
LEGAL PERSPECTIVE OF THE
LIVE-IN RELATIONSHIP

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India is a country, which is slowly opening its doors for western ideas and lifestyles and one of the most crucial episodes amongst it, is the concept of Live-in relationships. Many has been said and debated on the concept of Live-in relationships in India. It is important to understand the said concept from legal view point. In the year 2010 the Hon'ble Supreme Court of India had rendered few land mark judgments with regard to the live-in relationship.

CHANMUNIYA Vs VIRENDRA KUMAR SINGH KUSHWAHA

Judgment date: October 07, 2010

Facts: The Appellant, Chanmuniya was married to Ram Saran and had 2 daughters. Ram Saran died on 07.03.1992. Chanmuniya married Virendra Kumar Singh Kushwaha, the younger brother of her deceased husband, in accordance with the local custom of Katha and Sindur. They were living as husband and wife together, Virendra Kumar Singh Kushwaha started harassing and torturing Chanmuniya, she asked for maintenance but Kushwaha refused saying that she wasn't his legally wedded wife.

The Uttar Pradesh High Court also dismissed her petition on the ground that 125 Cr.P.C is available only to the legally wedded wife; thereafter she approached the apex court to seek justice.

Decision: Women in Live-in relationships are also entitled to all the reliefs given in the said Act (The Protection of Women from Domestic Violence Act, 2005).

Important observations: The courts should enforce express contracts between non-marital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services. In the absence of express contracts, 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 Protection of Women from Domestic Violence Act, 2005 assigns a very broad and expansive definition to the term 'domestic abuse' to include within its purview even 'economic abuse'. Economic abuse includes deprivation of financial and economic resources. Section 20 of the Act allows the Magistrate to direct the respondent to pay monetary relief to the aggrieved person, who is the harassed woman, for expenses incurred and losses suffered by her, which may include, but is not limited to, maintenance under section 125 Cr.P.C.

The Protection of Women from Domestic Violence Act, 2005 gives a very wide interpretation to the term 'domestic relationship' as to take it outside the confines of a marital relationship, and even includes Live-in relationships in the nature of marriage within the definition of 'domestic relationship'. Therefore, women in Live-in relationship are also entitled to all the reliefs given in the said Act, they should also be allowed in proceedings under section 125 of Cr.P.C.

VELUSAMY Vs D PATCHAIAMMAL

Judgment date: October 21, 2010

The Hon'ble Supreme court in the above case observed that a woman in a live-in relationship is not entitled to maintenance unless she fulfills certain parameters, the Supreme court had observed that merely spending weekends together or a one night would not make it a domestic relationship.

A bench comprising Justices Markandey Katju and T S Thakur said that in order to get maintenance, a women, even if not married, has to fulfill the following four requirements:

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.

4. They must be voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

The Supreme court observed, in our opinion not all Live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Protection of Women from Domestic Violence Act, 2005. To get such benefit the conditions mentioned above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom 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.

The Apex court passed the judgment while setting aside the concurrent orders passed by a matrimonial court and the Madras High Court awarding Rs 500 maintenance to Patchaiammal who claimed to have married the appellant D Velusamy.

Velusamy had challenged the two courts order on the ground that he was already married to one Laxmi and Patchiammal was not married to him though he lived with her for some time.

The Apex court also observed, "No doubt the view we are taking would exclude many women who have had a Live-in relationship from the benefit of the 2005 Act (Protection of Women from Domestic Violence Act), but then it is not for this 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," the bench observed.

S.KHUSHBOO VS KANNIAMMAL

Judgment date: April 28, 2010

In appeal filed by the well know actress, Khushboo seeking quashing of criminal proceedings filed against her mostly in the state of Tamil Nadu, for the remarks made by

her in an interview to a leading new magazine. The Hon'ble Supreme court opined that a man and woman living together without marriage cannot be construed as an offence.

The Apex court said there was no law which prohibits Live-in relationship or pre-marital sex.

The Supreme court, held that Live-in relationship is permissible only in unmarried major persons of heterogeneous sex. In case, one of the said persons is married, man may be guilty of offence of adultery and it would amount to an offence under section 497 IPC.

OTHER NOTABLE OBSERVATIONS MADE BY SUPREME COURTS

In S.P.S Balasubramanyam Vs Suruthaya @ Andali Padayachi and Ors. AIR 1992 SC 756, the Supreme court held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under section 114 of the Evidence Act, that they Live as husband and wife and the children born to them will not be illegitimate.

In Adan Mohan Singh Vs Rajni Kant, the Supreme Court observed “The courts have consistently held that the law presumes in favor of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (vide: Mohabbat Ali Khan Vs Mohd. Ibrahim Khan, AIR 1929 PC 135; Gokalchand Vs Parvin Kumar, AIR 1952 SC 231; S.P.S Balasubramanyam Vs Suruttayan (1994) 1 SCC 460; Ranganath Parmeshwar Panditrao Mali Vs Eknath Gajanan Kularni (1996) 7 SCC 681; and Sobha Hymavathi Devi Vs Setti Gangadhara Swamy and Ors., (2005) 2 SCC 244).