STIGMATISING THE TABOO AGAINST PRE–MARRITAL SEX AND LIVE IN RELATIONSHIPS IN INDIA: AN ANALYSIS OF S. KHUSHBOO V. KANNIAMMAL & ANR.

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INTRODUCTION:
Live-in relationships refer to the living arrangement in which an unmarried couple lives together in a long-term relationship that resembles marriage1. In India, such a cohabitation has been continuously debated and criticised for lacking legality and societal acceptance. For the first time in the history of India, the Supreme Court, in the case of S. Khusboo v. Kanniammal2, held that legal recognition is to be given for live-in relationships by the way of considering them as ‘domestic relationships’ within the protection and meaning under Protection of Women from Domestic Violence Act, 2005. It was also opined that the concept of ‘live-in relationships’ comes within the ambit of Article 21 which gives the fundamental right to life and personal liberty. Live-in relationships are permissible and no act of two individuals living together without a legal marriage cannot be viewed to be unlawful or illegal. This judgement serves as a foundational precedent whenever rights of women in relation to live-in relationships are in question.

FACTS:
- The Appellant is a prominent Tamil actress in India’s mainstream film industry against whom the Respondents have filed around 23 criminal complaints in the State of Tamil Nadu for the offences examined under Section 499, Section 500 and Section 505 of I.P.C and Section 4, Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986.
- The Appellant made a comment relating to pre-marital sex especially in live-in relationships and called for its social acceptance for a major leading news magazine i.e., India Today. Later the same was disclosed in a deformed manner in another news magazine i.e., Dina Thanthi. The precipitation of these offences was regarding this remark made by the Appellant.
- The Appellant approached the Madras High Court, invoking the quashing of criminal proceedings instituted against her in various locations of Tamil Nadu exercising its intrinsic power under Section 482 of Cr.P.C. However, the plea made by the Appellant was rejected by the High Court.
- In order to avoid the burden of prosecuting the same subject-matter in different areas, Chief Metropolitan Magistrate, Egmore (Chennai) coordinated that all the cases be consolidated and attempted together that are instituted against the appellant. Discontented by the judgement aforesaid and to quash the criminal proceeding cases pending against

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2 (2010) 5 SCC 600
her, under the batch of Special leave petitions, the Appellant approached the Supreme Court.

ISSUES:
Based on the facts of the present case, it is evident that the legal issues raised are multi-dimensional.
1. Whether the Appellant’s comments could reasonably amount to an offence under Section 499 Indian Penal Code, 1860 (hereinafter IPC)?
2. Whether the Supreme Court can quash several criminal proceedings against the Appellant under Section 499, 500 and 505 of IPC and Sections 4 and 6 of Indecent Representation of Women (Prohibition) Act, 1986?
3. Whether the complaints were filed in a bonafide manner?
4. Whether the Complaints can be contended to be described as ‘aggrieved persons’ within the ambit of Section 199 of CrPC?
5. Whether the Appellant can claim the recognised defences against the accusations of having committed defamation under Section 499 IPC?

JUDGEMENT:
1. The Supreme Court opined that there was no evidence to support or to even draw a prima facie case of defamation in the present case. It was held that the Appellant neither had the intention to cause the alleged defamation nor there is nothing to prove that there was actual harm caused by the Appellant’s comments.
2. It was also observed that the complainants were not ‘aggrieved persons’ within the meaning of Section 198 of Cr. P. C. The Court noted that the complaints were made with malafide intention. It is the reputation of an individual which must be in question and only that individual can pray for a justifiable claim.
3. The appeal was allowed and the impugned judgement and order of the High Court was set aside. The Court was more inclined to grant relief sought by the Appellant in order to safeguard the criminal law machinery.
4. All the impugned criminal proceedings against the Appellant were quashed. It was emphasised that an initiation of a criminal trial must not be influenced and triggered by bogus and frivolous complaints that can possibly amount to harassment and humiliation of the accused.

COMMENT:
The number of live-in relationships has increased tremendously over the past few decades. The very idea of live-in relationships and pre-marital sex in Indian Society has always been considered as a concept of obscenity. Irrespective of the rate of drastic change in the living standards and modern development, it is safe to say that such a relationship has never acquired major acceptance in the society. Any other form of cohabitation other than between a man and a woman as a consequence of a legal marriage are deemed to be illegitimate. A conventional society such as ours, where the institution of marriage of utmost ‘sacredness’, the concept of living together and a child born out of such a union has always been avoided for the simple reason that it falls outside the scope of the customs of the society and the law of the nation.

Similarly on the other hand, such a non-recognition of relationship has been taken as an advantage by the persons in the said relationship to escape all the natural responsibilities and duties. The main reason for such a gross misuse is the non-existence
of exclusive law to govern the matters of live-in relationships. Nowhere in the Indian law has there been a provision that stipulates the legal definition of live-in relationships, rights and obligations of the parties, lawful status of such a connection and status of child born to them. But, the Indian Judiciary has mandated various provisions pertaining to live-in relationships through a plethora of judgements. “With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”

Live-in relationships had begun since the time of Privy Council. It was held in a case by Privy Council that, “where a man and a lady are proved to have lived respectively as spouse, the law will presume, unless the opposite be obviously demonstrated that they were living respectively in result of a legitimate marriage, and not in a condition of concubinage.” This observation was taken in another case where the Court viewed the marriage to be legitimate due to the fact of living together as husband and wife. Many Courts have recorded on various instances how a cohabitation even without marriage is not an offence in the eyes of law. This concept may be regarded as immoral by the society but it is not illegal.

Globalisation, education, development, employment, freedom and privacy have led to the opening the society’s mind. Often, it is the women in the relationship that are put at a disadvantageous position facing many social and legal hurdles. The present judgement of Supreme Court is built on the vision of the constitutional framers which is to uphold the importance of the right to life and personal liberty and the right to freedom of speech and expression. The facts clearly shows the taboo gyrating around the concept of live-in relationships and pre-marital sex. All the criminal proceedings against the Appellant were initiated for merely mentioning and calling for the acceptance of the said concept. Judiciary, being the sentinel of justice, has not allowed frivolous petitions with *malafide* and intention infringe the fundamental rights of people. However, though there are several judgements which attempted to clarify the legal status of such relationships, there still remains ambiguity on few more aspects. There is an immediate need for a separate enactment consisting all the rules and regulations that concern live-in relationships. It is not necessary to give legal effect to all live-in relationships. For instance, if such a relationship is only for sexual reasons, none of the parties in such a relationship can claim for the benefits of a legal marriage. If a relationship has been maintained with a married or unmarried man with a married women, none of the parties can sought for its legality as it would previously constitute as an offence of Adultery under Section 497 IPC. However, the Section was decriminalised by the Supreme Court in a landmark judgement. Though adultery is no longer an offence under IPC, the above-mentioned setup of cohabitation can used as a ground in civil matters such as a ground for divorce, in which case would apply to both men and

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3 Honourable Justice A.K. Ganguly in Revanasiddappa v. Mallikarjun AIR 2011 SC 2447 (Supreme Court of India)
4 Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Blahamy AIR 1927 PC 185.
7 Joseph Shine v. UOI WP (Crl.) 194/2017
women. Nonetheless, when the pre-requisites are fulfilled, such a relationship can be protected.

CONCLUSION:
Live-in relationship has always been accused of damaging the ‘social fabric’ of our country. It is explicitly evident the society is not developed enough to treat all relationships equally. It is the duty of the judiciary to make sure that laws accommodate to the changing needs of public. There are various legal implications such a division of property, succession, desertion, legitimacy of children, etc. The change in social values and norms is inevitable. However, awareness needs to be created in the young minds about the legal consequences of being in such a relationship.

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