

LIVE-IN RELATIONSHIPS IN INDIA

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‘Traditionally speaking, live-in relationships were alien to our nation till late. Even today it is a fad which is visible only in urban areas. Lately, the Hon’ble Supreme Court, in judgments like Khusboo’s case of 23.03.2010, gave a legal cover to this infamous ‘western’ cultural product but our Parliament also accorded some degree of protection by including live-in relationships within the definition of “Domestic Relationship” in Section 2 (f) of Protection of Women from Domestic Violence Act 2005. Despite all these developments granting a level of legal legitimacy to the live-in relationship, it is still largely perceived to be an immoral relationship in our society.’²

-Additional Session Judge, Delhi

The aforementioned paragraph is taken from a judgment pronounced at a Delhi district court that sets out the perception of live-in relationships in India. The moral debates surrounding live-in relationships have often diluted the major issues facing the Indian society such as violence against women. The rights and the process of adjudication of justice are often affected if she or he is perceived to live in an immoral situation. In a live-in relationship, as in a matrimonial relationship, women often face various physical, verbal, emotional and economic abuses. While women in a matrimonial relationship have legal recourse available to them, women in live-in relationships do not have many options. It is not difficult to see that the rights of the woman in a matrimonial relationship have come from the approval society has granted to marriage as an institution. On the other hand, the rights of women in live-in relationships are still considered revolutionary in the Indian society.³

This essay will analyse the various debates surrounding the recognition of the live-in relationship in India. The first part will analyse the laws that exist for female partners in live-in relationships. The essay will then cover various debates that surround recognition of the live-in relationship in context of the rights of women. The discussion will probe further into the construction of the other or the bad woman by the legislature and the judiciary. Finally, the essay will reflect on the rights which are denied to women in India as a result of the social and legal construction of women in live-in relationships as bad women.

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² State v. Zarzoliani, Tis Hazari Court, Delhi; FIR No. 174/2008, SC No. 32/2010. The judgment is available at: <http://www.judis.nic.in/judis_cat/detail_dc.aspx>. Last viewed on 31 January 2012.

³ T.K. Rajalaksmi, “Tardy Progress” (2011) Volume 28, Frontline, Issue 2. Available at <<http://www.frontlineonnet.com/fl2802/stories/20110128280209800.htm>>. Last viewed on 31 January 2012

RECOGNITION OF LIVE-IN RELATIONSHIPS IN INDIA

Live-in relationships in many Western countries are formally referred to as cohabitation. However in India, judges and activists refer to such relationships as 'live-in relationships'. The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as PWDVA) was enacted in 2005 in India and enforced from 2006 onwards. The legislation defined domestic violence for the first time and introduced civil remedies for women who are or have been victims of domestic violence. As per the legislation, women who have suffered or are suffering domestic violence have been termed as aggrieved persons.⁴ The PWDVA not only recognised violence inflicted on married women by their husbands and in-laws but also violence inflicted on women by various other members of the family such as fathers, brothers, sons, fathers-in-law, brothers-in-law and live-in partners. Alternatively, the PWDVA, through its wide definition, recognises the relatives of the wife or live-in partner, as victims of domestic violence.⁵

Legislation that existed in India prior to the PWDVA only covered the rights of a legally-wedded wife. These laws are Section 125 of the Code of Criminal Procedure 1973 which provides for maintenance of a destitute wife, Section 498-A⁶ and Section 304-B⁷ of the Indian Penal Code 1860, the Dowry Prohibition Act 1961⁸, the Hindu Adoptions and Maintenance Act 1956⁹ and the Hindu Marriage Act 1955¹⁰. The wide scope of the PWDVA in the context of the aforementioned legislation is further clarified in paragraph 2 of the Statements of Objects and Reasons of the PWDVA which states that Section 498-A does not address the issue completely as it only provides relief to legally married women and does not provide for any civil remedy. Women often had to pay a large amount as stamp duty to claim any civil relief.

The PWDVA recognises live-in relationships for the first time as seen by their inclusion in¹¹ clause (f) of Section 2 of the PWDVA which defines domestic relationship as:

‘...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

⁴ Clause (a) of Section 2 defines “aggrieved person” as “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”.

⁵ Refer sub-para (i) of para 4 of the Statement of Objects and Reasons of the PWDVA.

⁶ Section 498-A is related to mental cruelty inflicted on women by her husband and in-laws.

⁷ Section 304-B of the Indian Penal Code, 1860 was introduced in 1986 through an amendment to deal with cases of dowry death.

⁸ The Dowry Prohibition Act, 1961 was enacted to deal with the menace of dowry demands by the groom and his family from the bride’s family at the time of the marriage.

⁹ The Hindu Adoptions and Maintenance Act, 1956 states provisions for grant of maintenance to legally wedded Hindu wife and also states rules for adoption by a Hindu couple.

¹⁰ The Hindu Marriage Act, 1955 lays down provisions pertaining to legally valid marriage and how to procure a divorce.

¹¹ Tahira Karanjawala & Shivani Chugh, “The Legal Battle against Domestic Violence in India: Evolution and Analysis”, (2009) 23(3) International Journal of Law, Policy and the Family, 289-308 at p. 294

living together as a joint family.’

The phrase ‘a relationship in the nature of marriage’ in the aforementioned section is intended to cover women who are victims of fraudulent marriages, bigamous marriages and live-in partners. Often, people are not aware of what qualifies as a valid marriage and may start living together under the presumption that they are legally wedded. This discrepancy often comes to light when women seek any form of redress against their husbands in the court of law. Thus, the PWDVA is intended to cover all the aforementioned parties within its ambit.

The phrase ‘relationship in the nature of a marriage’ has already been subjected to debate before the judiciary over the issue of whether aggrieved person includes live-in partners.¹² Furthermore, the proviso of Section 2 (q) also clarifies this debate by referring to the relatives of adult male partner. The proviso states the following:

‘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.’

The PWDVA is applicable all over India except in Jammu & Kashmir, where it was enforced through a separate resolution on 12th July 2011 with few changes. One of the changes was that it excluded the phrase ‘relationship in the nature of a marriage’ from the definition of domestic relationship under Section 2 of the PWDVA. The women’s group was of the firm opinion that there are no instances of live-in relationships in Jammu & Kashmir.¹³

CONSTRUCTION OF BAD WOMEN - WHO ARE THEY?

Every society has its own culture and morality.¹⁴ While there are laws to govern the public life of an individual, the personal life is often problematically governed by the culture and morality of the society. The public-private debate has often given rise to conflict in the recognition of rights of women. Also, concerns have been raised about putting live-in relationships on par with the marriage as marriage has social and moral approval while live-in relationships are condemned.¹⁵ However, the Delhi High Court, in a judgment, has affirmed that the protection of a woman in a live-in relationship does not entail the devaluation of other relationships.¹⁶

Traditionally, a woman can have a sexual relationship only with her legally-wedded

¹² Refer, *Kusum Lata Verma v. State and Another*, III (2011) DMC 1;

¹³ Jammu & Kashmir, Institute of Management, Public Administration and Rural Development, “Workshop for a Law on Domestic Violence” 9th-10th October 2009.

¹⁴ Joshua Broady Preiss, “Multiculturalism and equal human dignity: An essay on Bhiku Parekh”, (2011) *Res Publica*, 141-156 at p. 143

¹⁵ *Aruna Pramod Shah v. Union of India*, 2008(102)DRJ543

¹⁶ *Supra* note 14. Also refer, Lawyers Collective Women’s Rights Initiative, “Questions and Answers on the Protection of Women from Domestic Violence Act, 2005” 2007. Available at <<http://www.unifem.org.in/PDF/Second%20set%20of%20FAQ-on%20DV.pdf>>. Last viewed on 7 January 2012

husband. A woman was seen either as wife or a mother and those who defied the given structure were often viewed as 'bad women'.¹⁷ Any deviation in the sexual behaviour of a woman would weigh against her character.¹⁸ In the cultural context, women are considered to be the torch-bearer of good reputation and honour of the family.¹⁹ This is clearly seen in another Delhi High Court judgment which reflected that an educated woman is capable of understanding the consequences of the live-in relationships.²⁰ The Court further stated that the live-in relationship does not entail any responsibility and in the case the court also ignored the fact that the woman had been in the relationship for five years. A relationship of five years is definitely not a 'walk-in and walk-out relationship' as reported in the judgment. Instead, this case reinstates the fact that in a live-in relationship, the consequences are only faced by the woman and not by the man, who is allowed to walk out. The construction of the live-in relationship as immoral creates a setback for women in terms of the social and legal reality. Furthermore, a live-in relationship is often compared to adultery although the nature of the relationship in both instances is different and can easily result in different consequences.²¹ By validating a live-in relationship, the law is definitely not validating an adulterous relationship.

The 'other' women or the construction of bad women is also visible from the debates that arose in Parliament over clause (f) of Section 2 of the PWDVA. One of the points made during the debate over implementation of the PWDVA (then a Bill) is as following:

'...another point, which I would like to make here is this. I am a woman and I know that I may have to suffer severely for saying this but still I feel it is my moral obligation. I am willing to take the risk and say that just because we are women, if we find another woman doing something anti-social, it does not mean that we support her in that. How can you break the social norm and then have the audacity to expect the law to protect you? Tomorrow, what would we tell our children? If you are going to legitimise the position of the 'other woman', then which fool in this country would want to get married!'²²

Thus, the moral debate now seems to be between women and as a result the role of men in perpetrating injustice and violence against women is not given due attention. The

¹⁷ Judith E. Koons, "Motherhood, Marriage, And Morality: The Pro-Marriage Moral Discourse Of American Welfare Policy", (2004) 19, *Wisconsin Women's Law Journal*, 1-45 at p. 28

¹⁸ Faith A. Seidenberg, "The Myth of the 'Evil' Female as Embodied in the Law", (1971) 2, *Environmental Law*, 218-229 at p. 218

¹⁹ Radhika Coomaraswamy, "Identity Within: Cultural Relativism, Minority Rights and the Empowerment Of Women", (2002) 34 *George Washington International Law Review*, 483-513 at p. 497.

²⁰ *Alok Kumar v. State & Another*, CrI.M.C. No. 299/2009

²¹ *The Times of India*, "Live-in acceptable, why not adultery", 28 January 2011. Available at: <http://articles.timesofindia.indiatimes.com/2011-01-28/mumbai/28356077_1_adultery-live-in-relationships-criminal-offence>. Last viewed on 31 January 2012.

²² *The Parliamentary Debate*, "Introduction of the Protection of Women from Domestic Violence Bill, 2005", 23.8.2005. Available at: <<http://164.100.47.132/LssNew/Debates/DebateArchive.aspx>>. Last viewed on 7 January 2012.

'good' woman is posited against the 'bad' woman. The good woman is the legally-wedded wife while the bad woman has deliberately, or so it is assumed, sought relations with a man without the seal of a marriage over it. A woman in a live-in relationship with another man has often been viewed as someone who has intentionally, and with full knowledge, invited trouble upon herself.

Furthermore, the speaker in Parliament did not fail to emphasise that although a woman, she condemned the actions of other women who venture into live-in relationships. And yet, this discrimination against women which is perpetuated by other women cannot be considered acceptable and moral as it is against the very underpinnings of a liberal society.²³ Perhaps, it is fear of responses such as these that dissuade women's groups to explicitly use terms like live-in relationships or cohabitation in draft legislation.

For many, the mere protection of women from domestic violence is not only seen as the recognition of live-in relationships but also as an encouragement of immoral conduct.²⁴ The rights and protection granted under the PWDVA could also have been viewed as a discouragement for men to enter into a live-relationship. However, the burden of an 'immoral act' is still being placed on women. The moral construction of women in society often deprives her of the most basic rights and hinders the making and implementing of more effective laws to curb violence against women.

DIFFERENTIAL TREATMENT & INJUSTICES

As mentioned earlier, the clause related to live-in relationships in PWDVA is not only a reflection of changing social reality but also covers injustices that are perpetrated when women are in a fraudulent or bigamous marriage. Prior to the PWDVA, there was no civil remedy for women in the aforementioned relationships.²⁵ Criminal cases in India often take years to conclude and the rate of conviction is abysmally low.

Often, it is the people that pose a resistance to the changes that the society is going through. The facts of the case *S. Khushboo v. Kanniammal & another*²⁶, adjudicated by the Supreme Court of India, reflects the pressure exerted on the judiciary against the recognition of the live-in relationship. In this case, an actress sought the quashing of 23 criminal cases lodged against her for making a statement to a famous Indian magazine that live-in relationships should be accepted in India. The Apex Court quashed the criminal complaints, stating that the actress was protected by the right to freedom of speech and expression. The court also stated that an immoral act or expression need not be a criminal one and so the

²³ Supra note 13

²⁴ The Telegraph, "Within and Without" August 3, 2011. Available at: <http://www.telegraphindia.com/1110803/jsp/opinion/story_14326787.jsp>. Last viewed on 31 January 2012.

²⁵ While referring to the Indian culture and society the Jharkhand High Court denied the right to maintenance of a woman stating that the live-in relationship is not recognized in India. *Vineeta Devi v. Bablu Thakur & State of Jharkhand*, 2011(3)JCR21(Jhr).

²⁶ AIR 2010 SC 3196

court refrained from venturing into the moral debate.

These rigidities reflected in civil society and political groups are often perpetrated in the adjudication of courts as well. The attitude of the court can be gauged through the terminology used and the obiter statements in a judgment. For instance, in the case of *D. Velusamy v. D. Patachaiammal*²⁷, the Supreme Court of India denied maintenance to a woman stating that she did not fall into the category of a live-in partner. The Court held that for a relationship to qualify as a 'relationship in the nature of marriage', it had to satisfy four conditions:

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.²⁸

However, The PWDVA is a statute for social welfare²⁹ and the protection of women. Therefore the clause, 'relationship in the nature of marriage', should be given a broader and more dynamic interpretation to reflect current social reality. As mentioned earlier, many women are not aware of what would qualify as a valid marriage and might fall prey to an invalid, fraudulent or bigamous marriage. A woman, who has devoted herself to a relationship, may not have any rights under any of the existing legislation as the law has bound itself to the morality of society which does not recognise live-in relationships. Women cohabiting without getting married lack respect and have been perceived as the 'other' women or 'bad' women. Furthermore, the aforementioned case described the woman as a 'keep'. As per the judgment 'keeps' cannot have rights as they are 'financially maintained for sexual purpose' only. Thus, the court has unwittingly given an insight to the reasons for denial of the rights and construction of women in society. The word 'keep' does not have any legal recognition and women's groups objected vehemently to its usage.³⁰ The Lawyers' Collective Women's Rights Initiative, an NGO working on issues related to women's rights, publishes a Monitoring & Evaluation Report (Hereinafter the M&E Report) of the PWDVA every year.³¹ In the fourth M&E Report released in 2010, Ms. Indira Jaising, a leading

²⁷ AIR 2010 SCW 6731

²⁸ The judgment was also criticised for relying on Wikipedia for the definition of a common law marriage.

²⁹ Refer, *Kalpana Pal v. State of West Bengal & others*, W.P. No. 3915 (W) of 2010; *Jaydipsinh Prabhatsinh Jhala & others v. State of Gujrat & Others*, 2010 CriLJ 2462; *S. Meenavathi v. Senthamarai Selvi, Minor Ramasivam & Minor Harinarayani*, Crl.O.P.(MD) No. 12092 of 2008 and M.P.(MD) Nos. 1 and 1 of 2008.

³⁰ Lawyers Collective, "Staying Alive: Fourth Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005" 2010. Available at <<http://www.unwomensouthasia.org/publications.html>> as last seen on 7.1.2012.

³¹ Lawyers Collective Women's Rights Initiative was also actively involved in drafting and campaigning of the PWDVA. Ms. Indira Jaising is the head of the organisation. She is also a member of the UN Committee on the Elimination of Discrimination against Women (CEDAW) and Additional Solicitor General of India.

women's rights lawyer and activist in India, rightly pointed out that the usage of the word 'keep' is akin to referring women as 'chattel'. Ms. Jaising further elaborated in the M&E Report that '...what we have is a moral judgment being pronounced on women who do not marry but live with men in long-term relationships'.³² The result or rather the burden of the judgment will now be shared by any woman who has chosen to be in a live-in relationship but does not strictly qualify to be in the position of a lawfully wedded wife.

The previous case also made a reference to *Marvin v. Marvin*³³, a US case, and relied on the same principles to decide on the rights of the woman. In the *Marvin* case, decided in 1976, the Court denied the aggrieved woman's right to claim any money from her live-in partner as she was unable to prove any expressed contract between them. While the said judgment acted as a precedent in several cases, in many other instances the courts in United States did not follow it.³⁴ The Supreme Court of India has relied on a weak US authority delivered 34 years ago to ascertain the current status of live-in partners in India. A lot has changed legally since the 1976 judgment but this, along with the different social context, has not been adequately explored. There is much concern over the economic rights of women on the breakdown of cohabitation in Western countries and there are specific laws covering rights of cohabitants. In the UK and the US, the live-in relationship has already gained acceptance in society and there are progressive laws covering the rights of women.³⁵ The existence of the various laws and policies can be considered as one step towards access to justice for women.

CONCLUSION

In the Indian context one can say that '...the erosion of normative prescription has outrun the social reality'³⁶ Studies in Western countries show that women in cohabitation are more at risk of domestic violence than those who are married.³⁷ In light of human rights and principles of equality, it is unfortunate that differential treatment can be observed³⁸ in the instances of live-in relationships. This belies discrimination on the grounds of sex, which is against the Constitution of India.³⁹ All citizens, including women, have the freedom of speech and expression,⁴⁰ and most importantly, have a right to life and the right to live life

³² Lawyers Collective, "Staying Alive: Fourth Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005" 2010. Available at: <<http://www.unwomensouthasia.org/publications.html>> as last seen on 7 January 2012.

³³ 18 Cal. 3d 660

³⁴ Harry D. Krause, "Legal Position: Unmarried Couples", (1986) 34 *American Journal of Comparative Law*, Supp. 533-548 at p. 536

³⁵ Jane Lewis, "Debates and Issues Regarding Marriage and Cohabitation in the British and American Literature", (2001) 15 (1), *International Journal of Law, Policy and the Family*, 159-177 at p. 1,2

³⁶ *Supra* note 35 at p. 172

³⁷ Cynthia Grant Bowman, "Social Science and Legal Policy: The Case of Heterosexual Cohabitation", (2007) 9 *Journal of Law & Family Studies*, 1-52 at p. 36

³⁸ *Supra* note 13 at p. 143

³⁹ Article 15 of the Constitution of India.

⁴⁰ Article 19 (1) (2) of the Constitution of India.

with dignity⁴¹. To consider a live-in relationship as a relationship without any consequences and morality would result in holding women responsible for any breakdown. It is perhaps due to the moral and religious construction of good women that practices like sati and child marriage continued for so long and efforts to discontinue them faced much resistance. And yet we can see that attainment of moral and religious validity should not be the main grounds on which law is made. It has long been understood that law has to change with the times and reflect the dynamism of social realities for it to be workable and fair. Legislation and legal principles have to be objective while protecting the fundamental rights of a person as envisaged under the Constitution of India. Lastly, as Flavia Agnes, a feminist activist stated, in light of the rights granted to same-sex couples⁴² and recognition of property rights of illegitimate children, there hardly seems to be any rationale behind subjecting women in live-in relationships to unnecessary hardships. Whatever the stance on the moral debate may be, it cannot outweigh basic human rights and the fundamental rights of women.

⁴¹ Article 21 of the Constitution of India.

⁴² Naz Foundation v. Delhi, WP(C) No.7455/2001