

# **LIVE IN RELATIONSHIPS – THE SOCIETAL CONSTRUCTION OF ‘GOOD’ WOMEN AND ‘BAD’ WOMEN AND ITS CONSEQUENCES**

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## **ABSTRACT**

An adult female and an adult male living together under the same roof, as husband and wife without being legally married to each other, known as live-in relationship is a taboo in the Indian culture. The law is made for protecting the rights of an individual, however the subject of live-in relationship is so controversial that it also deprives women of their most basic rights in this predominantly male culture. Avoiding generalization, there are some dogmatic sections of the society and political institutions that look down upon women entering into live-in relationships on moral and ethical grounds. The moral debate should have been put aside when an effort was made to protect women being subjects of domestic violence in not just live-in relationships but also in fraudulent and bigamous marriages. However, we see instances of Indian women in such relationships failing to get any remedies under law when physically abused by their partners because of the pressure upon judiciary and legislature by political groups and extremists in the society. PWDVA by giving recognition to live-in relationship intends to protect the rights of all women and not just the ones who are married legally. However, the intention has been completely misunderstood as legitimizing the so called immoral relationship in the society and devaluing the sacred institution of marriage. Men are often also, in the modern times subjected to violence by their partners but they have no protection under law as we strive to protect women all the time being a vulnerable class of society and then fail to recognize the most basic rights that she is entitled to on the grounds of morality and dignity.

## INTRODUCTION

*“Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law, it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different time”- Hon’ble Justice A.K Ganguly and G.S Singhvi in **Revanasiddappa & others vs Mallikarjun & others**<sup>1</sup>*

The Live-in relationship is when an unmarried couple lives together in a long term relationship that has all the qualities or characteristics of a marriage. It can be also called cohabitation. Cohabitation is defined as a situation in which opposite-sex couples live together outside the bond of marriage.<sup>2</sup> In some laws live in relationships are counted as just as legal as a normal marriage, either upon fulfillment of specific amount of time or after becoming parents or also if the couple holds out themselves as spouses in the society.<sup>3</sup>

Live in relationship is neither recognized by The Hindu Marriage Act, 1955 nor by The Criminal Procedure Code, 1973, nor by The Indian Succession Act 1925. However, the Protection of Women from Domestic Violence Act, 2005 (PWDVA) does in a way try to include such live in relationships through its broad definition of ‘domestic relationship’.

Major issues that have prevailed since the past three decades in India such as violence against women often get hidden behind the moral debates regarding live-in relationships. If a woman is seen to be in an immoral situation by the society, even the most important of her rights and the adjudication procedures get affected. Women having a married legal status have many remedies available and the law time and again keeps updating itself for the protection of married women but we fail to recognize that even women who are in a live-in relationship face physical, verbal, emotional and economic abuse. Marriage is a very important institution and an approved one in the society and therefore the rights of married women have also come from the approval of the society. On the other hand, rights of women in live-in relationships are still

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<sup>1</sup> On 31<sup>st</sup> March 31, 2011, Arising out of Special Leave Petition (C) No.12639/09, Para27.

<sup>2</sup> “Cohabitation”, International Encyclopedia of Marriage And Family | 2003, Available At, [Http://www.encyclopedia.com/Topic/Cohabitation.aspx](http://www.encyclopedia.com/Topic/Cohabitation.aspx).

<sup>3</sup> Shobharam Sharma, —Live-In-Relationship: An Individualistic Approach, Naya Deep, Pg.69.

considered revolutionary in the Indian society.<sup>4</sup>

This research paper aims at analyzing the various kinds of perceptions and discussions that prevail around the recognition of a live in relationship in India. Existing laws for women, various debates and the perception of the 'other woman' by the legislature and the Judiciary will be discussed through this paper. This paper will finally conclude by diving into the issue of women's rights being affected due to the social and legal construction of live in relationship in India.

## **RECOGNITION OF LIVE- IN RELATIONSHIPS IN INDIA**

The PWDVA became enforceable in the year 2006 and it has been a great leap forward for live-in relationships status in India. PWDVA, for the first time defined domestic violence and for women suffering from such violence, civil remedies were introduced. Such women were termed and defined as aggrieved persons.

**Section 2 (a) "Aggrieved person"**<sup>5</sup> means any woman who is, or has been, in a domestic relationship with the respondent and has been subjected to any act of domestic violence by the respondent;

**Section 2 (f) "Domestic Relationship"**<sup>6</sup> 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;

This act also recognized physical abuse inflicted upon women by other related members of the family such as in-laws, brothers, and most importantly live-in partners. This act was a great leap forward as considering the illiteracy rate of women in India there are uncountable possibilities of women being tricked into fraudulent marriages or bigamous marriages. They might be in a live-in relationship or many women might also not be aware of what is a qualified legal marriage and may just be living together under the impression that they are legally married. All of this comes up when women in such relationships seek any form of redress in

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<sup>4</sup> T.K. Rajalaksmi, "Tardy Progress" (2011) Volume 28, *Frontline*, Issue 2.

<sup>5</sup> Section 2(a), of the PWDVA,2005

<sup>6</sup> Section 2(f), of the PWDVA,2005

the court of law. Therefore, through this act all women subjected to violence, being in any such kind of relationship are intended to be protected. Although the phrase ‘relationship in the nature of a marriage’ has long been the matter of debate before the judiciary as to whether live-in partners are also qualified<sup>7</sup>, Section 2(q) clarifies this debate. The proviso states :

‘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’.

Earlier, before PWDVA , the laws that existed in India only recognized rights of legally married women. Laws such as Section 125 of CrpPc 1973, 498-A<sup>8</sup> and 304-B<sup>9</sup> of The Indian Penal Code 1860, The Dowry Prohibition Act 1961<sup>10</sup>, The Hindu Adoption and Maintenance Act 1956<sup>11</sup> and The Hindu Marriage Act<sup>12</sup>, 1955 were the laws in place. PWDVA gave a wide interpretation to domestic relationships as compared to all the other existing laws and this is very clear from paragraph 2 of the Statements of Objects and Reasons of the PWDVA which states that 498-A failed to acknowledge the issue in its entirety as it only provides remedies for a legally married woman. It also stated that there is no civil remedy given and thereby women often paid heavy stamp duty to claim any civil relief.

It is also quite interesting to note that women’s group in Jammu & Kashmir are very firm on their opinion that there are no cases of live-in relationships in Jammu & Kashmir. PWDVA is applicable to all of India except Jammu & Kashmir because the same act was enforced there through a separate resolution including a few changes in 2011. One of the changes in there was exclusion of the phrase ‘relationship in the nature of a marriage’ from the definition of domestic relationship.<sup>13</sup>

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<sup>7</sup> Kusum Lata Verma v. State and Another, III (2011) DMC 1<sup>[SEP]</sup>

<sup>8</sup> Section 498-A is related to mental cruelty inflicted on women by her husband and in-laws.<sup>[SEP]</sup>

<sup>9</sup> Section 304-B of the Indian Penal Code, 1860 was introduced in 1986 through an amendment to deal with cases of dowry death

<sup>10</sup> 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 marriage

<sup>11</sup> 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.

<sup>12</sup> The Hindu Marriage Act,1955 lays down provisions pertaining to legally valid marriage and how to procure a divorce.

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

## **CONSTRUCTION OF WOMEN AS ‘OTHER’ WOMAN IN LIVE-IN RELATIONSHIPS**

Every country has its own cultural and moral values. India is a multi-cultural society and has very tight family values. Marriage is considered sacred and unlike western countries, in India marriage is not just between husband and wife but between the families too. Laws in the country govern the public life of a person but their personal lives are still pretty much governed by the moral values prevailing in the society. Unfortunately this public private debate has often affected the rights of women. If live-in relationships are given a legitimized status, it will be compared with socially approved legal marriage and concerns may be raised and socially live-in relationships are condemned.<sup>14</sup> The Delhi High Court in a judgment does not entail the devaluation of other relationships.<sup>15</sup>

Getting into a sexual relationship for an unmarried woman is seen as immoral. Only a married woman have sexual relationship with her legally wedded husband. In India, a woman either plays a role of a mother or a wife, and there is no place for a woman in a live- in relationship. Any woman who violates the given norms of the society were seen as a woman of bad character<sup>16</sup>. A Delhi High Court Judgment reflected that women in India are supposed to be the epitome of good reputation and honour of the family<sup>17</sup> by stating that an educated woman can very well understand the burden that a live-in relationship brings with it<sup>18</sup>. The judgment also stated that live in relationship entails no responsibilities even if it is a long term relationship. Such a perception by the judiciary is unfortunate for women as that only puts them in conflict with social and legal realities. Furthermore, often a live-in relationship is seen as adultery but they are certainly two different things and result in different consequences<sup>19</sup>. Legitimising or giving any sort of recognition must not be equated with adultery which is an offence.

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<sup>14</sup> Aruna Pramod Shah v Union of India, 2008(102)DRJ543

<sup>15</sup> Joshua Broady Preiss, “Multiculturalism and equal human dignity: An essay on Bhiku Parekh”, (2011) Res Publica, 141-156 at p. 14

<sup>16</sup> Judith E. Koons, “Motherhood, Marriage, And Morality: The Pro-Marriage Discourse of American Welfare Policy”, (2004) 19, Wisconsin Women’s Law Journal, 1-45 at p.28

<sup>17</sup> 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

<sup>18</sup> Alok Kumar v State & Another, CrI.M.C. No. 299/2009

<sup>19</sup> The Times of India, “Live-in acceptable, why not adultery”, 28 January 2011.

Before the bill was actually passed in the parliament, this construction of 'other' women was reflected from the discussions in parliament regarding Section 2(f) of PWDVA. An example of this is the following statement :

*'...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 legitimize the position of the 'other woman', then which fool in this country would want to get married!'*<sup>20</sup>

Hence, the ethical verbal confrontation now is by all accounts between women and thereby the role of men inflicting injustice upon women is totally ignored. Live-in relationship being immoral becomes the center focus and the 'great' lady is placed against the 'terrible' lady. The great lady is the lawfully married spouse while the terrible lady has purposely, or so it is expected, looked for relations with another man and has put herself in an immoral or bad position with all knowledge of the consequences.

Besides, the speaker in Parliament did not neglect to underline that in spite of the fact that she is a woman herself, she does not appreciate the activities of other ladies want to be in live-in relationships. But then, this discrimination against ladies which is sustained by other ladies can't be viewed as satisfactory and good as it is against the very underpinnings of a liberal society<sup>21</sup>. It is due to such reactions and opinions of authorities that discourage women to use terms like live-in relationships while looking for remedies in courts of law.

It is sad that for some people even the protection given under PWDVA from domestic violence is not just seen as legitimizing live-in relationship but also seen as promoting the immoral behavior of such women<sup>22</sup>. The rights and security conceded under the PWDVA could likewise have been seen as a discouragement for men to go into a live-in relationship. However, the weight of an 'unethical demonstration' is as yet being set on women. The ethical development

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<sup>20</sup> The Parliamentary Debate, "Introduction of the Protection of Women from Domestic Violence Bill, 2005"

<sup>21</sup> Jammu & Kashmir, Institute of Management, Public Administration and Rural Development, "Workshop for a Law on Domestic Violence" 9<sup>th</sup>-10<sup>th</sup> October 2009.

<sup>22</sup> The Telegraph, "Within and Without" August 3, 2011.

of ladies in the public arena frequently denies her of the most essential rights and blocks the making and executing of more effective laws to check brutality against women.

### **DIFFERENTIAL TREATMENT & INJUSTICES.**

As already discussed earlier in the paper, the clause in PWDVA not only reflects a social change but also protects women who have entered into the institution of marriage fraudulently or are subjects of bigamous marriage. The plight of women in such relationships was worse before PWDVA came into being as they had no civil remedies<sup>23</sup> at all and as well known criminal cases in India take years to conclude and if belonging to an economically poor family, it is hard for women to get through such situations. The conviction rate is also very low in the country.

The society keeps changing, it keeps growing, however it is the people most of the times who become hurdles to these changes by bringing in moral and ethical explanations. In *S. Khushboo v Kanniammal & another*<sup>24</sup>, decided upon by the Supreme Court of India, it was reflected that the judiciary has to go through extreme pressure against recognition of a live-in relationship. In the given case 23 criminal cases were filed against an actress for merely making a statement for a popular Indian magazine in the favor of live-in relationships and how it should be accepted and not looked down upon in India. She appealed for the quashing of all these complaints in the Supreme Court. Court allowed the actresses appeal and quashed the complaints acknowledging the right to free speech and expression given by the Constitution of India. Avoiding the controversial debate, the court also stated that every act that is considered unethical in the society may not be a criminal act and so such reactions should be avoided.

The way in which political institutions and society portray their objections towards live-in relationships, affects the Indian Judiciary and their interpretations as well. There are various instances in which through statements made by the court, such influence is reflected. In case of *D. Velusamy v. D. Patachaiammal*<sup>25</sup>, a woman was denied maintenance by the Supreme Court and it was stated that she failed to fall into the category of live-in relationship. The court

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<sup>23</sup> 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)

<sup>24</sup> AIR 2010 SC 3196

<sup>25</sup> AIR 2010 SCW 6731

in this case has laid down conditions using which, whether or not a woman can be categorized as being into a live-in relationship can be decided –

- 1) The couple must look just like a married couple out in the society
- 2) They must have attained the legal age required to marry.
- 3) They must also fulfill other conditions as of being married and that includes being unmarried.
- 4) They must be holding themselves as spouses out to the society for a significant period of time.

The PWDVA is a statute for welfare and protection of women and so inspite of all the resistance from the society and other political groups, it is important to give this statute a broader interpretation and an approach that fits the realities of changing times must be adopted. Just because women who choose to be in live-in relationships which is considered morally incorrect or the ones who have fallen prey to fraudulent or bigamous marriages, does not mean that she is deprived of the protection she ought to get from law. Just because the society is of opinion that live-in relationships are unethical and try to criminalize it by calling it adulterly, does not make it a criminal act. It must looked at as a new approach and a change in the new and growing society and so women having this new approach are also entitled to basic inherent rights. Even after explicitly mentioning the phrase ‘relationship in the form of marriage’ so much controversy has been created, women who are victims of fraudulent or bigamous marriages may not get any remedy under the existing legislation at all. Women cohabiting without entering into the ‘sacred’ institution of marriage is often tagged as a ‘keep’ in our society. In the Judgment court further explains what a keep means and states that she is not entitled any rights and is only maintained financially for fulfilling sexual purposes. By stating this explanation, the court has unintentionally and indirectly explained the reasons behind depriving women living-in of their rights and their construction in the society as ‘immoral’ woman or ‘other’ woman. In the fourth Monitoring & Evaluation report of the PWDVA, 2010, Ms. Indira Jaising, a famous and leading women’s rights lawyer and activist in India, stated that ‘..what we have is a moral judgment being pronounced on women who do not marry but live with men in long-term relationships.’<sup>26</sup> The burden that this judgment has attached with it will be shared by all women who either choose to be in live-in relationship or are supportive of it in any form.

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<sup>26</sup> Lawyers Collective, “Staying Alive: Fourth Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005” 2010.

The same case also referred to a US case of *Marvin v Marvin*<sup>27</sup> and relied on the principles laid down in this case which was decided in the year 1976. The very first matter in question is whether a case that was decided so early in time be relied upon to decided on contemporary issues as live-in relationships. In this case, as the woman who was living-in failed to show any express contract between the two of them she was denied of maintenance from her partner. This is a judgment that often even the US courts have refrained themselves from relying onto<sup>28</sup>, and ironically the Indian court has relied on a weak US judgment which is 34 years old and also based in a different cultural context. Furthermore, recognition to live-in relationships have already been given in many western countries including US and UK and in addition to that there are laws that protect the rights of women contradictory to the position in India.<sup>29</sup> If we wish for genuine justice for women, our perceptions for such issues need to change in order to grant women with their rights.

## **CONCLUSION**

‘The erosion of normative prescription has outrun the social reality’<sup>30</sup> – the women in cohabitation relationships have been more prone to domestic violence than those who are married<sup>31</sup>, shows a study conducted in Western countries. According to the Constitution of India, all the citizens have a right to life and live life with dignity, along with freedom of speech and expression. It is therefore, unfortunate that even today, we can notice differential treatment to people, especially women, who are in live-in relationships. It is with the change in time that that law should be changed, in order to reflect the dynamic structure of the legal system and the social realities around which people try to attain moral and religious validity. It is due to those moral and religious turpitudes that practice like sati and child marriage continued for so long and the discontinuation of the same brought about resistance and havoc in the society. Even then, there is no debate on the fact that whatever the moral stance, it should not overpower

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<sup>27</sup> 18 Cal. 3d 660

<sup>28</sup> Harry D. Krause, “Legal Position: Unmarried Couples”, (1986) 34 American Journal of Comparative Law, Supp. 533-548 at p.536.

<sup>29</sup> 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

<sup>30</sup> 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. 143

<sup>31</sup> Cynthia Grant Bowman, “ Social Science and Legal Police: The Case of Heterosexual Cohabitation”, (2007) 9 Journal of Law & Family Studies, 1-52 at p.36

the basic human rights of women. Lastly, as Flavia Agnes said, “In light of the rights granted to same-sex couples 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.”<sup>32</sup>

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<sup>32</sup> Naz Foundation v. Delhi, WP(C) No.7455/2001

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