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Cohabitation of Unmarried Couples: Its Consequences and Legal Redress in the Modern World

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Abstract

Adults of opposite sex who have no blood affiliation are not expected to live together in close intimacy which encourages unguided physical and emotional contact. Legal approval to such cohabitation is derived only from marriage. Marriage automatically spells out during a couple's lifetime and thereafter, the rights and obligations of each person and the duties they owe their off springs. The above is disregarded in Cohabitation hence, it is froth with numerous challenges namely; lack of commitment from either or both parties and an underlying opprobrium against partners and their off springs. Despite these challenges, there is no decline in the practice. This paper discusses the negative consequences of cohabitation and through doctrinal research method has found the need for the phenomenon to be given a legal

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appraisal in line with modern living. It recommends statutory intervention for cohabitation and affirmed the need for enforceable laws for it.

Key Words: Cohabitation without marriage; Cohabiting Partners; Perils of Cohabitation; Cohabiting Agreement; Civil Partnership; Legal Intervention.

1.1 Introduction

Perhaps, societal expectations for adults of opposite sex and within certain age bracket to be lawfully married is to disabuse in the thought of such persons the idea that they could live together in close intimacy as married persons do, without giving proper considerations to the risks associated with that practice. The living together of unmarried partners seems not only to attract societal reservations but also judicial disapproval. In *Gammans v Ekins*,²⁵¹ where unmarried partners lived together for over two decades with signals sent to the public that they were married; the Court held that the partners lived under false pretenses and that the pretentious show of their life style is an abuse of the meaning ascribed to the word ‘family which they seem to imitate.

Cohabitation without marriage refers to an arrangement where persons who are not lawfully labeled as husband and wife live together whether physically or apart but portray all the characteristics of spouses in their life style.²⁵² Although in *Fitzpatrick v Sterling Housing Association Ltd*,²⁵³ the Court appears to have expanded the above meaning when it held that the cohabitation of persons of same sex is a representation of family; the Court also pointed out that the model of a family unit is a husband and a wife of a legal marriage and their children.²⁵⁴ Added to the latter submission is the dissenting opinions in that judgment which emphasized that a family is a legal relationship connected either by marriage (which involves a man and a woman or adoption) or by blood (that which exists between parents and their children) and that since the same sex partners did not fall into any of the two classifications, their living together falls short of what cohabitation tends to portray.²⁵⁵

The first and fundamental element in cohabitation appears to be the existence of a romantic relationship between the partners. Cohabitation becomes the instrument for testing the degree of affection which both may have professed to each other. Thus, partners who intend to get married may decide to cohabit for certain period to

²⁵¹ (1950) 2KB 328 @ p 331 CA

²⁵² E I Nwogugu, *Family Law in Nigeria* (Rev. Edn.:Heinemann Educ. Books Nig. PLC, 1974). p.

71.

²⁵³ (2000) 1 FCR 21 HL

²⁵⁴ Ibid

²⁵⁵ ibid per Lord Nicholla p. 36; per Lord Clyde p.39

determine whether they could get along well after their lawful marriage.²⁵⁶ The outcome of their living together briefly or for a long period may help them determine whether they are compatible enough to undergo a lawful marriage.²⁵⁷

It would appear that neither present day religious beliefs nor societal values are against cohabiting when it is meant to be a prelude to a lawful marriage. Also, it may be insignificant whether partners have cohabited for a very long time or produced children while the practice lasts. Pope Francis once conducted a marriage for cohabiting couples who had children.²⁵⁸ Archbishop of Canterbury Rowan Williams and the Archbishop of York-John Sentamu had in 2011 demonstrated their support to a similar act when members of the royal household found the need for a unlawful union after cohabiting for years.²⁵⁹ In *Akhter v Khan*,²⁶⁰ the parties lived together after performing a religious ceremony that could not be described as a legal marriage.²⁶¹ They knew they needed to give a legal backing to their relationship but did not do so and never had the opportunity to accomplish that. Thus, their cohabiting had no justification because marriage which may have cured the defect in their relationship was ultimately ignored. But cohabitation before marriage may not be a guarantee to a blissful marital life or an unbreakable affinity between a husband and a wife thereafter. Similarly, the experiences gained by partners who lived together before marriage may add no positive value in resolving marital challenges. The good it has is the marriage that takes over from it. In the absence of partners taking the bold step to right their wrongs, the consequences of their unapproved life style enure perpetually with them.

The conscious decision to adopt cohabitation as an alternative to marriage is presumed to be the choice of both partners. There is also a presumption that cohabitees are abreast of the applications of their actions namely; the advantages and consequences of cohabiting outside a lawful marriage. However, the extent of the consequences and its damaging effect on their off-springs during and after the lifetime of the major actors may not be envisaged or be properly addressed at the on-set when reasoning is beclouded with love. This article presents the consequences of cohabitation without marriage as it stands today and seeks the intervention of

²⁵⁶ Nwogugu (n. 2)

²⁵⁷ Ibid

²⁵⁸ Australian Broadcasting Corporation (ABC) News ‘Pope Francis Breaks Taboo by Marrying Cohabiting Couples: Conducts Mass Wedding Ceremony’ (15/9/2014)

²⁵⁹ Ross Tim; Wayne- Jones Jonathan; Rayner Gordon (29 April 2011) ‘Royal Wedding: Archbishops back William and Kate’s Decision to live together Before Marriage’ (*The Telegraph London* Achieved from the original on 12 January,2022 retrieved 3 August 2013. Copied from Lexis Nexis <[https:// www.lexisnexis.com](https://www.lexisnexis.com)> accessed 19 January 2024:5.20am (2018) WTLR 729

²⁶⁰ Ibid

²⁶¹ Ibid

statutory enactments in limiting its cruelty. The above is set out in five parts including this introduction which is Part I. Part II discusses the perils of cohabitation in a modern society while Part III evaluates the search for legality in cohabitation without marriage. The proposal for a legal intervention to cohabitation is contained in Part IV and Part V is the conclusion.

1.2 The Perils of Cohabitation in Today's World

Cohabitation may be seen as an attempt at replicating marriage in the terms of cohabiting partners rather than as legally provided for such association. The attributes of marriage are visible in cohabitation and cohabitees can pass for married couples except where circumstances show them not to be. In *Kimber v Kimber*,²⁶² the Court held that cohabitation will be inferred in the association of two unmarried persons where the parties:

- (i) live together under the same roof;
- (ii) share in the tasks and duties of daily life e.g. domestic work;
- (iii) have a steady relationship that appears permanent in nature;
- (iv) have an on-going sexual relationship;
- (v) have children and are protective of them;
- (v) can be regarded as a married couple by a reasonable man with

normal perception on their way of life.²⁶³

The features so judicially recognized are similar to the characteristics of marriage hence; many young persons are comfortable with the arrangement believing that another version of marriage could be practiced in accordance with their own terms. Perhaps, the major difference between cohabitation and marriage is the absence of a legal instrument in the former upon which validity can be attached to the dealings of partners in the relationship. For example, marriage is registered but cohabitation is not.²⁶⁴ Again, there is age regulation in marriage unlike cohabitation where even underage persons can live together as partners.²⁶⁵ Similarly, the law frowns at the union of persons who are related through parentage or decent in wedlock but cohabitees are not bound by such laws although incidences of the latter may not be notorious.²⁶⁶ Another significant statutory regulation which distinguishes marriage from cohabitation is that the time the former commences and ends is legally recognized and made a subject of public knowledge while the beginning and end of

²⁶² (2000) 1FLR 383

²⁶³ Ibid

²⁶⁴ J Herring, *Family Law* (Longman Law Series, 2001) p. 33

²⁶⁵ Ibid

²⁶⁶ Ibid

the latter is neither documented nor given any significant value.²⁶⁷ Thus, the non-existence of a legal base in cohabitation may be the root of the numerous crises partners face when there is a breakdown in their relationship.

The illegality and wrong in two unmarried partners living together manifest its ugliness in the resentment and emptiness that ensue a break down in their relationship.²⁶⁸ The understanding which cohabitees presume to have becomes the first to be questioned in the face of a disagreement between them. The financial obligations shared between partners to accommodate their day to day expenses and in some instances to help in the purchase of property used by them are overlooked in determining who gets what at that stage or who should forfeit an item of property jointly owned by both. Thus, unlike what obtains between couples in a dissolved marriage where property acquired by them is redistributed in accordance with statutory provisions; the fate of cohabitees on what life holds in the future is uncertain where there is an end in their relationship.²⁶⁹ A partner may not only lose what he/she owned before cohabiting but willingly submitted for use during cohabitation but also other items of property purchased with joint fund whilst living unmarried with the other partner. Therefore, a crack in the relationship of partners may mark the end of any promising achievement made by both to secure the future.²⁷⁰

Judicial pronouncements on disputes over property acquired by unmarried partners seem to be in the same direction of denial of genuine sacrifices made by one party for a better future. The Courts appear to limit their judgment to declarative orders namely who the rightful owner of certain property is and not on transfer of property from one partner to another or on maintenance of a displeased partner or the children resulting from the practice.²⁷¹ In *Eric Robert Tanner v Josephine Joan Tanner*,²⁷² the plaintiff and the defendant had a relationship which led to both of them cohabiting. The plaintiff at that time was married to his first wife who bore to him a girl and a boy whose ages were 19 and 12 respectively. Although, both cohabiting partners were not married they lived like married couples with the defendant taking up the name Mrs Tanner. They had a twin during the relationship and decided that they needed a house which the plaintiff paid for with a mortgage he applied for. In his application for the mortgage, he included his two elder children among his family and added that the house to be purchased was needed because of the young twin he

²⁶⁷ Ibid

²⁶⁸ <<https://www.tutor2u.net>>cohabitation/sociology-Tutor 2u accessed 15 January 2024: 10:25am

²⁶⁹ Herring (n. 14)

²⁷⁰ Ibid

²⁷¹ Ibid

²⁷² ECWA CIV J O 430-2 Crt of App. Div. (Copied from Herring (n. 12))

had who will remain there until they passed out of school. Their relationship broke down as a result of the plaintiff's love affair with Miss MetCalfe whom he married after divorcing his first wife. The defendant at that point requested for the house to be sold and the proceeds given to her for the maintenance of the twin. But her request was turned down. The plaintiff moved in and lived with his new wife but could not sustain his new family with what he had. He felt he needed the house occupied by the defendant and their twin, so he made an offer of four thousand pounds to her to move out of the house. The offer was increased to six thousand pounds weekly as maintenance for the twin but the defendant rejected both offers insisting that the licence for the house was for them to remain there until the twin passed out of school. The plaintiff went to Court for the possession of the house. The Court held that the plaintiff never had the intention of marrying the defendant and that he was not pretentious of that fact while the relationship lasted. The defendant only moved into the house because it was convenient for her and the twin not for the purpose of securing accommodation for them in the future.²⁷³ Thus, she had no right to remain in possession while the plaintiff (the rightful owner) had made a demand for it. The Court held further that the plaintiff was right to ask for the protection of his right.²⁷⁴ The judgment meant that the defendant could no longer lay claims to the property she once clung onto for shelter and financial security because even if access to the property were granted to her, she would have relinquished that right immediately the children completed their schooling.²⁷⁵ The thought of the above coupled with the stress of single parenting may expose her to psychological challenges which if ill-managed could lead to mental disorder.²⁷⁶ The facts as well as the decision in *Maria Teresa Bernard v Dion Emmanuel Joseph*²⁷⁷ also portrays the limitations in the use of judicial orders to compensate partners for financial and emotional investments put into their relationship while cohabiting. In that case, the defendant told the plaintiff that he is unmarried and based on that misrepresentation, they got engaged, purchased a property in their joint names and lived together thereafter with the intention of conducting a lawful marriage. At the time they cohabited, the other financial obligations were shared by both partners so that they could meet up with their debt repayment. The plaintiff after awhile moved out of the house because she could no longer tolerate the defendant's behaviour. The defendant on his part divorced his wife, married another woman and lived in the house he

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ Herring (n. 14)

²⁷⁶ S O Meadows, J Brooks-Gunn, S S McLanahan 'Stability and Change in Family Structure and Material Health Trajectories' (2008) *American Sociological Review* 73: 314-334

²⁷⁷ (1982) EWCA Civ J0330

purchased with the plaintiff. The plaintiff went to Court to demand for her own share of the property. The Court held that the property belonged to both partners who once cohabited, so, it could be sold and the proceeds distributed between them.²⁷⁸ Again, the other investments such as the resources pooled together for the purchase of furniture, food items and payment of utilities and medical expenses while the relationship lasted are forgone in the determination of what each partner will get from the sale of the real property that is jointly owned.

The negative impact which break-up in relationships have on partners who have cohabited seems higher than that which is felt by married couples.²⁷⁹ Although parties in each of the relationships tend to give out all they have believing that they are committed to a future with their partner, the case of cohabitees appear worse because there is no guideline for the redistribution of partners' acquisitions or for the maintenance of the children borne during cohabitation or how contact between the latter and their parents particularly the fathers can be sustained to promote a healthy bond between them.²⁸⁰ In *Akhter v Khan*,²⁸¹ the plaintiff and the defendant while residing in England had an Islamic marriage ceremony with the intention of holding a civil ceremony later to formalize their position as husband and wife. They started cohabiting after the Islamic ceremony and had four children. The push made by the plaintiff for them to conduct a civil ceremony was not accompanied by the same zeal from the defendant so, no such ceremony took place. However, they were known to many as married couples even though they knew within themselves that what they had did not qualify them to be addressed and treated as one in England where the Islamic ceremony was conducted though, perhaps; good enough in Dubai where they lived before their separation. The parties cohabited for ten years and in those years they took care of their needs jointly including the maintenance of their children.

The relationship broke up and the plaintiff went to Court for a divorce. The argument between the parties was whether the Islamic ceremony they had qualified their relationship to be described as a void marriage or as a non-marriage under the provisions of the Matrimonial Causes Act 1973 and the Marriage Act 1949 respectively.²⁸² The Court of first instance decided in favour of the plaintiff and declared that the partners had a void marriage which entitled the plaintiff to some financial protection. The Court based its decision on the equitable maxim which

²⁷⁸ Ibid

²⁷⁹ J A Simpson 'The Dissolution of Romantic Relationships: Factors Involved in Relationship Stability and Emotional Distress' (1987) 53: 683-692

²⁸⁰ G k Phoades el ta 'Breaking Up is Hard to do: The Impact of Unmarried Relationship Dissolution on Mental Health & life Satisfaction' National Library of Medicine <www.apa.org/pubs/journals/fam> accessed 22 February 2024. 9:10am

²⁸¹ Supra (n. 10)

²⁸² Ibid

‘treats as done that which ought to be done’ because the joint intention of the partners at the time the Islamic ceremony was held is to conduct a civil ceremony subsequently to validate their union in the eyes of the law.²⁸³ On appeal, the decision of the trial Court was set aside because according to the higher Court, there was no ceremony in respect of which a decree of nullity could be granted in accordance with the provisions of section 11 of 1973 Matrimonial Causes Act.²⁸⁴ The appellate Court further held that the Islamic ceremony which the partners had is only recognized as a religious ceremony which carries no legal weight.²⁸⁵ The parties were merely cohabiting whilst the relationship lasted.²⁸⁶ The latter decision would most likely have been different if the Islamic ceremony was conducted in a country which practices and recognizes Sharia Law.²⁸⁷

The Court gave its declarative order in line with its role where issues on cohabiting relationships are brought before it. The order may not be a problem but its effect. In the case under consideration, the plaintiff who automatically assumes sole responsibility of the children gets no financial assistance which will help in her maintenance as well as that of the children. The defendant on the other hand gets no directive on how and when to see his children. Thus, he may lose regular contact with them thereafter.²⁸⁸ The exclusion of guidelines on how to handle the above highlighted facts may have negative impact on the mental state of the parties concerned and in the long run show its ugly consequences on their children and the society.

Cohabiting partners may also remain committed to their relationship throughout their life time and still end up with so much resentment and hatred about their lives. The absence of legal recognition for their association may not be a barrier to their accepting to live a high quality life that is characterized by deep affection for each other.²⁸⁹ Also, valuable companionship and support may be enjoyed by partners while alive yet, the weakness inherent in their relationship cannot be compromised.²⁹⁰ The passing on of one of the partners may reveal the emptiness in the make believe association the partners had. The surviving partner may not only lose social recognition which she enjoyed while the other partner lived but may also be disinherited from the demised partner’s property under intestacy rules.²⁹¹ The

283 Ibid per Justice Williams

284 *Akhter v Khan* (2020) supra (n. 10) per Cartwright King

285 Ibid

286 Ibid

287 Ibid

288 Meadows (n. 26)

289 Phoades et al (n. 30)

290 Ibid

291 Herring (n. 12)

legitimate status of children borne by cohabiting partners may not be questioned during and after the life time of their parents but the fact that they are products of an unmarried association will be tied to their history and that may prevent them from benefitting from certain communal entitlements. Cohabitation as practiced today seems to hold a bleak feature for those who indulge in it and for their off-springs in spite of the roles and responsibilities each party plays and undertakes in the other's life.²⁹²The seemingly apparent disadvantages have not discouraged many from cohabiting thus, the need for the practice to be reviewed for the benefit of the teeming present generation who are inclined towards adopting it as an alternative to the well-established marriage institution.²⁹³

1.2 The Search for Legality in Cohabitation without Marriage

Persons who cohabit owe no legal duty to one another whilst their relationship subsists or at the break-up of same or even at the demise of one of the partners.²⁹⁴ The partner in a cohabiting relationship who is financially dependent on the other bears the greatest risks in such relationship.²⁹⁵ The partner's jeopardy is connected to the fact that he/she may be disentitled from money collectively saved in the account of the other, from having a share in the proceeds of the sale of the property acquired in the name of the other partner, from maintenance and pension and may even be made homeless after spending a good number of youthful years building on a relationship without a foundation.²⁹⁶ The above seems to be the push for a means of mitigating the hardships which flow from cohabiting in the absence of marriage. One such means devised by partners who either intend to cohabit or are already in the practice is for partners to enter into a legal contract that would be binding on them. The cohabiting agreement so made is presumed to give legal identity to the transactions carried out by partners.

Cohabiting agreements are voluntarily entered into by partners who have decided to live together without marriage but need to specify in express terms issues which may affect them in their present relationship or later in future so that the document so prepared will serve as evidence in the event of any legal suit ²⁹⁷ The content of cohabiting agreement includes:

²⁹² Law School Policy Review & kautilya Society <<https://lawschoolpolicyreview.com>> accessed 23 February 2024. 3:40pm

²⁹³ *Akhter v khan* (n. 10)

²⁹⁴ Evans Solicitors 'Living Together while not Married: What Are the Risks?' <evanssolicitors.com> accessed 2 February 2024 5:30am

²⁹⁵ Ibid

²⁹⁶ Ibid

²⁹⁷ K M Joek 'How Cohabitation Agreements Can Benefit Unmarried Couples' <<https://kmjsolicitors.com>> accessed 15 February 2024 10: 05am

- (i) the responsibilities of each partner while living together;
- (ii) the financial obligations each partner will bear as long as the relationship subsists;
- (iii) the distribution of shared purchases, savings that are jointly made, debts incurred for the benefits of both but advanced in the name of one and other assets; in the event of a break-up;²⁹⁸
- (iv) the maintenance of children borne while cohabiting and how they will be supported after a break-up;
- (v) the modalities for the distribution of the property of a deceased partner.²⁹⁹

Partners may draw up cohabiting agreement before living together or while living together. Each of the timing has its own advantage. Agreements made while the partners are already cohabiting may have a wider content than that made at the on-set because partners have been exposed to the nitty gritty of the relationship; partners tend to make more objective decisions before living together when emotions may becloud reasoning.³⁰⁰ The introduction of legal element into cohabitation is the making of partners not an imposition of any law. Therefore, its content and commencement are under the control of the partners whose decisions are for the law to honour where appropriate.

An agreement made in respect of cohabitation is meant to protect the partners in such relationship where there is a break-up or where one of them is deceased.³⁰¹ The agreement is presumed, to among others; reduce disagreements that may lead to costly litigation, give direction on partners' maintenance and that of their children, make life easier for any of them both while cohabiting and afterwards and ultimately guarantee a stable physical and mental health condition for each of them before he/she dies.³⁰² The agreement seems to provide the missing perspective which cohabitees are denied for refusing to have a lawful marriage.

But neither cohabiting agreement nor a civil partnership contract (an agreement entered into by persons of opposite sex for the conduct of their affairs whether under same roof or not and registered under the latter name} addresses all the issues bedeviling partners who wish to assume marital status and live-out same without a wedlock. Both types of agreement fall short of the legal protection offered to married couples. First, it may be difficult to ascertain whether the agreement reached by

298 Ibid

299 Ibid

300 Ibid

301 Crisp & Co., 'The Benefits of Cohabitation Agreement' <<https://www.crispandco.com?> accessed 22 February 2024 3:10pm

302 Ibid

partners would be honoured by the Court when the need for that occurs.³⁰³ The content of the document could be questioned on grounds of undue influence or that the facts contained therein are untrue.³⁰⁴ The document could also be attacked for excluding the features of a legal contract which will make it enforceable by a Court of law. The Court in such circumstances may disregard the agreement made by the partners and exercise its discretion which may be contrary to the intentions of the major actors in the relationship.

Again, most cohabiting agreements like other forms of voluntary documents are not up-dated where some major changes occur in the lives of the partners.³⁰⁵ For example, an agreement entered into by cohabiting partners at the on-set of their relationship may not include shares transmitted to a partner through a Will upon the demise of a person related to him/her or property which a partner inherits through the application of Intestacy Rules of Succession to devolve the property of a deceased relative. Similarly, loans obtained to off-set challenges which partners face from time to time will not have been envisaged at the beginning of their relationship so, will not be included in the agreement made by partners to guide their affairs. The above shows the need for existing cohabiting agreements to be up-dated regularly to reflect current state of partners' lives shortly before the end of their relationship. The questions which persons who rely on cohabiting agreements must answer are: Will partners show same zeal in continually reviewing their agreement? What will happen where the push is from one partner?

Partners may hold different perceptions on the use of agreement to direct their affairs which has emotional undertone. A partner may perceive the agreement as a sign of lack of trust from the other partner.³⁰⁶ It may also be an uphill task to get a partner to put on paper all that may affect them in the process of living together. Thus, in being economical with the reality, some partners may write in their agreement, only what they wish to be documented. The consequence is that the agreement may refer to some aspect of the relationship, perhaps, considered insignificant when compared to what is omitted. Cohabitees who find themselves in such situation are still as helpless as those who failed to enter into contract with one another.

1.3 The Need for Legal Intervention

Adults of marriageable age are free to either get married or remain unmarried for the rest of their lives. Thus, to be married is a question of choice which the law

³⁰³ Freemans Solicitors 'The Advantages and Disadvantages of Cohabitation Agreement' <<https://freemanssolicitors.net>> accessed 22 February 2024 3:30pm

³⁰⁴ Herring (n. 12)

³⁰⁵ Freemans Solicitors (n. 50)

³⁰⁶ Ibid

recognizes just as to remain unmarried is legally accepted. The above explains why some persons may elect to be priests/reverend sisters and remain married only to their faith not to any of the opposite sex. Perhaps, the justification for the recognition given to the choice made by the latter is that their decision excludes sharing close intimacy, particularly, sexual relationship with one another or the opposite sex whilst under the same roof. Modern ideology on how freedom given to persons can be exercised has changed from the conservative approach which cohabitation is perceived. The former seems to maintain that where the law recognizes that some persons can remain unmarried, a restriction by the same law on how and when persons of the opposite sex can cohabit, may run contrary to the freedom already given.³⁰⁷ It argues that there may be a violation in the freedom given to persons to choose whether to be married or unmarried where live-in partners of opposite sex who chose to remain so is presumed under the law to be married or where the law provides that to get legal protection in certain issues, partners who share close intimacy must be married.³⁰⁸ The argument and reasoning may be the opinion of a few persons but it represents the paradigm shift in today's life style.

The modern generation seems indifferent to some moral values for which cohabitation is frowned at. They are many live-in partners whose style of living may not receive outright condemnation by the present generation. Some may proudly attest to the fact that they handled their affairs as if they were married and even though, they may experience break-up in their relationship; married couples are not luckier. Happenings of today appear to support the above. The number of the youth of today who cohabit outside marriage tends to be in the increase when compared to those who live together after wedlock.³⁰⁹ The implication is that more and more persons are cohabiting hence, the use of agreement by partners to address the challenges they face while and after cohabiting.

The effectiveness of the means adopted to mitigate the challenges associated with cohabitation without marriage is questionable. The shortcoming in the agreement made by partners is that it is their creation and it operates within the parameters set by them. The partners may find it difficult to introduce into cohabitation, a comprehensive ideology that will cater for incidences which live-in partners experience such that it will become practicable at all times and for all persons. Perhaps, the agreement entered into by partners would serve better purpose which will include what it is meant for and even more if it is operated as a law for certain category of persons living under such arrangement.

³⁰⁷ R L Reech copied from Herring (n. 14)

³⁰⁸ Ibid

³⁰⁹ Herring (n. 14)

It has become imperative for there to be a legal framework in form of a legislation or an amendment in the Marriage Act to address the incidences of cohabitation with specifications on the requirements which must be present before legal attention can be given to the practice. For example, live-in partners who have been able to sustain their relationship for a good number of years before their break-up, may be allowed some form of legal protection. In the same way, the law should have provisions for unmarried partners who have lived for a considerable number of years and have children before their separation as well the surviving partner and children of a deceased cohabitee partner.³¹⁰ Persons who fail to meet the requirement carefully drawn and provided in the law will be left out of the protection. Sanctions may also be put in place for partners who may wish to use the law to carry out fraudulent acts on their unsuspecting partners.

The benefits of such legal intervention are numerous. Partners and their children will be happy since their future will to some extent be taken care of and the society will be better off at the long run.

1.4 Conclusion

The law may have been silent over the predicament of cohabiting partners because it is their choice to make cohabitation an alternative to marriage, but, the negative consequences of their action are borne also by others and even the society. The ills of cohabitation are felt directly and indirectly by persons other than the major actors. The children borne by cohabiting partners appear to be first direct victims of the choice made by their cohabiting parents. Like children borne under a lawful marriage, they are innocent of the circumstances of their birth so, it may be unjust to visit the sins of their parents upon them. The society which provides the succor for the cohabiting family will also get a feel of the negative consequences of cohabitation. The above is a pointer to the fact that the continuous disregard to cohabitation of persons without marriage may portend danger in the nearest future.

2 It is important for cohabitation to be given a new legal perspective that is different from how it is presently perceived. Today's changing world requires a change from the position where the law is indifferent to the plight of certain categories of cohabitees to one where there is a defined and articulate law that will cater for them. Societal practices are dynamic, so, law is expected to align with the same dynamism for both to be relevant. Thus, the intervention of the law is a matter of necessity not a choice if healthy growth in persons to be bounded by law is to be achieved and meaningful development in the society where the law operates is contemplated at present and in the future.

³¹⁰ Ibid