

Exploring the Constitutional Dimensions of Live-In Relationships among Married Individuals: Rights, Responsibilities, and Legal Implications

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Abstract:

This comprehensive legal discourse explores the constitutional dimensions surrounding live-in relationships among married individuals, focusing on their rights, responsibilities, and the legal implications thereof. The discussion delves into the maintainability of cases related to live-in relationships before a constitution bench, emphasizing the exceptional importance and fundamental rights at stake. The analysis further scrutinizes Section 498 of the Indian Penal Code (IPC) and its alleged violations of Article(s) 14, 19, and 21 of the Constitution of India. The contention is that this section, dealing with enticing or detaining a married woman, is arbitrary and discriminatory, particularly concerning consent and privacy rights. The study also addresses the question of whether a married person can engage in a live-in relationship during the subsistence of marriage, asserting that though considered immoral, such relationships cannot be criminalized based on morality alone. The Supreme Court's recognition of live-in relationships as protected under Article 21 is highlighted to substantiate this argument. Furthermore, the discussion critiques Section 198(2) of the Code of Criminal Procedure (CrPC), asserting its unconstitutionality after being declared so. The analysis scrutinizes its impact on the right to privacy and equal protection under Articles 14 and 15, emphasizing the need for a fair and reasonable classification that respects individual choices.

In conclusion, this paper provides a nuanced examination of the legal intricacies surrounding live-in relationships among married individuals, offering insights into constitutional principles, privacy rights, and the evolving societal perspectives reflected in recent judicial pronouncements.

Keywords: Live-in relationships, Constitutional Bench, Section 498 IPC, Article 14 and 21, Criminalization of adultery, Right to privacy, Section 198(2) of CrPC

Introduction

The exploration of the constitutional dimensions of live-in relationships among married individuals raises significant questions about rights, responsibilities, and legal implications. This complex issue involves the consideration of fundamental rights guaranteed by the Constitution of India and their intersection with evolving societal norms. In this context, the maintainability of a live-in relationship involving married individuals before a constitution bench becomes a crucial aspect, touching upon issues of justice, fundamental rights, and the potential need for Supreme Court intervention.

Furthermore, an examination of the constitutional validity of Section 498 of the Indian Penal Code (IPC) is imperative. This section, dealing with enticing or detaining a married woman, is scrutinized for its

potential violations of Article(s) 14, 19, and 21 of the Constitution. The analysis delves into the constitutional implications of criminalizing certain actions related to married individuals, emphasizing the principles of equality, freedom, and the right to life.

The discussion extends to the broader legal landscape surrounding live-in relationships, contemplating the rights of individuals involved, societal perceptions, and the impact of judicial pronouncements. Additionally, the examination of Section 198(2) of the Code of Criminal Procedure (CrPC) focuses on its constitutionality, particularly its potential violation of Article(s) 14 and 15. This provision, which delineates the procedure for complaints under Section 498, is assessed for its fairness, reasonableness, and adherence to constitutional principles.

The introduction sets the stage for a comprehensive exploration of the intricate legal and constitutional aspects surrounding live-in relationships among married individuals, offering a nuanced understanding of the rights, responsibilities, and legal intricacies involved in this evolving societal landscape.

WILL LIVE IN RELATIONSHIP OF MARRIED INDIVIDUALS BE MAINTAINABLE BEFORE CONSTITUTION BENCH?

Yes, a matter of live in relationship of married individuals is maintainable before the constitution bench. The present matter involves a substantial question of law which infringes upon the fundamental rights of the petitioner and there has been a miscarriage of justice by the Hon'ble High Court. Thus it is the matter is of exceptional importance which requires interference by Supreme Court. The Supreme Court in *Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.* (AIR 1962 SC 1314) held that : "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law." Further In *Dy. Commr. Hardoi v. Rama Krishna Narain* (AIR 1953 SC 521) also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 100 of the CPC. In the case of *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai* (2005), it was held that the Supreme Court must exercise its powers under Article 136 only in exceptional circumstances, when a question of law of public importance arises. The same judgment was reiterated in the case of *Pritam Singh v. The State* (1950), it was held that once the appeal is admitted, the appellant can question every point of law considered wrong by the High court. A uniform standard should be adopted by the court while granting special leave to appeal. And it is to be noted that the present matter concerns exceptional circumstances and is thus maintainable before a constitution bench.

IS S.498 IPC IS VIOLATIVE OF ARTICLE 14 AND 21 OF CONSTITUTION OF INDIA?

Yes, S.498 IPC is violative of Article(s) 14, 19, 21 of the Constitution of Indistan. It is to raise a question that when a person who has attained the age of 18 and is considered major in the eyes of law is not under anyone's guardianship, custody, or care, and the state grants the person with all the fundamental rights in the Constitution, then why to restrict the free will of a married woman alone to the care of her husband, or his agent in his absence? This is arbitrary in the sense that it restricts the rights of a married woman

alone, and thus violates Article 14(equality before law), 15(prohibition of discrimination based on sex), 19(1)(d)(to move freely throughout the territory of India), 19(1)(e)(to reside and settle in any part of the territory of India) and 21(right to life).

S. 498 IPC is violative of Article 14 of Constitution of Indistan.

Article 14 of Constitution of Indistan reads as “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” But it is argued that the S.498 IPC blatantly violates Art. 14 of Constitution of Indistan. With a deep sense of sorrow it is put forward that Where the attempt is made to provide equal opportunities to and treat men and women on equal footing, this specific section only penalises the man and not the woman, turning a blind eye towards the consent of the woman, invalidating the very intent of the lawmakers. But it is to be highlighted that the consent of the woman plays a major role in determining whether the man should be penalised or not.

S. 498 IPC reads as “Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It can be said that S. 498 is an extension of S. 497.

S. 497. Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

The intention of taking away, enticing or concealing, or detaining the married woman must be for the woman to have illicit intercourse with any person. It might happen that the intercourse is not with the consent of the woman, in such a case S.376 can be invoked.

If however, the intercourse takes place with the consent of the woman, the society or the State has no right to give the woman a license or deny her to engage in such acts. Such acts on her part may serve to desecrate her marriage, but not her rights to self-determination, and right to privacy. Thus again, it infringes on the rights to privacy, of the married woman. The husband shall have the right to file for a divorce but is no way qualified to invoke criminal charges against the paramour with whom the woman has voluntarily involved herself by giving consent.

This Section indirectly enforces the adultery law of Section 497 by mentioning illicit intercourse. Thus it must not be allowed to stand given the fact that Section 497 is already struck down.

Further the rights have been conferred on the woman to decide her fate irrespective of her marital status, it is arbitrary on the part of lawmakers to fix criminal charges on the person who assists her in her endeavors that breach the matrimony. It is non sensical to say that woman should remain bound by the marital ties regardless of her mental health and wellbeing. The Section takes for granted the woman to be a property of a man, and assumes that she can be carried or enticed away without her own free will and it allows the husband to prosecute a third person out of their marriage, but not his own wife which is again said as irrational. The protection given to the wife is not the question here, the question raised is that the third person open to the prosecution by the husband is arbitrary and must be declared unconstitutional.

The Supreme Court (Joseph Shine vs UOI 2019), while striking down the section for being discriminatory to women and against the principles of equality enshrined in Article 14, also discussed the issue of criminalization of acts contrary to popular morality.

In case of adultery, the law expects the parties to remain loyal and maintain fidelity throughout and also makes the adulterer the culprit,” said the Supreme Court. “This expectation by law is a command which gets into the core of privacy. That apart, it is a discriminatory command and also a socio-moral one. Two individuals may part on the said ground but to attach criminality to the same is inapposite.”

It is apparent that acts that may be perceived as immoral are not automatically criminal. A logical corollary that can be drawn is that just because someone is in a relationship that society perceives to be immoral, they cannot be denied the protection of basic fundamental rights, which includes equal protection of the law.

Section 498 seems outdated because it was created way back in 1860 during the Victorian era. Section 498 goes hand in hand with Section 497, which criminalises adultery. According to Section 497, a man who has sex with a woman “whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery.”

On the one hand, sections 497 and 498 discriminate against men, as they only consider men guilty of adultery and liable to prosecution. Section 497 states, “the wife shall not be punishable as an abettor.” On the other hand, the laws’ attitude towards women is deeply patronising (if you’re being kind), seeing them as passive objects not unlike property that can be “enticed” or “taken away” — what Supreme Court lawyer Karuna Nundy sees as an example of “benevolent patriarchy”. This disregards women’s sexual choices and agency, and treats the husband as the primary aggrieved party even in a case of rape. “These laws are a clear example of how patriarchy operates to the detriment of everyone,”

In the case of Joseph Shine it was contended that A woman cannot file a complaint against her husband if he has sex with unmarried woman, though her grievance is the same as that of man. It discriminated against the women as it impinged the sexual freedom of married women but did not do so with respect to married man.

The Punjab & Haryana High Court held in the case of *Paramjit Kaur and Another vs State of Punjab* that no offence would be made out if two adults were in a live-in relationship, even though they were already married to someone else

In *Sowmithri Vishnu* case it was held that initially it may appear as if it is a beneficial legislation intended to serve the interests of women but, on closer examination, it would be found that the provision contained in the section is a kind of —romantic paternalism‖ which stems from the assumption that women, like chattels, are the property of men.

S. 498 IPC is violative of Article 21 of Constitution of Indistan

The court in the case of *Stanley v Georgia* highlighted that applying the same principles to homosexual conduct, as seen in *Bowers v. Hardwick*, would potentially protect various **consensual adult activities, including adultery**, incest, and other sexual crimes.

Article 21 of the Constitution of Indistan states that “No person shall be deprived of his life or personal liberty except according to a procedure established by law.

To simplify it accords every individual with the Right to Life which shall not be denied to anyone unless and except by following due procedure. The umbrella legislation aims to protect any person whose life

and liberty are in danger, without considering whether one is a child or an adult or a man, or a woman, or married, or in a live-in relationship.

Firstly, in *Joseph Shine v. Union of India*, the SC had struck down Section 497 of the IPC, thereby decriminalizing adultery. The impact of this judicial pronouncement is that if a married person is cohabiting with a person other than their spouse, it can no longer be termed as an offence, though it would be a valid ground for filing a divorce. The Supreme Court on Thursday termed as "manifestly arbitrary a penal provision which required a woman to have her husband's consent to indulge in adultery with another married man and said it amounted to treating women as "chattel".

Secondly, Section 494 of IPC states that Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Thus, bigamy clearly states that it is only the second marriage during the lifetime of the husband or wife that amounts to a punishable offence. A mere live-in relationship between a married and unmarried person can not be categorised as bigamy. Therefore, in cases where the individuals enter into live-in relationships during the subsistence of their marriage, although it might be considered against the established moral principles there is no violation of penal law, and therefore it is to be argued that protection to life and liberty under Article 21 should not be denied to such persons.

In *Shafin Jahan v. Asokan K.M*⁴⁹, the Supreme Court has reiterated the right of choice of a partner and held: "The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just, and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of everyone to take decisions on matters central to the pursuit of happiness. It is important to state here that expression of choice in accord with the law means acceptance of individual identity. Curtailment of this expression and the ultimate action arising therefrom on the conceptual structuralism of deference to the societal will destroy the individualistic entity of a person. The social values, morals and norms have their own space, but they are not above the constitutionally guaranteed freedom & rights. The aforesaid freedom is both a constitutional and a human right."

In the case of *Kamini Devi and Another v. State of U.P. and Others*⁵⁷ the two-judge bench of Allahabad High Court has observed that the live-in relationship between consenting adults is not an offence.

"The function of criminal law is to preserve public order and decency, to protect citizens from what is offensive or injurious and not to intervene in the private lives of citizens. The Constitutional Courts must never be pushed by the popular morality portrayed by the society and must always act like a warrior safeguarding the individual liberty and choice permitting constitutional morality. No individual however miniscule and odd may be barred from enjoying the personal liberty and freedoms granted by the Constitution of India.

CAN A MARRIED PERSON STAY IN A LIVE IN RELATIONSHIP WITH OTHER PARTNER DURING THE SUBSISTENCE OF MARRIAGE WHEN MARRIAGE IS NOT BROKE DOWN?

Yes, a married person can stay in a live in relationship with other partner during the subsistence of marriage when marriage is not broke down. Though considered immoral and unethical, it can't be criminalised based on the morality aspect. The Apex Court, in the case of '*Lata Singh v. State of U.P.*'

while dealing with the concept of live-in, held 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. Likewise, in *S. Khushboo v. Kanaimmal and Anr*, the SC observed that living together is a part of the right to life, hence it cannot be considered unlawful.

It is also to be noted as already mentioned earlier Section 494 of IPC states that Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Thus, bigamy clearly states that it is only the second marriage during the lifetime of the husband or wife that amounts to a punishable offence. A mere live-in relationship between a married and unmarried person can not be categorised as bigamy.

Further in *Indra Sarma v. V.K.V. Sarma*, live-in relationships were categorised into two domestic cohabitation between two unmarried individuals and domestic cohabitation between a married and unmarried individual or two married individuals.

The Delhi High Court adopted a wider approach, upholding the rights of a female live-in partner, irrespective of the marital status of both individuals.

The Supreme Court of India has recognized the live-in relationship between consenting adults as permissible and protected under the right to life enshrined in Article 21 of the Constitution of India. It has accorded certain rights and protections to individuals involved in such relationships. Morality which varies from person to person should not hold the power to influence the law of the country which is uniform for every individual and encroach into private lives.

The Punjab & Haryana High Court held in the case of *Paramjit Kaur and Another vs State of Punjab* that no offence would be made out if two adults were in a live-in relationship, even though they were already married to someone else.

IS SECTION 198(2) OF CRPC VIOLATIVE OF ARTICLE(S)14 AND 15 OF THE CONSTITUTION OF INDIA?

The procedure to be followed in cases of a complaint under Section 498 was provided for by Section 198(2) of the CrPC, which provided that only the husband, or anyone under whose care the husband left his wife, can give the complaint against the third person with whom the wife chose to leave. This has already been declared unconstitutional. Now, in absence of the Section 198(2) of the CrPC, it is a question of law as to who is authorised to file a complaint and against whom? Earlier the complainant was supposed to be the husband (or anyone authorised to take care of his wife) keeping in mind the fact to keep at bay any busybody who gets unnecessarily entangled in the family matters of others. However, the Section is now open to all and sundry to come forward to disturb the extremely private family issues and lodge complaints against any person with whom the wife wishes to interact or spend time, irrespective of the fact if such action on the part of the wife is validated by the husband or not. The third person with whom the wife leaves is also open to prosecution by his own wife, or his own family members in absence of the Section 198(2) of the CrPC, thus infringing on the right to privacy of that third person.

Sec 198 CrPC is arbitrary as it fails to pass the test of reasonable classification thus violates Art 14 of the constitution as it deprives women her right to prosecute her husband who has entered into an adulterous relation with an unmarried woman. It violates the principle of equal treatment and discriminates on the basis of sex and marital status.

To substantiate it can be relied upon the cases of *State of U.P. v. Deoman Upadhyaya*,, “wherein the court went on to state that whereas equality before law is a negative concept, the equal protection of the law has positive content. Thus classification can be made only when it is absolutely necessary. In the instant case claiming it to be a reasonable classification on the basis of sex is absurd as it does not benefit them.

Art 15(3) cannot operate as a cover for exemption from an offence having penal consequences as a section which perpetuates oppression of women is unsustainable in law, and cannot take cover under the guise of protective discrimination.

Kalyani v. State of Tr. Inspector of Police and Another wherein the court held that the consent of the woman is irrelevant to the offence of adultery. Thus A legislation which takes away the rights of women to prosecute cannot be termed as ‘beneficial legislation’ under Art 15(3). Article 15(3) is a part of the Indian Constitution that allows the government to make special provisions for women and children. But a law taking away a woman's right to prosecute (take legal action) in adultery cases isn't actually beneficial for women, as it doesn't consider or respect their choices in such situations.

In the case of *Joseph Shine* it was held that Sub-section of Section 198 treats the husband of the woman as deemed to be aggrieved by an offence committed under Section 497 IPC and in the absence of husband, some person who had care of the woman on his behalf at the time when such offence was committed with the leave of the court. It does not consider the wife of the adulterer as an aggrieved person. The offence and the deeming definition of an aggrieved person, as we find, is absolutely and manifestly arbitrary. Furthermore it lets a man free from the clutches of law for having committed the offence of adultery if the husband approve such a relation, this makes a woman a chattel of husband.

Thus it can be firmly said that Sec 198(2) of CrPC is based on discriminative classification against women. The provision is being discriminative in two ways, firstly it doesn't give woman the right to prosecute an adulterous husband and secondly it doesn't punish the women in adultery not even as an ‘abettor’