

EMERGING ISSUES OF DOMESTIC VIOLENCE AND MAINTENANCE RIGHTS OF LIVE-IN PARTNERS IN INDIAN SOCIETY

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1.1 INTRODUCTION

The topic of maintenance has been covered in a number of legal precedents. Since the judiciary's goal was to defend harassed and disadvantaged women, the term "wife" was previously defined narrowly. Only a woman who was legally married could file for support, according to the Indian courts. The Indian mentality has been impacted by the shift in attitude on social ties and the rising tendency of live-in partnerships.

One who has gotten a divorce is included in the definition of "wife" in Explanation (b) of Section 125(1) "provided she is not remarried." The word "wife" and its definition in Section 125 of the Code of Criminal Procedure are to blame for bringing up the subject of live-in relationships and the rights of partners, which must be discussed in light of the new social realities in which live-in relationships are taking precedence over legal marriage.

The issue of a woman marrying a Hindu man while he is still married to his first wife has been discussed and contested by a variety of jurists, attorneys, judges, social workers, and judicial forums. Different courts have made a number of contradictory rulings on this matter, and no firm stance has been taken.

The term "Indian culture" relates to the nation's and its people's religions, beliefs, customs, traditions, languages, ceremonies, arts, values, and way of life. Indian culture is evolving in step with the times. Of course, change is the nature of things and survival is not a need. Every aspect of society is changing, from the family home to the international flight. Laws that are intended to control human behavior should adapt to the shifting differences in the general society's behavioral patterns. One of the enduring and deeply ingrained notions of Hindu civilization is the tradition of the married relationship as a family. It is recognized as the idea of sophisticated prudence by the entire world. However, some social critics claim that India is now exhibiting a decaying trend.

The word "maintenance" has taken on a new meaning and is no longer just a derogatory term. Different statutory and individual regulations pertaining to "claim of maintenance" are taken into account how the marital relationship is changing. Here, the author has attempted to explain how Indian clothing has changed over time, with a focus on the law governing upkeep in cohabiting relationships. It is the beginning of a new cultural crisis in India, which has to be focused on and researched by

academics and social scientists from all angles. Marriage serves as society's earliest social ties, followed by our offspring, the entire family, and all things shared.

The Hindu Adoptions and Maintenance Act, 1956 defines "maintenance" as including "in all cases, provisions for food, clothing, residence, education, and medical attendance and treatment," while section 18 of the Act grants a Hindu wife the right to be maintained by her husband, though there is no provision for the reverse. It's interesting to note that while concubines who fit the concept of "avarudhstri" were previously entitled for maintenance under Shastric Hindu Law, they were not listed among those who were to be maintained in the Act of 1956. The Sharia and the Muslim Women (Protection of Rights on Divorce) Act of 1986 both give Muslim women the legal authority to receive maintenance. Apart from rules for temporary and permanent alimony paid in divorce proceedings, Parsis, Christians, and other groups do not have any unique maintenance laws. Under section 125 of the Code of Criminal Procedure, 1973, all married people of any religion have access to the same support arrangements.

With particular reference to Law Relating to Maintenance, Section 125 of the Code of Criminal Procedure, 1973 (Section 125) and the personal laws both address the issue of "maintenance" in India. This idea is further supported by Article 15(3) of the Constitution of India, 1950 (the "Constitution") and Article 39. Generally available to the wife, kids, and parents, "maintenance" in Indian law comprises the right to food, clothing, and housing. When a guy's wife, kids, and parents are unable to care for themselves, it is both a measure of social justice and the inherent obligation of a man to provide for them. Preventing immorality and poverty while improving the economic circumstances of women and children is the goal of upkeep. People of different faiths may seek maintenance under their individual personal laws, and any processes under such personal laws are civil in character. Contrary to personal laws, however, proceedings started under Section 125 are criminal proceedings that are summary in nature and apply to everyone, regardless of caste, creed, or religion. However, the goal of such actions is not to hold someone accountable for prior negligence. By requiring those who can support people who cannot sustain themselves but have a moral claim to support, the aforementioned clause seeks to discourage vagrancy. Both the interim stage, or while the case is still pending and the final stage are available for maintenance claims.

The Supreme Court went even farther in *Savitaben Somabhai Bhatiya v. State of Gujarat*¹, stating that the respondent's treatment of the appellant as his wife was truly irrelevant because it is the legislative objective and not the party's attitude that matters. There is no way around the conclusion that the term "wife" only refers to the "legally wedded wife" because the argument that the appellant was not made aware of the respondent's prior marriage when she married him is "of no avail" because the principle of estoppels cannot be used to circumvent the provisions of Section 125. As a result, the child was given support rather than the second wife by the court. However, according to the law, a second wife whose marriage is nullified because the first marriage survived is not legally wedded and is not eligible for maintenance under this clause².

¹ (2005)3SCC636:2005SCC(Cri.) 787

² Vimalav. Veeraswamy, (1991)2SCC375

In *Suresh Khullar v. Vijay Kumar Khullar*³, the appellant and the respondent, who was a divorcee, were wed. After some time, he ejected the appellant from the marital residence and requested a divorce. Additionally, the respondent submitted a petition in accordance with Sections 18, 20, and 22 of the 1956 Hindu Adoptions and Maintenance Act. It was revealed, meanwhile, that the divorce judgment against the first wife had not been overturned during the divorce process. According to the court, the respondent defrauded the appellant by concealing the fact of his first marriage, and the appellant was deemed to be the respondent's "legally wedded wife." She was thus given the upkeep.

In *Ramesh Chandra Rampratapji Daga v. Rameshwari Rameshchandra Daga*⁴, the Supreme Court attempted to make a distinction between the "legality" and "morality" of partnerships. The Supreme Court made the following observation: Given the current condition of the law, a bigamous marriage may be deemed illegal because it violates the terms of the Hindu Marriage Act of 1956, but it cannot be deemed immoral enough to deprive the spouse even the right to alimony or maintenance. In *Vidhyadhari v. Sukhrana Bai*⁵, the Supreme Court granted limited remedy to the second wife who had been tricked into bigamy without resolving her status and leaving it unclear. The second wife received the succession certificate and was instructed to keep the first wife's portion, which was now known as the "legally wedded wife," safe.

However, the rise in live-in relationships, particularly those that happen "by circumstance," made it clear that revisions were required. The word "wife" in Section 125 of the Code of Criminal Procedure should be changed to include a woman who has lived with a man for a "reasonable period" of time, according to the Malimath Committee Report on "Reforms in the Criminal Justice System" published in 2003. As it relates to the State of Maharashtra, the Maharashtra Government approved a modification to the Code of Criminal Procedure, but it is still pending the President of India's approval because the issue falls under the Concurrent List of the Indian Constitution. Ironically, the Supreme Court ruled in *Sumitra Devi v. Bhikan Chaudhary*⁶ in 1985 that a couple's marriage should be presumed in cases where they lived together for a long period and were regarded as husband and wife by society. The courts have not, however, expanded this rule to cover alleged live-in partners. Notably, the Protection of Women from Domestic Violence Act of 2005 was the first law to treat cohabiting partners equally with married ones. Live-in partners are not eligible to receive the same benefits under personal laws due to the protection provided by this Act.

1.2 INHERITANCE RIGHTS OF LIVE-IN PARTNERS

If a male Hindu dies intestate, Hindu law grants the widow the status of a class I heir, giving her right to one share with absolute ownership over her deceased husband's property. Likewise, a husband would be entitled to receive a portion of his wife's assets after her passing. According to Islamic law, a widow with children is entitled to one-eighth of her deceased husband's estate, and if she is childless, one-fourth. In a similar manner, a husband would receive half of his wife's estate in the event of the latter and three-fourths in the former scenario.

³ AIR2008 Del. 1

⁴ (2005)2SCC33

⁵ (2008)2 SCC238 ; (2008)1SC(L&S) 451.

⁶ (1985)1 SCC637.

A live-in partner does not automatically have the right to inherit their partner's possessions. Even a mistress cohabitating with a male Hindu is not granted succession rights under the 1956 Hindu Succession Act. But the Supreme Court gave individuals who live together as husband and wife hope in *Vidhyadhari v. Sukhrana Bai*⁷ by stating that those who have been in a live-in relationship for a sufficient amount of time can inherit property from a live-in spouse. In this instance, despite having a living legally married wife, the property of a Hindu guy who enjoyed a live-in relationship was transferred to a woman following his death (intestate)⁸.

If a child is not legitimate, they can only establish a claim against the parent's self-acquired property. It might also be read to mean that a kid could make a claim on their parents' part of whatever ancestral property they may own because Section 16 allows for a stake in the parents' assets. Therefore, it might be claimed that the person has a right to both self-acquired property and a portion of the property that belonged to their ancestors. The Apex Court further ruled that a spouse cannot claim a live-in relationship with another person while the marriage is still in effect and then ask for an inheritance from that person's assets on behalf of the children.

1.3 DOMESTIC VIOLENCE AND LIVE-IN PARTNERS

It took until 2006 for a statute to treat people who are married and those who are living together equally. The Protection of Women from Domestic Violence Act of 2005 brought about this. The statutes that were in place to shield a woman from a cruel husband were few in number⁹, and they also fell under the purview of criminal law in the situations described therein. It was considered that battered women needed reforms that provided them with safety, financial security, and other concrete benefits. This civil statute was the catalyst for this. It provided a variety of relief for victims of violence, such as monetary compensation, restraining orders, the right to live in the same household, etc. All types of physical, sexual, emotional, and even financial abuse are included in the definition of domestic violence, which has been made as broad as possible¹⁰.

In *M. Palani v. Meenakshi*¹¹, the respondent sought Rs. 10,000 in maintenance from the plaintiff, with whom she had shared a live-in relationship, for food, clothing, housing, and other requirements. The Protection of Women from Domestic Violence Act of 2005's Sections 20 and was invoked in the filing of the aforementioned application. The petitioner argued that because they had never lived together, the respondent was not entitled to any maintenance. They had never considered getting married and had only occasionally engaged in consensual sexual activity as acquaintances. He argued that the Protection of Women from Domestic Violence Act, 2005 should not be applied to situations where there is only temporary proximity for the goal of mutual pleasure. The Protection of Domestic Violence Act of 2005 contains a definition of "domestic relationship" in Section 2(f). This term did not specify that the couple had to have lived together for a specific amount of time before the relationship qualified as a domestic relationship. The Court ruled that "they shared a household and lived together, at least at the time of having intercourse by them." The Court additionally found that the

⁷(2008)2 SCC238;(2008)1SCC(L&S)451

⁸*Revanasiddappav. Mallikarjun*, (2011)11SCC1:(2011)3SCC(Civ)581

⁹ Section 498-A of the Indian Penal Code, 1860.

¹⁰ Section 3, The Protection of Women from Domestic Violence Act, 2005.

¹¹ AIR 2008 Mad. 162

Act's provisions would still apply in this situation; hence the claim for maintenance made pursuant to the Act was upheld.

1.4 DIVORCE (BREAK-UP) BETWEEN LIVE-IN PARTNERS

Divorce is the "dissolution of a lawful marriage in law," which can occur in situations other than when one spouse passes away. As a result, the parties are free to get married again right away or after a predetermined amount of time have passed. In India, two kinds of Christians first discussed divorce in the later part of the 19th century. The Hindu Marriage Act, 1955, which was first implemented for Hindus, was introduced in that year. The Bombay Hindu Divorce Act, the Madras Hindu (Bigamy, Prevention and Divorce) Act, and the Saurashtra Hindu Divorce Act were among the Acts in several States that provided for divorce in specific situations prior to the start of the Hindu Marriage Act, 1955. Section 30 of the Hindu Marriage Act of 1955 repealed these Acts. Different Acts currently apply to different communities in India when it comes to divorce. Live-in relationships are currently not recognized or protected by any of the aforementioned marriage laws in the nation.

1.5 STATUS OF CHILDREN FROM LIVE-IN RELATIONSHIPS

An intriguing trend is that more and more couples are choosing to live together instead of getting married legally. These long-term commitments frequently involve having children. In a live-in situation, the partner may have children under the impression that they are legally wed. The status and rights of such children in compared to those who are born through marriage raise a number of legal questions in either case. These are the main points to think about.

(a) Children's legitimacy: According to section 112 of the Indian Evidence Act, 1872, a child's validity can only be shown if they were born while their mother and father were still legally wed. Only children who are the progeny of a man and his wife are recognized as legitimate children in Mohammedan law. Children conceived as a result of a live-in relationship were therefore considered "illegitimate" in the eyes of the law at the time. In *Tulsa v. Durghatiya*¹², the Supreme Court did rule that children born from such a connection would no longer be regarded as illegitimate. The Supreme Court ruled in *Vidhyadhari v. Sukhrana Bai*¹³ that children born from a second marriage would still be valid because the second marriage would be void, even if the original marriage was still active at the time. In contrast, in *Mohd. Bauker v. Shurfoon*, The Privy Council had ruled in *Nissa Begum*¹⁴ that where there has been continuous and long-term cohabitation, the legitimacy of children of Muslim parents may be presumed without any direct evidence of marriage. Therefore, there will be a presumption of marriage in cases where a couple has lived together for a long period, and any children born from such a connection will have the same legal rights as other children.

The Supreme Court ruled in *Pyla Mutyalamma v. Pyla Suri Demudu*¹⁵ that the High Court erred in exercising its jurisdiction by hearing the revision petition challenging an order granting maintenance to the appellant wife under Section 125, Code of Civil Procedure, after carefully weighing the conflicting accounts of the disputing parties and carefully weighing their arguments in light of the evidence and circumstances. As a result, the Court nullified the judgment and order of the High Court

¹² (2008)4SCC520

¹³ (2008)2 SCC238;(2008)1SCC(L&S)45

¹⁴ (1859-61)8 MIA136

¹⁵ (2011)12 SCC189;(2012)1SCC(Cri.) 371

and reinstated the Magistrate's ruling granting appellant's support. In a case addressing the legitimacy of a child born out of wedlock, the Supreme Court previously decided that if a man and a woman live together for an extended period of time, they would be considered as a married couple and their child will be legitimate. Additionally, the Domestic Violence Act of 2005, which recently changed the legislation, guarantees wives' status and provides protection to women participating in such relationships for "a reasonable lengthy period of time." Children born out of such a relationship will no longer be referred to as illegitimate, according to a Supreme Court bench presided over by Justice Arijit Pasayat. The law favors legitimacy above whoredom and rejects the fruits of adultery¹⁶.

(b) Children's rights to maintenance: A legitimate son, son of a predeceased son of a predeceased son, or the son of a predeceased son of a predeceased son, while he is a minor, and a legitimate unmarried daughter, unmarried daughter of a son, or the unmarried daughter of a predeceased son of a predeceased son, while she is unmarried, while she is still unmarried, shall be maintained as dependents by his/her father or the According to the 1956 Hindu Adoptions and Maintenance Act, however, children of live-in partnerships are not entitled to this privilege. In contrast, where a kid is unable to support him, Section 125 of the Code of Criminal Procedure gives maintenance to all children, whether they are legitimate or not, while they are minors and after they reach adulthood. In 2007, however, *Dimple Gupta v. Rajiv Gupta*¹⁷ upheld the entitlement of children born from a live-in relationship to maintenance.

(c) Custodial and Guardianship Rights: The husband has a lucrative guardianship power over the wife's person and property under English common law. English law grants husband custody of his minor bride. The role of the English wife has also changed significantly. Even in light of the English Common Law's principles of unity of person, which have undergone further process of improvement under various legislations like the Matrimonial Causes Act, 1957; Law of Property Act, 1925; and Law of Reforms (Married Women and Tortfeasors Act), 1935, equity has to some extent protected and recognized her proprietary rights. The court determined in *R v. Leggatt*¹⁸ that the husband's right to custody is not comparable to a parent's right to custody of a child.

Hindu law states that after a marriage, the husband is the minor wife's legal guardian and is entitled to custody of his wife; the minor woman's age does not preclude her from claiming this custody to the exclusion of her parents. According to Section 2(2) of the Children Act of 1960, the mother, not the father, bears parental responsibility for a child when the mother and the father were not married before the kid was born. However, as stated in Section 2(2)(b) of the Act, the unmarried father has several options for acquiring parental responsibility:

The welfare of the child shall be the primary factor taken into account by the court in making a custody decision, together with his or her age, sex, and wishes as well as those of his or her parents. Therefore, even in custody disputes involving kids from live-in couples, the court would put the welfare of the kid first.

(d) Children's rights to inherit: In contrast to Shia law, which forbids such inheritances, Hindu law stipulates that an illegitimate kid may only inherit from his mother and not from his supposed

¹⁶ *Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.* 2010 STPL (Web) 406 SC

¹⁷ (2007) 10 SCC 30; (2008) 1 SCC (Cri.) 567

¹⁸ (1852) 18 QBD 781

father. Inheritance from the father's estate would be prohibited if kids from a live-in relationship were still deemed "illegitimate." In fact, the courts would not regard a child from such a relationship to be legal, hence prohibiting his inheritance, when the live-in relationship has not persisted for a reasonable amount of time. However, if the live-in meets this requirement, a child can inherit from both parents if they are considered "legitimate." The Supreme Court gave the bequest to the four children born from the lady with whom the man had a live-in relationship in *Vidhyadhari v. Sukhrana Bai*¹⁹, referring to them as "his legal heirs." By doing this, the Court has made sure that no child born after a live-in relationship that lasted for a reasonable amount of time will be disinherited.

1.6 CONCLUSION

If a child is not legitimate, they can only establish a claim against the parent's self-acquired property. It might also be read to mean that a kid could make a claim on their parents' part of whatever ancestral property they may own because Section 16 allows for a stake in the parents' assets. Therefore, it might be claimed that the person has a right to both self-acquired property and a portion of the property that belonged to their ancestors. The Apex Court further ruled that a spouse cannot claim a live-in relationship with another person while the marriage is still in effect and then ask for an inheritance from that person's assets on behalf of the children.

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¹⁹ (2208)2 SCC238:(2008)1SCC(L&S)451

²⁰ Section 498-A of the Indian Penal Code, 1860.

²¹ Section 3, The Protection of Women from Domestic Violence Act, 2005.

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