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Maintenance in Criminal Law with Specific Reference to Women in Live-In-Relationship

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ABSTRACT

With the change of societal structure, a new concept has emerged that can be called a -relationship. However, this concept is prevalent in western countries. But in regard to India, it has emerged so my article is related to maintenance in criminal law with special women who live-in-relationships. Firstly, I have discussed some historical aspects of women and then the general meaning of the term maintenance. Later on, provide a certain brief of the criminal code and grounds for refusal to grant maintenance. In criminal law, the term married is used so my article is focused on the position of women in live-in-relationship. And further discussed whether the provision of maintenance in regard to live-in-relationships and judicial interpretation in determining the position of women in live-in-relationships further discussed some landmark cases which provide the scope to live-in-relationships in India. and lastly discussed the overview position of women in regard to maintenance in India

I. INTRODUCTION

Sir Henry S Maine observed:

‘It has been said that the degree to which the personal immunity and proprietary capacity of women are recognised in a particular state of the community is a test of its degree of advance in civilisation.’²

This quotation of Sir Henry Maine reflects the universal truth about women’s position in society. And why it is checked to civilisation and advancement of society, one has to study about the position of women in it as we neither said in an ancient era nor in the prevalent period, to check the position of mens position. As man always being in a superior position, either in an ancient era or in the current situation as whenever we see women in different society, the different view we find about women, some way they are good but in some way they are bad.

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² H.S .Maine , Early institution ;[1914]

This quotation of Sir Henry Maine is based on the hypothesis that women are subordinate to men. They are denied the equality of men. India is no exception to this universally existing situation.

However, realising the problem of subordination of women and consequent injustice and in order to defeat it, the constitution of India enshrined in its preamble the term socialist, which means a better life for the people and equality of opportunity .and to attain the objectives mentioned in the preamble of the constitution, i.e., equality, the constitution guarantees fundamental rights and Article-14 ensures equality before the law and Article -15 prohibit the discrimination on the basis of religion, sex, caste etc. However, this discrimination, when we look behind it, is inherent in our traditional social structure based on sex, caste etc. have a very significant impact on the position of women. In India, most of the region is like the patriarchal form of society, and as a result, the women have to follow the norms and behaviour which were imposed on them. Most of the time, whether in an ancient era or modern period, it is seen that women are mistreated and disadvantaged in society. And to overcome these loopholes, The constitution of India enjoins upon the states to promote the welfare of people by securing and protecting the social order. The constitution of India does not merely prohibit discrimination which was based on sex but also empowers the state government to make special legislation for the upliftment and betterment of women. In pursuance of these articles, a number of social legislations have been passed for the better condition of women. To illustrate, the Hindu Marriage Act 1955 abolished polygamy for Hindus. There are certain other provisions that were made for the protection of women like the Domestic Violence Act,2005, the Prohibition of Dowry Act,1961 and the Immoral Trafficking and Prevention Act,1956 and much more legislation enacted for the upliftment of women.

II. MAINTENANCE

The dictionary meaning of the term maintenance is support and sustenance. The term maintenance is nowhere defined whether in the marriage law of any religious communities or code of criminal procedure,1973. But the general meaning of the term maintenance means ‘the expenses which are essential or basic for life. However, it is not merely a right for the survival of the claimant as various other factors were taken into consideration while granting the maintenance.

The court reiterated the factors to be considered while determining the amount of maintenance

as laid down in *Bharat hedge v. Saroj hedge*³ 140[2007] DLT16, I [2007] DMC 815 as:

- status of the parties
- reasonable wants of the claimant
- the independent income and property of the claimant
- the amount of aid the applicant to live in similar lifestyle as she/he enjoyed in the matrimonial home
- non-applicants' liabilities, if any
- provisions for food, shelter, clothing, education, medical attendance and treatment etc. of the applicant
- payment capacity of the non-applicant
- guesswork is not ruled out while estimating the income of the non-applicant when all sources or correct sources are not disclosed
- the amount awarded under section-125 of the criminal procedure code is adjustable against the amount of section 24 Of the act.

III. MAINTENANCE UNDER CRIMINAL LAW

The provision regarding maintenance is provided in chapter-9 of the Code of Criminal Procedure Act, 1973, which provided sections -125 -128 of the code. Section -125 of the code provides order for maintenance of wives, children and parents.

Liabilities arise when

1. When the person has sufficient means
2. Wilful neglect to maintain
3. Refuses to maintain

The person liable to maintain under this code one of is his wife, unable to maintain herself.

IV. SCOPE AND OBJECTIVE OF THE PROCEEDING

One of the main objectives of the proceeding is the speedy trial of the case, and the others are as the proceeding is not punishable in nature. The main objective of chapter -9 of the CrPC is not to punish a person who is not maintaining those whom he is bound to maintain parties.

V. GROUND NOT ENTITLED TO MAINTAIN

No wife shall be entitled to claim maintenance as provided under sub-section [4] of section -

³ <https://indiankanoon.org/doc/260066/>

125 Of the code of criminal procedure when she

1. she lives in adultery
2. if she, without any sufficient reason, refuses to live with her husband.
3. if they live separately by mutual consent

VI. WIFE

The term wife is explained in the explanation part of section-125 of the codes, which means wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

In November 2000, the Malimath Committee, i.e., reforms of the criminal justice system, was set up. In 2003, when the Malimath submitted its report,⁴ it made several recommendations under the heading 'offences against women'. one of the recommendations of this report is to alter the provisions of section-125 of the code of criminal procedure so as to alter the meaning of 'wife'. By doing such alternation as recommended by the committee now, the expression 'wife' incorporates the ladies who previously were in a live-in-relationship, and now she is abandoned by the male partner at his will, so the women in live-in-relationship can now get the status of wife. So basically, by such alteration in the provision, if a woman lives with a male partner in a sensible period of time as in a live-in-relationship, then the spouse gets the status of wife, and she can claim maintenance under section 125 Of criminal procedure.

Under the Evidence Act, the court may presume the existence of any fact which it thinks likely to have happened, with regard being given to the natural events, human conduct and public and private business, in relation to facts of a particular case. Therefore, where a man and a lady live respectively for a spell of time as a couple, then there would be a presumption of marriage.

⁵In *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, the supreme court held that only a legally wedded wife is entitled to claim maintenance. A Hindu woman marrying a Hindu male having a living wife is not entitled to claim maintenance as the marriage is void.

In *D. Velusamy v. D. Patchaiamm*⁶, this supreme court held that 'wife' in section 125 CrPC means a legally wedded wife and include a divorced wife.

VII. LIVE-IN-RELATIONSHIP STATUS FOR MAINTENANCE

As earlier, we discussed the provision of the code of criminal procedure with the report of the

⁴ justice v.s.malimath committee report

⁵ Section-114 of indian evidence act,1872

⁶ [2010] 10 SCC.469

Malimath Committee as this committee provides certain alternations in regard to the term 'wife', though there is no particular provision regarding maintenance in live-in-relationship in India. As there is no statute specifically dealing with this topic, there are no rights and commitments for the parties in a live-in-relationship, and the status of children born from these couples is in doubt as the Indian law does not give any rights and obligations to the parties who lived in a live-in-relationship. So, the court has clarified the concept of a live-in-relationship through their various judgments. Though the law is still unclear about the legal status of women who live in a live-in-relationship with their partner yet, few rights have been provided by interpreting and amending the existing legislation, so that prevent the partners from misusing such relationship. Some legislations are discussed below-

Domestic violence act,2005

For the very first time, this act provides certain rights and protection to those females who are not legally wedded wives but rather live with a male partner in a relationship, which is the idea of marriage, additional akin to wife but is not equivalent to wife.

Section-2[f] of the domestic violence act,2005 ⁷defines the domestic relationship, which means 'Relationship between two persons who live or have, at any point of time, lived together in a shared household when they are consanguinity, marriage, or through the relationship in nature of marriage, adoption or are family members living together as a joint family'.

Though the term live-in-relationship is not directly mentioned in the definition, the term 'relationship in nature of marriage' provides scope to the court to interpret the provision. The court interpreted that the provisions of the domestic violence act are applicable to women who live in live-in-relationship as the court presume that live-in-relationship to be covered under the term 'relationship in nature of marriage' and live-in-relationship stands on the same footing or in the same line and meaning. The court has liberally professed that if any man and woman live together for a considerable period of time, then it may be presumed that they are legally married until the contrary is proved. So, this act provides women certain basic rights to protect themselves from the abuse of fraudulent marriages in a bigamous relationship.

VIII. JUDICIAL APPROACH WHILE DEALING WITH THESE MATTER

The Indian judiciary has to fill the gap that is created due to there being no specific provision that deals with live-in relationships. With the passage of time, the live-in-relationship may be considered immoral in the eye of the society but not illegal in the eye of the law as this type of

⁷ Section-2[f] of domestic violence act,2005.

culture is prevalent in western countries but not due to social change. These cultures can be seen in India also as the Indian judiciary is neither expressly in favour of this concept nor denied or prohibiting the concept. But due to social change, the law should be interpreted as the time required to render justice to the vulnerable state of the people. Therefore, while deciding various cases, the judiciary has to keep in mind various factors like social norms and constitutional values.

Since the time of the privy council, a presumption for couples who are living together without being legally wedded has begun.

In the case of *Andrahenndiege Dinohamy v. Wijetunge Liyana Patabendige Balhamy*⁸ here the privy council took a stand:

‘Where a man and lady are proved to live respectively as a spouse, the law will presume, unless the opposite is obviously demonstrated that they were living respectively as a result of a legitimate marriage and not in a condition of concubinage’.

In *Mohabbat Ali Khan v. Md. Ibrahim Khan*,⁹ the court held that the marriage would be valid because both the partners had lived together as spouses for a long time.

Later in *Badri Prasad v. Director of Consolidation*¹⁰, this was the first-ever case where the apex court recognised the concept of live-in-relationship. The supreme court upheld the legality of 50 years in a live-in-relationship. However, the supreme court stated in the same ‘the presumption was rebuttable, but the person seeking to deprive the relationship of legal origin bears a heavy burden of proof to show that no marriage took place. Section -114 of the Indian Evidence Act, 1872 acts states that when a man and women live together as a couple for several years, it is presumed and interpreted to be a marriage unless it is rebuttable by proof.

However, in the case of *Gokal Chand v. Pravin Kimari*¹¹, the supreme court held that ‘even though it may be tempting to assume a marriage-like relationship, certain unusual circumstances may force to rebut the presumption.’

The Allahabad high court has also recognised the concept of live-in-relationship in *Payal Sharma v. Nari Niketan*¹², where the bench of Justice M. Katju and Justice R. B. Mishra, ‘in our opinion, a man and a woman can live together even if they are not married. Although society may consider this to be immoral, it is not illegal. There is a distinction to be made

⁸ 1927SCC OnLine PC51; AIR 1927 PC 185

⁹ AIR 1929 SC 138

¹⁰ AIR 1978 SC 1557

¹¹ AIR 1952 SC231,333

¹² 2001SCC Online ALL 332

between law and morality.

In *Ramdev Food Products [P] Ltd. v. Arvindbhai Rambhai Patel*,¹³ in this, the court held that two people who lived together but were not legally wedded are not criminals.

In *Lata Singh v. State of Uttar Pradesh*¹⁴, in this case, the apex court held that a live-in-relationship is permissible only in major unmarried persons of heterogeneous sex.

In *Abhijit Bhikaseeth Auti v. State of Maharashtra and others* ¹⁵, in this case, the apex court observed that it is not necessary for a woman to strictly establish the marriage to claim maintenance under section -125 Of the code of criminal procedure. A woman living in a live-in-relationship may also claim the maintenance under section-125 of the code of criminal procedure.

In *Chellamma v. Tillamma* ¹⁶, the supreme court gave the status of wife to the partner in a live-in-relationship. Katju J. and Mishra J. stated that, in their opinion, a man and a woman should live together, even without getting married, if they wish to do so. This may be regarded as immoral by society but not illegal in the eye of law. The bench went one step forward and held further that the child born by such parents would be considered legitimate. They have the right to their parent's property.

In *Madan Mohan Singh v. Rajni Kanth*, ¹⁷the supreme court held that a long-term relationship could not be called a 'walk in and walk out' relationship, and there is a presumption in this regard that it is marriage between the parties. It is clear from the court's opinion that a long-term relationship is treated as a marriage rather than creating a new concept such as a live-in-relationship.

In the landmark case of *S. Khushboo v. Kanniammal*,¹⁸ the supreme court held that a living relationship comes within the ambit of the right to life under article 21 of the constitution of India. The court further held that live-in relationships are permissible, and the act of two major living together cannot be considered illegal or unlawful. In this case, the apex court placed relied on its earlier decision in *Lata Singh v. the State of UP* and held that live-in-relationship is permissible only in major unmarried persons and is not a criminal offence under any law.

*Indra Sarma v. K.V Sarma*¹⁹, in this the court observed that if women who live in a live-in-

¹³ [2006]8 SCC 726

¹⁴ [2006]5 SCC475

¹⁵ [2009 ALL MR [Cri] 1005]

¹⁶ AIR 2009 SC112

¹⁷ [2010]9 SCC 209

¹⁸ AIR 2010 SCC 600

¹⁹[2013] 15 SCC755

relationship with the partner knowing that he is married and have a child. Then she is not entitled to claim the relief. But in this case, the supreme court felt that denial to provide any sort of protection to victim women was a great sort of injustice to her. Therefore, the supreme court emphasised section-2[f] of the domestic violence act to extend the definition of ‘domestic relationship’, which include victims of illegal relationships who are poor and illiterate.

In *Chanmuniya v. Chanmuniya Kumar Singh Kushwaha*,²⁰ in this case, the high court rejected to provide maintenance to the appellant on the ground that only a legally wedded wife can claim maintenance under section -125 of the Code of Criminal Procedure, 1973, but the supreme court turned down the judgment given by the high court and awarded maintenance to the claimant saying the provision of section-125 of the code must be read in the light of protection of women from Domestic Violence, 2005 and held that women in live-in-relationship are equally entitled to claim maintenance under section-125 of the Code of Criminal Procedure, 1973. Further, the supreme court requested the parliament to enact new legislation based on the guidelines provided by them so that the victim can be protected from any societal wrong caused by such a relationship.

Following are the guidelines which were provided by the supreme court –

1. Duration of the period in living in live-in-relationship

Section -2[f] of Domestic Violence Act, 2005 defines the domestic relationship, which refers to a term ‘at any point of time’, which means a reasonable period of time the partners should live together. And the reasonable period of time may vary from time to time and depend on the case.

2. Shared household

The term has been defined under section -2[s] of the Domestic Violence Act, so there is no need to further briefing.

3. Pooling of resources and financial distribution

Supporting each other at any point of time in their living together and sharing bank accounts or having joint accounts or purchasing any immovable in joint names or in the name of women, long term investment in any bank, purchasing a share in the name of women or joint name in the share, these are certain guiding factors to determine the relation.

4. Domestic positioning

²⁰ [2011]1 SCC141

These are certain basic responsibilities that generally lie on women to do the house chores and to maintain the household like cleaning of the house, gardening of garden or etc. duties which indicate that the living together symbolises the nature of marriage.

5. Sexual relationship

Marriage is a relationship where the sexual relationship is also necessary not for the desires but for the emotional and sentimental connection between the parties. By this sexual relationship, the partners move further in their relationship by the procreation of children so as to provide emotional support, companionship and also maternal affection and love, caring etc.

6. Children

Having children is an indication of a step toward building a family, and it indicates a strong relationship in the nature of marriage. So, the partners have the responsibility of upbringing the child and providing care and protection to the children.

7. Socialisation in public

Holding out with the public, neighbours, relatives and friends as if they are husband and wife is a strong circumstance to indicate the nature of marriage.

8. Intention and conduct of the parties

To determine the intention of the parties, we have looked at their conduct with the society, neighbours, relatives and friends and checked whether they fulfil their responsibilities as husband and wife.

In 2015, a landmark judgement was given by a supreme court of India by a seat comprising Justice M.Y. Eqbal and Justice Amitava Roy in the case *Dhannulal v Ganeshram*²¹, in this supreme court decided that couples who live together in a live-in-relationship will be presumed legally wedded wife and it was further held that a woman in such a relationship would be eligible to inherit the property of his partner after his death.

In 2021 *Gurwinder Singh and others v. the State of Punjab*, in this case, the bench is comprised of Justice Navin Singh and Justice Ajay Rastogi. The apex court observed that the petitioner is represented to the superintendent of police; however, their grievances were not addressed by the police. The court held that matters concern the life and liberty of the couple, so the superintendent of police is required to act expeditiously according to law and provide necessary protection to the couples as they face threat apprehension on them.

²¹ [2015]15 SCC755

IX. CONCLUSION

Although after the recommendation of the Malimath Committee, alternation is made to the term wife, which gives scope to court to interpret the term in the light of law for providing justice to the victim in such types of relationships and also the Domestic Violence Act, 2005 which defines domestic relationship under section -2[f] of the act which not directly deal with the live-in-relationship but provide protection to women by using the term 'nature of marriage'. By discussing the whole topic, we can at some point say that live-in-relationship is always a debating topic as it is evaluating the term. Although the term is prevalent in western countries, in the context of India, it is an emerging term that poses a constant threat to our basic societal framework. Live-in-relationship is not considered as offences under the law, and there is no law which prohibits such kinds of relationships if they attained the majority as in recent amendment done in the age of marriage for women is 21 so for live-in-relationship also same age applies, and for the male, the age is same, i.e., 21 years of age. The judgment given by the supreme court reflects a progressive approach towards the live-in-relationship. The supreme court opined that 'living together is a right to live'. All the judgments which were discussed above, we can say that the apex court is adapting to change with the need of time.

Still, India has not legalised it; legalising means providing special legislation in this regard. However, there needs to adopt an orthodox attitude towards live-in-relationship. So, we need to have a fixed law on the rights and commitments in live-in-relationships. Otherwise, people can take undue advantage of their partners, and the victims of such relationships may face many more difficulties in this matter.
