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THE RIGHT TO MAINTENANCE OF A  
WOMAN IN LIVE IN RELATIONSHIP: A CRITICAL ANALYSIS  
IN THE LIGHT OF JUDICIAL DECISIONS



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**ABSTRACT:**

India is a country with high morals and ethics, when we say ethics, the first question that, creeps into our mind is whether they are still prevailing. We have changed drastically. We consider ourselves to be developing, but how far and to what extent? Does this development mean imitating the western world and culture? We have entered into the modern world and when we call ourselves modern, morality is sublimed. Modern law is said to be manmade. It is only considered with acts and omissions and not bothered about the motives.

**KEYWORDS**

*Critical Analysis , Light Of Judicial Decisions , globalization, industrialization .*

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## INTRODUCTION :

Our morality starts with the family first. Family is therefore, recognized as a social unit of the people related to each other by kinship, marital and legal ties. It is an institution, which has its base in morals and ethics. The concept of family has been recognized in India since the time immemorial and had always been cherished strongly by the Indian traditions and culture. It has a mark of honor worldwide.

Marriage, that is the first step towards the formation of the family has always been considered as a sacred thing among all the religions prevailing in India. It was always considered as a knot whereby two opposite sexes unite to lay down the foundation of a family. The two partners bonded by the marriage, dedicated to each other will fight against all odds compromise in all adverse situations to make a strong foundation on which a strong family tree will grow. It had the elements of love sacrifice and understanding. In this backlight, it was rare for a marriage and the family to break up which in turn lead to the strong built up of the nation.

However, with the advent of the globalization, industrialization and development of the technology and with the entry of computers and Internet we started imitating the western culture. Pre marital sex & gay marriages have become a fashion. We started imitating the western culture without knowing its drastic effect and we had to pay price for it.

One of the most affected things with the advent of the modern culture was the concept of family and marriage. The marriage, which was considered as a sacrament since the time memorial, has no longer remained the same in the modern era. The tie of love and understanding once has now become a burden and responsibility for the spouses. The family courts are flooded with the litigations and the divorce has become a frequent phenomenon.

We can say the family has changed from the product to the consumption unit. Marriage is an initial stage of the family. Therefore, marriage was considered as sacred earlier, but not with the advent of generation next. Now the marriages are not made in heaven but on the earth. Marriage is no longer a devotion of a woman to man but contracting to live together on equal terms. This is how the concept of live in relationships has come into existence.

Live in relationship has been defined as arrangement of living under which the couple which is unmarried live together to conduct a long going relationship similarly as in marriage. It is nothing but a fashion and it is rightly said fashion grows where the custom breaks off. In the ancient times, we had the concept of the dharma, which included law, morality and religion within its ambit. But now this concept has become more vague and old fashioned.

India is a country, which is slowly opening its doors for western ideas and lifestyles, and one of the most crucial episodes amongst it is live-in relationship. We can witness the number of unmarried partners staying together is scaling high. Some couples find living together is easy. Others find themselves attacked by angry family members, excluded from faith communities and discriminated against because they are not married. In some places and situations unmarried partners can share a policy and can get certain legal protections; in other situations they are considered legal strangers with no rights even if they have lived together for decades. On the other hand it has also stirred up a debate about the morality and acceptability of live-in relationships in India. Live-in relationships in India are often treated as a crime by the so-called "upholders" of Indian tradition

The law traditionally has been biased in favor of marriage.- Public policy supports marriage as

necessary to the stability of the family, the basic societal unit. To preserve and encourage marriage, the law reserves many rights and privileges to married persons. Cohabitation carries none of those rights and privileges. It has been said that, cohabitation has all of the headaches of marriage without any of the benefits. Cohabiting couples have little guidance as to their legal rights in such areas as property ownership, maintenance, responsibility for debts, custody, access to health care and other benefits, and survivorship

### LIVE IN RELATIONSHIP VIS-À-VIS RIGHT TO MAINTENANCE.

The legally wedded wife can claim maintenance from husband under section 125 of Criminal Procedure Code, Protection of Women from Domestic Violence Act, 2005, and various personal laws. In order to see whether a women in live-in-Relationship can clam maintenance, under these acts a deep insight of these provisions become essential. According to section 125 Cr. P.C.

#### 125. Order for maintenance of wives, children and parents.

- (1) If any person having sufficient means neglects or refuses to maintain—
- (a) his wife, unable to maintain herself, or
  - (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
  - (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
  - (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

Explanation.—For the purposes of this chapter,

- (b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

Thus, only a legal wedded wife (along with other relatives) can clam maintenance under the provision. In Radhika-Vs-State of UP the court held, "Wife means legally wedded wife and not any other woman."

In Savitaben Sombhat Bhatiya Vs State of Gujrat and other, Supreme Court Held, " There is no scope to include woman not lawfully married within the expression of wife. In Yamunabai Anandrao V/s Anandrao Shivram Adhav and Another, court held. That the expression 'Wife' in section 125 of the code should be interpreted to mean only a legally wedded wife.

In D. Velusamy V/s D. Patchaiammal SC, held that, the a divorced wife is treated as a wife for the purpose of section 125 of Cr.P.C., but if a person has not even been married obviously that person could not be divorced.

Under the protection of woman from Domestic Violence Act 2005 and 'Aggrieved Person' can approach the Magistrate under section-12 and under section-20 (1(d)). The Magistrate can grant maintenance while disposing off the application. Under section-2(a), 'Aggrieved Person' means "Any

woman who is or has been in a domestic relationship with the responded.....”

Under Section-2(f) domestic relationship means a relationship between two persons live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relation ship in the nature of marriage, adoption or any family members living together as a joint family.

Thus, a woman though not legally wedded but living in a relationship can claim maintenance under the provisions of the said act, However in D. Velusamy V/s D. Patchaiammal the SC held, “In our opinion a relationship in the nature of marriage is akin to a common law marriage common law marriages require that although not being formally married:

- (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 our opinion live in relationship is not akin to common law marriage.

#### Maintenance under various personal laws such as:

- (a)Hindu Adoption and Maintenance Act 1956 (78 of 1956)
- (b)Muslim Women (Protection of Rights on Divorce)Act 1986
- (c)Parsi Marriage and Divorce Act 1936
- (d)Indian divorce Act 1869, can only be claimed by legally wedded wife and can not be claimed by a woman in live-in relationship.

However the SC in Chanmuniya V/s Virandra Kuman Singh Kushwaha held that, “ the Act of (2005) gives a very wide interpretation to the term Domestic relationship ‘As to take it outside the confine of marital relationships and even includes live-in relationships in the nature of marriage with in the definition of Domestic Relationship Under sec. 2 (f) of the act. Therefore the women in Live-in relationships or also entitled to all the reliefs. The court further held, We are of the opinion that, a broad and expansive interpretation should be given to the term ‘Wife’ to include even those cases a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under section 125 of the Cr. P. C. so as to fulfill the true spirit and essence of the beneficial provision of maintenance under section. We also believe that, such as interpretation would be a first application of the principles enshrined in the preamble to our constitution, namely, social justice and upholding the dignity of the individual.

The decisions of SC in S. Khusboo V/s Kanniammal , Vimda V/s Veeraswami and Dawarikaprasad Satpathi V/s Bidyut Prava Dixit cases are significant as the court has taken the view that maintenance can not be denied to a woman in live-in relationship.

Malimath Committee has also suggested that, word wife under section 125 of the cr. P.C. to be amended to include a woman living in live in relationships.

The Maharashtra Govt. taking the cognizance of this suggested reform in Oct. 2008 approved the proposal suggesting that, a woman involved in live-in relationship for a reasonable long period should get the status of a wife.

The National Commission for Woman has recommended to the Ministry of woman and child Development that, the definition of wife described in section 125 of the Cr. P. C. should include woman involve in live in relationships.

## CONCLUSION

The concept of live in relationship has entered in the Indian scenario, much welcomed by the generation next. It is here to stay. The necessity of the time to deal effectively with it socially as well as legally.

The law traditionally has been in favor of marriage and the legally wedded wife can claimed maintenance under the various provisions of law and personal laws. The decisions in Radhika V/s State of UP, Savitaben Bhatiya V/s State of Gujrat, D. Velusamy V/s D Patchaiammal are significant in that respect.

However that SC has taken the note of this modern development maid this relationship legal. The court further stressed the need to give the right in maintence to a woman in live in relationship. The decisions of SC in Kushboo, V/s Kannimmal, Vimala V/s Veeraswami and Dwarikaprasad Sathpathi V/s Bidyut Prava Dixit also points the need of right to maintenance of woman in live in relationship.

However the need of the time is to build special legislation on this modern phenomenon to deal effectively, with the emerging issues, related with it.

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