition (1993), Allahabad Law Agency.

marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act." In addition to this, Section 26 of the Hindu Marriage Act authorizes courts to pass interim orders in any proceeding under the Act, with respect to custody, maintenance, and education of minor children, in consonance with their wishes.

III. Domestic Violence Act, 2005 (DV Act)

The DV Act has been enacted to uphold the constitutional principles laid down in Article 15(3), reinforced vide Article 39 of the Constitution of India for protection of women in India. The DV Act recognizes the right of a woman to live- in violence free home and provides legal remedies if this right is violated. The Legal remedies pertain to civil reliefs such as injunctions, protection order, compensation, custody order and monetary relief or compensation. The Woman can file the complaint and it would be put in the Domestic Incidence Report (DIR) format which shall be sent to the Magistrate. To understand the nature of a relationship there must be a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved. and to answer this, the hon'ble SC in *Lata Singh v. State of U.P.*¹⁹ observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. On the other hand, the hon'ble Supreme Court in *Pinakin Mahipatray Rawal vs. State of Gujarat*²⁰ observed that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on. Following this, the court in *D. Velusamy vs. D. Patchaimmal*²¹ had held that whether a relationship in the nature of marriage akin to a common law marriage between a male and female partner as provided under Section 2(f) of the DV Act, the following conditions must be met in addition to proof of the fact that parties had lived together in a shared household as defined in Section 2(s) of the DV Act:

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried.
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time

In another case, the Hon'ble Supreme Court in *Indra Sarma v V.K.V Sarma*²² have suggested several guidelines (not exhaustive) which give further insight into what kind of relationships (live-in relationships) are considered by the Court to be in the nature of marriage as defined under Section 2(f) of the Act, such as

¹⁹ AIR 2006 SC 2522

²⁰ (2013) 2 SCALE 198

²¹ (2010) 10 SCC 469

²² Criminal Appeal No. 2009 of 2013 (SLP No. 4895 of 2012)

shared household, duration of relationship, domestic arrangement, sexual relation, children born out of such union, intention & conduct of parties. However the protection of interest of concubine and mistress was most asserted issue in the present case.

IV. Code of Criminal Procedure, 1973: Right to Maintenance

In a live-in relationship, an unmarried couple lives together under the same roof in a way it resembles a marriage, but without getting married legally. No law at present deals with the concept of live-in-relationships and their legality. In a live-in relationship an unmarried couple lives together under the same roof in a way it resembles a marriage, but without getting married legally. No law at present deals with the concept of live-in-relationships and their legality. In *Chanmuniya vs. Virendra Kumar Singh Kushwaha & Anr*²³ though the Supreme Court gave a broad and expansive interpretation to the term “wife.” the court acknowledged the instances 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 fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125. Thus according to a Justice Malimath committee report recommendations on Reforms of Criminal Justice System (2003) word ‘wife’ under Section 125 of Cr. P. C. included a woman who was living with the man like his wife for a reasonably long period.

V. Medical Termination of Pregnancy Act, 1971 (MTP Act)

The Act was the result of Shah Committee recommendations. The committee was formed to look into the alarming incidences of abortions across India. The recommendations of the committee were accepted in 1970 and in 1971 the MTP Act came into force. The Medical Termination of Pregnancy Act, 1971 was enacted with an object to liberalize the existing provisions relating to termination of pregnancy only in following cases- when it threatens a women’s life; pregnancy is the result of rape; existence of any eugenic grounds. Prior to MTP Act 1971, the legal termination of pregnancy could only be dealt under IPC. However the Act does not accept Abortion as a right of pregnant woman. Abortion opted by a pregnant lady, other than the grounds mentioned in The MTP Act, is a punishable criminal offence under Indian Penal Code, 1860. In *Suchita Srivastava vs. Chadigarh Administration*²⁴, the court gave a broader interpretation to ‘personal liberty’ under Article 21 of the Constitution of India by recognizing woman’s right to make reproductive choices procreate as well as also includes to abstain from procreating. In 2020 the Union Government proposed an amendment to the MTP Act, 1971 which lately became an Act. The amendment act 2021 extends permission for abortion, with their due consent, on ground of failure of contraceptives to the unmarried women. Earlier this permission was confined to married women only, with her consent.

²³ (2011) 1 SCC 141 Available at:

http://www.supremecourtcases.com/index2.php?option=com_content&itemid=99999999&do_pdf=1&id=20197

²⁴ Civil Appeal no. 5845 of 2009 (<https://indiankanoon.org/doc/1500783/>)

VI. Surrogacy

Surrogacy is an arrangement in which a woman (the surrogate) agrees to carry and give birth to a child on behalf of the prospective parent(s). The Surrogacy (Regulation) Bill was first introduced in Lok Sabha on 15th July 2019. The President gave his assent and was enforced on 25th December 2021. The Surrogacy (Regulation) Act, 2021 aims to regulate the practice and process of surrogacy and matters connected therewith or incidental thereto. The Act is a masterpiece of legal text that elucidates a reflective blend of socio-political ideologies that are inherent within the society. The Act prevents the possible exploitation of surrogate mothers. According to the Act, surrogacy can only be intended either by a woman who is a widow or a divorcee between the ages of 35 to 45 years or a married couple who had been married for at least 5 years only if they have a medical condition necessitating this option. Though India favors marriage centric approach, yet tremendous downfall in the success rates of marriage has given rise to such dimensions of motherhood.

5. Constitutional Perspective

Article 21 of the Indian Constitution says, “No Person Shall Be Deprived of His Life and Personal Liberty except according To Procedure Established by Law.” Person here includes, man and woman both. Among various rights available to woman, the right to conceive and retain the pregnancy and deliver the child is believed to be one of the essential fundamental rights.²⁵ However, life in India is regarded to have started at the time of conception of child itself. At the same time, if we broadly consider the meaning of “life and liberty”, it would refer to not only the physical health of the mother but also her overall psychological and emotional well-being. Thus right to life and personal liberty of a woman confers right to conceive and with-hold pregnancy and deliver a baby. But unwed mothers and their children are often exposed to social discrimination, thereby restricted to participate in social, cultural, and economical activities. thus inequality on the basis of sex makes it ultra vires of the equality clause in the Indian Constitution mentioned under Article 14 and Article 15 respectively. The right to free legal aid is not only one of the fundamental rights guaranteed by the Indian Constitution but is also listed as one of the directive principles of the state policy under the Constitution of India. Thus Article 39A of the Indian Constitution mandates a state to secure and promote justice without any favoritism to any citizen. Article 42 of the Indian Constitution again directs a state to secure just and humane conditions for work and maternity relief. For instance, earlier, in Singapore, the unwed mother could only get eight- weeks of paid maternity leave. But, recently, the Ministry for Social and Family Development allowed a 16- week maternity leave for unwed mothers. On the other hand, in India, maternity leave was granted for 12 weeks. But after the amendment in the Maternity Benefit (Amendment) Act, 2017 the maternity leave has been elevated from 12 weeks to 26 weeks in organized sector jobs. The Maternity Benefit (Amendment) Bill was passed by Lok Sabha on March 9 and Rajya Sabha on March 20. And the president gave his assent on 27 March 2017. India is in the third position

²⁵ This was well illustrated by Supreme Court in recent case of ABC vs. State (2015)

globally in terms of the number of weeks of maternity leave after Canada (50 weeks) and Norway (44 weeks).

6. Status of Unwed Mothers by Metamorphosing Notion of Live In Relationship

In case of *Z vs. State of Bihar*²⁶ (2017) a rape victim filed an appeal in the hon'ble SC for termination of her pregnancy. However the permission for the same was refused by the Bihar HC on the ground that it would affect the health of the girl. But the SC eventually, allowed for the termination of pregnancy on the ground that she has a fundamental right to terminate her pregnancy. Similarly, despite the fact that a false promise to marry is typically the reason, it is also an act of violence since a woman under these circumstances is cheated and mistreated. The number of single parent families has increased dramatically in the world and extensive research has been done in the developed countries. But the literature on single parent families (unwed mothers, in specific) is limited in India and little is known about their soothing and harsh experiences along with the problems of such unwed mothers and their children.

The hon'ble Supreme Court in case of *ABC v. State (NCT of Delhi)*²⁷ 2015, has duly exercised its parens patriae jurisdiction securing the future of several helpless children in India who have been born out of wedlock and thereafter, abandoned by their fathers. The Apex court upholding the interests of one such child granted his unmarried mother the right —to be appointed the sole guardian without giving any notice to the 'deserter' father. Thus, there is no need for an unwed mother to disclose the identity of the child's father as she can solely be the legal guardian of her child.

After 2021 amendment, the Medical Termination of Pregnancy Act uses the word "partner" instead of "husband" in the explanation to Section 3, the Court said that this shows the legislative intent to cover "unmarried woman" under the Act. This view was expressed in the recent judgment, *X vs The Principal Secretary, Health & Family Welfare Department*²⁸ (2022) had passed an interim order to Supreme Court passes ad-interim order allowing unmarried woman to terminate pregnancy of 24-week term arising out of a consensual relationship, subject to a medical board constituted by the AIIMS Delhi concluding that the foetus can be aborted without risk to the life of the woman. The case was an appeal against the judgment of Delhi HC wherein the respondent was refused to grant her the permission for abortion.

²⁶ Civil Appeal No.10463 OF 2017 (https://main.sci.gov.in/supremecourt/2017/14156/14156_2017_Judgement_17-Aug-2017.pdf)

²⁷ (Civil) No. 28367 of 2011 (<https://indiankanoon.org/doc/162566950/>)

²⁸ Special Leave to Appeal (C) No(s).12612/2022; 21-07-2022 (https://www.livelaw.in/pdf_upload/621-x-v-principal-secretary-health-family-welfare-department-21-july-2022-426996.pdf)

7. Conclusion:

The term unwed mother connotes such 'social status' that is accorded on those women who, owing to some situational and other social distortions, do become mother of a child without having undergone any regular and formal socio- religious procedures of weddings or matrimonial relationship with the so called 'father' of the child in question. Marriage being a sacramental and eternal union of a man and woman would only then allow cohabitating. A strict restriction on cohabitation without marriage was marked as a taboo in Indian society. And thus motherhood being a most important event could only be experienced & enjoyed by married women only. But with the change in trends and patterns of the institutions like that of the society & the family, varied aspects of motherhood were explored, and thus philosophy of motherhood is decoded. Now the idea of motherhood is not restricted to married women only. Instead it is now a choice. Becoming a single mother by choice is an increasingly popular path to motherhood, as more women are making the decision to have a child on their own. In addition to this, an unwed motherhood may also be the resultant of rape, adolescent pregnancy, child sex abuse, surrogacy, adoption, artificial insemination, in-vitro fertilization. On the other hand, the issue of unwed motherhood remains unexplored in India. Laws are not enough to protect the rights of this vulnerable section of society. Unwed motherhood appears almost surreal in our culture, yet it is extremely real and dangerously on the rise. It appears that the problem of unwed mother is always the result of a circumstance in which they are utterly powerless and are faced with the responsibility of bearing a child and our society is intolerant of such women. In view of the heightened stress that might accompany a woman's decision to have a child on her own, the society is now experiencing a transition to motherhood of single mothers by choice. For each woman, the road to becoming a mother is challenging and complicated, but the rewards are transformational and joyous.