

RELATIONSHIP IN NATURE OF MARRIAGE

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Marriage, whether considered as a contract or sacrament gives rise to a status, it confers a status of husband and wife on the parties to the marriage. It confers a status of legitimacy on the children, out of it arise certain obligations and responsibilities toward children of the marriage. The benefit of marriage come with a lot of responsibilities. The marital obligation towards the spouse, towards the family, towards the children and towards the marital house are an inseparable part of Indian Marriage. To avoid the obligations of a traditional marriage and on the other hand to enjoy the benefit of cohabiting together, the concept of relationship in nature of marriage has come into picture. The concept of live-in-relationships provides for a life free from responsibility and commitment which is an essential element of marriage. The concept of live-in-relationship is not new to the Indian society, the only difference is that earlier people were hesitant in declaring their status may be due to the fear of the society but now the people are openly in this kind of relationship.

- **Relationship in the nature of marriage**

Basically the word relationship in the nature of marriage is nowhere define in any statute, but this word is used in Sec 2 (f) of The Protection of Women from Domestic Violence Act, 2005 (hereinafter PWDV Act, 2005). According to the Sec. 2(f) of the Act 2005, “domestic relationship” as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a **relationship in the nature of marriage**, adoption or are family members living together as a joint family.

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Under The Protection of Domestic Violence Act 2005, “**a relationship in the nature of marriage**” protects:

- (i) Women in marriages void or voidable in law, where all other elements of marriage exist; and
- (ii) Women in common law marriages who represent to the world that they are married.
- (iii) Women who are in the relationships of cohabitation or live-in-relationships;

(i) Void and Voidable Marriage

The rules regarding solemnization of marriage vary from religion to religion, according to their personal laws and customary practices. In India, there are two major communities, Hindus and Muslims.

The Validity of Hindu Marriages is governed by Sec.- 11 and 12. The Hindu Marriage Act, 1955 wherein it is provided “Any marriage solemnized after the commencement of this Act shall be null and void if :-

- (i) Either party has a spouse living at the line of marriage.
- (ii) The parties are within the degrees of prohibited relationship; or
- (iii) The parties are sapindas of each other.

Sec. 12 further provides the grounds where a marriage shall be voidable and may be annulled by decree of nullity.

• **Status of children from void and voidable marriage**

Sec. 16(3) of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable close also to confine its application, so far as succession or inheritance by such children is concerned, to the properties of the parents only a laudable and noble act of the legislature indeed in enacting Sec. 16 to put an end to a great social evil:-

- (i) *Jinia Keotin and others V. Kr. Sitaram Manjhi and others*³.
- (ii) *Neelamma and others V. Sarajamma and others*⁴.

³ (2003) 1 SCC 730

⁴ (2006) 9 SCC 612.

- (iii) Bharatna Matha and another V. R. Vijaya Renganathan and others⁵.

In above cases Hon'ble Supreme Court held that a child born in void and voidable marriage was not entitled to claim inheritance in ancestral coparcenary property but was entitled to claim only the share in self-acquired properties.

But in the case of Ravanasiddappa and another Vs. Mallikarjun and others⁶ on 31 March 2011. Hon'ble Supreme Court held that we cannot accept the aforesaid interpretation of Section 16(3) given in *Jinia Keotin, Neelamma and Bharatha Matha* for the reasons discussed as - The legislature has used the word "property" in Section 16(3) and is silent on whether such property is meant to be ancestral or self-acquired. Section 16 contains an express mandate that such children are only entitled to the property of their parents, and not of any other relation. Therefore in the instant case, Section 16(3) as amended, does not impose any restriction on the property right of such children except limiting it to the property of their parents. Therefore, such children have a right to whatever becomes the property of their parents whether self-acquired or ancestral. We are, therefore, of the opinion that the matter should be reconsidered by a larger Bench and for that purpose the records of the case be placed before the Hon'ble the Chief Justice of India for constitution of a larger Bench.

Similarly, under the muslim personal law a marriage performed in Violation of rules of consanguinity, fosterage or affinity or with another's wife, shall be void (batil marriage) and no process recognized or prescribed in law can validate such marriages.

A marriage under Muslim law is irregular (Fasad) in the following cases:-

- (i) A Sunni Marriage performed without witnesses.
- (ii) A marriage performed with a women undergoing iddat.
- (iii) A marriage prohibited on account of difference of religion.
- (iv) A marriage with a fifth wife.
- (v) A marriage performed in violation of the rule against lawful conjunction.

⁵ AIR 2010 SC 2685.

⁶ (2011) 11 SCC 1.

If a marriage is performed in contravention of the personal laws, it is not protected under any law and the wife is not entitled to inherit her husband's property, to claim maintenance etc.

However, such a woman is been protected under the PWDV Act, 2005 and can take recourse of courts to claim maintenance etc.

(ii) Common Law Marriage

Where two parties are living together for a considerable period of time and represents themselves as married couple to the society are recognized in law as common law marriages. In the *Robinson Women's Legal Centre Trust Vs. Richard Gordon Volkas etc.*, the High Court of South Africa laid down guidelines to determine whether a relationship is in nature of marriage⁷:-

- (i) The commitment of the parties to the shared household.
- (ii) The existence of significant period of co-habitat
- (iii) The existence of financial and other dependency between the parties including significant mutual financial arrangements vis-a-vis the household.
- (iv) The existence of children of the relationship.
- (v) The rule of the partners in maintaining the household and in the care of the children.

These guidelines prove beneficial is ascertaining the relationship in nature of marriage.

(iii) Live-in Relationship:-

It is an arrangement of living, where unmarried couples agree to live together and conduct a long going relationship similar to marriages, without getting married formally.

In India, there is no legislation which recognized a live-in-relationship. The rights and obligations of the parties in such a relationship and the status of children born out of such relationship is also not defined in any specific law in India. However, the courts have taken a view that

⁷ Piers [(1849) 11 HLC 331].

where a man and a women live together, as husband and wife for a long term, the law will draw presumption as if they were actually married.

The Protection of Women from Domestic Violence Act, 2005 provides for the protection, maintenance and right of Palimony (a form of alimony paid to a former partner in a non-marital relationship), to the female partner in a live-in-relationship, on her complaint.

Thus, the female live-in-partners and the children of live- in- couples have been accorded adequate protection by the Judicial System. The live-in-relationships may be immoral for an Indian Society but no law makes such relationships illegal.

• **Rights of a Female in Live-in-relationship:-**

In June 2008, it was recommended by national commission for women to the Ministry of women and child development to include live in female partners for the right to maintenance under section 125 of The Code of Criminal 1973C. The view was also supported by the judgment in *Abhijit Bhikaseth Auti V. State of Maharashtra and others*⁸. In October 2008, the Maharashtra Government also supported the concept of live-in-relationship by accepting the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in-relationship for considerably long time, she has right to enjoy the legal status as given to wife. However, recently it was observed that it is divorced wife who is treated as a wife in context of Sec. 125 Cr.P.C. if a person has not even been married i.e. the case of live in partners, they cannot be divorced, and hence cannot claim maintenance U/s 125 Cr.P.C.

The partner of a live-in-relationship was first time accorded protection by the protection of women from Domestic Violence Act 2005, which considers females who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage also akin to wife, though not equivalent to wife. Sec. 2(f) of the Act defines domestic relationship which means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together

⁸ Crl. Writ Petition No. 2218 of 2007.

as a joint family. Thus the definition of domestic relationship includes not only the relationship of marriage but also a relationship in the nature of marriage. In a case of *Varsha Kapoor v. U.O.I. & Ors*⁹. The Delhi High Court has held that female living in a relationship in the nature of marriage has right to file complaint not only against husband or male partner but also against his relative.

- **Status of children born out in such relation :-**

Since there is no specific law that recognizes the status of the couple in live-in-relationship hence the law as to the status of children born to couple in live-in-relationship is also not very clear.

The Hindu Marriage Act 1955 gives grants the status of legitimacy to every child irrespective of his birth out of a void, voidable or legal marriage. But there is no specific law raises any presumption of legitimacy in favour of children of live in partners. The future of children of live in partners becomes very insecure in case of partners step out of their relationship. There comes there requirement of a strong provision to safeguard the rights of such children. There must be provision to secure the future of the child and also entitling the children to a share in the property of both the parents.

In the case of *Madan Mohan Singh V. Rajni Kant and another*¹⁰ - presumption of legitimacy of children born from presumed marriage-held law presumes in favour of marriage and against concubinage, when a man and women have cohabited continuously for a number of years such presumption can be rebutted by leading unimpeachable evidence- A live in relationship confined for long time, cannot be termed as “walk in and walk out” relationship and there is presumption of marriage U/S 114 Evidence Act that they lived as husband and wife and children born out to them will not be illegitimate.

In the case of *Bharata Matha and others v. R.Vijaya Renganathan and others*¹¹ -The Supreme Court of India has held that child born out a live in relationship may be allowed to succeed inheritance in the property of the parents, if any, but doesn't have any claim as against ancestral coparcenary property.

¹⁰ Civil Appeal No. 6466 of 2004 (13.08.2010) para 19-22.

¹¹ C.A. No. 7108 of 2003 (17.05.2010).

- **Judicial approach-regarding relationship in nature of marriage**

In the case of *Lousia Adeliaide Piers and Florence A.M. De Kerriguen V. Sir Henry Samual*¹² - The lordship observed that the question of validity of a marriage cannot be tried like any other issue of fact independent of presumption. The court hold that law will presume in favour of marriage and such presumption could only be rebutted by strong and satisfactory evidence.

In *Lieutenant C.W. Campbell V. John A. G Campbell*¹³ also known as the Breadalbale case, the house of Lords held that cohabitation, with the required repute, as husband and wife, was proof that the parties between themselves had mutually contracted the matrimonial relation. A relationship which may be adulterous at the beginning may become matrimonial by consent. This may be evidenced by habit and repute. In the instant case both the appellant and the first respondent were related and lived in the same house and by a social custom were treated as husband and wife. Their marriage was solemnized with Katha and Sindur. Therefore, following the ratio of the decisions of the House of Lords, this Court thinks there is a very strong presumption in favour of marriage.

In the case of *Sastry Velaidar Aronegary and his wife V. Sembecutty Viagalie and ors*¹⁴. It was held that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved that they were living together in consequence of a valid marriage and not in a state of concubinage.

The above principle have been followed in India in cases of -

In the case of *A. Dinohamy V. W.L. Balahamy*¹⁵, in which Privy Council laid down the general preposition that where a man and woman are proved to have lived together as husband and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state concubinage.

In the case of *Mohabbat Ali Khan V. Muhammad Ibrahim Khan and others*¹⁶ Privy Council has laid down that the law presumed in

¹² [(1849) 11 HLC 331].

¹³ [(1867) Law reporter 2 HC 269].

¹⁴ [(1881) 6 AC 364].

¹⁵ [AIR 1927 P.C. 185].

¹⁶ [AIR 1929 P.C. 135].

favour of marriage and against concubinage when a man and woman have cohabited continuously for numbers of years.

In the case of *Gokal Chand Vs. Parvin Kumar*¹⁷ Hon'ble Supreme Court held that continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from lay co-habitation is rebuttable and if there are circumstances which weaker and destroy that presumption, the court ignore them.

The first come in which Hon'ble Supreme Court of India first recognized the live-in-relationship as a valid marriage was that of *Badri Prasad V Dy. Director of Consolidation*¹⁸ in this case Hon'ble Supreme Court recognized the live-in-relationship as a valid marriage, in which court gave legal validity to the 50 years in relationship of a couple.

The Hon'ble Allahabad High Court again recognized the concept of live-in-relationship in case of *Payal Katara V Superintendent, Nari Niketan and others*¹⁹ - wherein it held that live-in-relationship is not illegal. The court said that a man and a woman can live together as per this wise even without getting married. It further said that it may be immoral for the society but is not illegal.

In the case of *S. Khusboo V Kanniammal and another*²⁰ Hon'ble Supreme Court held that living together is a right to life. Live-in-relationship may be immoral in the eyes of the conservative Indian Society but it is not illegal in the eye of law.

In the case of *Lata Singh v. State of U.P. and another*²¹- Hon'ble Apex court held that live-in-relationship was permissible only between unmarried major persons of heterogeneous sex. If a spouse is married, the man would be guilty of adultery punishable U/s 497 I.P.C. Since the husband survives, Rangammal cannot invoke presumption of live in. It so the children became illegitimate and disqualified to inherit U/s 16 of Hindu Marriage Act 1955. Therefore, live-in-relationship could be a

¹⁷ [AIR 1952 SC 231].

¹⁸ (1978) 3 SCC 527.

¹⁹ Criminal Appeal No. 913/2010.

²⁰ AIR 2006 (SC) 2522.

²¹ Criminal Appeal No. 2028-2029 of 2010.

'dangerous thing' between a wife and a non-husband as it could lead to an offense of adultery, but not to 'marriage'.

In the case of *D. Velusamy V. D. Patchainammal*²² Hon'ble Supreme Court has held not a relationship in the nature of marriage U/s 2005 Act must also fulfil some basic criteria. Merely spouting weekends together or a one might stand would not make it a domestic relationship. It also held that 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 their opinion, be a relationship in nature of marriage.

Hon'ble Supreme Court, in this case made it clear that if the man has a live-in-arrangement with a woman only for sexual reasons, neither partner can claim benefit of a legal marriage. In order to be eligible for palimony, a relationship must comply with certain conditions.

The conditions laid down are that the couple must hold themselves out to society akin to spouses; they must be of legal age to marry; they must be otherwise gratified to enter into a legal marriage, including being unmarried; they must have voluntarily cohabited for a significant period of time.

Considering that the judgment would exclude many women in live-in-relationship from the benefit of the Domestic Violence Act 2005, the Hon'ble Apex Court said that it is not for this court to legislate or amend the law. The parliament has used the expression relationship in the nature of marriage and not live-in-relationship. The court cannot change the language of the statute.

• Conclusion

Thus to conclude, we can say that 'valid marriages' have been protected under various legislations and the rights of such females and children born out of such relation other than marriage are intact. But, with in modernization the emerging concepts of live-in-relationships cannot be overlooked and the female partner in such relationship should also be given adequate protection. Moreover, regardless of whether two adult persons of opposite sex are married or not, when they bring a child into

²² Case No. 2010 (10) SCC 469.

the world, his or her rights are para-amount and therefore, such child needs to be protected. That is why, in a changing society law cannot afford to remain static and should adopt the protective measures and PWDV, Act 2005 is an example of progressive legislation which protects even those females who though not legally married, yet constitute a relationship in nature of marriage.
