

Legalization of live-in relationships in India through the Protection from Domestic Violence Act, 2005: A critical Analysis

Ms. Nirmala Devi¹, Dr. Parmod Malik²

¹Research scholar, Dept. of Laws, BPSMV, Khanpur Kalan Sonipat

²Assistant Professor, Dept. of Laws, BPSMV Khanpur Kalan, Sonipat.

Abstract: Article 15(3) of the constitution of India empowers the parliament to make specific law for the welfare of women. The domestic violence Act, 2005, is one of that kind of legislation. The ultimate object of the statute is protect the female from every kind of violence, physical, emotional, financial etc. The present act serve the given purpose very well. The protection of women from domestic violence Act, recognized the domestic relationship, outside the marriage, but like a nature of marriage. Which is called live-in relationship, it means two persons living together as couple as husband and wife, under the same roof in a long term relationship that resemble a marriage but exactly not marriage. Sometime it seems that protection from domestic violence act 2005, impliedly ratified the live-in-relationship and protects the rights of the female partners, in case of dispute between couple. The focus of present paper is to find the real implication of decisions of the Supreme court in context of live in relationship in light of Protection of women from Domestic Violence act, 2005. The various decisions of honorable Supreme court reflects the enthusiastic and gender justice approach towards the victim of the live in relationship.

Key words- domestic violence act, live-in relationship, implied ratification, courts approach, marriage.

I. CONCEPT OF LIVE –IN RELATIONSHIP

In the very general sense, live-in-relationships are understood as living together of a couple under the same roof for a considerable period of time in such a way that it resembles marriage. In a live-in-relationship, the couple decides to live together for a long term and share an emotional and sexual bond amongst them. To live together in a sexual relationship under the one roof, especially when not legally married.ⁱ

*Live-in marriage like relationship is neither a crime nor a sin though socially unacceptable in this country - The decision to marry or to marry or to have a heterosexual relationship is intensely personal.*ⁱⁱ

II. OBJECT OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The aim of the Protection of women from Domestic Violence Act, 2005 (hereinafter called PWDA) is primarily meant to provide protection to the wife or female live-in partner from violence at the hands of the husband or male live-in partner or his relatives. The PWDV Act, 2005, is a piece of social beneficial legislation enacted to protect Women from domestic violence of all kinds.ⁱⁱⁱ The present act, 2005 also recognized the economic rights of female live-in partners. These legal moves appear to be set against the backdrop of prevalent

practices of married men entering secondary relations with women and are a response to more traditional and even patriarchal forms of non –marital cohabitation.^{iv} A very sensitive approach is expected from the courts while interpreting the relevant provisions of the above mentioned act. It should be borne in mind that stranded and unfortunate aggrieved person under the domestic violence act approach the court under the very compelling circumstances. *The principle of justice to the cause is equivalent to the salt of ocean should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non- adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women.*¹ When a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498A IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the PW DV Act.

III. RELATIONSHIP IN THE NATURE OF MARRIAGE:

¹ Krishna Bhattacharjee v. Sarathi Choudhary and anr. 2016 (1) R.C.R (CIVIL) 151.

Relationship” in the nature of marriage” is term, that is exactly not marriage .moreover, the entry gate of the relationships, for that where relationships, which are not amount to valid marriage .Parliament of India through the PWDV Act recognizes in reality, various other forms of familial relations, flaking the idea that such relationship can only be through some acceptable modes hitherto understood. First of all, let see, Section 2(f),² as already indicated, that deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

- (a) Consanguinity
- (b) Marriage
- (c) Through a relationship in the nature of marriage
- (d) Adoption
- (e) Family members living together as joint family.

Above mentioned definition is the basis for every proceeding instituted under the PWDV Act. This clause also differentiate between marriage and relationship like nature of marriage. The apex court of country various time draw a line of distinction between legally valid marriage and “relationship like nature of marriage” The following decisions of court made a path for future reference.

In the case of, **D. Velusamy v. D. Patchaiammal**³ Apex court observed that a ‘relationship in the nature of marriage’ is akin to a common law marriage .Common law marriages require that although not being formally marriage .Relationship in the nature of marriage, could not be treated as domestic relationship, unless and until have following elements are proved:-

- (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.*

The Supreme Court further stated that ‘relationship in the nature of marriage’ under the PWDV Act, 2005 must also fulfill the above requirements, and in addition the parties must have lived together in a ‘shared household’⁴. *Merely spending weekends together or a one nightstand would not make it a ‘domestic relationship’*. Not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the PWDV Act, 2005.⁵ To get such benefit the test laid down by the honorable Supreme Court has to be satisfied, and this has to be demonstrated by clear evidence. The court further observed that *Parliament has used the expression ‘relationship in the nature of marriage’ and not ‘live in relationship’*. *The Court in the grab of interpretation cannot change the language of the statute*. It

means each and every kind of cohabitation outside marriage cannot be treated as relationship in nature of marriage.

The Supreme Court of India in another landmark case namely, *Indra Sarma v. V.K.V Sarma*⁶ observed that the definition clause mentions only 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) of the PWDV act has not used the expression "include" so as to make the definition exhaustive. Then court try to explain the every possible meaning of the act for its ample benefit. It is in that context court has to examine the meaning of the expression "Relationship in the nature of marriage". However, in the present case, the court said that the relationship between the married man and the woman is not a relationship in the nature of marriage and it is not a domestic relationship which can be covered under sec-2(f) of the Domestic Violence Act, 2005.⁷

The Possibility of the expression "relationship in the nature of marriage" which falls within the definition 2 of Section 2(f) of the PWDV Act. This case is of the third enumerated category (above mentioned) that is "relationship in the nature of marriage" *which means a relationship which has some inherent or Essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to Determine whether the relationship in a given case constitutes the characteristics of a regular marriage. Distinction between the relationship in the Nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc.,*⁸ even if they are not sharing a shared household, may be they are living separate due to their job or business. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end no divorce, no repudiation of relationship by the court is required. Further, in a relationship in the nature of marriage, the party admitted the existence of the Relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of marriage"⁹

There could be certain situations, in which the relationship between parties would or would not amount to a relationship in the nature of marriage, would be suitable. Following are some of the categories of cases, which are classified by the court.

- (a) Domestic relationship between an unmarried adult woman and an unmarried adult Male: Relationship between an unmarried adult woman and an unmarried adult male who lived

² Sec. 2 (2) Protection from domestic violence Act, 2005.

³ AIR 2011 SC 478.

⁴ Sec.2 (s) of the Protection from Domestic Violence Act, 2005.

⁵ *Supra at 7*

⁶ 2013 (15) SCC 755.

⁷ Dr. Sangita Laha, Live-in relationship-An Analysis Through cases, International Journal of Arts, Humanities and Management Studies .vol.no. 02(June, 2016).

⁸ *Supra no.7.*

⁹ *Ibid.*

or, at any point of time lived together In a shared household, generally today's generation adopting this trend, will fall under the definition of Section 2(f) of the PW DV Act, 2005 and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the PW DV Act, 2005.

(b) Domestic relationship between an unmarried woman and a married adult male: Circumstances may arise when an unmarried adult woman perceptively enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the PW DV Act, 2005.

(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, in a given situation, fall within the definition of Section 2(f) of the PWDV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned. Because female partner not aware about the marital status of the male partner. In this situation court may be give relief to the aggrieved person.

(e) Domestic relationship between same sex partners PW DV Act, 2005 does not recognize such a relationship and that relationship

Cannot be termed as a relationship in the nature of marriage under the Act. However, presently in India these relationships are not illegal.

The court further emphasized that whether a relationship will fall within the expression "relationship in the nature of marriage" within the meaning of Section 2(f) of the PW DV Act, 2005 close analysis of the entire relationship, should be taken into account. All live-in-relationships are not "relationships in the nature of marriage". If any relationship having lack of inherent or essential characteristic of a marriage could not be treated "in the nature of marriage. Under Section 2(f) of the PWDV Act.¹⁰ In addition to this, court also identified extra elements like duration of relationship, shared household, pooling of resources and financial arrangement, domestic relationship, sexual relationship, children are priority or not, socialization in public and intention and conduct of parties'. Through these elements profundity of relationship can be analyses.

¹⁰ *Ibid.*

¹¹ 2011 (1) SCC 141.

¹²2018 SCC ONLINE BOM. 1827..

Chanmuniya v. Veranda Kumar Singh kushwaha and anr.¹¹

The appellant contended that she was married off to the first respondent as per the customs and usages prevalent in the customs and usages prevalent in the Kushwaha community in 1996. The custom allegedly was that after the death of the husband the widow was married off to the younger brother of the husband.

This was the case, which creates lot of curiosity and confusion. Finally case referred to the chief justice, with some questions to be solved. Following questions are there:-

1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption

Would entitle the woman to maintenance under section 125 Cr.P.C?

2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C. having regard to the provisions of

PWDV Act, 2005?

3. Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the conditions of section 7(1) of the Hindu marriage Act, 1955. Or any other personal law would entitle the woman to maintenance under section 125 Cr.P.C.

Reshma Begum v. State of Maharashtra & anr.¹² Under this case, the Bombay high court reiterated the decision of apex court in delusamy case (details of case mentioned earlier in this article) and held that the relation between appellant and respondent was not in nature of marriage. Because her first marriage was not dissolved and if that be so, she could not have married legally with the respondent. So appellant not entitled for any relief under PWDV, Act 2005.

IV. CONCLUSION

It can be submitted that the Supreme Court interpret the PWDV act, 2005 in such a way that it became the modern comprehensive piece of legislation which deals with the live-in relationship. The PWDV act, 2005 has been widely hailed as the first legal Act to recognize the existence of non-marital adult heterosexual relations. However present act does not consolidate all the domestic relationships, like it excludes the domestic relationship between a male employer and a live-in domestic worker¹³. The Act also clearly has no space for adult same-sex relationships. Apart from that apex court legalize their relationships Nevertheless, it is possible to say that, unlike the recommendations of the Malimath Committee, the PWDVA, 2005 has implications for a broader terrain of non-marital relations as it does not explicitly limit itself to the secondary relations of men.¹⁴. In having used the idea of "relations in the nature of marriage", the Act seems to have widened the scope

¹³ Anujja Agarwal, Law and live-in relationships in India, Economic & political weekly .Vol. XLVII NO 39 (September 29, 2012).

¹⁴ *Ibid.*

of legally recognized domestic relationships between men and women. However, in delusamy case court tried to set some principles for future reference, where particular live-in relationship, can be considered as relationship in nature of marriage .Indirectly through this case, the apex court of India

has ratified and legalized the live –in relationship. Now female partner of live-in can get relief from court under PWDV act 2005. But terms and conditions are applied, because every live-in relationship is not in nature of marriage.

ⁱ<https://www.thefreedictionary.com/Live-in+relationship>.

ⁱⁱ Indra Sarma v. V.K.V Sarma 2013 (15) SCC 755.

ⁱⁱⁱ Hira P.Harsora and ors. V. Kusum Narottamdas Halsora and ors. 2016 (4) R C R (CIVIL) 751.

^{iv} Manju jamwal, Live-in relationships in India: Legal moves and judicial Attitude: some observation .RGNUL (JANUARY – JUNE 2014).

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