

Case law on the definition of 'wife'

The case law pertaining to the definition of the term 'wife' suggests that the courts are inclined to take a broader approach to the definition of wife and extend legal protection to a cohabitee or to a second wife where claims for maintenance are made. Further, the Supreme Court has recently acknowledged the fact that marriage may not be central, while granting rights in ancestral property to children of the second wife. The following Supreme Court and High Court case law is indicative of a trend that moves away from strict definitions of 'wife':

Supreme Court Decisions

Revanasiddappa v Mallikarjun (decided on 31-3-2011): In this case, the first defendant had two wives and a case was filed by the children of the first wife claiming that the second marriage was invalid, and the children from the second marriage had no rights in ancestral property. The Supreme Court upheld the right of illegitimate children to the father's share in ancestral property. The ruling dissented from the earlier position held in *Jinia Keotin vs. Kumar Sitaram Manjhi*, (2003) 1 SCC 730 and *Bharatha Matha vs. R. Vijaya Renganathan* AIR (2010) SC 2685 which had constrained the rights of illegitimate children to the separate property of the father and had held that a child born in a void or voidable marriage was not entitled to claim rights in ancestral property. This case has been referred to a larger bench of the Supreme Court for its consideration.

Khushboo vs. Kanniammal [(2010) 5 SCC 600]: As part of its observations in this case, the Supreme Court held "While there can be no doubt that in India marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view...Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy."

Chanmuniya vs. V.K Singh [Civil Appeal of 2010 arising out of SLP (Civil) No. 15071/2009], involves maintenance for a woman who married her brother in law as per the customs of the Kushwaha community. It was observed that “We are of the opinion that a broad and expansive interpretation should be given to the term ‘wife’ to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C, so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125” (at para 46). While the judgement is sympathetic towards the woman, this case has been referred to a larger bench of the Supreme Court for clarification on the definition of the term ‘wife’.

Vidyadhari & others vs. Sukhrana Bai & others (2008 AIR 1420): Succession certificate was granted to a woman after the death of the man with whom she was living despite the fact that his legally wedded wife was alive. The Court based this decision on the fact that the live-in partner was mentioned as the nominee in the man’s provident fund and life insurance policies. Both the wife and the deceased’s partner filed petitions before a Madhya Pradesh trial court seeking the right of succession to his properties. The trial court rejected the wife’s claim, but the High Court reversed this, noting that there was no evidence to substantiate the claim that the deceased had divorced his legally wedded wife by customary procedure. The Supreme Court upheld the partner’s claim and observed that although the High Court was right in deciding about the subsisting marriage between the deceased and his wife, it was wrong in denying the succession certificate to his partner for the purpose of collecting the provident fund and the life insurance amounts. Whatever be the status of the live-in partner, there was no doubt about the legitimacy of the four children born of her relationship with the deceased.

Rameshchandra Rampratapji Daga vs. Rameshwari Rameshchandra Daga [(2005) 2 SCC 33] held that a bigamous marriage may be declared illegal, being in contravention of the provisions of the Hindu Marriage Act, 1955, but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent.

Dwarika Prasad Satpathy vs. Bidyut Prava Dixit and Anr. [AIR (1999) SC 3348]: It was held that the validity of the marriage for the purpose of summary proceedings under Section 125 of the Cr.P.C is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as that required in a trial of offence under Section 494 of the Indian Penal Code. If the claimant in proceedings under Section 125 succeeds in showing that she and the respondent have lived together as husband and wife, the Court has to presume that they are legally wedded spouses, and in such a situation one who denies the marital status can rebut the presumption. When the respondent does not dispute the paternity of the child and accepts that a marriage ceremony was performed, though not legally perfect, he cannot avoid maintenance proceedings.

Mohammed Amin vs. Vakil Ahmed [AIR (1952) SC 358]: In this case the legal status of the woman as ‘wife’ was questioned, and the Supreme Court held that ‘The presumption of marriage arises in Mohamadan law in the absence of direct proof from a prolonged and continual cohabitation as husband and wife.’

High Court Decisions¹

Suman Nivrutti Satav v Nivrutti Dattu Satav (Bombay High Court, decided on 26th August 2009): In this case, the wife was thrown out of the matrimonial home along with her minor daughter. She filed a case for maintenance but the husband pleaded that the marriage was not valid since the woman is his second wife. The wife contended that she was the first wife and that a year after their marriage, he remarried. The magistrate’s court and the Sessions Court upheld the husband’s contention and denied her maintenance. Since paternity was not denied, the daughter was awarded Rs.200/- p.m. as maintenance which was enhanced to Rs.400/- by the Sessions Court. The wife appealed to the High Court which upheld her claim and awarded Rs.500/- p.m. as maintenance from the date of filing the application, i.e.1991. The court ruled

¹ This is a selection of case law, which does not include all High Court decisions throughout India on the meaning of the term ‘wife’. Further, it is important to note that there are numerous family court judgments that have upheld the rights of women in marriages that are not legally valid to maintenance – for details of such decisions, see for example, ‘Defending Women’s Right to Maintenance’ MAJLIS (2011).

that the lower court had erred in demanding strict proof of marriage for claiming maintenance, and commented that the fact that both had stayed together as husband and wife and that a daughter was born to them was sufficient evidence of marriage for the purpose of awarding maintenance under S.125 Cr.P.C.

Lakhwinder Kaur vs. Gurmail Singh 1 (2008) DMC 148 Punjab and Haryana: The husband in this case denied he was married to the woman and that he was not the father of the child she had. The court held that proceedings under section 125 Cr.P.C are of a summary nature, and the standard of strict proof is not required. According to the court, “If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouse, and in such a situation, the party who denies the marital status has to rebut the presumption”.

Shyamalal Pathak vs. State of Bihar 1 (2008) DMC 461 Pat: The High Court of Patna held that proceedings under section 125 Cr.P.C are of a summary nature and proof of marriage is not as high as in under section 494 Indian Penal Code (adultery) or divorce proceedings. According to the court, “If the applicant is able to show that she and opposite party lived together as husband and wife, the court can presume they are legally married...”

Narinder Pal Kaur Chawla vs. Manjeet Singh Chawla (judgement of the Delhi High Court, dated 20.09.2007): In this case, the husband pretended he was a bachelor and married the wife in 1977 with whom he had two children. She was deserted in 1991, and the husband refused to provide maintenance on the ground that he was already married. The Delhi High Court held that for the purpose of claiming maintenance under section 18 of the Hindu Marriage Act the woman be treated as a ‘legally wedded wife’. According to the Court, ‘Even when two interpretations are possible, one which would advance the purpose for which the Act was enacted should be preferred than the other, which may frustrate the purpose’.

Suresh Khullar vs. Vijay Kumar Khullar, (judgement of the Delhi High Court dated 27 August 2007): In this case the husband has acquired a divorce decree from his first wife from a court in Himachal Pradesh which had no jurisdiction to adjudicate upon the divorce. He married again, but threw out his second wife after a few days of marriage and refused to pay maintenance on the

ground of his subsisting marriage. The Delhi High Court held that section 18 of the Hindu Marriage Act is a beneficial provision for the purpose of securing a decent living for a Hindu wife and to ameliorate the sufferings of a deserted wife. The Court held that for the purpose of claiming maintenance under section 18 of the Hindu Marriage Act the woman be treated as a 'legally wedded wife'.

Manda R. Thaore vs Ramaji Ghanshyam Thaore [Bombay High Court (Nagpur bench), Criminal Revision Application Number 317/2006]: In this case, the court held the second wife was not entitled to maintenance under section 125 Cr.P.C but she was entitled to maintenance under the Protection of Women from Domestic Violence Act. The court awarded compensatory costs (Rs. fifteen thousand) to the woman to help her pursue proceedings under PWDVA.

Krishna Chandra Jerai vs State of Jharkhand 1 (2005) DMC 437 Jha: In this case the wife sought maintenance but could not prove the marriage, although the husband did not deny the fact of long cohabitation and that they had three children. The High Court held that strict proof of marriage is not necessary in summary proceedings. According to the court, "Section 125 is not be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment".

Pradeep Gupta vs. Kanti Devi 1 (2003) DMC 265 Jha: The Jharkhand High Court held that strict proof of marriage is not necessary when awarding maintenance under section 125 Cr.P.C. The court referred to section 50 of the Indian Evidence Act, which states that 'Opinion or relationship, when relevant: When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is relevant fact...'

It was submitted that the persons living in and around the area had always thought of the man and woman as husband and wife, and the court accepted this argument.

Govindrao vs. Anandibai (AIR 1976 Bom 433): In this case, the husband married twice, and upon deserting his second wife, refused to pay maintenance on the ground he was already married. While the court observed that the second marriage was null and void, it was held that words ‘husband’ and ‘wife’ under section 25 (1) of the Hindu Marriage Act does not imply a lawfully wedded Hindu wife and lawfully wedded Hindu husband. According to the court the Hindu Marriage Act is a piece of social welfare and “when construing such a piece of legislation, it would not be right to adopt a narrow pedantic approach.”