
THE RIGHT OF MAINTENANCE OF A FEMALE LIVE IN PARTNER UNDER THE DOMESTIC VIOLENCE ACT 2005: A CRITICAL STUDY OF JUDICIAL APPROACH

Dr. Amruta Sirpurkar, Asst. Professor Satpura Law College, Chhindwara, M.P.

ABSTRACT

In a male dominated Indian society, a woman is very often found to have been subjected to cruelty, physical as well as mental, even in the place of her residence at the hands of her own people. To protect women from such domestic violence, “The Protection of Women from Domestic Violence Act, 2005” was brought into existence. The Act provides for various reliefs in the form of residence orders, protection orders as also certain monetary reliefs to a woman victim of domestic violence of any kind. Under the Act, a relationship between a man and a woman living together in ‘a marriage-like relationship’ is considered as “a domestic relationship”. Therefore a female live-in partner- victim of domestic violence can very well claim monetary relief in the form of maintenance under sec.12 read with sec. 20 of the Act.

The article attempts to put forth critical study of the approach adopted by the Judiciary in refusing the claim of maintenance under the Domestic Violence Act to a female live-in partner in a bigamous relationship which she, having been aware of its bigamous nature, enters into.

In a male dominated Indian society, a woman is very often found to have been subjected to cruelty, physical as well as mental, even in the place of her residence at the hands of her own people. To protect women from such domestic violence, “The Protection of Women from Domestic Violence Act, 2005”¹ was brought into existence. The Act provides for various reliefs in the form of residence orders, protection orders as also certain monetary reliefs to a woman victim of domestic violence of any kind.

The “aggrieved person”, who can apply before the Magistrate under this Act to seek certain monetary reliefs, according to its definition given under sec.2(a) 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. Since a relationship between a man and a woman living together in “a marriage-like relationship” is considered as “a domestic relationship” under sec. 2(f) of the Act, a female live-in partner can very well claim monetary relief in the form of maintenance under sec.12 read with sec. 20 of the Act.

As such the expression “domestic relationship” includes not only the relationship of marriage but also relationship “in the nature of marriage”. The question- when the relationship can be called the relationship “in the nature of marriage” is dealt with by the Supreme Court in *D. Velusamy v. D. Patchaiammal*.²

While interpreting the expression “in the nature of marriage” the Supreme Court at the first instance made it clear that the intention of the legislature was to draw distinction between marriage and “the relationship in the nature of marriage” and that it intended to provide for the benefit of the Act to a person entering into either relationship. The court considered relationships “in the nature of marriage” as similar to a common law marriage. It means the couple, though not formally married, must fulfill the following conditions.

- The couple must carry themselves out to the society the way spouses usually do.
- They must be of marriageable age as per law.
- They must be otherwise qualified to enter into a legal marriage besides being unmarried.

¹ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005.

² (2010) 10 SCC 469.

- They must have voluntarily cohabited as being akin to spouses for a significant period of time.

The court opined that 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 per its definition given in section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a “domestic relationship” according to the court.³

As such the Court emphasized on the fulfillment of the above mentioned conditions for a relationship in question to be one “in the nature of marriage” so that the benefits of the Act can be extended to such relationship. However the Court clarified that the status of a “keep” whom a man maintains financially and uses mainly for sexual purpose and/or as a servant is different from the relationship “in the nature of marriage”. The court further observed that the interpretation of the expression as done above might deprive many women in live-in relationship from the benefit of the Act but then it is not for the Court to legislate or amend the law. The court made it clear that the expression used by the legislature is ‘relationship in the nature of marriage’ and not ‘live in relationship’. As such in the garb of interpretation it cannot change the language of the statute.

“The Protection of Women from Domestic violence Act 2005” can be said to be the first legislation providing protection to the woman in an informal live-in relationship. However the court in this case extended its protection only to live-in relationships between unmarried couples, that is to say the relationships which are not bigamous.

Then in 2014, the Supreme Court once again considered the meaning of the phrase “in the nature of marriage” occurring in the definition of ‘domestic relationship’ in *Indra Sarma v. V.K.V. Sarma*⁴. In this case the relationship in question was between an unmarried woman, the Appellant and a married man having two children, the Respondent. The Appellant, having been fully aware of the existing marriage of the Respondent, entered into a relationship with him. While living with the Respondent in a shared household, Appellant became pregnant thrice. However all pregnancies resulted in abortions. The Respondent never exposed her as his wife publicly, or allowed her to suffix his name after hers. The respondent never used to take her

³ *Id.* at 478-479.

⁴ AIR 2014 SC 309.

anywhere, either to the houses of relatives or friends or functions or accompany her to the hospital or make joint Bank accounts, execute documents, etc. In short Respondent never treated Appellant as his wife in public. Ultimately the constant opposition from Respondent's family forced him to leave Appellant's association. Thereafter Respondent stopped maintaining Appellant. Being aggrieved by such treatment, Appellant applied before the Magistrate for various reliefs under "The Protection of Women from Domestic Violence Act 2005" from Respondent. The Magistrate, on being found that the parties had lived together for a considerable period of time for about 18 years and that the Respondent left the company of Appellant without maintaining her, passed an order directing Respondent to pay to the Appellant an amount of Rs. 18000 per month towards maintenance from the date of the petition. The Court held that non maintenance of the Appellant constitutes 'domestic violence' under the 'said Act'. In an appeal against the said order of the Magistrate, the Session's court having found that the Appellant has no source of income and that the Respondent is legally obliged to maintain her, confirmed the order passed by the learned Magistrate. However, in an appeal against this decision, the High Court while allowing the appeal held that the relationship between the parties would not fall within the ambit of "relationship in the nature of marriage" and the tests laid down in Velusamy case have not been satisfied. As such the High Court allowed the appeal and set aside the order passed by the Courts below. Aggrieved by the same, the appeal has been preferred before the Supreme Court. The question before the Court was to examine whether non maintenance of the Appellant in a broken live-in-relationship - a relationship which is not "in the nature of a marriage", will amount to "domestic violence" as per its definition given in Section 3 of the Domestic Violence Act, so that the Appellant could seek one or more reliefs provided under Section 12 of the 'Said Act'. As regards this the Supreme Court observed that whether any act, omission, commission or conduct of a man constitutes "domestic violence" towards women depends on the various factors which exist in the particular relationship between them, and the court is supposed to weigh those factors to decide primarily whether that particular relationship is a relationship in the "nature of marriage" to render the conduct in question a "domestic violence". Many times, it is the common intention of the parties to that relationship as to what their relationship is to be, and what it should involve and as to their respective roles and responsibilities, that primarily governs that relationship. Such intention may be expressed or implied and their intention as to matters that are characteristic of "a marriage" would certainly be the important factor to consider. According to the court the expression "relationship in the nature of marriage" cannot be given an abstract meaning. The context in which it appears and applies having regard to the

object of the Act should be taken note of. The plight of a vulnerable section of women in that relationship needs to be taken care of. Many times, the women are taken advantage of and the essential contributions of women in a joint household through labour and emotional support have been lost sight of. Therefore the court required that, in cases of live-in relationships, which are voluntarily entered into by an unmarried adult woman and an unmarried adult man as also those wherein an unmarried woman unknowingly enters into a relationship with a married adult man due to the concealment of the fact of his first marriage, the Court needs to take into consideration the hardships taken and the contributions made by female live-in partner towards that relationship and should allow benefits under the Domestic Violence Act to the female partner by holding the relationship in question as one “in the nature of marriage”.⁵ The court further explores the factors that should be considered while determining the character of the relationship i.e. whether the relationship is “in the nature of marriage”. The court further laid down some guidelines⁶ for testing under what circumstances a live-in relationship will fall within the expression “relationship in the nature of marriage” under Section 2(f) of the DV Act. The guidelines, though not exhaustive, give some insight into relationships qualifying for benefits under the said Act. These are..

- The reasonable period of time to maintain and continue a relationship. However this according to the Court may vary from case to case, depending upon the factual situation.
- The shared household.
- The pooling of Resources and Financial Arrangements Supporting each other,
- The domestic arrangements between them specially requiring the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. which is certainly indicative of a relationship “in the nature of marriage”.
- The existence of sexual relationships not just for pleasure, but for emotional and intimate relationships, for the procreation of children etc.
- The fact that children are born out of such relationships is a strong indication of a relationship “in the nature of marriage”. In such cases parties do intend to have a long

⁵ *Id.* at 779-780.

⁶ *Id.* At 786.

standing relationship. Responsibility sharing towards bringing up and supporting them is also a strong indication of constituting a relationship “in the nature of marriage”.

- Socialization in Public with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship as one “in the nature of marriage”.
- The common intention of parties as to what their relationship is and also as to their respective roles and responsibilities, primarily determines the nature of that relationship.

Applying the above mentioned tests to the matter before it in the present case, the court held that since the Appellant was fully aware of Respondent’s marital status, she could not be said to have entered into a live-in relationship “in the nature of marriage”. Therefore, the Appellant’s status is lower than the status of a ‘wife’ and the relationship in question would not fall within the definition of “domestic relationship” under Section 2(f) of the DV Act. The court was of the opinion that if it is held that the relationship between the Appellant and the Respondent is a relationship “in the nature of a marriage”, it will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, the court held that any act, omission or commission or conduct of the Respondent in connection with that type of relationship, would not amount to “domestic violence” under Section 3 of the DV Act. As such the Supreme Court, in this case refused to grant any relief to the Appellant (female live-in partner) under the DV Act, for according to the Court the polygamous or bigamous marriage or maintaining an adulterous relationship cannot be said to be a relationship “in the nature of marriage”, for a woman to claim relief under the “said Act”. The Court expressed its inability to go beyond the four corners of the Act and interpreted the words “in the nature of marriage” to mean a relationship which fulfills all the essential conditions for a valid marriage.⁷

Towards the above mentioned views of the Supreme Court as to what constitutes a live-in relationship “in the nature of marriage”, this article attempts to put forth some different perception of “relationship in the nature of marriage”. The “relationship in the nature of marriage” would also mean – a man and a woman living together under the same roof, sharing physical and emotional bonding with each other, the way husband and wife share in a marriage. Here what is important is living under the same roof with a bonding like husband and wife,

⁷ *Id.* at 788-789.

irrespective of the fact that whether the relationship is bigamous or adulterous. Whenever a provision in any Act is capable of two possible interpretations, one allowing the relief provided for under the Act, whereas other is denying the same, then the mischief rule of interpretation would require the enquiry into the question that what mischief was present in the society at the time of enacting that particular law which compelled the legislature to legislate a law to remove that mischief from the society. Then between the two possible interpretations that interpretation which would suppress the mischief and advance the remedy would be the right interpretation. In India, having a male dominating culture, women being vulnerable, very often become victim of violence even in a place of their own residence. This reality can be found in all strata of society. To protect a woman from domestic violence, the need was felt to enact “The Protection of Women from Domestic Violence Act, 2005”. Thus the object of “the Act” in its true sense is to protect a woman from any kind of domestic violence whether or not she is a “wife”, “wife-like” i.e. female live-in partner or a “concubine”. Secondly, domestic violence being a human rights issue, the law providing remedy to a woman against domestic violence cannot discriminate between a woman who is a “wife”, “wife-like” or “a concubine”. Such being the object of the Act, the benefits thereunder cannot be denied on the basis of the status of a particular woman. The Constitution of India provides for the equality of status to all its citizens/people through various provisions. It means that people/citizens should not be conferred different status, for treating them unequally, unless there exists reasonable grounds justifying unequal treatment. Having regard to the constitutional mandate of securing equality of status, the approach adopted by the court in denying various reliefs provided under the DV Act to women who knowingly enter into bigamous relationships can be said to be in complete disregard to the said constitutional mandate/objective. The court, conferring different status on women in live-in relationships such as “wife”, “wife-like” or “concubine”, allowed reliefs to certain women under the said Act whereas denied them to others. If the object of the Act is to protect women generally, from any instance of domestic violence; then any woman who is subjected to domestic violence should be extended protection of the Act, irrespective of the status she carries; i.e. whether she is “wife”, “wife like” or “a concubine”. In *Indra Sarma’s* case, the court conferring on the petitioner the status of a concubine, denied protection from domestic violence, for her own fault of knowingly entering into a bigamous relationship. The court further observed that the case would have been different had the woman unknowingly entered into such a bigamous relationship on account of her partner's fault of not disclosing the fact of his first marriage. It means whether to protect a woman from domestic violence to which she is being subjected to, will depend on some additional factor, which is the fault of her partner

to deceive the women. And if the woman herself is at fault for entering into a live-in relationship with a married man, then irrespective of the fact that the man too has committed the same mistake, such a woman will not be protected from domestic violence to which she is subjected. Thus the court can be said to have created different status of woman in live-in relationships, though on the basis of the language used in the legislation only. Here having regard to the constitutional mandate of providing justice to all ensuring equality of status, the article claims that, a concubine, whose womanhood is being used by a man for fulfilling his sexual desires, being a woman, should be protected from all kinds of domestic violence. Here by conferring her status of concubine, she should not be denied protection from domestic violence. For, domestic violence is ultimately a human rights issue. These are the rights which are taken care of even in respect of those who are undergoing the term of imprisonment in prison i.e. the convicts. However it should not be implied from this that no woman can ever be denied protection under the said act. What if a woman, concealing the fact of her first marriage, marries or enters into a live-in relationship with an unmarried man. In such a case, non maintenance by his partner would certainly not amount to domestic violence. However this certainly would not be on account of her particular status but on account of the principle of clean hands, which says that one who comes into equity must come with clean hands. Equity will not permit to profit from his own wrong.⁸ The court, in *Indra Sarma v VKV Sarma*, though refused relief to a concubine under the Domestic Violence Act, taking note of the plight of all those vulnerable women who are thrown resourceless by their live-in partners recommended the legislature to consider and provide for appropriate law on the subject matter.

Recently, Justice D.Y. Chandrachud in support of the similar stand taken by the Supreme Court in Same Sex Marriage Case, of delegating the legislation of same sex marriage to the legislature and not taking up the task by the Court itself, said “You cannot look to the Courts to resolve every issue of dispute that may arise in society. It is important as judges that we draw the line and decide what legitimately belongs to our jurisdiction and what legitimately belongs to other wings of society including civil society itself.”⁹ As regards the Court's duty to reform law, he said “the reformation of law does not necessarily always fall in the domain of the court and

⁸ *Tinsley v Milligan*, (1993) UKHL 3, House of Lords.

⁹ Astha Kaushik, *You Cannot Look To Courts To Resolve Every Issue In Society, Important To Draw The Line: CJI Chandrachud On Same-Sex Marriage Judgment Being Called 'Infamous' At Oxford Union*, Verdictum (June 28, 2024, 5:01 PM), <https://www.verdictum.in/news/chief-justice-dy-chandrachud-same-sex-marriage-judgment-oxford-union-talk-1542053>.

that's something we need to accept... ”¹⁰

In the background of Vishaka case¹¹, wherein the Supreme Court itself supplied law to the vacuum awaiting legislation, the approach adopted by the Supreme Court in Indra Sarma case would mean either that the court found grievance of a working woman more important than that of a housewife or the court is hesitant of supplying law in matters to which principles/values of popular morality are very strongly attached and therefore considered legislature to be the appropriate forum to address the grievance.

¹⁰ *Id.*

¹¹ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.