

THE LEGAL IMPLICATIONS OF COHABITING COUPLES ON CHILDREN WELFARE

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ABSTRACT

Cohabitation means a man and a woman usually in the same age bracket, living together as though they were husband and wife. The issues on cohabitation raised many concerns about the nature of family life and future of marriage. The purpose of the study was to investigate the legal implications of cohabiting couples on children's welfare, consequences of cohabitation in the welfare of the children, income sharing and community property. Qualitative research methodology was utilized in the study. The results of the interview revealed that there are a lot of differences in the services given by the different institutions of the society to the children of cohabiting couples. The author recommends that the Government should make necessary actions for the benefit of children of cohabiting couples.

Keywords: *Cohabitation, Children Welfare, Income Sharing and Community Property, Marriage*

INTRODUCTION

Cohabitation has become widespread in modern western nations and it has led to dramatic declines in marriage rates. Cohabitation is an arrangement where two people who are not in marriage live together in an intimate relationship. It was perceived as immoral and illegal then but today people are indifferent and cohabitation today is a personal choice. The practice of cohabitation is growing enormously. It is now accepted in developed and developing countries. Some argued that cohabitation is equivalent to marriage. But cohabitation is a weak family form according to Horn (2006) because cohabiting couples break up at much higher rates than do married couples. Cohabitation in place of marriage should be considered a major societal concern. Marriage typically brings with it, according to numerous researches, many benefits for those involved. Married people tend to be happier, healthier, wealthier, and they live longer (Popenoe 2009).

Women involvement in labor force is becoming a trend. The issue on income sharing of dual earning couples has been argued about. Increase in female employment increases 'joint house holding' rather than 'independent' organization of income. Income organization varies whether the person is legally married or cohabiting, which is attributed to the institution of marriage. There are distinct differences in the treatment of money in cohabiting and married couples. 'Marriage money' is characterized by a joint bank account, which is often set up upon marriage, or when buying a home. Married couple has community property or has joint property compared to cohabiting couples. In comparison, cohabiting couples keep finances separate and make equal contributions to expenses and purchases of assets. Cohabiting couples tend to have separate bank accounts and joint

accounts are often used for purposive pooling. This separation of finances reflects the independent nature of cohabiting relationships (Gray and Evans 2008).

Specifically, the objective of this study is (1) To identify the legal implications of cohabitation to children's welfare, (2) To know the consequences of cohabitation like children welfare, income sharing and community property, (3) To find out whether marriage is a better option rather than cohabitation.

In general, the current study serves as the barest guideline in taking marriage and cohabitation. This study aims to analyze the legal implications of cohabiting couples on children welfare.

Theoretical Background

Theoretical Framework

The study utilized the Selection theory as outlined by Kasearu (2010), According to the theory, it could be expected that cohabitation is chosen by those whose attitudes are more liberal and they do not highlight marriage as an important life event, furthermore they wish to have fewer children than married couples (Nock 2005). Cohabitation is also chosen by those individuals, who have a different socio-demographic background or value orientations compared to those who are married. It can be preferred by those whose possibilities to marry are limited for some reason. Huston and Melz (2004) showed that for some people cohabitation may be a response to insecurity, unemployment and socio economic disadvantage and social exclusion. This indicates that cohabitation is chosen by the people who differ in some aspects from those who marry.

This study took into considerations the legal implications of cohabitation practice in children welfare. The approaches are used to further talk about the trend of cohabitation practice.

Literature Review

Cohabitation

Cohabitation means a man and woman usually, in the same age bracket, living together as though they were husband and wife (Chinwuba 2010). It is an increasingly common phenomenon in developed and developing countries. Cohabitation appears to have become imbedded as a normal part of the life course in modern nations; that is, the great majority of the people in these nations are likely to cohabit outside of marriage sometime during their lives (Popenoe 2009). It is becoming more prevalent. The number of unmarried partner households increased from 3.2 million in 1990 to 5.5 million in 2000. Similarly, during this period, there has been 88 percent increase in cohabiting couple households with children under fifteen, from 891,000 to 1.675 million. Half of adults have

cohabited, and most recent marriages are preceded by cohabitation (Manning 2006). The increase of cohabitation is illustrated by the fact that the number of children born out of wedlock has risen (Bumpass and Sweet 1989, Kiernan 2000, Manning and Smock 1995, Paetsch, Bala, Bertrand and Glennon 2004, Perelli-Harris et. al. 2009, Seltzer 2000, Kasearu 2010).

The issue of cohabitation raises many concerns about the nature of family life and the future of marriage. It also raises the questions of law concerning the remedies available against the parties in cohabitation should there be a relationship failure (Voyce 2008). Research has conclusively found that cohabitation is not similar to marriage. Couples that cohabit are less stable, less committed and less satisfied than married couples (DeMaris and Rao 1992; Dush et al. 2003; Kline et al. 2004 Willoughby and Carroll 2010). Most marriages today are preceded by cohabitation (Martin et al. 2001, Willoughby and Carroll 2010), and a large proportion of young adults view cohabitation as a good way to test the relationship prior to marriage (Larson 1988; Martin et al. 2003, Willoughby and Carroll 2010) or as a developmental step toward marriage (Manning et al. 2007, Willoughby and Carroll 2010). For some, cohabitation is becoming viewed as an acceptable alternative to marriage (Bumpass et al. 1991; Thornton et al. 1995, Willoughby and Carroll 2010).

Research has identified several negative effects of cohabitation. Cohabiting couples experience more depression, more sexual activity outside of the relationship, less sexual satisfaction, more difficulty in communication and problem solving, and worse relationships with parents than their married counterparts (Brown, 2000; Cohan & Kleinbaum, 2002; Giesen&Treas, 2000; Popenoe& Whitehead, 2002, Johnson 2005). Risks of physical abuse, sexual abuse, and murder are higher for individuals in cohabiting relationships (Popenoe and Whitehead, 2002; Shackelford, 2001, Johnson 2005).

Cohabitation is a weak family structure compared with marriage children in households with married parents do better on almost every measure of child well-being, even after controlling for income. Some argue that cohabitation is the equivalent of marriage. But cohabiting couples break up at much higher rates than do married couples, and although 40 to 50 percent of couples who have a child while cohabiting go on to get married, they are more likely to divorce than are couples who get married before having children. Three-quarters of children born to cohabiting parents will see their parents split up before they reach sixteen, compared with only about one-third of children born to married parents (Horn 2006).

Child Welfare

In a marriage and cohabitation type of relationship, child welfare should always be an important factor to be considered. Children's emotional and developmental well-being may depend to some extent on their biological relationship to adults in their household (Manning 2006). Dramatic declines in marriage rates and contributed to high levels of unwed births and lone-parent families, thus negatively affecting child wellbeing (Popenoe 2009).

Children living in a cohabiting partner households compared to those living in married step parent families share similar level of well-being for indicators of behavior problems, school engagement, and some measures of academic achievement. Teenagers living in cohabiting couple households fare equal well as teens living in married step parent families in terms of school problems, suspension and expulsion from school, grade point average, college expectations (Manning 2006). During socialization, the children take over parental attitudes and values, but research has also indicated that parental attitudes may influence children's union formation in the ways that are not explained by the children's own attitudes (Axinn, Thornton 1992 and Kasearu 2010). This may happen when children consider their parents' views, even when they do not share these views. Thus the children's opinions about their parents' attitudes may have some effect also on their union formation intentions (Kasearu 2010).

Income Sharing and Property Distribution

Marriage affects income sharing. Married people are less likely to keep their incomes totally separate and more likely to have their incomes totally combined. This fits proscribed behavior that married couples' organization of income is shared. Even after controlling for other factors, particularly having young children or buying a home, this behavior holds. The combination of money can also be viewed as an expression of trust (as argued by Singh and Lindsay 1996, Gray and Evans 2008), much like marriage itself. Most cohabiters, like most married couples, combine some or all of their income. (Gray and Evans 2008).

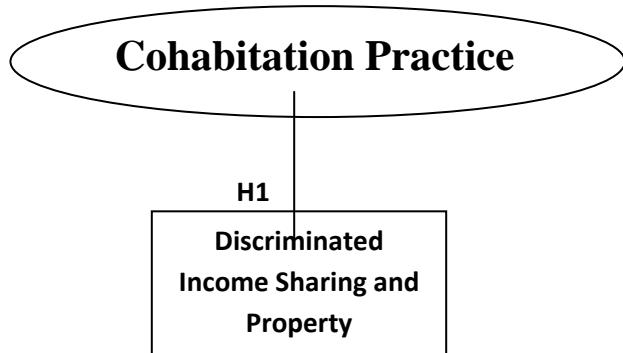
Cohabitors are more likely than married people to have their incomes totally separate, and a substantial proportion keep some income separate and have some income combined. This supports arguments that cohabiters are more egalitarian, and may have more power to negotiate different rules (Baxter 2005, Gray and Evans 2008). Certainly people who cohabit are not a homogeneous group. Although cohabiters are much more likely than married people to organize their income by keeping some separately and having some combined, we do not find, as Singh and Lindsay (1996) do, that most cohabiters organize their money this way. It is certainly an important way of organizing income for cohabiting couples, but we find that so too is having income totally combined. It should be acknowledged that cohabiting couples may pool income for specific reasons whereas married couples pool money as a representation of trust (Singh and Lindsay 1996, Gray and Evans 2008).

The effect of relationships on the organization of income is not, however, limited to a person's current relationship. At the vicariate level, we find that people who have experienced divorce are more likely than people who have not experienced a divorce to keep their incomes separate, but this finding does not hold after controlling for other factors. While people who have experienced a divorce may be more likely to separate their income, this is more likely to be due to their shorter length of relationship, and the decreased likelihood of having a child in the household or purchasing a home together than an effect of a divorce per se(Gray and Evans 2008).

The Income Sharing and community property can be different in terms of relationship type (marriage and cohabitation). Community property is classically an object of premarital contracting (Leckey 2009). Women's rights to property during marriage, upon divorce, and death of a spouse is far from satisfactory and must be reformed to advance the status of women in the country(Kafumbe 2009).

H1: If cohabitation is practice, then there will be discrimination in income sharing and property distribution.

Conceptual Framework



METHODS

The current study was approached qualitatively to identify the legal implications cohabitation practice in children welfare. The researcher gathered data including the different cases of marital discrepancies and other documents that will somehow be related and will be taken from the National Statistics Office, Department of Social Welfare and Development and Government Service Insurance System. A set of questions was used to interview the informants. The validated interviews are supported by the documents/data from the agencies of the government.

The study was conducted in Metropolitan Manila. The location was chosen because of the greater number of marital relationships as reflected from the National Statistics Office. The interview will be done among respondents from Caloocan city, Pasay city, Quezon City and City of Manila which were considered to be the four original cities. The researcher identified the reasons for the growing population of cohabiting couples in Metropolitan Manila.

The instrument developed acquired and measured the following data, (1) Legal implications of cohabitating couples on children's welfare, (2) The extent results of the children welfare, income sharing and community property, (3) Alternative for Cohabitation.

A specialized interview guide was constructed for the couples. The interview includes the reasons and issues behind the Cohabitation practice in Metropolitan Manila. The data gathered from

the specialized interview method was analyzed thematically looking for commonality and trending in answers.

The selection theory was used in the study. Both the positive and negative notes in terms of advantages, benefits and socio-economic acquisitions will be pronounced, laid down and illustrated. The comparison and contrast between Cohabitation and Marriage was established. The increasing trend of Cohabitation was determined and that of Marriage which will manifest why the couples selected cohabiting relationship. However, the greater number does not imply good selection which will be taken up as a starting point for those who will enter into a relationship.

RESULTS

Cohabitation

Cohabitation refers to a living arrangement in which an unmarried couple lives together in a relationship that resembles a marriage. Couples cohabit, rather than marry, for a variety of reasons. They may want to test their compatibility before they commit to a legal union or they see cohabitation as a convenient way of living. They may want to maintain their single status for financial reasons. In other cases, the partners may feel that marriage is unnecessary. Between 2000 to 2007, the number of cohabiting couples in Metropolitan Manila continuously doubled from 67,991 to 101,006. (National Statistics Office Population Census).

With the random choice of couples among the cohabiting ones in Metropolitan Manila; the following reasons were given why the couple lives together. Most of the respondents said that they cohabited because they don't see the importance of marriage. They also agreed that being married has no difference with a cohabitation type of relationship. To these people cohabitation offers similar benefits to marriage without the potential pain of divorce. Respondent A said that they chose to cohabit because they were checking their compatibility before getting married. Most of them also said that it is not necessary to get married. Marriage for them is just a costly piece of paper. They rather spend their money for their children and household purposes. Another respondent said that they decided to cohabit because they had a child already and they need to raise their child together. So they decided to move in together.

Conclusively, Cohabitation may be a trend today which may somehow replaced or replaced marriage as a legal institution. The relationship may assume some benefits of marriage but in the end, being married will always be a lot better in terms of legality and security.

Children Welfare

Children Welfare refers to the protection, care and healthy development of children. Parents play an irreplaceable role in the lives of their children. This relationship positively impacts a child's physical, mental and emotional well-being. The relationship that the Parents share with their children has a great impact throughout his/her lifetime. The Department of Social Welfare and Development's study about Parenting in 2007 shows that the benefits of parental involvement are manifold, affecting numerous areas of a child's life, including health development, academic progress and life choices.

Illegitimate child is defined as the condition before the law, or the social status, of a child whose parents were not married to each other at the time of his or her birth. These are the laws for the illegitimate child/children of cohabiting couples. (Article 175 and 176 from the Family Code of the Philippines).

Legitimate or illegitimate children should be given equal rights. Children born out of wedlock should not be discriminated and should not suffer the consequences of his/her parents' unlawful actions.

Children of Cohabiting Couples

Cohabitation has a much higher break up rates (Horn 2006). In most cases, children of a cohabiting couple are lucky to have two parents providing for their needs but the unlucky to those children who experience difficulties because they loss of one parent. The strongest predictor of child well-being even stronger than the payment of child support was the degree to which their parents engaged in authoritative parenting. Children whose parents listened to their problems, gave them advice, provide explanations for rules, monitored their academic performance, helped with their home works and disciplined them were significantly more likely to do well in school and evidence greater psychological health.

Most of the respondents said that they had encountered numerous problems including the birth certificate of their child/children. Birth certificates are one of the most common problems faced by cohabiting couples. The following respondents shared their experience.

Respondent A stated that "We had a problem with the birth certificate. Before, when our baby was born we are not married. If that's the case there is only an attached acknowledgement in the birth certificate of the child that he was acknowledged by his father but still it is written there that we are not married". If a child is born out of wedlock, there are usual problems on the legitimacy of the child. If the parents are not married, the birth certificate of the child has an attached acknowledgement signed by his father. Respondent B said that she also experienced problems with birth certificate of her child. During the time when her baby was born, the imposed

family code by Aquino was strict so she had registered her daughter late. She also said that during that time, even though the child was acknowledged by his father but the parents are not married, the child cannot use the surname of the father. The respondent said that her child is still using her surname. Almost all of the respondents said that their child's birth certificate was registered late because they were not married.

It is evident that the children are primarily the recipients of the negative consequences of cohabitation. For children, cohabitation means a greater risk of living within an unstable family structure.

Income Sharing and Property Distribution

Income Sharing and Property distribution refers to the assets or belongings of couples, married or unmarried. Unmarried couples tend to have more financial issues than married couples do. According to a financial expert, in the early stages of a relationship where two single people are living together, it's best to keep their assets separate, to avoid property disputes later.

Most cohabiting couples tend to keep separate checking accounts, never contribute money to the purchase of a major asset, such as a house or a car, which is held only in the name of your partner, to contribute equally to a shared checking account to pay for common expenses. Respondent C said that they don't combine their salaries. His husband gives his salary to her for their household expenses but her salary remains with her. Most respondent said that they don't combine they income with their partner's income. They tend to have a separate property compared to married ones.

Misconception about Marriage

Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution. Kasearu (2010) stated that reasons for marrying were divided into four factors. Children included the items which emphasize the attitude that the children should be born in marriage. Security factor consisted of items that represent the belief that marriage provides economic security; legislation guarantees mutual rights and responsibilities; legalizes sexual relations. Social norms factor was the composition of items representing societal acceptance and finally, Conventionality, which emphasizes the importance of weddings, economic security and the legislation of sexual relations. Decades of research suggest that marriage offers a range of socio-emotional and economic resources that enhance health and well being. Cohabitation appears to offer some, but not all the benefits of marriage (Ross 2005). Almost all of the respondents stated that they do not believe in marriage and said that cohabitation is a worldwide trend. They don't care about the negative judgment of society upon them. They also believed that marriage is just a piece of paper.

Respondent A said that “Marriage is like a piece of paper. God is your ultimate bond. It doesn’t mean that if you are not married, you have no bond with God.” She also said that there’s no need for marriage because it is not important. Respondent B stated that “You need to be practical. It is better to be stable before you get married. For me, marriage is just a paper. Even though you are not married but everything is going well, it is not needed”. Most of the respondents perceived marriage as a piece of paper that has no value. Respondent C said that she doesn’t believe in marriage since she was a child. Respondent D believes that if she gets married, there would be a lot more problem to be encountered rather than being in a cohabitation type of relationship. She said that if the relationship doesn’t work, the couples will have a hard time breaking up if they were married because they should face the consequences of the pain of divorce. For these people, marriage is not necessary and most of them said that they should be practical and disregard what others will comment about their relationship.

Problems Encountered by Cohabiting Couples

Aside from smooth and intimate relation of couple, there may also be disagreements. Married or unmarried couples experienced having problems. In the case of the cohabiting couples they said that they experienced emotional and economic problems because of their status. With a random choice of cohabiting couples in Metropolitan Manila, here are their problems encountered during their relationship.

One of the most common problems encountered by cohabiting couples is about the stability of their relationship. Most of them doesn’t have a stable relationship. These people saw the trend of cohabitation in the society thus believing it to be the replacement for marriage. Cohabiting couples experience more problems compared to married ones. Most respondents also agreed that there is no financial security that goes along with cohabitation. They also faced numerous problems in the different institutions of the society because of their relationship status. Respondent A said that she encountered problem regarding the school of her children because it requires a marriage certificate that they cannot provide.

Some problems as mentioned may at time, be given temporal solutions which may not be applicable to all concerned. It is in this light that the researcher will use the laws/code on marriage and family life.

Government Insurance System and Department of Social Welfare and Development

Government Service Insurance System or GSIS is a government agency that provides retirement and health benefits to all government employees in the Philippines. Instances were in the partner dies, the primary beneficiaries will be the legal spouse and legitimate children. Not being

married will make the children illegitimate thus forfeiting him to receive all the benefits left for him/her.

The researcher interviewed Mr. Butch Briosco, the Accounting division chief of the GSIS or the Government Service and Insurance System about the benefits of cohabiting couples if one of them passed away. The researcher asked following questions: (1) Can a cohabiting partner get something or inherit something from the partner who passed away? “No. A cohabiting partner cannot get anything from the partner who passed away. But the legitimate child/children can inherit something from their parent who passed away. An illegitimate child can also inherit something from the parent as long as he/she is still a minor. (2) Are there instances where the claimants is the cohabiting partner? “Yes. There are many situations like that. Before, members of GSIS can choose their beneficiaries but when RA 8291 or also known as the Government services insurance system act of 1997, what is in the family code is strictly implemented. The benefits will only be given to the legal spouse, legitimate children including illegitimate children, who have not reached the age of majority. The new implemented law aims to protect the rights of the legal wife. If the claimants would be a cohabiting partner that could not present a legal marriage certificate he/she could not get the benefits from his/her partner.”

Marriage is not just a piece of paper. It signifies legal rights and privileges that only married couple can avail. It serves as the reminder for legality and responsibility.

Department of Social Welfare and Development

The Haven for Women is a facility that provides temporary shelter and protective custody to women ages 18-59 years old who are victims of involuntary or forced prostitution, illegal recruitment, battered/abused women, victims of sexual abuse, women in detention, women victims of armed conflicts and others.

The general objective of the facility is to enable women in especially difficult circumstances to resolve their problems and restore their normal social functioning, and thus regain self-worth and dignity through the provision of protective and rehabilitative services. Data from DSWD (Haven for Women) showed that cohabiting women has a higher rate of sexual abuse compared to married women. The researcher interviewed women under the care of DSWD’s Haven for Women in Alabang. Most women under DSWD’s care were a victim of sexual abuse from their partners. Women from the center said that their partners physically and emotionally abused them. According to them, if they were only married the chances of being abused by their partners are small.

DISCUSSION

Today, the number of cohabiting couples are extremely growing in numbers. The reason behind this is the changing perception or standard of many Filipino in the traditional concept of family life which includes marriage before living together. Marriage is seen as a piece of paper that has no value and cohabitation is seen as normal part of the society. Unmarried couples experience more problems with their children specifically with their children's birth certificate. The Income sharing and Community property of cohabiting couples tends to be separated compared to married couples. Most of the respondents indicated low satisfaction in regard with their present relationship status.

The study focuses on cohabiting couples residing in Metropolitan Manila, living together for almost a year, has a child/children. It also involves children welfare of the unmarried couples, their income sharing and community property. The study aims to lay down the consequences of not being married and for people to be aware of the growing population of cohabiting couples around the world that could cause decline in marriage thus defeating the purpose of marriage. This study does not cover cohabiting couples residing in different parts of the Philippines except for Metropolitan Manila. The paper does not include the view point of married couples.

The Author recommends that Article 176 of the Family Code of the Philippines as amended by Republic Act No. 9255 should be modified. Illegitimate children should get an equally shared inheritance from the biological parents. They should not get half of what a legitimate child should inherit. Moreover, this study may become an initial awakening for the researchers who are in the field of sociology, psychology, education and social work to understand better the circumstances and situations behind cohabitation. The study could serve as added materials or avenues to legal practitioners and consultant in appreciating their cases and defending their clients. This will also intensify in influencing the government authorities, agencies, officials and other instrumentalities to improve their services for the betterment of the plight of the aggrieved and oppressed women and families. Over all, the author believes that this study will serve as a touching reminder that aims to develop life-changing support systems and contribute to the abovementioned bodies of knowledge, and eventually to mankind.

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