REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2009 OF 2013
(@ SPECIAL LEAVE PETITION (CRL.) NO.4895 OF 2012)

Indra Sarma ... Appellant

Versus

V.K.V. Sarma ... Respondent

J U D G M E N T

K.S. Radhakrishnan, J.

Leave granted.

2. Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

3. We are, in this case, concerned with the question whether a "live-in relationship" would amount to a "relationship in the nature of marriage" falling within the

definition of "domestic relationship" under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short "the DV Act") and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to "domestic violence" within the meaning of Section 3 of the DV Act.

FACTS:

4. Appellant and respondent were working together in a private company. The Respondent, who was working as a Personal Officer of the Company, was a married person having two children and the appellant, aged 33 years, was unmarried. Constant contacts between them developed intimacy and in the year 1992, appellant left the job from the above-mentioned Company and started living with the respondent in a shared household. Appellant's family members, including her father, brother and sister, and also the wife of the respondent, opposed that live-in-relationship. She has also maintained the stand that the respondent, in fact, started a business in her name and that they were

earning from that business. After some time, the respondent shifted the business to his residence and continued the business with the help of his son, thereby depriving her right of working and earning. Appellant has also stated that both of them lived together in a shared household and, due to their relationship, appellant became pregnant on three occasions, though all resulted in abortion. Respondent, it was alleged, used to force the appellant to take contraceptive methods to avoid pregnancy. Further, it was also stated that the respondent took a sum of Rs.1,00,000/- from the appellant stating that he would buy a land in her name, but the same was not done. Respondent also took money from the appellant to start a beauty parlour for his wife. Appellant also alleged that, during the year 2006, respondent took a loan of Rs.2,50,000/- from her and had not returned. Further, it was also stated that the respondent, all along, was harassing the appellant 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

take her anywhere, either to the houses of relatives or friends or functions. Appellant also alleged that the respondent never used to accompany her to the hospital or make joint Bank account, execute documents, etc. Respondent's family constantly opposed their live-in relationship and ultimately forced him to leave the company of the appellant and it was alleged that he left the company of the appellant without maintaining her.

5. Appellant then preferred Criminal Misc. No. 692 of 2007 under Section 12 of the DV Act before the III Additional Chief Metropolitan Magistrate, Bangalore, seeking the following reliefs:

1) Pass a Protection Order under Section 18 of the DV Act prohibiting the respondent from committing any act of domestic violence against the appellant and her relatives, and further prohibiting the respondent from alienating the assets both moveable and immoveable properties owned by the respondent;
2) Pass a residence order under Section 19 of the DV Act and direct the respondent to provide for an independent residence as being provided by the respondent or in the alternative a joint residence

along with the respondent where he is residing presently and for the maintenance of Rs.25,000/- per month regularly as being provided earlier or in the alternative to pay the permanent maintenance charges at the rate of Rs.25,000/- per month for the rest of the life;

3) Pass a monetary order under Section 20 of the DV Act directing the respondent to pay a sum of Rs.75,000/- towards the operation, pre and post operative medication, tests etc and follow up treatments;

4) Pass a compensation order under Section 22 of the DV Act to a sum of Rs.3,50,000/- towards damages for misusing the funds of the sister of the appellant, mental torture and emotional feelings; and

5) Pass an ex-parte interim order under Section 23 of the DV Act directing the respondent to pay Rs.75,000/- towards the medical expenses and pay the maintenance charges @ Rs.25,000/- per month as being paid by the respondent earlier.

6. Respondent filed detailed objections to the application stating that it was on sympathetical grounds that he gave shelter to her in a separate house after noticing the fact that she was abandoned by her parents and relatives, especially after the demise of her father.

She had also few litigations against her sister for her father's property and she had approached the respondent for moral as well as monetary support since they were working together in a Company. The respondent has admitted that he had cohabited with the appellant since 1993. The fact that he was married and had two children was known to the appellant. Pregnancy of the appellant was terminated with her as well as her brother's consent since she was not maintaining good health. The respondent had also spent large amounts for her medical treatment and the allegation that he had taken money from the appellant was denied. During the month of April, 2007, the respondent had sent a cheque for Rs.2,50,000/- towards her medical expenses, drawn in the name of her sister which was encashed. Further, it was stated, it was for getting further amounts and to tarnish the image of the respondent, the application was preferred under the DV Act. Before the learned Magistrate, appellant examined herself as P.W.1 and gave evidence according to the averments made in the petition. Respondent examined

himself as R.W.1. Child Development Project Officer was examined as R.W.2. The learned Magistrate found proof that the parties had lived together for a considerable period of time, for about 18 years, and then the respondent left the company of the appellant without maintaining her. Learned Magistrate took the view that the plea of "domestic violence" had been established, due to the non-maintenance of the appellant and passed the order dated 21.7.2009 directing the respondent to pay an amount of Rs.18,000/- per month towards maintenance from the date of the petition.

7. Respondent, aggrieved by the said order of the learned Magistrate, filed an appeal before the Sessions Court under Section 29 of the DV Act. The Appellate Court, after having noticed that the respondent had admitted the relationship with appellant for over a period of 14 years, took the view that, due to their live-in relationship for a considerable long period, non-maintenance of the appellant would amount to domestic violence within the meaning of Section 3 of the DV Act.

The appellate Court also concluded that the appellant has no source of income and that the respondent is legally obliged to maintain her and confirmed the order passed by the learned Magistrate.

8. The respondent took up the matter in appeal before the High Court. It was contended before the High Court that the appellant was aware of the fact that the respondent was a married person having two children, yet she developed a relationship, in spite of the opposition raised by the wife of the respondent and also by the appellant's parents. Reliance was also placed on the judgment of this Court in ***D. Velusamy v. D. Patchaiammal*** (2010) 10 SCC 469 and submitted that the tests laid down in ***Velusamy*** case (supra) had not been satisfied. The High Court held that the relationship between the parties would not fall within the ambit of "relationship in the nature of marriage" and the tests laid down in ***Velusamy*** case (supra) have not been satisfied. Consequently, the High Court allowed the appeal and set aside the order passed by the Courts

below. Aggrieved by the same, this appeal has been preferred.

9. Shri Anish Kumar Gupta, learned counsel appearing for the appellant, submitted that the relationship between the parties continued from 1992 to 2006 and since then, the respondent started avoiding the appellant without maintaining her. Learned counsel submitted that the relationship between them constituted a "relationship in the nature of marriage" within the meaning of Section 2(f) of the DV Act, which takes in every relationship by a man with a woman, sharing household, irrespective of the fact whether the respondent is a married person or not. Learned counsel also submitted that the tests laid down in ***Velusamy*** case (supra) have also been satisfied.

10. Ms. Jyotika Kalra, learned *amicus curiae*, took us elaborately through the provisions of the DV Act as well as the objects and reasons for enacting such a legislation. Learned amicus curiae submitted that the Act is intended to provide for protection of rights of

women who are victims of violence of any type occurring in the family. Learned amicus curiae also submitted that the various provisions of the DV Act are intended to achieve the constitutional principles laid down in Article 15(3), reinforced vide Article 39 of the Constitution of India. Learned amicus curiae also made reference to the Malimath Committee report and submitted that a man who marries a second wife, during the subsistence of the first wife, should not escape his liability to maintain his second wife, even under Section 125 CrPC. Learned amicus curiae also referred to a recent judgment of this Court in ***Deoki Panjhiyara v. Shashi Bhushan Narayan Azad and Another*** (2013) 2 SCC 137 in support of her contention.

11. Mr. Nikhil Majithia, learned counsel appearing for the respondent, made extensive research on the subject and made available valuable materials. Learned counsel referred to several judgments of the Constitutional Courts of South Africa, Australia, New Zealand, Canada, etc. and also referred to parallel legislations on the

subject in other countries. Learned counsel submitted that the principle laid down in ***Velusamy*** case (supra) has been correctly applied by the High Court and, on facts, appellant could not establish that their relationship is a "relationship in the nature of marriage" so as to fall within Section 2(f) of the DV Act. Learned counsel also submitted that the parties were not qualified to enter into a legal marriage and the appellant knew that the respondent was a married person. Further, the appellant was not a victim of any fraudulent or bigamous marriage and it was a live-in relationship for mutual benefits, consequently, the High Court was right in holding that there has not been any domestic violence, within the scope of Section 3 of the DV Act entitling the appellant to claim maintenance.

12. We have to examine whether the non maintenance of the appellant in a broken live-in-relationship, which is stated to be a relationship not in the nature of a marriage, will amount to "domestic violence" within the definition of Section 3 of the DV Act, enabling the

appellant to seek one or more reliefs provided under Section 12 of the DV Act.

13. Before examining the various issues raised in this appeal, which have far reaching consequences with regard to the rights and liabilities of parties indulging in live-in relationship, let us examine the relevant provisions of the DV Act and the impact of those provisions on such relationships.

D.V. ACT

14. The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.

15. "Domestic Violence" is undoubtedly a human rights issue, which was not properly taken care of in this

country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498A IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.

16. Chapter IV is the heart and soul of the DV 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. The Magistrate, while entertaining an application from an aggrieved person under Section 12 of the DV Act, can grant the following reliefs:

(1) Payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set off against the amount payable under a decree obtained in Court;

(2) The Magistrate, under Section 18 of the DV Act, can pass a "protection order" in favour of the aggrieved person and prohibit the respondent from:

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both

the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

(3) The Magistrate, while disposing of an application under Section 12(1) of the DV Act, can pass a "residence order" under Section 19 of the DV Act, in the following manner:

> **"19. Residence orders.-** (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-
>
> (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
>
> (b) directing the respondent to remove himself from the shared household;
>
> (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

xxx xxx xxx
xxx xxx xxx"

(4) An aggrieved person, while filing an application under Section 12(1) of the DV Act, is also entitled, under Section 20 of the DV Act, to get "monetary reliefs" 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 is not limited to,-

"**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,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(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.

xxx xxx xxx
xxx xxx xxx"

The monetary reliefs granted under the above mentioned section shall be adequate, fair, reasonable and consistent with the standard of living to which an aggrieved person is accustomed and the Magistrate has the power to order an appropriate lump sum payment or monthly payments of maintenance.

(5) The Magistrate, under Section 21 of the DV Act, has the power to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if

necessary, the arrangements for visit of such child or children by the respondent.

(6) The Magistrate, in addition to other reliefs, under Section 22 of the DV Act, can pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

17. Section 26 of the DV Act provides that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a Civil Court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. Further, if any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

18. Section 3 of the DV Act deals with "domestic violence" and reads as under:

> "**3. Definition of domestic violence.-** For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-
>
> (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; or
>
> (b) harasses, harms, injures 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 I.- For the purposes of this section,-
>
> (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
>
> (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
>
> (iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(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;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

> Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes" domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

19. In order to examine as to whether there has been any act, omission, or commission or conduct so as to constitute domestic violence, it is necessary to examine some of the definition clauses under Section 2 of the DV Act. Section 2(a) of the DV Act defines the expression "aggrieved person" as follows:

> "**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) defines the expression "domestic relationship" as follows:

> "**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(q) defines the expression "respondent" as follows:

> "**2(q).** "Respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:
>
> Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

Section 2(s) defines the expression "shared household" and reads as follows:

> "**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."

20. We are, in this case, concerned with a "live-in relationship" which, according to the aggrieved person, is a "relationship in the nature of marriage" and it is that

relationship which has been disrupted in the sense that the respondent failed to maintain the aggrieved person, which, according to the appellant, amounts to “domestic violence”. The respondent maintained the stand that the relationship between the appellant and the respondent was not a relationship in the nature of marriage but a live-in-relationship simplicitor and the alleged act, omission, commission or conduct of the respondent would not constitute “domestic violence” so as to claim any protection orders under Section 18, 19 or 20 of the DV Act.

21. We have to first examine whether the appellant was involved in a domestic relationship with the respondent. Section 2(f) refers to five categories of relationship, such as, related by consanguinity, marriage, relationship in the nature of marriage, adoption, family members living together as a joint family, of which we are, in this case, concerned with an alleged relationship in the nature of marriage.

22. Before we examine whether the respondent has committed any act of domestic violence, we have to first examine whether the relationship between them was a "relationship in the nature of marriage" within the definition of Section 3 read with Section 2(f) of the DV Act. Before examining the term "relationship in the nature of marriage", we have to first examine what is "marriage", as understood in law.

MARRIAGE AND MARITAL RELATIONSHIP:

23. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae" which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest

and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

24. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in ***Dawood and Another v. Minister of Home Affairs and Others*** 2000 (3) SA 936 (CC) noted as follows:

> "Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well.
>
> The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends...."

25. South African Constitutional Court in various judgments recognized the above mentioned principle. In

Satchwell v. President of the Republic of South Africa and Another 2002 (6) SA 1 (CC), ***Du Toit and Another v. Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as Amicus Curiae)*** 2003 (2) SA 198 (CC), the Constitutional Court of South Africa recognized the right "free to marry and to raise family". Section 15(3)(a)(i) of the Constitution of South Africa, in substance makes provision for the recognition of "marriages concluded under the tradition, or a system of religious, personal or family law." Section 9(3) of the Constitution of South Africa reads as follows:

> "The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

26. Article 23 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that:

> "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

27. Article 16 of the Universal Declaration of Human Rights, 1948 provides that:

"1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at it dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

28. Parties in the present case are Hindus by religion and are governed by the Hindu Marriage Act, 1955.

The expression "marriage", as stated, is not defined under the Hindu Marriage Act, but the "conditions for a Hindu marriage" are dealt with in Section 5 of the Hindu Marriage Act and which reads as under:

> "**5**. **Conditions for a Hindu marriage -** A marriage may be solemnized between any two hindus, if the following conditions are fulfilled, namely:-
>
> (i) neither party has a spouse living at the time of the marriage
>
> (ii) at the time of the marriage, neither party-
>
> (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
>
> (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
>
> (c) has been subject to recurrent attacks of insanity;
>
> (iii) the bridegroom has completed the age of twenty- one years and the bride the age of eighteen years at the time of the marriage;
>
> (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
>
> (v) the parties are not *sapindas* of each other, unless the custom or usage governing each

of them permits of a marriage between the two."

29. Section 7 of the Hindu Marriage Act deals with the "Ceremonies for a Hindu marriage" and reads as follows:

> "**7. Ceremonies for a Hindu marriage. -**
>
> (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.
>
> (2) Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

30. Entering into a marriage, therefore, either through the Hindu Marriage Act or the Special Marriage Act or any other Personal Law, applicable to the parties, is entering into a relationship of "public significance", since marriage being a social institution, many rights and liabilities flow out of that legal relationship. The concept of marriage as a "civil right" has been recognised by various courts all over the world, for example, ***Skinner v. Oklahoma*** 316 US 535 (1942), ***Perez v. Lippold*** 198 P.2d 17, 20.1 (1948), ***Loving v. Virginia*** 388 US 1 (1967).

31. We have referred to, *in extenso*, about the concept of "marriage and marital relationship" to indicate that the law has distinguished between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or, marriage-like relationship or *defacto* relationship.

32. Married couples who choose to marry are fully cognizant of the legal obligation which arises by the operation of law on solemnization of the marriage and the rights and duties they owe to their children and the family as a whole, unlike the case of persons entering into live-in relationship. This Court in ***Pinakin Mahipatray Rawal v. State of Gujarat*** (2013) 2 SCALE 198 held that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual

relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on.

RELATIONSHIP IN THE NATURE OF MARRIAGE:

33. Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) 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.

34. The definition clause mentions only five categories of relationships which exhausts itself since the

expression “means”, has been used. When a definition clause is defined to “mean” such and such, the definition is *prima facie* restrictive and exhaustive. Section 2(f) has not used the expression “include” so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression “relationship in the nature of marriage”.

35. We have already dealt with what is “marriage”, “marital relationship” and “marital obligations”. Let us now examine the meaning and scope of the expression “relationship in the nature of marriage” which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is “relationship in the nature of marriage” which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

36. Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".

37. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a

relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

(a) 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 or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

(b) Domestic relationship between an unmarried woman and a married adult male*: Situations may arise when an unmarried adult women knowingly* enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

(c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether

such a relationship would fall within the expression relationship "in the nature of marriage".

(d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

(e) Domestic relationship between same sex partners (Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

38. Section 2(f) of the DV Act though uses the expression "two persons", the expression "aggrieved

person" under Section 2(a) takes in only "woman", hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

39. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence", have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the "nature of marriage". Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The

expression “relationship in the nature of marriage”, of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression “in the nature of marriage”. Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in (a) and (d) supra. Women, who fall under categories (b) and (c), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 37(b) of the Judgment.

40. We have, therefore, come across various permutations and combinations, in such relationships, and to test whether a particular relationship would fall within the expression “relationship in the nature of

marriage", certain guiding principles have to be evolved since the expression has not been defined in the Act.

41. Section 2(f) of the DV Act defines "domestic relationship" to mean, *inter alia*, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression "relationship in the nature of marriage" is also described as *defacto* relationship, marriage – like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship) etc.

42. Courts and legislatures of various countries now began to think that denying certain benefits to a certain class of persons on the basis of their marital status is unjust where the need of those benefits is felt by both unmarried and married cohabitants. Courts in various countries have extended certain benefits to heterosexual unmarried cohabitants. Legislatures too,

of late, through legislations started giving benefits to heterosexual cohabitants.

43. In U.K. through the Civil Partnership Act, 2004, the rights of even the same-sex couple have been recognized. Family Law Act, 1996, through the Chapter IV, titled 'Family Homes and Domestic Violence', cohabitants can seek reliefs if there is domestic violence. Canada has also enacted the Domestic Violence Intervention Act, 2001. In USA, the violence against woman is a crime with far-reaching consequences under the Violence Against Women Act, 1994 (now Violence Against Women Reauthorization Act, 2013).

44. The Interpretation Act, 1984 (Australia) has laid down certain indicators to determine the meaning of "de facto relationship", which are as follows:

> **"13A . De facto relationship and de facto partner, references to**
>
> (1) A reference in a written law to a de facto relationship shall be construed as a reference to a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

(2) The following factors are indicators of whether or not a de facto relationship exists between 2 persons, but are not essential —

(a) the length of the relationship between them;

(b) whether the 2 persons have resided together;

(c) the nature and extent of common residence;

(d) whether there is, or has been, a sexual relationship between them;

(e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(f) the ownership, use and acquisition of their property (including property they own individually);

(g) the degree of mutual commitment by them to a shared life;

(h) whether they care for and support children;

(i) the reputation, and public aspects, of the relationship between them.

xxx xxx xxx

xxx xxx xxx”

45. The Domestic and Family Violence Protection Act, 2012 (Queensland) has defined the expression “couple relationship” to mean as follows”:

“**18. Meaning of couple relationship**

(1) xxx xxx xxx

(2) In deciding whether a couple relationship exists, a court may have regard to the following –

(a) the circumstances of the relationship between the persons, including, for example–

(i) the degree of trust between the persons; and

(ii) the level of each person's dependence on, and commitment to, the other person;

(b) the length of time for which the relationship has existed or did exist;

(c) the frequency of contact between the persons;

(d) the degree of intimacy between the persons.

(3) Without limiting sub-section (2), the court may consider the following factors in deciding whether a couple relationship exists-

(a) Whether the trust, dependence or commitment is or was of the same level;

(b) Whether one of the persons is or was financially dependent on the other;

(c) Whether the persons jointly own or owned any property;

(d) Whether the persons have or had joint bank accounts;

(e) Whether the relationship involves or involved a relationship of a sexual nature;

(f) Whether the relationship is or was exclusive.

(4) A couple relationship may exist even if the court makes a negative finding in relation to any or all of the factors mentioned in subsection (3).

(5) A couple relationship may exist between two persons whether the persons are of the same or a different gender.

(6) A couple relationship does not exist merely because two persons date or dated each other on a number of occasions."

46. The Property (Relationships) Act, 1984 of North South Wales, Australia also provides for some guidelines with regard to the meaning and content of the expression "de facto relationship", which reads as follows:

"4 De facto relationships

(1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:

(a) who live together as a couple, and

(b) who are not married to one another or related by family.

(2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following

matters as may be relevant in a particular case:

(a) the duration of the relationship,

(b) the nature and extent of common residence,

(c) whether or not a sexual relationship exists,

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,

(e) the ownership, use and acquisition of property,

(f) the degree of mutual commitment to a shared life,

(g) the care and support of children,

(h) the performance of household duties,

(i) the reputation and public aspects of the relationship.

(3) No finding in respect of any of the matters mentioned in subsection (2) (a)-(i), or in respect of any combination of them, is to be regarded as necessary for the existence of a de facto relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(4) Except as provided by section 6, a reference in this Act to a party to a de facto relationship includes a reference to a person who, whether before or after the

> commencement of this subsection, was a party to such a relationship."

47. "In ***Re Marriage of Lindsay,*** 101 Wn.2d 299 (1984), ***Litham v. Hennessey*** 87 Wn.2d 550 (1976), ***Pennington*** 93 Wash.App. at 917, the Courts in United States took the view that the relevant factors establishing a meretricious relationship include continuous cohabitation, duration of the relationship, purpose of the relationship, and the pooling of resources and services for joint projects. The Courts also ruled that a relationship need not be "long term" to be characterized as meretricious relationship. While a long term relationship is not a threshold requirement, duration is a significant factor. Further, the Court also noticed that a short term relationship may be characterized as a meretricious, but a number of other important factors must be present.

48. In ***Stack v. Dowden*** [2007] 2 AC 432, Baroness Hale of Richmond said:

> "Cohabitation comes in many different shapes and sizes. People embarking on their

> first serious relationship more commonly cohabit than marry. Many of these relationships may be quite short-lived and childless. But most people these days cohabit before marriage..... So many couples are cohabiting with a view to marriage at some later date – as long ago as 1998 the British Household Panel Survey found that 75% of current cohabitants expected to marry, although only a third had firm plans: John Ermisch, Personal Relationships and Marriage Expectations (2000) Working Papers of the Institute of Social and Economic Research: Paper 2000-27. Cohabitation is much more likely to end in separation than is marriage, and cohabitations which end in separation tend to last for a shorter time than marriages which end in divorce. But increasing numbers of couples cohabit for long periods without marrying and their reasons for doing so vary from conscious rejection of marriage as a legal institution to regarding themselves 'as good as married' anyway: Law Commission, Consultation Paper No 179, Part 2, para 2.45."

49. In ***MW v. The Department of Community Services*** [2008] HCA 12, Gleeson, CJ, made the following observations:

> "Finn J was correct to stress the difference between living together and living together 'as a couple in a relationship in the nature of marriage or civil union'. The relationship between two people who live together, even though it is a sexual relationship, may, or may not, be a relationship in the nature of

> marriage or civil union. One consequence of relationships of the former kind becoming commonplace is that it may now be more difficult, rather than easier, to infer that they have the nature of marriage or civil union, at least where the care and upbringing of children are not involved."

50. In ***Lynam v. The Director-General of Social Security*** (1983) 52 ALR 128, the Court considered whether a man and a woman living together 'as husband and wife on a bona fide domestic basis' and Fitzgerald, J. said:

> "Each element of a relationship draws its colour and its significance from the other elements, some of which may point in one direction and some in the other. What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. The endless scope for differences in human attitudes and activities means that there will be an almost infinite variety of combinations of circumstances which may fall for consideration. In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated persons of the opposite sex meets the statutory test."

51. Tipping, J. in ***Thompson v. Department of Social Welfare*** (1994) 2 SZLR 369 (HC), listed few characteristics which are relevant to determine relationship in the nature of marriage as follows:

> "(1) Whether and how frequently the parties live in the same house.
> (2) Whether the parties have a sexual relationship.
> (3) Whether the parties give each other emotional support and companionship.
> (4) Whether the parties socialize together or attend activities together as a couple.
> (5) Whether and to what extent the parties share the responsibility for bringing up and supporting any relevant children.
> (6) Whether the parties share household and other domestic tasks.
> (7) Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise.
> (8) Whether the parties run a common household, even if one or other partner is absent for periods of time.
> (9) Whether the parties go on holiday together.
> (10) Whether the parties conduct themselves towards, and are treated by friends, relations and others as if they were a married couple."

52. Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other countries. In ***Lata Singh v.***

State of U.P. [AIR 2006 SC 2522] it was observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in Civil Law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.

53. Section 125 Cr.P.C., of course, provides for maintenance of a destitute wife and Section 498A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The

Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnization of marriage also deals with the provisions for divorce. For the first time, through, the DV Act, the Parliament has recognized a "relationship in the nature of marriage" and not a live-in relationship simplicitor.

54. We have already stated, when we examine whether a relationship will fall within the expression "relationship in the nature of marriage" within the meaning of Section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship

between two unrelated persons of the opposite sex meets the tests judicially evolved.

55. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

(1) Duration of period of relationship

Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household

The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements

Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name

of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

(6) Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

STATUS OF THE APPELLANT

56. Appellant, admittedly, entered into a live-in-relationship with the respondent knowing that he was married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in ***Andrahennedige Dinohamy v. Wiketunge Liyanapatabendage Balshamy***, AIR 1927 PC 185, 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 a marriage, and the status of the 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 monogamous in character. Reference may also be made to the judgments of this Court in ***Badri Prasad v. Director of Consolidation*** 1978 (3) SCC 527 and ***Tulsa v. Durghatiya*** 2008 (4) SCC 520. In ***Gokal Chand v. Parvin Kumari*** AIR 1952 SC 231 this Court held that the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabition is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or 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 to be a relationship in the nature of marriage.

57. We may note, in the instant 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 a marriage. Long standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but we are afraid that DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV Act, which is restrictive and exhaustive.

58. ***Velusamy*** case (supra) stated that instances are many where married person maintain and support such types of women, 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.

59. We cannot, however, lose sight of the fact that inequities do exist in such relationships and on breaking down such relationship, the woman invariably is the sufferer. Law of Constructive Trust developed as a means of recognizing the contributions, both pecuniary and non-pecuniary, perhaps comes to their aid in such situations, which may remain as a recourse for such a woman who find herself unfairly disadvantaged. Unfortunately, there is no express statutory provision to regulate such types of live-in relationships upon termination or disruption since those relationships are not in the nature of marriage. We can also come across situations where the parties entering into live-in-relationship and due to their joint efforts or otherwise acquiring properties, rearing children, etc. and disputes may also arise when one of the parties dies intestate.

60. American Jurisprudence, Second Edition, Vol. 24 (2008) speaks of Rights and Remedies of property accumulated by man and woman living together in illicit relations or under void marriage, which reads as under:

> "Although the courts have recognized the property rights of persons cohabiting without benefit of marriage, these rights are not based on the equitable distribution provisions of the marriage and divorce laws because the judicial recognition of mutual property rights between unmarried cohabitants would violate the policy of the state to strengthen and preserve the integrity of marriage, as demonstrated by its abolition of common-law marriage."

61. Such relationship, it may be noted, may endure for a long time and can result pattern of dependency and vulnerability, and increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship. Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against. See ***S.***

Khushboo v. ***Kanniammal and another*** (2010) 5 SCC 600.

62. Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage.

63. We may now consider whether the tests, we have laid down, have been satisfied in the instant case. We have found that the appellant was not ignorant of the fact that the respondent was a married person with wife and two children, hence, was party to an adulterous and bigamous relationship. Admittedly, the relationship between the appellant and respondent was opposed by the wife of the respondent, so also by the parents of the appellant and her brother and sister and they knew that they could not have entered into a legal marriage or maintained a relationship in the nature of marriage. Parties never entertained any intention to rear children

and on three occasions the pregnancy was terminated. Having children is a strong circumstance to indicate a relationship in the nature of marriage. No evidence has been adduced to show that the parties gave each other mutual support and companionship. No material has been produced to show that the parties have ever projected or conducted themselves as husband and wife and treated by friends, relatives and others, as if they are a married couple. On the other hand, it is the specific case of the appellant that the respondent had never held out to the public that she was his wife. No evidence of socialization in public has been produced. There is nothing to show that there was pooling of resources or financial arrangements between them. On the other hand, it is the specific case of the appellant that the respondent had never opened any joint account or executed any document in the joint name. Further, it was also submitted that the respondent never permitted to suffix his name after the name of the appellant. No evidence is forthcoming, in this case, to show that the respondent had caused any harm or injuries or

endangered the health, safely, life, limb or well-being, or caused any physical or sexual abuse on the appellant, except that he did not maintain her or continued with the relationship.

ALIENATION OF AFFECTION

64. Appellant had entered into this relationship knowing well that the respondent was a married person and encouraged bigamous relationship. By entering into such a relationship, the appellant has committed an intentional tort, i.e. interference in the marital relationship with intentionally alienating respondent from his family, i.e. his wife and children. If the case set up by the appellant is accepted, we have to conclude that there has been an attempt on the part of the appellant to alienate respondent from his family, resulting in loss of marital relationship, companionship, assistance, loss of consortium etc., so far as the legally wedded wife and children of the respondent are concerned, who resisted the relationship from the very inception. Marriage and family are social institutions of vital importance.

Alienation of affection, in that context, is an intentional tort, as held by this Court in ***Pinakin Mahipatray Rawal*** case (supra), which gives a cause of action to the wife and children of the respondent to sue the appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the respondent..

65. We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships in the nature of marriage. Appellant's and the respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" under Section 2(f) of the DV Act.

If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act.

66. We have, on facts, found that the appellant's status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation.

67. We are conscious of the fact that if any direction is given to the respondent to pay maintenance or monetary consideration to the appellant, that would be at the cost of the legally wedded wife and children of the

respondent, especially when they had opposed that relationship and have a cause of action against the appellant for alienating the companionship and affection of the husband/parent which is an intentional tort.

68. We, therefore, find no reason to interfere with the judgment of the High Court and the appeal is accordingly dismissed.

.....J.
(K.S. Radhakrishnan)

.....J.
(Pinaki Chandra Ghose)

New Delhi
November 26, 2013