

PALIMONY: RECOGNITION OF WOMEN'S RIGHT FOR MAINTENANCE IN LIVE-IN RELATIONSHIPS

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ABSTRACT

The Supreme Court of India has since the year 2010 delivered judgments granting maintenance to partners in a live-in relationship, if their relationship passes the litmus test of the guidelines laid down by the Hon'ble Court in a catena of cases. Besides the apex court, the Law Commission of India, National Commission for Women and the Malimath Committee have all endorsed the concept of granting maintenance or 'palimony' to the aggrieved partner of a live-in relationship. In spite of such progressive strides taken by the aforementioned authorities, the parliament has refrained from framing any statutes that would work towards the regulation of live-in relationships. This has given rise to an extremely undesirable scenario where increasingly plural fractions of the society, namely the unmarried domestic partners, are not being accounted for and governed by explicit statutes. It is submitted that the welfare of these citizens cannot be left at the mercy of judicial interpretations any longer. The promulgation of the concept of palimony in India is not only in conformity with the modern relationship trends but also with the spirit of the Constitution of India which is secular to its very core and takes a stand for a Uniform Civil Code.

The present paper aims to bring to the fore the various cases adjudicated upon by the Courts in the matter of granting maintenance to partners of live-in relationships and furnish the paucity of information regarding the concept of palimony in India.

Keywords- Palimony, Maintenance, Live-In Relationship, Domestic Partners, Wife, Maintenance.

INTRODUCTION

The division of financial assets and real property upon the termination of a personal live-in or a domestic relationship, wherein the parties share a “relationship in the nature of marriage”, is termed as ‘palimony’. The term is not a consequence of any legal or historical legacies but is rather a colloquial portmanteau of the words ‘pal’ and ‘alimony’ coined by an American divorce attorney by the name of Marvin Mitchelson, when his client Michelle Triola Marvin filed an unsuccessful lawsuit against the actor Lee Marvin.ⁱ While the suit was unsuccessful in this instance, the courts (American) found that if no express agreement exists between the couple, a variety of other remedies can be looked into by the courts for dividing the assets owned by the couple.ⁱⁱ

Under the Indian law, the husband and wife are considered as a single entity and enjoy multiple benefits derived from the different personal laws which are in force in the country. Marriage provides a sense of validation for two persons to cohabit not just in the eyes of the law but also in the eyes of society. The children thus born out of a legally valid marriage are considered as the legitimate children of the couple; the wife is entitled to maintenance during the subsistence of marriage and even after the dissolution of marriage and also alimony if the court deems it fit to grant such an allowance. However, these benefits of marriage come bearing responsibilities. The marital obligation towards the marital home and towards your spouse and children forms an inextricable part of the Indian marriage. In order to escape from the duties and obligations of a traditional marriage and yet enjoy the benefits of cohabiting together, the couples in modern times have developed the concept of live-in relationships or domestic partnership.

However, there does not exist, to this date, any specific statutes which attempt to regulate domestic partnerships directly. As a result, the definition or the position of domestic partners in a live-in relationship and consequently palimony is not clear. There is no legislation to define the rights and obligations of the couples in a live-in relationship or the status of children born out of such relationships. In the absence of any legislation to define the status of live-in relationships; the Courts have come forward to give clarity to the concept of domestic partnership.

CONCEPT OF PALIMIONY

During the past fifty years, there has been a substantial increase in the number of couples living together without marrying. Such non-marital relationships result in the legal uncertainties when one partner dies, or when the couple separates. This is exacerbated when one partner relies substantially on the other for financial support throughout the relationship. The concept of 'palimony' sounds very similar to 'alimony', and in practice, it is essentially alimony for the separating couples who have cohabited, unmarried. 'Palimony' can take many forms, from a one-time payout to monthly maintenance payments.

The expression 'palimony' was coined in United States of America by California Superior Court in 1976 in the famous case of *Marvin v. Marvin*. 'Palimony' means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him and is then deserted by him. Palimony is the payment of support from one partner to another one after an unmarried couple who lives together has broken up. Subsequently in many decisions of the courts in United States of America, the concept of palimony has been considered and developed. The US Supreme Court has not given any decision on '*whether there is any legal right on palimony or not?*', but there are several decisions of the courts in various states of United States of America. The courts in United Nations of America have taken divergent views, some granting palimony and some granting it on certain conditions.

ORIGIN OF THE CONCEPT OF PALIMONY

In the present paper, it has been already discussed that the meaning and basic understanding of palimony, but it seems also important to discuss the origin of the same as it is not mentioned anywhere in the present statutes. This justified concept for women is evolved from the very famous case of California name *Marvin v. Marvin*. Palimony is not a legal term. In this case, Lee Marvin, an actor was sued by his longtime girlfriend Michele Triola. Triola claimed that Marvin had agreed to support her financially if she gave up her own career and moved in with him to become a homemaker. When the unmarried couple split, Triola sued for what Marvin

had promised, half of what he had earned during their relationship. Michelle's plea for alimony which has specially reserved for 'spouse support' was unsuccessful, even as her attorney made the case that the couple had lived together as though they were married for years. In its ruling, the California court pointed out that the state has abolished the 'common law marriage'ⁱⁱⁱ at the end of the nineteenth century but that it did recognize relationship contracts between the non-married partners. Michelle argued that Marvin had indeed promised to support her for the rest of her life and had given her an interest in her property. Although, the couple's agreement was not in writing, the California Supreme Court nevertheless held that a written contract was not required for so called palimony support, but that the conduct of the parties could create an implied contract.

McCall v. Frampton was another example of palimony involving celebrities was the case of rock musician Peter Frampton being sued by his ex-girlfriend, Penelope McCall in 1976 after their breakup over an affair. McCall had sued for half of Frampton's earnings during the five years that they were living together, as well as half of the value of Frampton's fifty-three acres estate in the Westchester country. McCall claimed to have given up her profession as a rock promoter to instead dedicate herself to furthering Frampton's success and that she did so at the exact point when he reached superstar status. McCall claimed she would do everything for Frampton, from picking out his clothes to inspire his hit songs and that as successful as he was, they were being successful together. The judge ultimately ruled that Frampton and McCall had never held themselves out to public as husband and wife and therefore had never intended to get married at all. The judge dismissed McCall's complaint on the grounds that if the complaint was not dismissed then the court would otherwise be condoning adultery. The case went on to set precedent in New York. This means it is not necessary for the couple to live after doing marriage but it is necessary for a man and woman to live like couple even without marriage in the society.

MEANING OF MARRIAGE

The 'Hindu Marriage Act, 1955' is the legislation which relates to marriage among Hindus and applies also to Buddhists, Jains and Sikhs. While marriage is not defined under the Hindu

Marriage Act, Section 7 of the act lays down that a Hindu marriage may be solemnized in accordance with the “customary rites and ceremonies” of the either party. Section 7 further elaborates that where the rites and ceremonies include the ‘satpadi’ means taking of seven steps by the bridegroom and bride jointly before the sacred fire, the marriage is only said to be complete when the seventh step is taken completely. The provisions of Hindu Marriage Act thus apply to marriage as understood in accordance with the Section 7 of the act. At present, the Hindu Marriage Act does not apply to the other relationships.

WHO IS WIFE?

The definition of wife as per the Explanation (b) of Section 125 of the Criminal Procedure Code that provides for maintenance is that "Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried." In *Vimla (K) vs. Veeraswamy (K)*^{iv}, a three-Judge Bench of the Supreme Court explained the meaning of the word 'wife' the Court held:

*“...The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative(sic) the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. **The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective (of Sec. 125 Criminal Procedure Code) ...”***

The Supreme Court has not stifled with the fundamental fount of humanity at the moment by restricting or limiting the grant of relief exclusively to the legally married wife. It has refrained from economically handicapping the legally overcome female partner and has consistently passed judgments in favour of expanding the ambit of the definition of a ‘wife’. In this respect, subsequently the Supreme Court in *Savitaben Somabhat Bhatiya v. State of Gujarat and others*^v has been commiserative with the plight of the women whose position in the

relationship has been akin to that of a legally married wife save the status of the word 'wife'. It has been the Hon'ble Court's opinion that such women should not be robbed of their right to claim maintenance.

Therefore, it is submitted that the woman in the live-in relationship (which meets the criteria laid down by the Supreme Court) can move court for maintenance as she is covered by the judicial interpretation of the definition of a "wife" under the above stated provision.

EVOLUTION OF THE CONCEPT OF PALIMONY IN INDIA OR HISTORICAL BACKGROUND

The concept of palimony is not common in India till now also there is neither any codified law regarding this and nor it is mentioned in anywhere of the statute. But the concept has emerged or evolved in India from the landmark case on this in the year of 2008. The Supreme Court of India contemplated the granting of palimony under Section 125 of Criminal Procedure Code in *D.Velusamy vs. D. Patchaiammal*^{vi}. The Supreme Court examined the trend of trying to apply or observe if the concept of palimony which arises out of the famous case of *Marvin v. Marvin*^{vii} and *Taylor vs. Fields*^{viii} in the California Supreme Court can be applied in India as well. The Hon'ble bench however held that- "In the case before us we are not called upon to decide whether in our country there can be a valid claim for palimony on the basis of a contract, express or implied, written or oral, since no such case was set up by the respondent in her petition." This is unfortunately the closest Indian Judiciary has ever come to addressing the concept of palimony directly. However, the granting of maintenance after the breaking-up of a live-in relationship has been dealt with in number of cases and it is submitted that this 'maintenance' granted to domestic partners under Sec. 125 of Criminal Procedure Code in India.

In a judgment delivered on 13 April 2015 by the bench consisting of Justices M Y Eqbal and Amitava Roy^{ix}, the Supreme Court ruled that "*couples cohabiting in live-in relationships will presumed to be legally married.*" The Apex Court also held that "*in the event the man dies, then his partner would be legally entitled to inherit his property.*" It was also held that "*a*

couple living together for a number of years would rightfully lead them to presume that the couple was, for all intents and purposes, married.”

Since the year 2010, the Hon’ble Supreme Court has consistently ruled in favour of women reiterating that *women should get the rights equivalent to that of a wife, in case of live-in couples*. These rights include but are not limited to-

- protection from domestic violence, the right to inherit property,
- the legitimacy of her children and
- the maintenance of women after split.

The legal right to maintenance for women involved in live-in-relationship has been adjudicated upon by the Supreme Court in the case of *Virendra Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha and Anr.*^x The brief facts of the case were that the appellant woman had married the younger brother of her deceased husband, which was consistent with their prevalent customs and usage. They had cohabited together as husband and wife for a considerable period of time. Thereafter, shockingly and unfortunately the husband (respondent) started harassing the appellant wife and also refused to provide her maintenance.

In this instant case, the Delhi High Court held that the appellant wife was not entitled to maintenance as she had failed to establish her legal status as a wife under section 125 of Code of Criminal Procedure. However, the Supreme Court reversed the decision of the Delhi High Court and awarded maintenance to the wife (appellant) saying that provisions of Sec. 125 of Criminal Procedure Code must be considered in the light of Sec. 26 of the Protection of Women from Domestic Violence Act, 2005^{xi}. In brief, the Supreme Court reiterated its previous position and held that *“women in live-in-relationships are equally entitled to all the reliefs which are available to legally wedded wife”*.^{xii}

Again, giving cognizance to live-in relationships, the Supreme Court in the case of *D. Velusamy v. D. Patchaiamma*^{xiii} has held that, a ‘relationship in the nature of marriage’ under the 2005 Protection of Women from Domestic Violence Act must also fulfil some fundamental criteria. *“For a relationship to be in the nature of marriage, it needs to be a full-fledged domestic relationship and not merely a means for sexual gratification”*¹⁴. The apex

court has time and again reiterated that “*if the man has a live-in arrangement with a woman only for sexual reasons, neither partner can claim benefits of a legal marriage*”.

In order to be eligible for ‘palimony’, a relationship must comply with certain conditions:¹⁵

- (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.

In addition to the above the Supreme Court in *Indira Sarma vs. V.K.V Sarma*^{xiv} has added to the above that “*the duration of cohabitation during the relationship, shared household, accumulation of monetary resources and financial arrangement between the parties, domestic arrangements, children, and socialization of relationship in public sphere are some more guide lines which aim to construe the same*”.

STATUS-QUO OF LEGISLATION REGARDING PALIMONY IN INDIA

As regards the establishment of a live-in relationship is concerned, Section 114, Indian Evidence Act, 1872, reads that where independent evidence of solemnization of marriage is not available, it will be presumed to be a valid marriage by continuous cohabitation between the parties unless the contrary is proved^{xv}.

At this time, there are no specific legislatures active in India that regulates the law regarding palimony. However, according to sub-clause (d) of Section 20 of the Domestic Violence Act, 2005 which defines “Monetary reliefs” for an “aggrieved person”-

20. Monetary reliefs. - (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person

as a result of the domestic violence and such relief may include, but not limited to, -.....

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

The “aggrieved person” includes not only the legally valid status of “wife” but also an unmarried woman in a live-in relationship. As stipulated by the clause above, this “aggrieved person” can approach the court for maintenance

Till today’s date, there is no specific statutes which attempt to regulate domestic partnerships directly. In the country i.e India which has a huge concept of various coded law, *there is no statute even a single one which clearly specifies about ‘palimony’ and the legislatures of the country never took any burden to codify it in the form of law.* ‘Hindu law’ is a ‘substantive law’ and not the ‘procedural law’, which means that the substantive law always talks about the duties and liabilities of the partners along with their legal rights but unfortunately, ‘Hindu law’ even it is a substantive law remains silent about the legal right of maintenance of the unmarried women of live-in-relationships. As a result, the definition or the position of domestic partners in a live-in relationship and consequently palimony is not clear. There is no legislation to define the rights and obligations of the couples in a live-in relationship. In the absence of any legislation to define the status of live-in relationships; the Courts have come forward to give clarity to the concept of domestic partnership.

JUDICIAL PRECEDENTS ON THE APPLICATION OF HINDU MARRIAGE ACT TO NON-MARRIAGES

Indian courts are increasingly allowing claims under the Hindu Marriage Act in cases involving relationships which are not marriages. In 2015, the two-judge bench of the apex court in the case of *Madan Mohant Singh v. Rajni Kant*^{xvi} ruled that “*an unmarried couple living together under the same roof will be presumed to be married, and the woman would be entitled to inherit the legal property after the death of her partner*”

In *Uday Gupta v. Aysha*^{xvii}, the Supreme Court clarified that “*children born out of live-in relationships could not be termed illegitimate*”. When applying Section 16 of the Hindu Marriage Act which talks about ‘Legitimacy of children of void and voidable marriage’ to non-marriages, the Supreme Court has preferred the purposive interpretation approach i.e the court has interpreted the legal provisions by determining the purpose and intention behind enacting the legislation.

In May of 2015, the Supreme Court ruled that “*a man is obliged to pay palimony or alimony (maintenance) to a woman with whom he was in a live-in relationship*”.

RECOMMENDATIONS

The National Commission for Women recommended the inclusion of live-in female partners for the right of maintenance under Section 125 of Cr.P.C to the Ministry of Women and Child Development in the month of June in 2008^{xviii}. The view of the National Commission for Women was seconded by the judgment in *Abhijit Bhikaseth Auti v. State of Maharashtra and Others*^{xix} where the apex Court observed that establishing the marriage as a fact by the women was not a necessary pre-requisite to claim maintenance under sec. 125 of Criminal Procedure Code. A woman living in a live-in relationship (albeit a relationship in the nature of marriage) also has the right to claim maintenance.

The Government of Maharashtra in the month of October 2008 endorsed the concept of live-in relationships as it accepted the recommendation made by Malimath Committee^{xx} and Law Commission of India. The Malimath Committee had advocated the granting of the legal status of wife to a woman who has cohabited in a live-in relationship for a considerably long period of time. *The Malimath Committee made several recommendations in Part IV, Chap.16 under the Head “Offences against Women” has observed; “that the definition of the word ‘wife’ in Section 125 of the Criminal Procedure Code should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage.”*

CONCLUSION

The right to maintenance should also be granted to male partners of a live-in relationship. If this is not done then the aforementioned concept would become a tool for legalized extortion for women. The word men/women should be replaced by the word person whereas the word husband/wife should be replaced by the word spouse/partner in the section made for maintenance. In cases where the claimant partner is educated and fit for employment, so it is necessary to consider this while deciding the payable amount. In cases where the claimant partner has already filed for maintenance under Section 125 of Criminal Procedure Code, no claim under any other sections of the respective personal laws should be allowed. An upper ceiling needs to be placed on the maintenance being granted irrespective of the gender of the sued partner.

The Constitution of India proudly declares itself to be secular and godless. Despite this fact, it is a very unfortunate circumstance that the same hasn't been promulgated in the country's personal laws. The Constitution takes a stand for a uniform civil code but the journey for the same has stagnated at the starting line itself. India continues to be governed by different personal laws which render it comparatively harder to settle disputes arising out of broken live-in relationships. Presently, the political scenario of the country doesn't seem to be receptive of promulgating a Uniform Civil Code anywhere in the immediate future. Amidst this undesirable condition, the only consolatory solution for 'live-in relationships' seems to be Section 125 of the Code of Criminal Procedure. The said provision is blind to the parties' religion and thus has the capacity to onset uniform judicial decisions for the couples in a live-in relationship.

Now that the live-in relationships have found their due recognition in the eyes of the law, it cannot and should not be ignored by the society any longer. With changing times, the thinking of the society should also evolve and accept the modern experiment in romantic cohabitation. The debate rages on in public forums whether or not to amend our respective personal laws. By amending our laws, we would take another step towards becoming a more civilized nation as it would grant universal acceptance to couples in such relationships and the label of 'taboo' would be lifted from the increasingly popular alternative to the traditional marriages. But in this quest, it would be a grave injustice to not consider the potentially harmful effect it could

have on a “legally wedded wife” and her children. In case a man maintains live-in relationship with another woman without the knowledge of his wife and the probability that such legalization will increase the practice of bigamy are the two main contentions of the critics of legalization of live-in relationships have aside from the done to death immorality. Any attempt to protect live-ins in personal laws must therefore tackle these two issues carefully.

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ENDNOTES

ⁱ *Marvin v. Marvin* (1976) 18 C3d 660.

ⁱⁱ *Ibid*

ⁱⁱⁱ Common Law Marriage- A union wherein a couple lives together for a period of time and acts as if they were married, but they never participate in a front ceremony or obtain a marriage license.

^{iv} (1991) 2 SCC 375.

^v AIR 2005 SC 1809.

^{vi} AIR 2011 SC 479

^{vii} (1976) 18 C3d 660

^{viii} 224 Cal. Rptr. 186

^{ix} *Ganeshram vs. Dhanulal and others*, AIR 2015 SC 2382.

^x 2011 (2) Bom CR 787, MANU/SC/0807/2010

^{xi} MANU/SC/0807/2010, Para. 43

^{xii} MANU/SC/0807/2010, Para. 42

^{xiii} AIR 2011 SC 479

^{xiv} AIR 2014 SC 309

^{xv} Section 114- Court may presume existence of certain facts. -The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

^{xvi} AIR 2010 SC 2933.

^{xvii} AIR 2014 SC 3390.

^{xviii} Annexure - IV: Reports on implementation of the Protection of Women from Domestic Violence Act, 2005

^{xix} AIR 2009 (NOC) 808 (Bombay)

^{xx} *Reforms of Criminal Justice System*, 2003, pp. 197