

**Live-in Relationship & Alimony With Reference To The Judgement Dated 21st October 2010
On Crl. Appeal No.s 2028-2029/2010 Between D. Velusamy V D. Patchaiammal**

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Contemporary Scenario :

In the current run of time the wonderful incident that we see is human beings are gradually getting conscious of their rights inclusive of the rights of relationships. Apart from all other shreds of struggle for rights, the said rights of conjugal relation or conjugality are menacing in the event of contemporary trend of increasing conjugal disloyalty and displeasure. The run does not remain so smooth sailing merely when it casts the look of a passion or frenzy or a mania. As human animals are relatively more ingenious than other species they seek to take advantage of every relationship they inherit and every other relationship they acquire socio-culturally : approved or incestuous. A relationship of a man with a woman in legal parlance is legitimate if is based on proper marriage and illegitimate if not as per Marriage Laws.

Marriage Laws or Laws of Conjugality in India :

Sparing of Muslims regulated by their personal law of Shariat, rest of Indians are ruled by mainly two marriage laws such as the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 for the purpose of proving one's marriage valid to establish an existing relationship or divorce while the pre-existing relation qualifies one for maintenance. Hindus obviously adopt the Hindu Marriage Act and the Hindus as well as non-Hindus who abide by the Registration Laws or Laws of Oath before the competent courts of Magistracy or Oath Commissioners or Notaries for the sake of their wedlock have to obey the Special Marriage Act. Hindu Marriage a custom driven affair has its institutional sanction and validity if solemnized through proper rites or ritualism as premised by our custom. The marriage to be cogently supported by evidence in respect of its continuance taking the number of days, months or years the legally married wife resided under the same roof with her husband and in-laws at the matrimonial home with merriments and mirth and during her stay co-habited with her husband.

Pleas of Marriage Break-up & Qualification to Break-up Benefits legally called Maintenance :

The said marriage after being thus legally accepted can attract all the post-marital benefits unless there is visited any undesirable hassle. Usually a male partner does not allege of any animosity notwithstanding the presence of adequate unpleasantness or of any untoward chain of circumstances towards irretrievable damage to conjugality and proneness to break-up of marriage. The break-up of marriage that comes by degrees in forms of judicial separation and at the end

dissolution on grounds of cruelty, fraud, desertion, psychopathic disorder, adultery and impotency or disability for sexual consummation. Even otherwise the one who comes forward with a complaint is not well received by the portals of law that bear a feminist view. But congenially, the legally married wife feeling no more to sustain her relationship with her married partner after separation or divorce can assert her claim to be maintained by her ex-husband if she qualifies to apply for that. Question of qualification crops up in the context when the divorced consort is not engaged with other partner by remarriage.

Marriage Made in Heaven, Broken on Earth Pays for Hearth :

In the angle of the unpopularly popular accusation of the protracted female domination and torture in the hands of their male counterparts, the pecuniary consolation or solatium might have some scruple. But the other way round the subsistence of the female non-cooperation and abuse of the leverage issued by congenial matrimonial laws is myopically not taken notice of. The unwilling female partner to continue a conjugal tie with her husband is entitled to a maintenance or alimony subject to divorce whereas the divorcee husband who is unable to remarry has no benefit of even any deduction if not complete reprieve from the amount of maintenance he is enjoined to pay every month. The evidentially proven guilty husband having source of income is enjoined to pay alimony and the non-earning faces imprisonment. No matter if the non-earning wife is maintained. Yet, the earning wife is also vitally not asked to pay for her resolution to be separated from her divorced husband till he is remarried if in any event he has no stable income or has lost that by the time of divorce. Liberty administration ought to be equitable if conjugality is to be based on finance and individuality has to be credited. Is n't it?

'Wife' Denoted when Defined from Divorce Angle Demanding a Due or Damage As If Demurrage :

Here it is apt and apposite to learn the definition of wife as per the Explanation (b) to Section 125 of the Cr.P.C. that provides for maintenance. As per 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)* [(1991) 2 SCC 375], a three-Judge Bench of the Supreme Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining 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 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. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision."

The Supreme Court has not smothered the basic source of humanity at the moment of administering relief only to the legally married wife in its test of a claimant woman's entitlement to maintenance. It has rescued itself from the hang-over or hallucination of 'wifehood' and been roused of inadequacy of law. The equitable eye of law while meting out justice to the legally overcome wife can not ignore to take notice of the interest or need of the woman who is either married otherwise although unrecognized by law or not married even leads a wife-like life with a man. In this respect, subsequently the Supreme Court in *Savitaben Somabhat Bhatiya vs State of Gujarat and others*, AIR 2005 SC 1809, has been commiserative with the plight of the unfortunate woman unwittingly entered into wedlock with a married man but without amendment have restrained to inculcate a woman not lawfully married within the expression of 'wife'.

Definition of 'Wife' as per Glossaries :

Unlike the legal connotation of wife obliquely provided in view of divorce and the assertion of maintenance the lexical meaning is relatively straighter. To follow their footprints, Chambers glossarist refers 'wife' to a woman: a married woman: the woman to whom one is married: the mistress of a house, a hostess (obs.). The Oxford Advanced Learner's glossarist agrees with the former. In olden times wife was status-specific which replaces the 'wife' of the present period that is rights-efficient that demands an alimony while being divorced if not willing or well circumstanced to remarry. But the point to press is that where legal provision removes the cloud and serves the purpose the linguistics loses its reading and remedies.

From the De novo plea of 'Domestic Violence' Relationship of Mistress And Damage Against End of Relationship :

Apart from the pleas discussed heretofore a new plea under a novel statute called the Protection of Women from Domestic Violence Act, 2005 (in short the "Act") has come to the focus with the sole intention of claiming maintenance. Maintenance being admissible to the legally married wife not remarried even after the dissolution of conjugal relationship by the effect of divorce whether accommodates "woman other than wife" is a matter of wide debate. The judgement under scrutiny extricates the definitions of concepts "aggrieved person" and "domestic relationship"; "shared household", various acts or abuse inclusive of "economic abuse" constituting "domestic violence" for the purpose of maintenance to exhaustively examine as to whether domestic violence explains

the legitimacy of claim as well as satisfies the ingredients of compensating with maintenance. In this favour,

Section 2(a) of the Act states :

"2(a) "aggrieved person" means 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";

Section 2(f) states :

"2(f) "domestic relationship" 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";

Section 2(s) states :

"2(s) "shared household" means 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."

Section 3(a) states that an act will constitute domestic violence in case it-

"3(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse , sexual abuse, verbal and emotional abuse and economic abuse,"

(emphasis supplied)

The expression "economic abuse"has been defined to include :

"(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including but not limited to household necessities for the aggrieved person and her children, if any stridhan, property,

jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance."

(emphasis supplied)

'Relationship in the nature of marriage' and the Protection of Women from Domestic Violence Act, 2005 :

As earlier, the Act has an advantageous aspect of granting 'maintenance' under section 20(1)(d) by the Magistrate approached by any aggrieved person under section 12. It is also provided vide section 26(1) that the relief mentioned in section 20 may also be sought in any legal proceeding, before a civil court, family court or a criminal court. Pertinently, the Protection of Women from Domestic Violence Act, 2005 speaks that the expression 'domestic relationship' comprises of not only the relationship of marriage but also a relationship 'in the nature of marriage' not being defined in the Act. Novel though of the kind and nascent in its emergence in Indian ambience, yet the approach before the Supreme Court by the appellant has afforded enough scope to it to distinguish the 'relationship of marriage' from the 'relationship in the nature of marriage'. The Supreme Court too has lent its view that in either case a person entering into either relationship entitles herself to the benefit of the Act.

View of Indian Judiciary On Conjugal Relationships :

Indian judiciary on contemporary emanation of new relationships between two persons of same and opposite sex has taken suitable steps to legally certify those treated indecent, incriminating and socially unhealthy once upon a time. The High Court of Delhi has led the pack in this respect and read out its verdict in favour of 'gay', 'lesbian', 'estranged' and 'transgender' relationships and marriage. Sociologists pun these prohibited relationships as 'taboo' and 'incest'. A relationship that is not injurious to the deep-seated social culture or values however preservative nor sends disintegrative and degenerative signals was legally sanctioned. But of late, the Supreme Court emancipates the mutually consensual relationships such as live-in and homo-sexual relationships held formerly abusive. Such attempt of the Supreme Court to convince the public expectants down the podium of justice that the law does not find flaw with these currently cultivated agencies of relationships within the parameters of liberty is perhaps to prepare the citizens to magnanimously bear with the evolution of time and the demand of the juncture.

Trend of Libertarian Society and Turn of Relief :

There is no dearth of libertarianism today at the expense of collective custom and cultural ethos. The semblance of incidents of 'social deviance' vibrantly evident in foods, clothings, culture, language, festivity, conjugality and objectivity though throws confusing challenge in chiseling sound

character of citizens is also on the contrary, bound to recur. Who can stem the tide of transforming the old customs when the ancient folkways and mores fall victim to the new wave or direction of wind? Who can answer as to why the 'mana' and 'fetishism' of yore and antiquity are re-interpreted and re-phrased as per the prerogative of change? The socio-economically cooperative family of yester years has replaced the self-sustaining, individually assertive, nuclear households wherein each member makes untiring efforts to establish his entity and express his taste and sense of aesthetics. The expressiveness has come to such pass that the mutually compatible partners of opposite sexes start living together like couple without marrying legally.

The emergence of unmarried camps or accommodations has wrought such havoc that the already married couple resolves to sever their wedlock dissenting the family burden and mutual bindingness. They often opt out of the joint family bondage wending their way into the self-lured though virtually deluded lease of life where there is no apparent let or hindrance. The mutually inseparable and emotionally sacrificial relationship between a husband and a wife on slightest affectation of ego tended to crumble requiring the divorced wife to be maintained by the divorcing husband. The spree was so much so that it does not spare to sensitize the transiently engaged partners while a female partner of the live-in relationship also comes forward to claim the maintenance deemed legitimate.

Their claim for maintenance has excited the debate as to whether woman maintaining live-in relationship with a man other than a wife is conferred any right under the provisions of the prevalent law to be maintained? In India, it is no as yet but, in other countries such as USA it is yes in case of the substantial period of co-existence of a woman with a man deemed to be an implied or constructive contract subsequently deserted by him as an apparently considered ground. There too being conflicts of legal rights in the absolute sense of the term, ubiquitously a deserted wife is only entitled to maintenance called in different names such as 'alimony' and 'palimony'.

A thorough survey of the foreign judgements such as Taylor v Fields (1986) 224 Cal. Rpr. 186 and Devacy vs L'Esperance 195 N.J., 247 (2008) etc. has also not attached importance with cohabitation or sexual service as a valid ground for palimony to a 'mistress'. Instead, it has recognized the common law marriage. The common law marriage requires :

- (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.

Settled Position As Compared between Inland & Alien Laws On Maintenance/Alimony :

Prior to coming to the conclusion about alimonies, let us notice how 'matrimonial injunctions' operate and are availed in which circumstances by the parties. Injunctions available in the High Court (if ancillary to other matrimonial proceedings) and county court restraining the other party to a marriage from molesting the applicant or a child living with the applicant or excluding the other party from the matrimonial home or requiring the other party to permit the applicant to enter and remain in the matrimonial home. Available also in the case of a man and woman living in the same household as a husband and wife. Alimony as understood by alien provisions of law can be intelligible from their Matrimonial Causes Act, 1973, Matrimonial and Family Proceedings Act 1984 etc. It is defined by Cowel as "That allowance which a married woman sues for on separation from her husband". Maintenance pending suit has replaced alimony pending suit; financial provision for a spouse has replaced an order for permanent alimony. 'Alimonia' the original Latin term means nourishment. Rather, the case *Carpenter v Carpenter* (1988) 18 Fam Law 56 specifies that a court has the power to attach a power of arrest to an injunction made in divorce proceedings or under the Domestic Violence and Matrimonial Proceedings Act 1976 but whispers not a single word about alimony. What is more an 'Exclusion Order' under section 16 of the Domestic Proceedings and Magistrates' Courts Act, the respondent to leave the matrimonial home and/or prohibiting him from entering it as clarified in *R v Sharples* [1990] Crim LR 198. After thorough scrutiny of all these therefore the Supreme Court of India arrives at the conclusion that a 'relationship in the nature of marriage' while fulfilling the above requirements must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'. Per se, a kept-mistress maintained financially and used sexually or manually might be a relationship in the nature of marriage. Yet, no 'live-in relationship attracts maintenance notwithstanding maintenance within the ambit of the Protection of Women from Domestic Violence Act, 2005 is available.

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