



STATUS OF LIVE-IN-RELATIONSHIP AFTER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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Abstract: *Women were exploited in the men dominated society and they suffered this discrimination in silence. They are under exploitation both in the house and outside the house. They are subjected, to violence likewise female feticides, infanticide, child marriage, dowry, purdah, sati and slavery. Generally, women are exploited in different ways. They are also tortured by their male partner by way of live-in-relationship. Despite the enactment of several laws, the status of women has not improved. In the common parlance, brides are going to burning, poisoned, beaten and harassed for dowry demand. The term of domestic violence is not a new or unknown term. It spread all over the world but most of the society still remained largely unrecognized. At Present, when a married woman faces cruelty by a husband or his relatives, it is deemed to be an offence under this section. But any civil law of land doesn't approve the term cruelty completely. For that reason, the Constitution of India proposed for the enactment a new law with a view to fulfill the rights of women that are enshrined under Articles 14, 15 and 21 of the Constitution of India. There is a need to pass such a law to protect the rights of women against domestic violence so that the goal of preamble to the Constitution of India can be achieved. By passing this enactment, the protection provided to women under the fundamental rights can be achieved in a better way. This will also improve the status of women and enhance the women empowerment.*

Keywords: *Live-in-relationship, discrimination, domestic violence, rights of women, Constitution of India.*

1.1 INTRODUCTION

The idea of live-in relationship evolves from the broadened mindset of the people who started to crave for a relationship with no-strings-attached. A living relationship couple are the ones who cohabit, with

no expectations being the bottom line. However, there is no legal definition to describe the concept in Indian law. It is more of a westernized theory with very less relevance with the Indian tradition.²

So, the Supreme Court, at various instances taken the liberty to elaborate on the concept through their judgements. It is different from a marriage. (Marriage or wedlock or matrimony, is a socially/ritually acknowledgeable union of a couple). Live in relationship partners don't force on obligations. When asked if a live-in relationship is good or bad, there is no proper explanation on if it is good or bad. It merely depends on the person and one's personality on looking from a different perspective. People ought to believe that when living together, they can understand each other better and also for many other reasons, which cannot be denied.³

1.2 MEANING OF LIVE -IN- RELATIONSHIP

In Legal Sense, live in relationship is “an arrangement of living under which the couples which are unmarried live together to conduct a long-going relationship similarly as in marriage”. In other words, Live-in relationship is one such connection in which a boy and girl have some relation before their marriage and if they are satisfied with their partner they get married or be like that for years. Live-in relationship handles matter of premarital sex, but those couples who are maintaining relations don't mind such things. Overall, this relation builds up harmony between the couples, but spoils their social influence.

1.3 THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AND LIVE-IN-RELATIONSHIP

The Protection of Women from Domestic Violence Act, 2005 is a significant legislation by the Indian Parliament for protecting women from violence within their homes. This Act is unique in nature as it has provisions to protect women who face violence not only from husband but also from brothers, father, sons or any person with whom the victim is living. The first point from which the Act is to be viewed is the extent of its applicability. The Act allows institution of proceedings by an “aggrieved person”. An aggrieved person is that women who is living or has lived in a shared household under a domestic relationship with the respondent. By living time with the respondent, she alleges that the incident of domestic violence by the respondent has occurred.⁴

The Act thus envisages the vulnerability of woman and child whether he/she is an adopted, step or foster child equally. However, under this law, children can also file a case against a parent or parents who are tormenting or torturing them physically, mentally or economically. This provision in the Act keeps itself in tune with the concept of ‘protective discrimination’ and indicates the use of “affirmative action” to remedy a wrong done towards a child within the family as envisaged by the Constitution of India.⁵

² <https://vakilsearch.com/advice/live-relationship-indian-law-say/> accessed on 25 March 2019.

³ Ibid.

⁴ The Protection of Women from Domestic Violence Act, 2005, s. 2(a).

⁵ M.P. Kishwar, *Well Intentioned but Over Ambitious – A Review of the New Domestic Violence Act 2005* (Sage Publications India (Pvt.) Ltd., New Delhi, 1st edn., 2008).

Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain control over another intimate partner. Many types of abuse are included in the definition of domestic violence:

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- Physical abuse can include hitting, biting, slapping, battering, shoving, punching, pulling hair, burning, cutting, pinching, etc. (any type of violent behavior inflicted on the victim). Physical abuse also includes denying someone medical treatment and forcing drug/alcohol use on someone.
- Sexual abuse occurs when the abuser coerces or attempts to coerce the victim into having sexual contact or sexual behavior without the victim's consent. This often takes the form of marital rape, attacking sexual body parts, physical violence that is followed by forcing sex, sexually demeaning the victim, or even telling sexual jokes at the victim's expense.
- Emotional abuse involves invalidating or deflating the victim's sense of self-worth and/or self-esteem. Emotional abuse often takes the form of constant criticism, name-calling, injuring the victim's relationship with his/her children, or interfering with the victim's abilities.
- Economic abuse takes place when the abuser makes or tries to make the victim financially reliant. Economic abusers often seek to maintain total control over financial resources, withhold the victims access to funds, or prohibit the victim from going to school or work. It also includes movable and immovable assets bonds, valuables, shares, securities and any other property of like nature. The aggrieved person shall have an interest or right by virtue of the domestic relationship.
- Psychological abuse involves the abuser invoking fear through intimidation; threatening to physically hurt himself/herself, the victim, children, the victim's family or friends, or the pets; destruction of property; injuring the pets; isolating the victim from loved ones; and prohibiting the victim from going to school or work.

The "shared household" has been defined in the Act. As per this definition where the person aggrieved lives or has lives in a household in a domestic relationship at any stage. It also includes such a household whether it is owned or tenanted. It can be either jointly owned by respondent and aggrieved or singly.⁷ It is clear from the definition that the wife has not only gets a right to be maintained but also gets a right of residence. The right of residence is not a small right but a higher right. The legislation extends the said right to joint properties in which the husband has a share.⁸ In *Balwant Kaur v. Chanan Singh*⁹, the court compare this legislation with British Matrimonial Homes Act, 1967 and stated that in India there is no such law like British Matrimonial Homes Act, 1967. In any case, the aggrieved person's rights under this Act may be available under only against the husband and not against the in-laws or family members of husband. The

⁶ The Protection of Women from Domestic Violence Act, 2005, s. 3.

⁷ The Protection of Women from Domestic Violence Act, 2005, s. 2(s).

⁸ Nidhi Shukla, *Gender Justice and Domestic Violence* 92 (Regal Publication, New Delhi, 1st edn., 2014).

⁹ (2000) 6 SCC 310.

only condition in which father-in-law is liable to maintain his daughter-in-law is when she had lost her husband and is a destitute and has no earnings of her own or other property.

As for as “living in shared household” is concern the aggrieved person cannot be deprived of living there peacefully any female member who is destitute, has no other mean of livelihood and no other shelter, cannot be deprived of the shelter which she is using from beginning. She cannot be thrown out of the house without shelter. No male member can restrict or prohibit any female member of the family to continued access to resources or facilities. Resources may be doing a job, gaining any skill or training, educating her so that she may become independent. No one can restrict her, if she wants to become economically independent and educated. Education and economical independence are the only solution of protection from domestic violence. Facilities include whatever goods are there in the aggrieved person's shared house hold she can avail it aggrieved person cannot be denied of its use or consumption.¹⁰

The rights enshrined in the act are Right to secure housing¹¹, Right to the assistance and service of the service provider and protection officer¹², Right to file complaint¹³, Right to receive protection¹⁴, Right to get shelter home¹⁵, Right to medical assistance¹⁶, Right of counseling and legal aid¹⁷. There are various orders provided under the Act for victim as relief that are Protection Order¹⁸, Residence Order¹⁹, Custody Order²⁰, Monetary Orders²¹, Compensation Orders²², Interim and Ex-parte Orders²³

The Act prescribes certain authorities that helps in the proper functioning and implementation of act in a proper manner. These authorities are Protection Officer²⁴, Service Providers²⁵. When there is any breach of protection order for not discharging duty by protection officer, the Act also provide certain penalties for

¹⁰ Shalu Nigam, *Domestic Violence in India: What One Should Know?* 95 (We the People Trust Publication, New Delhi, 1st edn., 2008).

¹¹ The Protection of Women from Domestic Violence Act, 2005, s. 19.

¹² The Protection of Women from Domestic Violence Act, 2005, s. 9, 10.

¹³ The Protection of Women from Domestic Violence Act, 2005, s. 5(e).

¹⁴ The Protection of Women from Domestic Violence Act, 2005, s. 18.

¹⁵ The Protection of Women from Domestic Violence Act, 2005, s. 6.

¹⁶ The Protection of Women from Domestic Violence Act, 2005, s. 7.

¹⁷ The Protection of Women from Domestic Violence Act, 2005, s. 9(d).

¹⁸ The Protection of Women from Domestic Violence Act, 2005, s. 18.

¹⁹ The Protection of Women from Domestic Violence Act, 2005, s. 19.

²⁰ The Protection of Women from Domestic Violence Act, 2005, s. 21.

²¹ The Protection of Women from Domestic Violence Act, 2005, s. 20.

²² The Protection of Women from Domestic Violence Act, 2005, s. 22.

²³ The Protection of Women from Domestic Violence Act, 2005, s. 23(2).

²⁴ The Protection of women from Domestic Violence Rules, 2006, rule 3.

²⁵ The Protection of Women from Domestic Violence Act, 2005, s. 6.

them that are Penalty for breach of protection order by respondent²⁶, Penalty for not discharging duty by Protection Officer²⁷.

1.4 JUDICIAL RESPONSES OVER PRESUMPTION OF MARRIAGE

Indian Judiciary always try to enhance the rights of women and act as a guardian of the Constitution of India. It always interpreted the rights of women in liberal sense. All the provisions of the Indian Constitution get their real and just meaning and through the soft process of judicial interpretation. The Constitution also make it compulsory that the various laws providing for protective discrimination in favors of women so that the protection of women come up before the courts.

In *Ajay Bhardwaj v. Jyotsna*²⁸, while determining whether a live-in partner would be entitled to maintenance under Section 125 of Code of Criminal Procedure, 1973, the Bench of Jaishree Thakur J. reiterated the holding of the Supreme Court in *Chanmuniya v. Virendra Kumar Singh Kushwaha*²⁹ that where partners live together as husband and wife, a presumption would arise in favour of a wedlock.

In *D.Veluswamy v. D.Patchaiammal*³⁰, it was held that all live-in relationships will not be called a relationship which is in the nature of marriage to get the benefit provided under Domestic Violence Act of 2005. To get such benefits the conditions mentioned by the bench should be satisfied and it is required to be proved by evidences. If a man has a woman to whom he fulfills all her financially needs and uses her mainly for sexual enjoyment, purpose or pleasure and/or as a servant it could not be said to be a relationship in the nature of marriage.

In landmark case of *S. Khushboo v. Kanniammal*³¹, the Supreme Court held that a living relationship comes within the ambit of 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 later part of 2010, the Delhi High Court decided *Alok Kumar v. State*³² which also was related to live-in relationships. The complainant was in a live-in relationship with the petitioner, who had not even divorced his previous wife and had a child of his own. The complainant also had a child of her own. The

²⁶ The Protection of Women from Domestic Violence Act, 2005, s. 31.

²⁷ The Protection of Women from Domestic Violence Act, 2005, s. 33.

²⁸ Criminal Revision No. (F) 166 of 2015.

²⁹ (2011) 1 SCC 14.

³⁰ Criminal Appeal No. 2028-2029 of 2010.

³¹ Criminal Appeal No. 913 of 2010.

³² Criminal Miscellaneous Case No. 299 of 2009.

Delhi High Court, therefore, tagged the nature of such relationship as a walk in and walk-out relationship with no legal strings attached. It is a contract of living together “which is renewed everyday by the parties and can be terminated by either of the parties without consent of the other party”. Those who do not want to enter into such relationships enter into a relationship of marriage which creates a legal bond that cannot be broken by either party at will. Thus, people who choose to have “live-in relationships” cannot later complain of infidelity or immorality.

In *Indra Sarma v. V.K.V. Sarma*³³, live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal. In this case, concerned with the question whether a “live-in relationship” would amount to a “relationship in the nature of marriage” provided under the definition of “domestic relationship” under Section 2(f) of Act. and the disarrangement of such a relationship by reason of failure to maintain a woman where such act involved in such a relationship amounts to “domestic violence” within the meaning of Section 3 of the Domestic Violence Act.

1.5 CONCLUSION

In context of Indian strata, the term live in relationship is similar to ‘Domestic Violence’ basically refers to an abuse by an intimate partner within or outside the confines of home. Nowadays, ‘home’ which was earlier presumed to be a safe place now is an unsafe for women, as the males who were said to be ‘protectors’ now becomes perpetrators of violence Such incidences of violence against women occur behind the closed door, in the form of detrimental accidents. Various studies done across India reveals pervasiveness of violence perpetrated against intimate partners across caste, class, religion, culture, employment status, education and ethnic boundaries. Therefore, though live-in relationships have become legally valid, it is still not legally binding on the partners. It could be a benefit as well as a disadvantage depending on the expectations of the couple. In a society that shamed premarital sex, accepting a practice like live-in is a big step forward. There are no specific personal laws are governing these relationships. However, the Indian Law/Supreme Court is trying to bring in a change into the nation. And also, it is trying to widen the legal prospect relevant to this foreign concept. We have a widen idea of what live in relationship in India means.

³³ Criminal Appeal No. 2009 of 2013.