

AGGRIEVED WOMEN AND LIVE-IN RELATIONSHIPS: JUDICIAL DISCOURSE

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Introduction

Lon L. Fuller contributed more than any other individual to the revival of Natural Law in the postwar years. He emphasized the theory of inner morality of law which he means that moral values are written into the very idea of law.¹ Law to be enforced must have minimum content of morality and in absence of it, law is incapable of execution. In India judiciary has interpreted the term, 'law' and 'morality' as contemplated by Fuller while adjudicating the cases relating to relationships in the nature of marriage. Pre-marital sex and live-in relationships are recognized to the extent of granting maintenance, residence and protection under statutory laws. While dealing with these types of cases all live-in relationships have not been protected under the garb of relationships in the nature of marriage. Judiciary is adumbrating law relating to live-in relationship in India on case to case basis approach. The present article deals with the issue of live-in relationship in the light of judicial approach towards it and subsequent statutory developments in India.

Meaning of Live-In Relationship

There is no legal definition of the term live-in relationship. Live-in relationship is: "An arrangement of living under which the couples which are unmarried live together to conduct a long-going relationship similarly as in marriage."² It is an arrangement whereby two people decide to live together on a long term or permanent basis

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¹ Fuller, *The Morality of Law*, 192 (1969).

² Available at: <http://legalservices.co.in/blogs/entry/Live-In-Relationship>, visited on 27/01/2013.

in an emotionally and/or sexually intimate relationship. The term is applied more frequently to those couples who are not married. In fact it has been emerged as a declaration of independence, keeping away from the 'shackles' of institutionalized marriages. It's a willful rejection of the institution of marriage, of the stereotypes it engenders, and of the restrictions and inequalities it has come to stand for.

Live-in relationships in India have still not received the consent of the majority of people. They are still considered a taboo to the Indian society. The majority of the people consider it as an immoral and an improper relationship.

Legal Status of Live-In Relationship

There is no legislative provision in India recognizing live-in relationship except the provision given under the Protection of Women from Domestic Violence Act, 2005³ wherein female living in a relationship in the nature of marriage is termed as an aggrieved person. Before that the issue was that, whether a man and woman living together for a long time even without a valid marriage as per personal law entitle her to claim reliefs against male partner. In *A. Dinohamy v. W.L. Balahamy*,⁴ the Privy Council for the first time laid down the preposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and in a state of concubinage. The Privy Council again reiterated the same principle, and made significant addition to the ruling of 1927 in *Mohabbat Ali Khan v. Muhammad Ibrahim Khan and Others*,⁵ laying down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years. For a live-in couple to be considered validly married, the Court wanted evidence of

³ According to provision to section 2(q) of the Act, a female living in a relationship in the nature of marriage may also file a complaint against male partner and his relatives.

⁴ AIR 1927 PC 135.

⁵ AIR 1929 PC 185.

cohabitation for a number of years, without specifying the minimum number of years.⁶

After 1950 the Supreme Court of India in *Gokal Chand v. Parvin Kumari*,⁷ followed the principle laid down by the Privy Council in *Mohhabat Ali Khan* case, but added further that a continuous cohabitation of a man and a woman as husband and wife, and their treatment as such for a number of years may raise the presumption of marriage. But the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the court cannot ignore them. Further in the case of *Badri Prasad v. Dy. Director of Consolidation and Others*,⁸ the Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy.

The judgments given by Supreme Court in *Gokal Chand and Badri Prasad* case was again revisited by the Court while interpreting sections 50⁹ and 114¹⁰ of the Indian Evidence Act, 1872 in *Tulsa v. Durghatiya*¹¹ wherein the Supreme Court held that, in case of relationship of marriage between two persons there is a rebuttable presumption regarding marriage. The presumption can be drawn from natural events and

⁶ Available at: <http://www.indiatogether.org/2008/aug/soc-livein.htm>, visited on 27/01/2013.

⁷ AIR 1952 SC 231.

⁸ AIR 1978 SC 1557. For around 50 years, a man and a woman, as the facts in this case unfold, lived as husband and wife. The Court observed that, in such cases a strong presumption arises in favour of wedlock. Proof as to *factum* of marriage by examining the priest and other witnesses are not necessary.

⁹ It states that: "When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact."

¹⁰ It states that: "The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

¹¹ (2008) 4 SCC 520.

conduct of the parties. Long cohabitation as husband and wife raises such presumption. Law favours legitimacy of marriage and burden lies on the person who seeks to deprive such relationship to prove that no marriage took place. Thus in those cases where a man lived with a woman for a long time without formal proof of marriage, the woman has been accorded legal status with a view to protect her rights. Reading the provisions of sections 50 and 114 of the Evidence Act together, it is clear that that act of marriage can be presumed from the common course of natural events and the conduct of the parties as they are borne out by the facts of a particular case.¹² It is clear that the view taken by the Privy Council in *A. Dinohamy*¹³ and *Mohabbat Ali Khan* case¹⁴ has been consistently followed by the Supreme Court after 1950 granting a woman status of wife and favouring legitimacy of marriage.

Live-In Relationship and Issue of Maintenance

In case of woman who is in live-in relationship with the male partner, the question was without a valid marriage as per personal law whether raises a presumption of a valid marriage entitling such a woman to maintenance. In *Jagit Kaur v. Jaswant Singh*,¹⁵ the Court observed with respect to Chapter XXXVI of the Code of Criminal Procedure, 1898 (Cr P C) that provisions for maintenance wives and children intend to serve a social purpose. Section 488 prescribes forum for a proceeding to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief. Again in *Nanak Chand v. Chandra Kishore Aggarwal*,¹⁶ the Supreme Court while discussing section 488 of Cr P C, virtually came to the same conclusion that section 488 provides for a summary remedy, and is applicable to all persons belonging to any religion, and has no relationship with the personal laws of the parties.

¹² *Ibid.*, para 11.

¹³ *Supra* Note 4.

¹⁴ *Supra* Note 5.

¹⁵ AIR 1963 SC 1521.

¹⁶ AIR 1970 SC 446.

After the enactment of consolidated Cr P C, 1973 in *Captain Ramesh Kaushal v. Veena Kaushal*,¹⁷ the Supreme Court held that section 125 is a re-incarnation of section 488 of Cr P C, 1898. It observed that this provision is a measure of social justice specially enacted to protect, and inhibit neglect of women, children and falls within the sweep of Article 15(3) reinforced by Article 39 of the Constitution. Speaking for the Bench Justice Iyer observed that: “We have no doubt those sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to the selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts.”

It may be noted that section 125, Cr P C provides for giving maintenance to the wife and some other relatives. The word 'wife' has been defined in Explanation (b) to section 125(1) of Cr P C as: “Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.”

Despite the observation made by Supreme Court in *Captain Ramesh Kaushals* case the Court in future gave restricted meaning to the provision under section 125 in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Another*,¹⁸ wherein a two-judge Bench of Supreme Court held that, an attempt to exclude altogether personal law of the parties in proceedings under section 125 is improper. The Court also held that the expression 'wife' in section 125 should be interpreted to mean only a legally wedded wife. This case made an impact on subsequent judicial decisions.¹⁹ However in *Vimala v. Veeraswamy*,²⁰ a three-judge Bench of Supreme Court gave wider meaning to the provision under section 125 and held that, section 125 of Cr P C, 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the

¹⁷ AIR 1978 SC 1807.

¹⁸ AIR 1988 SC 644.

¹⁹ *Infra* Note 22.

²⁰ 1991 AIR SCW 754.

word 'wife' the Court held: “..the object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in section 125 of Cr P C, includes a woman who has been divorced by a husband, or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision.”

The Apex Court again reiterated the law laid down *Vimala* case in 1991 by protecting those women who were not having legal status of marriage. In *Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr*,²¹ the Supreme Court held that, the standard of proof of marriage in a section 125 proceeding is not as strict as is required in a trial for an offence under section 494 of the Indian Penal Code, 1860. The Court explained the reason for the aforesaid finding by holding that an order passed in an application under section 125 does not really determine the rights and obligations of parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The Court held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached.

The law laid down by Supreme Court in *Yamunabai* case giving restricted meaning to the provision under section 125 of Cr P C, 1973 was again relied by the Supreme Court in a subsequent decision in *Savitaben Somabhat Bhatiya v. State of Gujarat and Others*,²² wherein the Court held that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man,

²¹ 1999 AIR SCW 3844.

²² AIR 2005 SC 1809.

there is no scope to include a woman not lawfully married within the expression of 'wife'. The Bench held that this inadequacy in law can be amended only by the Legislature. From the above it is clear that there was a divergence of opinion on the interpretation of the word 'wife' in section 125 of Cr P C, 1973.

Constitutional Protection to Live-In Relationship

It is to be noted that the acceptance of pre-marital sex and live-in relationships is viewed by some as an attack on the centrality of marriage. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in pre-marital sex. Notions of social morality are inherently subjective, and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy.²³ Morality and criminality are not coextensive.

Whenever restriction is imposed on pre-marital sex and live-in relationship it violates Article 21 of the Constitution of India which provides for right to life and personal liberty, and more particularly right to privacy recognized under the canopy of Article 21.

In *Payal Sharma v. Supdt., Nari Niketan Kalindri Vihar, Agra*,²⁴ while interpreting the right of petitioner in the light of Article 19 and 21 of the Constitution, the Court held that the petitioner, a lady about 21 years of age, being a major, has right to go anywhere and to live with anyone. Man and woman even without getting married can live together if they wish. This may be regarded immoral by society, but not illegal. There is a difference between law and morality. In *Lata Singh v. State of U.P.*,²⁵ the Supreme Court held that, a live-in relationship

²³ *Infra* Note 26.

²⁴ AIR 2001 All 254.

²⁵ AIR 2006 SC 2522.

between two consenting adults of heterogenic sex does not amount to any offence even though it may be perceived as immoral. A major girl is free to marry anyone she likes, or live with anyone she likes.

The further constitutional sanction to live-in relationship has been given by Supreme Court in *S. Khushboo v. Kanniammal*,²⁶ wherein the Court observed that, while it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting. Though an *obiter dictum* this case has provided a positive impetus to live-in relationship in India.

Live-In Relationship and the Domestic Violence Act, 2005

By enacting the Protection of Women from Domestic Violence Act, 2005 (hereafter referred as 'the Act') Parliament of India has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship, still rare in our country, sometimes is found in big urban cities. In India, in the wake of changed social context, judiciary has also taken cognizance of the live-in relationship while interpreting the term, 'relationship in the nature of marriage' as used in section 2 of the Act.

For detailed scrutiny of the term, 'relationship in the nature of marriage' some key provisions which are there in the Act are important to be taken into consideration.

Section 2(a) of the Act states: 'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

Section 2(f) states: 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when

²⁶ 2010 Cri L J 2828.

they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

Section 2(s) states: 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

Section 3(a) states that an act will constitute domestic violence in case: it harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

It is to be noted that section 2 (f) of the Act has used the term, 'lived together in a share household' while defining domestic relationship. The definition is silent about the period of residence of the parties. In *M. Palani v. Meenakshi*,²⁷ the Madras High Court held that, the Act does not contemplate that the petitioner and respondent should live or have lived together for a particular period or for few days. A fact that they shared household at least at the time they had voluntary sexual intercourse is sufficient to enable woman to maintain application for maintenance. In this case there was consensual sex between petitioner and respondent, but there was no promise to marry her.

Though the term, 'relationship in the nature of marriage', has been used in different definitions given in section 2 of the Act it has not been defined. In *D. Velusamy v. D. Patchaiammal*,²⁸ the Supreme Court laid

²⁷ 2008 (5) ALL MR (Journal) 38.

²⁸ 2011 Cri L J 320.

down following requirements to be fulfilled for determining the term 'relationship in the nature of marriage':

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.

The Court held that a 'relationship in the nature of marriage' under the Act of 2005 must fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'. Thus a relationship with married person cannot be considered as relationship in the nature of marriage.

The Court also said that all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the four conditions mentioned above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' that he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, be a 'relationship in the nature of marriage'.²⁹ The Supreme Court has thus impliedly rejected the judgment given by the Madras High Court in *M. Palani* case where parties lived together at the time of having sex was held by the Court as domestic relationship entitling a woman to claim maintenance.

In *D. Velusamy* case³⁰ the Court also observed that the judgment would exclude many women who have had a live-in relationship from the benefit of the Act of 2005,

²⁹ *Ibid.*, para 34.

³⁰ *Ibid.*, para 35.

but then it is not for the court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The court in the garb of interpretation cannot change the language of the statute.

Conclusion

The law relating to live-in relationship in India is not clear, and there are many questions that need to be answered. Right of the child born out of such relationships ought to be secured. There is a need of urgent legislation which will clearly dictate the ambit of live-in relationship, and the rights and obligations of the partners in such relationship. Despite this due to the willingness of judiciary to provide immediate solution to the existing problems, following propositions laid down by the Apex Court are to be taken into consideration while interpreting the term live-in relationship:

1. A woman who is in live-in relationship with a male partner can be treated as an 'aggrieved person', as contemplated by section 2 (a) of the Protection of Women from Domestic Violence Act, 2005.
2. A woman and her male partner must hold themselves out to society as being akin to spouses; must be of legal age to marry; must be otherwise qualified to enter into a legal marriage, including being unmarried; and must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.
3. They must have resided together in a share household as contemplated by section 2(s) of the Protection of Women from Domestic Violence Act, 2005.