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PROPERTY RIGHTS IN LIVE-IN RELATIONSHIPS – A CRITICAL ANALYSIS

-Mrinal Parihar

Even if they (couples) were not competent to enter into wedlock, they have the right to live together even outside wedlock. It would not be out of place to mention that 'live-in relationship' is now recognised by the legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

– Hon’ble Justice AK Sikri and Justice Ashok Bhushan in *Nandakumarv. State of Kerala*¹

1. Introduction

“It’s better to have a live-in relationship rather than having a divorced life!” This is common and line favouring live-in relations around the world. This line means that, “In live-in relationships when partners get separated, they can easily find someone else to live with. While same is not true in marriage, once couples get divorced it will be difficult for them to find a new partner to live with.” Live-in relationships are not new for western countries but these days this concept is growing its roots in the east too. The word live-in is controversial in many terms in eastern countries such as it is against traditional values or morals of developing society, it disrupts the marriage culture and even the children born out of such relations are treated illegitimate ones.²

¹ *Nandakumarv. State of Kerala*, (2018) 16 SCC.

² <http://www.legalservicesindia.com/article/1013/Emerging-Concept-of-Live-in-Relationships.html> (accessed on 17.04.2019).

In the past, much of family law revolved around questions of marriage and divorce. People lacking the status of marriage could be comfortably ignored and children born outside wedlock were treated as second class citizens.³

1.1 Meaning of “Live-In Relationship”

The ‘Live-in relationship’ is a living arrangement in which two couples of opposite gender or same gender cohabits together for a long-term period. Live-in relationships are allowed in some countries like U.K., U.S.A., Australia, etc., around the world and even they are having their own specified provisions in Family Law Acts regarding the same. While on the other hand, it is still prohibited in many countries like Bangladesh, Indonesia, etc., as their social and cultural backgrounds don’t seem to be accepting it.

India is developing at a rapid rate and with development its cultural and societal background has started to evolve. Due to which many changes are taking place in laws and thinking of our society. With an introduction of any new western concepts, Indian youths likely to adopt it and in the same way the live-in relationship has its roots in metropolitan cities which are spreading to other parts of the nation. The recent judgements like that of decriminalizing section 377⁴ and 497⁵ of the IPC show how the Indian laws have additionally developed alongside society.

The sexual relationship between man and woman outside marriage was totally taboo in feudal society and was regarded with disgust and horror.⁶ The same taboo that used to haunt partners in live-in relationships has also started to fade away with society opening up about the idea of pre-marital sex and live-in relationships. This improved mindset is a result of freedom, privacy, profession, education and also globalization.⁷

In *Varsha Kapoor v. Union of India*⁸, the Delhi High Court held that domestic violence is a human right issue and a female living in a relationship in the nature of marriage has right to file a

³ Bill Atkin, “The Challenge of Unmarried Cohabitation – The New Zealand Response” at <https://www.jstor.org/stable/25740421> (accessed on 18.04.2019).

⁴ *Navej Singh Johar v. Union of India*, W.P. (Cr.) No. 76 of 2016.

⁵ *Joseph Shine v. Union of India*, WP(Cr.) 194/2017.

⁶ Jatindra Kumar Das, *Human Right Law and Practice* 343 (PHI Learning Pvt. Ltd., 2016).

⁷ <https://www.thebetterindia.com/132607/want-to-get-into-a-live-in-relationship-here-are-the-rights-you-need-to-know/> (accessed on 17.04.2019).

⁸ *Varsha Kapoor v. Union of India*, (170) 2010 DLT 166 (DB).

complaint also against the relatives of the husband or male partner, not only against husband or male partner.

In *S. Khushboo v. Kanniammal and Anr.*,⁹ Supreme Court, placing reliance upon its earlier decision in *Lata Singh v. State of U.P. and Anr.*,¹⁰ held that live-in-relationship is permissible only in unmarried major persons of heterogeneous sex. In case, one of the said persons is married, man may be guilty of offence of adultery and it would amount to an offence under Section 497 IPC.

1.2 Property Rights in Live-in Relationships

Right to property is one of the important rights available to human beings. It makes sure that whatever a person owns whether movable or immovable remains safe and secure with himself. Couples who are in live-in relationships have the right to own shares of their property after relation come to an end. Thus in many countries, couples already entered into the cohabitation agreement before getting into a relationship and it set out, in advance, what each member of the relationship expects of the other, both during the relationship and if they separate or one of them dies.¹¹ When their relationship comes to an end, courts separate their property on the basis of the contribution made by both the couples in properties owned by them jointly or separately.

Not only the partners in a relationship have the right to own the property but also a child born out of live-in relationship also has the right to inherit the property of his parents. The recent trend of the attitude of the courts in case of succession rights of live-in relationships in India shows a huge change towards the notion of the institution of marriage. The Supreme Court has not only pronounced that live-in relationship is not illegal, but has gone to the extent of declaring that the child born out of a live-in relationship is legitimate children and has the right to inherit the property.¹²

2. International Position

⁹ *S. Khushboo v. Kanniammal and Anr.*, JT 2010 (4) SC 478.

¹⁰ *Lata Singh v. State of U.P. and Anr.*, AIR 2006 SC 2522.

¹¹ <https://www.lawsociety.org.uk/for-the-public/common-legal-issues/moving-in-together-getting-a-cohabitation-agreement/> (accessed on 18.04.2019).

¹² *Bharata Matha v. R. Vijaya Renganathan*, AIR 2010 SC 2685.

The position of laws related to live-in relationships and property rights, across the globe presents an interesting picture. The same has been discussed in detail in the following section.

2.1 New Zealand

In New Zealand, live-in relationship is regarded as “De Facto Relationship”. They are regarded as informal partnerships. A de facto relationship is defined under the Property (Relationships) Act, 1976 as:

“For the purposes of this Act, a de facto relationship is a relationship between 2 persons (whether a man and a woman, or a man and a man, or a woman and a woman)—

- (a) Who are both aged 18 years or older; and
- (b) Who live together as a couple; and
- (c) Who are not married to, or in a civil union with, one another.”¹³

The Property (Relationships) Act provides a list of nine factors to assist the Court in determining whether two people were living together as a couple: the duration of relationship, the performance of household duties, sharing a common residence, caring for children, financial interdependence, sexual intercourse, mutual commitment to a shared life, and public reputation.¹⁴ Although the definition then goes on to state that none of the factors is essential, the Courts treat the mutual commitment to a shared life as an essential ingredient of a de facto relationship.¹⁵

It provides various provisions related to the division of property at the end of the relationship and also during the death of a partner. Equal sharing rules related to property rights in a de facto relationship apply only when both the partners live together for three years continuously. All children even those which born out from de facto relationship are ‘legitimate and equal’ in the eyes of New Zealand law. Thus, children who are born out of de facto relationships can inherit their parent’s property in the same way as children born out of marriages.

¹³ Section 2D(1) of Property (Relationships) Act, 1976.

¹⁴ Section 2D(2) of Property (Relationships) Act, 1976.

¹⁵ *Scragg v. Scott*, (2006) 25 FRNZ 942 (HC); *Public Trust v. Cornelius*, High Court Hamilton, CIV 2007-419-1046.

The general principle is that all the properties and debts which are bought or incurred during de facto relationships should be divided equally among the partners. Thus Property (Relationships) Act, 1976 classifies property into parts:

- I. Relationship Property: Such property divided equally among the partners unless there are extraordinary circumstances that make equal sharing "repugnant to justice".¹⁶
- II. Separate Property: Separate property is the property of the person who owns it and thus, it cannot be divided among the partners. It includes those properties which are owned by any partner before getting into the relationship and also the gifts and inheritance he/she has received during the relationship.

In *Nash v. Nash*,¹⁷ it was noted that the woman's claim "rested almost entirely on the provision of spousal services of housekeeping and child-rearing." Yet the female applicant was granted a share of a six hectares block of land where the parties lived and ran horses. Although the trial judge had restricted the woman's share to the homestead, the Court of Appeal extended it to the whole property. In other words, domestic contributions made by live-in partners, which are more obviously related to the home and its contents, can reach to other assets as well.

2.2 Canada

In Canada, Live-in relationships are commonly known as "Common Law Relationship". Generally, Common-law Partners has the same fundamental rights as married couples after 2 years of their cohabitation. If cohabitation ends before completion of 2 years then they will not be granted those rights. Common-law relationships typically refer to couples that live together in an arrangement akin to marriage, but without an actual ceremony or legal documents.¹⁸

According to Family Law Act 1990, the common-law relationship falls under provincial jurisdiction, thus, the law varies from provinces to provinces. A couple is considered to be living in a common-law relationship, if they are living together for a time period of two to three years or if they have been living together for less time but have a child together.

¹⁶ <https://www.howtolaw.co/division-of-property-when-a-marriage-or-de-facto-relationship-ends-392064> (accessed on 18.04.2019).

¹⁷ *Nash v. Nash*, [1994] N.Z.F.L.R. 921.

¹⁸ Alexandra Kazia, "4 myths about common-law relationships", *CBC News*, 20 March 2013 at <https://www.cbc.ca/news/canada/4-myths-about-common-law-relationships-1.1315129> (accessed on 19.04.2019).

Polygamous-like live-in relationships are not considered in Canada and are thus stand prohibited. That is, it cannot be exist between more than two people simultaneously. Also, those relationships which fall within prohibited degrees in the Marriage (Prohibited Degrees) Act 1990, applies equally to common-law partners. The following persons are not recognized as common-law partners:

- persons in an incestuous relationship;¹⁹
- one or both partners under the minimum age of consent (i.e. below 18 year of age); and
- one of the partners detained or incarcerated for what would be offences in Canada under the Criminal Code.²⁰

In Alberta, partners are regarded as Adult Independent Persons (AIP). The partners have to live for three years or have a child together to get benefits of AIP, but there is no automatic right to property division when the relationship ends.

In Saskatchewan and British Columbia, partners have to live together for two or three years or have a child together. Here partners have right to property and can get equal share in it.

In Manitoba and Nova Scotia, a common-law relationship is needed to be registered with the Vital Statistics Agency to receive the benefits of the right to property.

In provinces like New Brunswick, Ontario, Prince Edward Island, Yukon & Newfoundland and Labrador, property sharing rights are not granted to common-law partners.

In Nunavut and the Northwest Territories (NWT), to receive benefit of rights to property, the couple must have been living together for at least two years, or, have a child together in NWT.²¹

Quebec is the only province that does not recognize common-law relationships. The Supreme Court of Canada ruled in January, 2013²² that provinces had the right to decide if common-law

¹⁹ *Incest* – Human sexual activity between family members or close relatives. This typically includes sexual activity between people in consanguinity (blood relations), and sometimes those related by affinity (marriage or stepfamily), adoption, clan, or lineage.

²⁰ <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-common.html> (accessed on 25.04.2019).

²¹ <https://www.legalline.ca/legal-answers/common-law-rights-upon-break-up/> (accessed on 19.04.2019).

couples should get the same rights as married couples, and so has allowed Quebec to continue excluding common-law-style relationships from being recognized no matter how long two people have lived together.²³

In *Rathwell v. Rathwell*²⁴, the respondent wife contributed directly and indirectly to a real property asset but at the time of separation, found herself off the title and orphaned by the common law. The Supreme Court Hon'ble Justice Dickson said that:

"It seems to me that Mrs. Rathwell must succeed whether one applies classical doctrine or constructive trust. Each is available to sustain her claim. The presumption of common intention from her contribution in money and money's worth entitles her to succeed in resulting trust."

In *Federic v. Therrien* (2003, Ontario), a man (a taxi-driver) moved in with a woman and she supported him but they did not pool their resources. He was injured in a motor vehicle accident and she continued to support him during his convalescence, and he later started to pay her back. When she got an inheritance, she bought a house.

When they separated, Dario Frederic claimed an interest in the house based on the constructive trust, the Court gave him nothing concluding he:

"... lived in the house without paying a proportionate share of the mortgage or other expenses, or otherwise contributing. An equitable doctrine ought not to be invoked in such circumstances."²⁵

2.3 United Kingdom

In the U.K., there is generally a myth related to 'Common Law Marriages'. It is a common misunderstanding among U.K. citizens that after living together as couples for a long period of time then their relationship will be established as 'common law marriage'. But this concept is

²² *Quebec (Attorney General) v. A*, 2013 SCC 5, [2013] 1 S.C.R. 61.

²³ Alexandra Kazia, "4 myths about common-law relationships", *CBC News*, 20 March 2013 at <https://www.cbc.ca/news/canada/4-myths-about-common-law-relationships-1.1315129> (accessed on 19.04.2019).

²⁴ *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436

²⁵ <http://www.duhaime.org/LegalResources/FamilyLaw/LawArticle-277/Cohabitation-The-Law-Of-Living-Together-in-Canada.aspx> (accessed on 19.04.2019).

incorrect in the law of England and Wales. Cohabitants do have some legal protection in several areas which will be discussed below.²⁶

According to data collected by the Office of National Statistics (ONS), between 1996 and 2017 the number of opposite sex cohabiting couple families more than doubled, from around 1.5 million in 1996 to around 3.2 million in 2017.²⁷

In the UK, in recent years, the falling marriage rates and increased births outside marriage have become a political issue, with questions of whether the government should promote marriage (i.e. through tax benefits or public campaigns) or whether it should focus on the status of a parent, rather than that of a spouse.²⁸

2.3.1 England and Wales

When a cohabiting relationship comes to an end, they do not have guaranteed rights provided by law to gain ownership of each other properties. If a couple cannot agree on their respective shares, it is possible to ask the court to determine interest in the property.²⁹ Even courts divide their properties in the same way as they do during divorce between married couples i.e. by applying legal rules of trusts or proprietary estoppel.

In 2011, Lord Walker and Baroness Hale summarized the principles which apply where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage but without any express declaration of their beneficial interests. They confirmed that each case would turn on its own facts: “financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended... or fair...”³⁰

Another method they can use is by entering into cohabitation agreements about the amount of share they hold in any properties which they hold jointly in their names. This makes things easier when the separation of the property takes place.

²⁶ http://www.resolution.org.uk/news-list.asp?page_id=228&n_id=363 (accessed on 20.04.2019).

²⁷ <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2017> (accessed on 20.04.2019).

²⁸ <https://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/social-reform/marriage-and-cohabitation/> (accessed on 20.04.2019).

²⁹ Under section 14 of the Trusts of Land and Trustees Act, 1996.

³⁰ *Jones v. Kernott*, [2011] UKSC 53, paragraph 51.

When one of the cohabitant partners dies without leaving a will, the survivor has no automatic right under the intestacy rules to inherit any part of his or her partner's estate.³¹ Under family provision legislation, cohabitants can approach to court to make a claim to inherit their partner property. A cohabitant may only seek reasonable provision for their own maintenance.³²

2.3.2 *Scotland*

Family Law (Scotland) Act, 2006 provides limited rights to cohabitants couples to protect their interest. Cohabitants can make limited claims against each other when their relationships come to an end or on the death of a cohabitant.

Partners can receive equal shares in a joint property if they own it together in their own names or had made any financial contribution to such property. If any of the partners dies without leaving a will, then the property will be distributed according to the rule of intestacy.³³ It cannot be inherited automatically until and unless it is owned as jointly. A partner can apply to the court within 6 months of his/her partner death for a share in the deceased partner's estate.

If there is no will, a child born out of cohabitation relationship has the right to inherit property from both the parents and families of both the parents.³⁴

2.3.3 *Northern Ireland*

In Northern Ireland, Civil Partner has similar rights as that of married couples in many matters. But for that purpose, it should be duly registered. The Civil Partnership Act 2004 enables same-sex couples to get legal recognition of their relationship. Couples who form a civil partnership have a new legal status, that of 'civil partner'.³⁵

Thus it provides equal rights to civil partners in case of property rights and inheritance as married couples are having.

³¹ Law Commission, *Intestacy and Family Provision Claims on Death Executive Summary*, Consultation Paper No 191 (Summary), 29 October 2009, paragraph 15.

³² Inheritance (Provision for Family and Dependents) Act, 1975.

³³ The intestacy rules specify who should inherit the property of a deceased person who did not leave a valid will.

³⁴ <https://www.citizensadvice.org.uk/scotland/family/living-together-marriage-and-civil-partnership-s/living-together-and-opposite-sex-marriage-legal-differences-s/> (accessed on 20.04.2019).

³⁵ <https://www.nidirect.gov.uk/articles/find-out-your-rights> (accessed on 20.04.2019).

In *Re an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)*,³⁶ The Supreme Court ruled in favour of an unmarried woman who was fighting to access a widowed parent allowance after her partner died. It found that the government's refusal to allow Siobhan McLaughlin, 46, to claim the benefit after her partner's death was incompatible with human rights laws.³⁷

Ms McLaughlin, a classroom assistant from County Antrim, lived with John Adams for 23 years until he died in 2014. The couple had four children but never married. Mr Adams had made sufficient National Insurance contributions for Ms McLaughlin to claim a bereavement payment of £2,000 and widowed parent's allowance of £117 paid weekly, but her benefits claim was refused by the government on the grounds that she was not married to or a civil partner of the deceased.

"Where means-tested benefits are concerned, it is difficult indeed to see the justification for denying people and their children benefits, or paying them a lower rate of benefit, simply because the adults are not married to one another," Lady Hale ruled.

3.1 Position in India

In India, there are several personal laws such as Hindu laws, Muslim laws, and Christian laws which govern the rights and duties of couples who are married. While Live-in Relationship being a foreign concept has no recognition under these laws and thus stand withdrawn. But the year 2005 has brought a significant change in Indian law as the term 'live-in relationship' was included in the definition of domestic relationship in "The Protection of Women from Domestic Violence Act, 2005".

The Malimath Committee on Reforms of Criminal Justice System, 2003, made the recommendation that the definition of the word 'wife' in Section 125 of Criminal Procedure Code, 1973 should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage.³⁸In June 2008, it was recommended by the National Commission for Women to the Ministry of Women and Child

³⁶ *Re an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)*, [2018] UKSC 48.

³⁷ <https://www.ft.com/content/c9ec2b0a-ac3c-11e8-89a1-e5de165fa619> (accessed on 20.04.2019).

³⁸ Government of India, Report: *Committee on Reforms of Criminal Justice System*, (Ministry of Home Affairs, 2003) available at mha.nic.in/pdfs/criminal_justice_system.pdf on page 197 (accessed on 22.04.2019).

Development to include live-in female partners for the right of maintenance under Section 125 of Criminal Procedure Code, 1973.³⁹ Indian judiciary has also supported the recommendations of National Commission for Women and Report of Malimath Committee in *Abhijit Bhikaseth Auti v. State of Maharashtra*.⁴⁰

Earlier, children who were born out of live-in relationships were regarded as illegitimate and have no right to inherit their parent properties. But in the case of *Bharatha Matha v. R. Vijaya Renganathan*⁴¹ dealing with the legitimacy of a child born out of a live-in relationship and his succession of property rights, the Supreme Court held that such a child may be allowed to succeed inheritance in the property of the parents if any, but doesn't have any claim as against Hindu ancestral coparcenary property.

In *Rameshwari Devi v. State of Bihar & Ors.*,⁴² it has been held by the Hon'ble Supreme Court that by virtue of Section 16 of The Hindu Marriage Act of 1955, children even of void marriages are legitimate and would be entitled to a share in equal measure with other live-in relationships where the Hindu male dies intestate.

4.1 Conclusion and Suggestion

As a shift taking place in society from ancestral to modern, slowly and slowly live-in relationship is also getting recognized in Eastern countries along with Western ones. Sometimes live-in relations are important for the couples who think about marrying each other because during their duration of living together in the same household as a partner they came to understand each other better and can decide whether to marry or not. On the other hand, some of the issues arise in a live-in relationship like domestic violence, property disputes, a child born out of that relation, etc. all such issues have been handled by court and laws in a better way to provide justice to the partner which is affected from such relation.

When we compare live-in relation laws of India to that of other countries around the world, our law is still lacking behind of their laws. There need to be reforms made in these laws as our

³⁹Himanshi Dhawan, "Maintenance for Live-in-Partner?" *The Times of India*, June 30, 2008, at: <https://timesofindia.indiatimes.com/india/Maintenance-for-live-in-partner/articleshow/3178050.cms> (accessed on 22.04.2019).

⁴⁰*Abhijit Bhikaseth Auti v. State of Maharashtra*, (2009) Cri.LJ 889(Bom.).

⁴¹*Bharata Matha & Ors v. R. Vijaya Renganathan & Ors*, AIR 2010 SC 2685.

⁴²*Rameshwari Devi v. State of Bihar & Ors.*, (2000) 2 SCC 431

society is also changing at a faster rate and adopting most of the western values and culture. Here are the few suggestions that can help in improving the legal status of live-in relationship in India.

- I. At present, there is no specific legislation in India regarding live-in relationships while many foreign countries like USA, UK, New Zealand, France has specifically mentioned it in their Family Laws. Indian government should look upon it and enact the present family laws to include live-in relationship too.
- II. Like New Zealand, Indian law should also treat each and every child born in this country whether from the marriages or live-in relationships as legitimate ones.
- III. There should be provisions regarding registration of live-in relationship as provided in countries like the UK and Canada. It will confirm that the partners who are living together had ensured their rights and duties in front of the court of law. So if any issue arises among them they will be able to approach the court easily along with their registered proof of living together.
- IV. It should be made mandatory for live-in couples to enter into Cohabitation Agreements. These agreements should be signed by both the partners at the time when they start their relationship and must mentioned in detail the distribution of their property in case the relationship ends, financial distribution, custody of a child, etc. This makes it easier even for the court to decide and dispose of cases quickly.

It is suggested that there must be a separate provisions for the partners who are in live-in relationships and children born out of such a relationship in order to protect their rights. It should only apply to those who are in proper live-in relationships, thus, satisfying all the basic requirements of being live-in partners.