

## RIGHT OF MAINTENANCE TO WOMEN IN LIVE-IN RELATIONSHIPS – A CRITICAL COMMENT ON *INDRA SARMA V. V.K.V. SARMA*

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### CORAM:

**Court Name:** The Supreme Court of India.

**Equivalent Citations:** (2013) 15 SCC 755; (2014) 5 SCC (Civ) 440; (2014) 6 SCC (Cri) 593; 2013 SCC OnLine SC 1042.

**Appellant:** Indra Sarma.

**Respondent:** V.K.V. Sarma.

**Bench:** Justice K.S.P. Radhakrishnan, Justice P.C. Ghose.

**Date of Judgment:** 26<sup>th</sup> November 2013.

### ABSTRACT:

*The Hon'ble Supreme Court of India has played a vital role in upholding the rights of women. In the case of Indra Sarma v. V.K.V. Sarma, the Hon'ble Supreme Court dealt with the issue of live-in relationships and how far it is connected or permitted within the purview of the Protection of Women from Domestic Violence Act, 2005 in this context. This judgment addressed the contrast between 'live-in relationships' and 'relationship in the nature of marriage' and considered as a significant judgment over the issue. The current paper attempts to explore and assess all the aspects of the judgment and critically scrutinizing the approach of the Supreme Court and reliance placed on other provisions. It further explores the remedies available to the victims of live-in relationships.*

*Keywords: Relationship, marriage, remedies, live-in, rights, women.*

### INTRODUCTION:

The most contentious question before the Supreme Court of India is how far they should allow live-in relationships to be covered by *the Protection of Women from Domestic Violence Act, 2005*<sup>2412</sup>. The Hon'ble court in the case of *Indra Sarma v. V.K.V. Sarma*<sup>2413</sup> laid down

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<sup>2412</sup> The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

<sup>2413</sup> *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

guidelines on the most proficient method to mediate whether a particular live-in relationship is covered in the expression “relationship in the nature of marriage.”<sup>2414</sup>

## BACKGROUND:

Appellant, an unmarried woman, left her job and began a live-in relationship with the respondent, in 1994, despite knowing that he was married and had two children. The respondent inevitably quit living with the appellant in 2006 in a state where she could not maintain herself. Consequently, the appellant filed an application under *Section 12 of the DV Act*, claiming maintenance and various other reliefs. On the prefatory question of maintainability, both the magistrate and sessions courts simultaneously found it to be maintainable, on account of the parties have lived together for almost 18 years and ruled that a subsequent non-maintenance would constitute ‘domestic violence’.

However, the High Court of Karnataka set aside the orders of the lower courts by applying the test laid down in the *Velusamy*<sup>2415</sup> case and held the live-in relationship to be not one ‘in the nature of marriage’ within the meaning of section 2(f) of the DV Act.<sup>2416</sup> Pouncing upon such a demeanour, the aggrieved woman approached the Supreme Court. The precise question before the Supreme Court was, therefore, the correctness of the view propounded by the high court.

## ANALYSIS:

In this case, the court had to determine whether a woman in a live-in relationship could claim under the DV Act. To do so, the appellant would have to show that her relationship was covered under one of the enumerated grounds under *Section 2(f)*, which the Court read as exhaustive. The only possible ground was “*relationship in the nature of marriage.*” The Supreme Court observed that the expression “relationship in the nature of marriage” has not been defined in the DV Act. It means a relationship that has some inherent or essential characteristics of marriage though not a marriage legally recognised.

In reaching its decision, the court stated that while determining whether any act, omission, commission, or conduct of the respondent constitutes ‘domestic violence’, on a balanced

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<sup>2414</sup> Section 2(f), The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

<sup>2415</sup> *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

<sup>2416</sup> *V.K.V. Sarma v. Indra Sarma*, ILR 2012 KAR 218.

approach, after weighing up various factors which exist in a particular relationship and then reach a conclusion as to whether it is a 'relationship in the nature of marriage'. In this case, the court needed to consider the vastness of the term 'relationship in the nature of marriage' mentioned in *section 2(f)* of the DV Act. The court also noted relevant provisions under foreign statutes.

While arriving at this conclusion, the court laid down various criteria to determine what kind of relationships would fall within the ambit of the expression 'relationship in the nature of marriage' to provide a remedy at civil law to women who are part of such a relationship. In the case of *Meenakshi*, Madras High Court took the view that as long as the parties were close, and had lived together at any point of time, even without the promise of marriage, an application can be filed under the provisions of the DV Act.<sup>2417</sup> This view is on the premise that the provision in *section 2(f)* is intended to consolidate within the fold of the DV Act, all kinds of abuses dispensed to a woman by a man including where the relationship between the parties is by way of consanguinity and adoption.

In *Vimala v. Veeraswamy*<sup>2418</sup>, the court noticed that the term 'wife' is explained inclusively in *Section 125, CrPC*<sup>2419</sup> including former wives in certain situations. The court reckoned on the object of the provision of the section, i.e. to prevent vagrancy and destitution, and imposed a heavy burden of proof on the husband who was first married to prove the existence of the marriage. In this procedure, the court qualified an alleged second wife for maintenance in accordance with *section 125, CrPC*.<sup>2420</sup> However, the court made a series of rulings at the same time, and at the same time issued discordant notes, the court insisted that the woman prove a legal and valid marriage in order to claim maintenance under *section 125, CrPC*.<sup>2421</sup>

Along with these developments at the court, the legislative policy underwent a radical change when, for the first time, almost-marital relationships were covered by the DV Act. Defied with the cleavage in judicial opinion and the legislative change, the court in *Chanmuniya v. Virendra Kushwaha*<sup>2422</sup> rightly referred the matter to a larger bench for an authoritative

<sup>2417</sup> *M. Palani v. Meenakshi*, AIR 2008 Mad 162.

<sup>2418</sup> *Vimala v. Veeraswamy*, (1991) 2 SCC 375.

<sup>2419</sup> Section 125, The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

<sup>2420</sup> See also, *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*, (1999) 7 SCC 675.

<sup>2421</sup> *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530; *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636.

<sup>2422</sup> *Chanmuniya v. Virendra Kushwaha*, (2011) 1 SCC 141.

pronouncement, *prima facie* opining that a broad and expansive interpretation be given to the term 'wife' to include cases where parties, though not formally married, have been living together for a reasonably long period.

The Supreme Court, in supporting its conclusion in the present case, marshals the tort of alienation of affection and the same having been *prima facie* committed by the appellant-lady, which was imported into Indian law in the *Rawal*<sup>2423</sup> case. It is incredibly questionable to rely upon the woman being in the tort of alienation of affection to be denied maintenance from her male accomplice. By being denied maintenance, the person who gained was the respondent, while the sufferer was the appellant-lady.

## CONCLUSION:

The Supreme Court in *Indra Sarma* has attempted to lay down tests for determining the expanse of 'relationship in the nature of marriage' or what a quasi-marriage is. The apex court has attempted to balance between the rights of a woman on the one hand, and public policy considerations on the other. The court has frowned upon women who, by being in such relationships, actively contribute to the adultery.

In *Chanmuniya*, the apex court indicated that the definition of 'wife' under section 125, CrPC would draw some colour from the DV Act. The two-judge bench referred this question to a larger bench for an authoritative pronouncement.

The current judgment has played a key role in protecting women's rights and promoting gender equality. However, the court ought to have awaited the answers to the questions referred by *Chanmuniya*, as they would have had an undeniable impact upon the *lis* in *Indra Sarma*.

The primary concern, however, remains that till such time the legislature does not define 'relationship in the nature of marriage', the problem of interpreting it is going to haunt the Supreme Court.

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<sup>2423</sup> *Pinakin Mahipatray Rawal v. State of Gujarat*, (2013) 10 SCC 48.