



PALIMONY: FATE OF LIVE-IN PARTNER WITH SPECIAL REFERENCE TO POSITION IN INDIA AND USA

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ABSTRACT

The California Superior Court in the case of *Marvin v. Marvin* coined the concept of palimony. Later, several pronouncements have analysed the circumstances as to when palimony will be allowed. In India, palimony is still in its nascent stage. One relationship which is considered to exist for the next seven births is marriage. Marriage is considered as a sacrosanct. With time, Live-in relationships have got the legal recognition, but it is still considered immoral and unacceptable by many people in the society. Morality and legality in this relationship does not go hand in hand. The need arises to protect persons in live-in.

The legislature and judiciary are taking efforts in this respect. The interpretation of different legislations will help to understand the scope and limits of live-in relationship. The judicial pronouncements have analysed concepts like presumption of marriage, maintenance, and relation. The article explores and examines the viability of these concepts and, suggests the changes needed to protect the right of a person to live with dignity.

Keywords: presumption of marriage, palimony, live-in relationship, concubinage, child.

INTRODUCTION

In India's traditional and conservative society, marriage is considered as a sacrosanct. 'Any such relationship' other than marriage was never accepted by the society at large and honour killings can be seen in many cases. According to NCRB¹ data on honour killings, the report of 2019 showed that 'love affairs' constituted the third biggest trigger for murders between 2001 and 2017.² One

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¹ National Crime Records Bureau

² *Safe house: Live-in relationships*, THE TELEGRAPH ONLINE (May 24, 2021, 01:31 am), <https://www.telegraphindia.com/opinion/safe-house-live-in-relationships/cid/1816557>



such “marriage like relationship” or generally speaking, live-in relationship was also the cause of such crimes.

Live-in relationship *socially* has not got any good recognition. But, with the passage of time “marriage like relationship” got recognised by law, for the purpose of redressal of cases of domestic violence met by woman in such relationship. So, it cannot be said that this relationship is an illegal one or living together without the sanctity of marriage constitutes an offence.³ The different paths of legality and morality arose due to the changes occurring in the society. Legality and morality at all moments do not go together. Now, living together is not considered as illegal in the eyes of law though it is considered as immoral in the eyes of society.

Live- in relationship requires both the parties (male and female) are of age of majority and have given their free consent to live together. The right to choose a life partner is the right of person to decide how to live his life. Social approval of intimate decisions ought not be the basis of recognizing them.⁴ Living together is a right to life and should not be considered as ‘illegal’.⁵ Absence of parents’ consent will not make the live- in relationship illegal.⁶ Dissolution of marriage gives right of maintenance. But, when man and woman are there in a live-in-relationship, several questions like whether the relationship can be as considered legal or not, whether the live-in partners be entitled for maintenance and/or interim maintenance, whether the child be considered legitimate or not and when a relationship is called live-in relationship. Also, this concept will see its course with legislations and case laws of other countries.

1. PALIMONY: MEANING

³ Aishwarya Iyer, *Live-in relationship may not be acceptable to all, but it is not illegal nor an offence: Punjab and Haryana High Court*, BAR AND BENCH (May 21, 2021, 1:15pm), referred in <https://www.barandbench.com/news/litigation/live-in-relationship-may-not-be-acceptable-to-all-but-not-illegal-punjab-and-haryana-high-court>

⁴ Anil Malhotra, *Live-in is not living in sin*, INDIAN EXPRESS (May 22, 2021, 9:12 am) <https://indianexpress.com/article/opinion/columns/live-in-is-not-living-in-sin-7325262/>. In this article, the author analysed the two judgments of High Court where the protection was refused mentioning that approval of live-in relationship is morally and socially not acceptable and if such protection is granted the entire fabric of society would get disturbed. However, the Supreme Court has provided them the protection.

⁵ *Khushboo v. Kanniammal*, 2010 (CrI.A.913/2010 dt. 28.04.2010).

⁶ *Ishmatara Sharafathussain Shaikh v. State of Gujarat*, 2017 SCC online Gujarat 1409.



The California Superior Court, coined the concept of ‘palimony’ in *Marvin v. Marvin*⁷ case, the term ‘palimony’ means where a woman has lived for a substantial period of time with a man without marrying him, and she is then deserted by him. The grant of maintenance to the woman is ‘palimony’.

Palimony is a type of alimony that is given to one of the partners who have romantic relationship following a long period of living together and now there is breakup of that relationship. It is an award to support the partner and is similar to alimony. In this, the couple were not married but they had lived together for a long period and then terminated their relationship.⁸ In feudal society, the sexual relationship between man and woman outside marriage was considered a taboo and regarded with disgust and horror, as depicted in the novel ‘Anna Karenina’ by Leo Tolstoy, or novel ‘Madame Bovary’ by Gustave Flaubert or novels of the great Bengali writer Sharat Chandra Chattopadhyaya.

2. POSITION OF PALIMONY IN AMERICA

In *Marvin v. Marvin*⁹, a famous film actor Lee Marvin lived for many years with Michelle without marrying him. The plaintiff, Michelle Marvin alleged that both entered into an oral agreement whereby they will live together and combine their earnings and will share equally any and all the property which is accumulated. The parties allegedly further agreed that Michelle would “render her services as a companion, homemaker, housekeeper and cook.” Michelle sought a judicial declaration of her contract and property rights. She wanted to impose a constructive trust upon one half of the property acquired during their relationship. The Supreme Court of California decided:

“(1) The provisions of the Family Law Act do not govern the property distribution acquired during a non-marital relationship. This relationship is subject solely to judicial decision.

(2) The courts should enforce express contracts between non-marital partners. However, it is except the extent that the contract is explicitly based on the consideration of meretricious sexual services.

(3) In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The

⁷ (1976) 18 C3d 660

⁸ <https://definitions.uslegal.com/p/palimony>

⁹ (1976) 18 C3d 660



courts may also employ ‘quantum meruit’ doctrine, or equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case.”

After that, palimony has been considered and developed in several cases. Also, different Courts discussed palimony, but a uniform law or Supreme Court judgment was not available. Some Courts allowed a written or oral agreement between the man and woman that if they separate then man will give palimony to woman. Whereas some Courts requires that a man and woman should have lived together for a substantially long period without getting married then constructive or implied contract will be deemed and palimony will be given on their separation.

In *Taylor v. Fields*¹⁰ case, the plaintiff Taylor was in a relationship with a married man Leo. After the death of Leo, Taylor sued his widow alleging there is breach of implied agreement to take care of Taylor financially. She claimed maintenance from the estate of Leo. The Court of Appeals relied on the fact that Taylor and Leo did not live together. Leo occasionally spent weekends with her. Also, there was no sign of a stable and significant cohabitation between the two. The Court of Appeals in California held that the relationship alleged by Taylor was nothing more than that of a married man and his mistress. It was held that the alleged contract rested on meretricious¹¹ consideration and declared the contract as invalid and unenforceable. Here, the Court has distinguished between live-in relationship and a mistress.

In 2008, the Supreme Court of New Jersey in *Devaney v. L'Esperance*¹² decided that cohabitation is not necessary to claim palimony. Palimony is rather “the promise to support, expressed or implied, coupled with a marital type of relationship, that are indispensable elements to support a valid claim for palimony. In 2010, a law has now been passed by the State legislature of New Jersey that to claim palimony, the parties must have a written agreement.

There are widely divergent views of the Courts in U.S.A. regarding palimony. States like Georgia and Tennessee expressly refuse to recognize palimony agreements. Written palimony contracts are still rare. Even when there is no explicit written or oral contract some US Courts have held that the action of the parties make it appear that a constructive or implied contract for grant of palimony

¹⁰ (1986) 224 Cal. Rpr. 186

¹¹ Apparently attractive but in reality having no value or integrity.

¹² 195 N.J., 247 (2008)



existed. However, a meretricious contract which is exclusively for sexual service is held in all US Courts to be invalid and unenforceable.

3. INDIA: LIVE –IN RELATIONSHIP AND PALIMONY

In India, live-in relationship is recognized by law and there is an assumption that it is not between equals. So, women must be protected from the patriarchal power by the courts.¹³ Domestic Violence Act was enacted in 2005. The statute has not used the word ‘live-in relationship’ explicitly, though in the society it is commonly used. It is the understanding, analysis and interpretation that allow us to include live-in relationship in the ambit of Domestic Violence Act. For application of this Act to live-in relationship, the man and woman should be in the domestic relationship in a shared household. When essentials mentioned in this Act are satisfied, the women can claim compensation or damages¹⁴.

3.1 Domestic Violence Act, 2005

The object of the statute is to effectively protect the rights of women which are guaranteed under the Constitution. They are victims of violence occurring in the family and in other connected and incidental matters. The application of the Act requires that there must be domestic relationship between two persons (man and woman) and they live or have lived together in a shared household. The term ‘domestic relationship’ includes not only the relationship of marriage but also a relationship which is in nature of marriage.¹⁵ The Act has taken it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage and thus, provides a wide interpretation to ‘domestic relationship’.¹⁶ The Parliament has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and provides that a person who enters into either of the relationship is entitled to the benefit of the statute.¹⁷

They should be related to each other by consanguinity, marriage, or through a relationship in marriage, adoption or are family members living together as a joint family. The definition clause

¹³ *Live-in relationship—a Right to Life*, THE PRACTICAL LAWYER (last visited on June 11, 2021) http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=16506

¹⁴ Domestic Violence Act, 2005, § 12, No. 43, Acts of Parliament, 2005 (India)

¹⁵ Section 2(f), Domestic Violence Act, 2005.

¹⁶ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

¹⁷ *D.Velusamy v. D.Patchaiammal*, (2010) 10 SCC 469.



mentions about five categories of relationships which exhausts itself since the expression “means”, has been used. When a definition clause is defined to “mean” such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) does not have the expression “include” to make the definition exhaustive.

“Following are some of the categories of cases which are only illustrative¹⁸:-

A) Domestic relationship between an unmarried adult woman and an unmarried adult male: Relationship will fall under the definition of Section 2(f) of the Domestic Violence Act and in case of domestic violence, the same will fall under Section 3 of the Domestic Violence Act and the aggrieved person can seek reliefs provided under Chapter IV of the Domestic Violence Act.

(b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship “in the nature of marriage”.

(c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship “in the nature of marriage”.

(d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male may fall within the definition of Section 2(f) of the Domestic Violence Act and such a relationship may be a relationship in the “nature of marriage”, so far as the aggrieved person is concerned.

(e) Domestic relationship between same sex partners (Gay and Lesbians): Domestic Violence Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. However, legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.”

Indian Parliament has taken notice of a new social phenomenon which has emerged in our country known as ‘live-in relationship’. This new relationship is still rare in our country and is sometimes found in big urban cities. It is very common in North America and Europe. The question arises

¹⁸ Kala Devi v. Mehar Singh, 2019 SCC OnLine HP 3202.



regarding the meaning of the expression a relationship 'in the nature of marriage'. Unfortunately, this expression has not till date been defined in the Act.¹⁹

The protection of the persons in live-in relationship is also important. The SSP has to act expeditiously in accordance with the law including the grant of any protection to the petitioners in view of the apprehensions / threats.²⁰

3.1.1 Shared Household

The parties in domestic relationship must have 'shared household' for the application of Domestic Violence Act, 2005. The onus of proof lies on the party who affirms the fact. Shared household is defined in section 2 (s), Domestic Violence Act as

“a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent. It 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.”

In the case of *Neelam Manmohan v. Manmohan Attavar*²¹ the petitioner had filed an application in Section 12 of the Act seeking for an order of grant of maintenance from the first respondent late Manmohan. She is also seeking residence by way of 'shared household' and such other reliefs as damages. The Court held that domestic relationship means a relationship between two persons who live or have at any point of time lived together in a shared household. The petitioner was not able to prove shared household. Hence, revision petition dismissed.

¹⁹ D.Velusamy v. D.Patchaiammal, (2010) 10 SCC 469.

²⁰ Ajay Sura, *SC orders Punjab police to protect 'live-in' couple*, THE TIMES OF INDIA (June 6, 2021, 05:12am) <https://timesofindia.indiatimes.com/city/chandigarh/sc-orders-punjab-police-to-protect-live-in-couple/articleshow/83273009.cms>

²¹ 2018 SCC OnLine Kar 787. The petitioner got acquainted with respondent in 1996. At that time petitioner was going through bad marital relationship and divorce proceedings. The respondent promised to announce petitioner as his wife after divorce culmination. In 1998, the respondent started visiting the petitioner regularly and they started living together as husband and wife. Later, petitioner came to know that respondent is already married and suffered on three grounds- firstly respondent concealed the fact of his marriage, secondly he compelled her to resign her job and thirdly by his activities he made her to suffer, which it is stated that amounts to domestic violence.



Domestic relationship and shared household are essential elements to claim relief in live-in relationship under the 2005 Act. For a live-in to be included in domestic relationship, the party must prove there existed a relationship that is in the nature of marriage.

3.1.2 Relationship in the nature of marriage: Interpretation

In *D. Velusamy v. D. Patchaiammal*²² the Supreme Court held that “*relationship in the nature of marriage*” is akin to a common law marriage. Common law marriages require that although not being formally married: (a) The couple must hold themselves out to society as being akin to spouses. (b) They must be of legal age to marry. (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried. (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. In our opinion a “relationship in the nature of marriage” under the 2005 Act must also 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 will not make it a “domestic relationship”.

The Court held that *not all live-in relationships will be a relationship in the nature of marriage to get the benefit of 2005 Act. In order to get the benefit, the conditions mentioned above must be satisfied, and it has to be proved by evidence. If a man has a “keep” who he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage.*

Concubine suffers social ostracism through the denial of status and benefits. Also, they cannot enter in a relationship in the nature of marriage. Though this view would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for the Court to legislate or amend the law. The 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 Act.

²² (2010) 10 SCC 469.



In *Rashika Khandal v. State of Rajasthan*²³ case, Rajasthan HC held that the protection is available to live-in relationship between unmarried and not married people. A live-in relation between married and unmarried people is not permissible and Honourable Court observed,

“It is well settled legal position as expounded by the Hon'ble Supreme Court of India that personal life and liberty has to be protected, except according to procedure established by law as mandated under Article 21 of the Constitution of India, irrespective of the fact that the relation between two major individuals may be termed as immoral and unsocial. Further, as per Section 29 of the Rajasthan Police Act, 2007 every police officer is duty bound to protect the life and liberty of the citizens.”

In the case of *Indra Sarma v. V.K.V. Sarma*²⁴ to examine whether relationship will fall in relationship in the nature of marriage we should look into entire relationship. A close analysis is to be done taking into consideration all facets of interpersonal relationship. The following guidelines are not exhaustive but it only provides insight into the relationship:

“(1) Duration of period of relationship: Section 2 (f) of the Domestic Violence Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household: The expression has been defined under Section 2 (s) of the Domestic Violence Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements: Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements: Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship: Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

²³ Areeb Uddin Ahmed, *Live-in-relationship between married and unmarried person is not permissible: Rajasthan High Court*, BAR AND BENCH (June 11, 2021, 7:52 am) <https://www.barandbench.com/news/litigation/live-in-relationship-married-unmarried-person-not-permissible-rajasthan-high-court>

²⁴ (2013) 15 SCC 755.



(6) Children: Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public: Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties: Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.”

3.2 Presumption of Marriage

Marriage gives rights to the parties against each other. Also, when man and woman are living together for a long time then there is a presumption of marriage unless the contrary is clearly proved that is, they were living together in consequence of a valid marriage and not in a state of concubinage.²⁵ But, under some circumstances this presumption is rebuttable.

In *Sastry Velaidar Aronegary v. Sembecutty Vaigalie*²⁶, the Court held where a man and woman are proved to have lived together as husband and wife then there will be presumption that they were living together due to valid marriage, and not in a state of concubinage, unless the contrary is clearly proved.²⁷ In *Gokal Chand v. Parvin Kumari*²⁸ case the Supreme Court held “the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage. But the presumption which may be drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy that presumption and the Court cannot ignore them.” In polygamy, there is voluntary sexual intercourse between a married person who is not one's husband or wife and thus, cannot be said to be a relationship in the nature of marriage.

In *Badri Prasad v. Director of Consolidation*²⁹ the Honourable Court held “*there is 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*

²⁵ Kamala v. M.R. Mohan, (2019) 11 SCC 491.

²⁶ (1881) 6 AC 364.

²⁷ The decision is followed in *Andrahenedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy* AIR 1927 PC 185, *Mohabbat Ali Khan v. Mohd. Ibrahim Khan*, AIR 1929 PC 135

²⁸ AIR 1952 SC 231.

²⁹ (1978) 3 SCC 527.



to deprive the relationship of legal origin.” In 2008, in the case of *Tulsa v. Durghatiya*³⁰ the Supreme Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in the favour of a valid wedlock. In the case of *Kamala v. M. R. Mohan*, on the basis of oral and documentary evidence, the family court has held the case to be of a valid marriage.³¹ The Supreme Court agreed with family court decision and being revisional court the High Court has no power to reassess the evidence.

The above cases showed that presumption of valid marriage can be made out. However, this presumption can be contrarily proved. The presumption can be rebutted by leading unimpeachable evidence and the burden of proof lies on a party who seeks to deprive the relationship of legal origin.³² Also, concubinage will not be deemed between the parties till it is proved.

3.3 Can we say that a relationship of bigamy or polygamy is a live-in relationship? Whether maintenance can be claimed?

In *Indra Sarma v. V.K.V. Sarma*³³ case, the Hon'ble Supreme Court held “*even though long standing relationship as a concubine deserves some protection in order to provide her financial stability, her such relationship not being in the nature of marriage cannot be termed as domestic relationship as contemplated by Domestic Violence Act, 2005.*” The provisions of Domestic Violence Act, 2005 do not cover this relationship as the definition and interpretation of Section 2(f) is restricted and exhaustive. The Court has also expressed a view that perhaps this definition requires an amendment. So, a married woman cannot enter into a domestic relationship as contemplated under Section 2(f) of the Act, 2005 and even if she establishes a long-standing relationship with a man as his concubine or mistress, she would not be entitled for protection under the provisions of the Act, 2005.

In *Ram Prakash v. Sneh Lata*³⁴ case, the respondent lived with the petitioner. They were believed to be husband wife. However, as the wife of petitioner was alive. The marriage between petitioner and respondent and also, maintenance payable is in question. As regards, whether she can claim

³⁰ (2008) 4 SCC 520.

³¹ (2019) 11 SCC 491.

³² Nigel Bell, *Unmarried Couple Living Together Deemed Married – Supreme Court Rules*, THE READERS BUREAU, (April 14, 2015 2:48 am)

<https://thereadersbureau.com/unmarried-couple-living-together-deemed-married-supreme-court-rules/>

³³ (2013) 15 SCC 755.

³⁴ 2012 SCC On Line HP 4004.



maintenance. The point involved in the present case is that in case respondent is not a wife of the petitioner, whether she can be said to be living in ‘domestic relationship’ with the petitioner. The definition of the term ‘domestic relationship’ of Domestic Violence Act, 2005 was referred. She does not fulfill “relationship in the nature of marriage” with petitioner. The respondent has claimed relief under the Act which is a special statute. The Court held that in order to get relief under the Act, the applicant must establish jurisdictional facts before any relief is granted under the Act. She cannot be said to be the wife of petitioner nor it can be said that she had “domestic relationship” under the Act with the petitioner. So, she is not entitled for maintenance.

In the case of *Kala Devi v. Mehar Singh*³⁵ the marriage of the applicant with respondent was solemnized, but the dissolution of applicant’s earlier marriage was not proved in accordance with law. The Court held that applicant was not competent to enter legal marriage with respondent.

3.4 Children from Live in Relationship

In the case of *Tulsa v. Durghatiya*,³⁶ the Supreme Court provided legal status to the children who are born from live in relationship. It was held “*one of the crucial pre-conditions for a child born from live-in relationship to not be treated as illegitimate are that the parents must have lived under one roof and co-habited for a considerably long time for society to recognize them as husband and wife and it must not be a “walk in and walk out” relationship*”. Therefore, the court also granted the right to property to a child born out of a live in relationship.

4. INTERPRETATION OF THE DEFINITION OF ‘WIFE’ MENTIONED IN CRIMINAL PROCEDURE CODE, 1973

Section 125, CrPC, 1973 mentions about giving maintenance to the wife, child, and parents with certain specifications. “Wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.³⁷

³⁵ 2019 SCC OnLine HP 3202.

³⁶ Appeal Civil No. 648/2002 Dt. 15.01.2008.

³⁷ Section 125 (1) Explanation (b), Criminal Procedure Code, 1973



In *Vimala v. Veeraswamy*³⁸ the Court observed that section 125 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution.

"Section 125 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 negate 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' 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."

In 2005, in *Savitaben Somabhat Bhatiya v. State of Gujarat*³⁹ case, the Court held that there is no scope to include a woman who is not lawfully married within the expression of 'wife'. The Bench held that this inadequacy in law can be amended only by the Legislature. Though, no major amendment has been included in CrPC till date to include live-in relationship. In 2011, in the case of *Chanmuniya v. Virendra Kumar Singh Kushwaha*⁴⁰, three questions were raised before the Hon'ble Supreme Court-

1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under CrPC?
2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 CrPC having regard to 2005 Act?
3. Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955 or any other personal law would entitle the woman to maintenance under Section 125, CrPC, 1973?"

The Court in this case observed that a broad and expansive interpretation should be given to the term 'wife' to include and protect even those cases 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, CrPC, so as to fulfil the true spirit

³⁸ (1991) 2 SCC 375.

³⁹ AIR 2005 SC 1809.

⁴⁰ (2011) 1 SCC 141.



and essence of the beneficial provision of maintenance. The Court did not decide the issues. The Court held that the above three questions be referred to larger Bench.

In 2016, in *Ajay Bhardwaj v. Jyotsna*⁴¹ case the P& H High Court held the provision was included to avoid vagrancy and destitution of wife/ minor children/ old age parents, and the same is extended by judiciary to partners of a live-in relationship. But the Apex court has also opined that the nature of the live in relationship has to be looked into to decide entitlement.

5. WHETHER NO MARRIAGE CAN GIVE RIGHT OF MAINTENANCE AND RIGHT IN PROPERTY UNDER CRPC, 1973 AND DOMESTIC VIOLENCE ACT, 2005?

When the essential ceremonies of valid marriage are performed and criteria for valid marriage are satisfied, the wife has right of maintenance under CrPC, 1973 and personal laws also. The wife has a right to be maintained and taken care of by her husband. Also, she has one more right that she will have right of succession in the property.

When we consider the women's status in live-in relationship, her right for the first time was recognized in Domestic Violence Act, 2005. The provision mentions about domestic relationship and shared household. Also, to understand 'relationship in nature of marriage' is elucidated in *Indra Sarma* case (referred earlier) with eight pointers which will entitle women of right in this Act and also with the expansion of the definition of 'wife' in the *Chanmuniya case* (referred earlier), the conglomeration of the two needs consideration. When criteria of relationship in nature of marriage is satisfied and the definition of wife is expanded, it implies that women in live-in relationship will be entitled for the status of wife. This will entitle her to not only right of maintenance but also rights in succession.

In 2015, in *Dhannulal v. Ganeshram*⁴², the Supreme Court held that there is strong presumption in favour of valid marriage and the legitimacy of child on the ground that the relationship is recognized by all persons concerned. The burden of proof lies on a party who seeks to deprive the relationship of legal origin. In the instant case, the plaintiff instead of adducing unimpeachable evidence took the plea that the defendant has failed to prove the fact that Phoolbasa Bai was the legally married

⁴¹ 2016 SCC Online P&H 9707.

⁴² (2015) 12 SCC 301.



wife of Chhatrapati. The woman would be eligible to inherit property after her partner's demise and proof of a Will stands in a higher degree in comparison to other documents. The judiciary has once again proved to be the hallmark of progress and liberalism.⁴³ The judgment has understood the need of hour is to make palimony the alimony.

6. CONCLUSION AND SUGGESTIONS

With the enactment of Domestic Violence Act, 2005, the rights of women in live-in relationship are recognized to a great extent. However, rights of live-in male partner are not protected in Domestic Violence Act, 2005. The application of CrPC, 1973 and succession will protect her rights to a much larger extent. The judicial pronouncements also favour this suggestion. The author suggests-

- Domestic Violence Act, 2005 should explicitly mention about live-in relationship.
- Legal aid authorities and law schools should work to create awareness about live-in relationship.
- Also, transgender satisfying shared household should be dealt in domestic relationship in Domestic Violence Act, 2005.

⁴³ Editorial Board, *Safe house: Live-in relationships*, THE TELEGRAPH ONLINE (May 31, 2021, 01:31 am), <https://www.telegraphindia.com/opinion/safe-house-live-in-relationships/cid/1816557>