
PROTECTION OF DOMESTIC VIOLENCE ACT TO A WOMAN UNDER LIVE-IN-RELATIONSHIP

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Abstract

Modern society is facing a new concept of martial relation known as live-in-relationship. Now it has been legalized in the celebrated case of Lata Singh V. State of U.P. (2006) and affirmed by the Apex court in Indra Sharma v. V.K.V. Sharma (2014). The purpose of present article is to explain the legal aspects of the live-in-relationship and under what circumstances such relations may be legally accepted and when such relation will not be permissible. Now it has become well established principle of Law that any major boy or girl is free to marry anyone he/she likes or live with anyone he/she likes. It means major boy or girl have freedom to marry anyone to lead a married life or without marriage have freedom to live with the desired one. In later condition live-in-relationship arises. It means two persons of opposite sex living as husband and wife without being married attracts such relation. The days are not far off when such relation will become common in Indian society. The moot question of the present article is that whether and under what conditions a woman living under such relation may claim protection of the Domestic Violence Act, 2005. Relationship in the nature of marriage is very significant element for getting protection of the D.V. Act. A concubine or mistress cannot claim such protection. The present work has tried to highlight these aspects in a very lucid manner with the help of decided cases and aims at public awareness towards legal protection available at present.

Keywords: Shared household, Live- in- relationship, Hetero, Apposite, Lesbian, Monogamous, Ostracism, Consanguinity, Sine qua non, Domestic Violence, Concubine

Introduction

"Protection of Domestic Violence Act to a woman under live-in-Relationship"

The provisions of the Domestic Violence Act, 2005 are intended to achieve the constitutional principles laid down in Article 15(3), reinforced vide Article 39 of the constitution of India. Article 15(3) provides: "Nothing in this Article shall prevent the State

from making any special provision for women and children". Article 39 provides that the State, in particular, direct its policy towards securing:

(a) that the citizen, men and women equally have the right to an adequate means of livelihood ;”

The D.V. Act, 2005 has now been enacted to provide an effective protection of the rights of woman guaranteed under the Constitution, who are victims of violence of any kind occurring within the family. The Act provides remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence. Chapter IV is the heart and soul Of the D. V. Act, which provides various reliefs to a woman who has or has been in domestic relationship with any adult male person and seeks one or more reliefs provided under the Act i.e., payment of compensation or damages, protection order by the Magistrate, residence order, monetary reliefs, custody of any child or children etc.

Conditions of Relief:-

The Act provides following conditions for the protection:

1. Aggrieved person and respondent.
2. Domestic relationship, and
3. Sufferance from domestic violence

Now above each condition needs explanation.

1- Aggrieved person: The person seeking protection must be aggrieved person. Section 2(a) defines it as: "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent". "Respondent" here means, "any adult male person who is, or has been, in a domestic relationship with the aggrieved person,

An aggrieved person or a protection officer or any other person on behalf of the aggrieved person may present an application to the magistrate seeking one or more reliefs under the Act¹

2- Domestic Relationship : It 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 as a joint family"². The party seeking protection has to establish that there is domestic relationship between the aggrieved person and the respondent.

Modern Indian society through the D. V. Act recognizes in reality, various other forms of family relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f) deals with a relationship between two persons of opposite sex i.e., woman (aggrieved person) and the respondent (man) 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.

Where the plaintiff is not in a domestic relationship, cannot get protection under the Act. The onus of burden lies on the aggrieved person i.e.; woman that she is living with the respondent in a domestic relationship.

In order to establish domestic relationship the following two things are required:

- (i) A relationship between the parties by any of the above (a) to (e), and
- (ii) Secondly, living together in a shared household. 'Shared household' has been defined under S.2(s) as : "a household where the person aggrieved lives or at any stage' has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. Shared house may not be a hotel or a tourist place for a short stay but stay for a considerable period may be relevant.

Relationship in the nature of marriage:

Relationship in the nature of marriage is very significant element in order to constitute live-in-relationship and this element is sine qua non in order to get protection by a woman under live in relationship.³

3- Sufferance from domestic violence:

The purpose of the Act is to provide protection to women who are victims of violence of any kind occurring within the family i.e; domestic violence and for matters connected there with or incidental there to. The term domestic violence has been defined under Section 3 of

the Act as: "any act, omission or commission or conduct of the respondent shall constitute violence in case it:

- a) harms or injures or endangers the health, safety, life, limb or well-being, whether or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse or verbal abuse and economic abuse, or
- b) harasses, harms or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security, or
- c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b), or
- d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. "

Explanation (1) of the Section explains the various abuses mentioned under clause (a). Explanation (2) explains that for the purpose of determining whether any act or omission, commission or conduct of the respondent constitutes "domestic violence", the overall facts and circumstances of the case shall be taken into consideration.

An woman who is under live-in-relationship under the above conditions may be able to seek protection under the D. V. Act, 2005.

Protection of women under live in relationship

Now the question is whether a woman under live-in-relationship can seek protection under D.V. Act. Before taking this aspect it is necessary to explain the nature and effect of live-in-relationship.

‘Live-in-relationship’ as such, is a relationship which has not been socially accepted in India unlike many other countries. This concept for the first time has been laid down by the Supreme Court in *Lata Singh V. State of U.P.*⁴ that a major boy or girl is free to marry anyone he/she likes or live with any one he/she likes. It means major boys and girls have freedom to marry any one to lead a married life or without marriage, have freedom to live with any one. In later condition live-in-relationship arises. It means two persons of opposite sex living as husband and wife without being married, are living together under live-in-relationship.

Thus the sexual relation between two consenting adults of hetero sexual sex does not amount to any offence⁴ with the obvious exception of adultery, even though it may be perceived as immoral. The observation of the Supreme Court is apt quoted⁵:

"This is free and democratic country, and once a person becomes a major he/she can marry who so ever he/she likes. If the parents to the boy/girl do not approve of such inter-caste or

inter-religious marriage the maximum they can do is that they can cut off social relations with son/daughter, but they can not give threat or commit or instigate acts of violence and cannot harass the person who undergoes such marriage and where they do so, should be proceeded against sternly in accordance with law by the authorities.⁶

Another leading case on the point is *Indra Sharma V. VKV Sharma*⁷, Appellant and respondent were working together in a private company. Respondent a married person having two children, was a personal officer of the company and the appellant aged 33 years was unmarried. Constant contacts between them developed intimacy and in the year 1992 appellant left the job and started living with the respondent in a shared household. Appellant's family members, father, brother and sister and wife of the respondent opposed the live-in-relationship. Respondent started business in her name and they were earning from that business. After some time, the respondent shifted that business to his residence and continued the business with the help of his son, depriving her right to working and earning. As per appellant they lived together in a shared household and, due to their relationship appellant became pregnant on three occasions, though all resulted in abortion. She was forced to use contraceptive to avoid pregnancy. Appellant provided Rs.1,00,000 to buy a plot in her name, but the same was not done. The respondent accepted such relations, and further took loan from her Rs. 2,50,000 which had not returned. It was also stated that respondent harassing her by not exposing her as his wife publicly, or permitting to suffix his name after the name of the appellant. Appellant also alleged that the respondent never used to accompany her to the hospital or make joint bank account etc. and the respondent left the company of the appellant without maintaining her. The Appellant then filed a Criminal petition. u/s 12 of the D.V. Act before the Metropolitan Magistrate, Bengaluru claiming order under Sec 18, 19, 20 of the D.V. Act.

The learned Magistrate found proof that the parties lived together for about 18 years and then the respondent left the company without maintaining her, therefore, domestic violence has been established. In appeal before the session court u/s 29 of the D. V. Act, the Session Court upheld the order of the lower Court. The respondent then appealed before the High Court, which allowed the Appeal and set aside the order passed by the courts below. Aggrieved by the same this appeal has been preferred by the appellant to the Supreme Court.

Concern of the Court in this case was of third enumerated category i.e; the expression "relationship in the nature of marriage" which falls under Section 2(f) of D.V. Act which means a relationship has some inherent or essential characteristics of a marriage. Reference

to certain situations in which the relationship between an aggrieved person (woman) referred to in Section 2(a) and the respondent (man) referred in Section 2 (q) of the D. V. Act, would or would not amount to a relationship in the nature of marriage, would be apposite.

Examples of live-in-relationship:

1. 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 together in a shared household will be a relationship in the nature of marriage i.e., will fall under the definition of Section and in case there is any domestic violence, the same will fall under Section 3 of the D.V. Act and the aggrieved person can always seek relief provided under the D.V. Act. Such relation has only legally recognized as live-in-relationship.

2. Domestic relationship between an unmarried woman and a married adult male:

Relationship between an unmarried woman and a married male can never be a relation in the nature of marriage and the status of woman will always be of a concubine or a mistress who cannot enter into a relationship in the nature of marriage, therefore, cannot seek protection under the D. V. Act

3. Domestic relationship between a married adult woman and an unmarried adult male:

Relationship between a married adult woman and an unmarried adult man can never be a relation in the nature of marriage and status of woman always be of a concubine or a mistress, therefore, cannot seek protection under the DV Act.

4- Domestic relationship between an unmarried women unknowingly enters into a relationship with a married adult male:

Such relation will also fall in the nature of marriage and will be covered under the D. V. Act. The relevant case on the point is *Badshah V. Badshah Godse*⁷, where the Supreme Court held that where an unmarried woman in good faith marries a married man who has concealed the fact of the first marriage. Such woman will be treated as legally wedded wife for the purpose of claiming maintenance and will be entitled to maintenance under the Act. This is an apt case where such woman can seek protection under D.V. Act.

5. Domestic relation between same sex partners (Gay and Lesbian):

D V Act does not recognise such a relationship and that relationship cannot be termed as the relation in the nature of marriage under the Act. Although some countries like Australia, New Zealand, South Africa, U.K. etc. have recognised the relationship between

the same sex couples and have brought these relationship into the definition of domestic relationship.

Though gay relationship has now been legalised repealing Section 377 of the Indian Penal Code. But D V. Act requires aggrieved person as a woman and respondent as a man. Thus, gay relationship will not be covered by the D. V. Act.

Status of the Appellant

Appellant admittedly, entered into a live-relationship with the respondent knowing that he was married person, having wife and two children, hence the generic proposition laid down by the Privy Council in *A.Dinohamy V. Wiketunge L. Balshamy*⁸, that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of marriage, and the status of appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogenous in character. Reference may also be made to the judgment of this court in *Badri Prasad V. Director of Consolidation*⁹ and *Tulso V. Durghtia*.¹⁰

Long and continuous Cohabitation:

In *Gokal Chand V. Pravin Kumari*¹¹

this court held that the continuous cohabitation of man and woman as husband-and wife may raise the presumption of marriage, but such a presumption of long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them, viz ;

- (i) polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or
- (ii) A relationship by way of bigamous marriage that is marrying someone while already married to another, or
- (iii) maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife, cannot be said be a relationship in the nature of marriage.

In the present case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a concubine or a mistress, who cannot enter into relationship in the nature of marriage. Judgment in the case of *velusamy*

V.D. Patchaiamal¹² may also be referred, such instances are many where married person maintain and support such types of woman, either for sexual pleasure or sometimes for emotional support. Woman a party to that relationship does suffer social disadvantages and prejudices, and historically, such a person has been regarded as less worthy than the married woman. Concubine suffers social ostracism through the denial of status and benefits, who cannot of course, enter into a relationship in the nature of marriage.

The principle of law laid down in *Indira Sharma V. VKV Sharma* (Supra) was followed in *Narayan Jangluji Thool & others V. Mala Chandanvani*¹³, that Section 2(f) of Act, 2005 does not require that a woman should be a wife and it is enough that she is living with a man in relationship, which is similar to that of a marriage. But there is a rider to it that she should be unmarried and be otherwise qualified to marry. In the instant case petitioner is a married woman whose marriage with her husband is still subsisting and this being the position, her relationship with another man outside marriage cannot be termed as domestic relationship under Section 2(f) of the DV Act, 2005, therefore, she cannot seek protection under the Act and if the proceedings are allowed to be continue, it would be nothing but abuse of the process of law.

Conclusion

To conclude, it is crystal clear from the ruling given by the Hon'ble Supreme Court that a woman who is married, cannot enter into a domestic relationship as contemplated under Section 2(f) of the D.V. Act and even if she established a long standing sexual relationship with a man will be considered his concubine or mistress, therefore, she would not be entitled for protection under the provisions of the DV Act, 2005. The act fulfils the constitutional mandate as enshrined in the Constitution of India.

References

1. Section 12 of the Act.
2. Section 2(f) of the Act.
3. *Indira Sharma V. VKV Sharma* AIR 2014 SC 309, *Badri Prasad V. Director of consolidation* AIR 1978 SC 1757, *Tulso V. Durghatia* AIR 2008 SC 1 173, *Narayan Jangluje V. Mala Chandan vani* AIR 2015 Bom 36.
4. AIR 2006 SC 2522
5. Justice Markandey Katju and Ashok Bhan JJ.
6. AIR 2006 SC 2522
7. AIR 2014 SC 309
8. AIR 1927 P.C. 185

9. AIR 1978 SC 1757, (1978) 3 SCC(52)
10. AIR 2008 SC 1193, (2008) 4 SCC 520
11. AIR 1952 SC 231
12. AIR 2013 SC 479
13. AIR 2015 Bom. 36