



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **LEGAL CONUNDRUM OF LIVE-IN RELATIONSHIP: ISSUES & CHALLENGES IN CONTEMPORARY INDIAN SOCIETY**

AUTHORED BY – PRIYA & VIDYAMAAN SINGHAL

## **Introduction: -**

Dynamic is constantly changing definitions of the live-in relationships in India reflect major societal changes, leading to alternative ways like greater individual freedom or career focus choice or shifting relationship in to live in relationship. On one side, India is a traditional based society but on the other hand live in relationships has got quite popular among our youth because of factors like urbanization, globalization and media as well. The breaking points of this paradigm change can be found in the liberalization processes of the early 1990s, that encapsulated modernization not only as societal belief but also as individual claim. Although live-in relationships are seen as a personal choice by many, they often run up against broader social norms in the deeply conservative rural parts of India where traditional marriage is still considered sacrosanct. The Indian judiciary has been instrumental in giving definite shape to the prospective legal recognition for live-in relationship. *Badri Prasad v. Dy. In the case of Gully v. Director of Consolidation (1978)*<sup>1</sup>, where prolonged cohabitation was held to be "in the nature of marriage," thereby making possible an inheritance for long-term partners. Similarly, *Indra Sarma Vs. V.K.V. Sarma (2013)*<sup>2</sup> gave a clear legal explanation as to the domestic relationship of live-in partners with certain qualifying criteria in place such as cohabitating for long, having mutual obligations and so on. These judgments reinforce the judicious proactive stance in recognizing live-in relationships equivalent to marriage so as to entitle female partners benefits under Domestic violence act (2005)<sup>3</sup> and maintenance rights by giving them legal sanctity.

Nevertheless, the remaining ambiguities in Indian law with respect to property rights, inheritance and child custody have validated some of these landmark cases. Children born outside the domain are held legitimate but they have rights of inheritance only in self-acquired

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<sup>1</sup> *Badri Prasad v. Dy. Dir. of Consol.*, (1978) 3 SCC 527.

<sup>2</sup> *Indra Sarma v. V.K.V. Sarma*, (2013) 15 S.C.C. 755 (India).

<sup>3</sup> Protection of Women from Domestic Violence Act, No. 43 of 2005, India Code (2005).



properties of parents. This absence of a well-structured guidance may lead to litigation, particularly when one partner departs or dies. Take the example of *Khushboo v. Kanniamal* (2010)<sup>4</sup>, where a division bench pronounced that, living together without marriage is protected by Article 21 in so far as it does not interfere with, or violate the rights to be exercised under social norms; personal liberty cannot drown within societal bondage. While this decision has been important in recognizing an individual's power to choose his/her partners, it also signals the ongoing struggle between personal liberties and social adherence. The cultural resistance, regional divergences between regions within India, has seen a wide opposition to live-in relationships in many parts of North and Central of India.<sup>5</sup> In the southern states, especially in matriarchal Kerala with higher literacy levels among many communities it has met less resistance. This has led to a much more liberal attitude towards live-in relationships, thanks in no small measure to the strong presence of progressive social movements active in Kerala and Tamil Nadu.<sup>6</sup> However, it is worth a mention here that live-in relationships continue to remain socially stigmatized and boycottable in northern states like Uttar Pradesh or Rajasthan where values of traditional family structures and caste hierarchies are deep-rooted.<sup>7</sup> The answer to such disparity is largely drawn from the cultural complexity of India and at times it also has something to do with societal pressures that come in. While legal precedents have; in a way, tried to balance personal freedoms and societal restraints much is still lacking of social acceptance. Media has acted as a two-edged sword — where some movies and serials have openly showed live-in relationships in positive light giving us all a much progressive view but simultaneously, they have attracted the criticism from certain conservative groups which sees such representation denigrating the very institution of Marriage. In Bollywood movies such as *Shuddh Desi Romance*, and *Salaam Namaste* living relationships have been propagated as an acceptable alternative to marriage however they also shed light on the social stigma that opts for non-conventional partnerships.

### **Key Legal Issues in live in relationship: -**

Despite of this live in relationship increasing day by day after the 1990s liberalization of India's

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<sup>4</sup> S. *Khushboo v. Kanniammal*, (2010) 5 SCC 600 (India).

<sup>5</sup> **Live-In Relationships In India: Socio-Legal Perspectives**, *Journal Of Indian Law And Society*, Vol. 8, No. 2, 2020, Pp. 245-268.

<sup>6</sup> **Agarwal & Anuja**, "Changing Patterns of Marriage and Family in Urban India: The Rise of the Live-In Relationship." *International Journal of Social Sciences and Humanities Research*, Vol. 7, No. 3, 2018, pp. 223-234.

<sup>7</sup> **Veena Talwar Oldenburg**, "Dowry Murder: The Imperial Origins of a Cultural Crime," 15 *Oxford University Press* 89 (2002).



economy, this concept became more familiar in our society. In that, the judiciary has played especially important role to frame a structure of live in relationship in India. Judiciary try to justify the legality of live in relationship in that they provide some landmark judgments on that to recognize the legitimacy of some certain rights within live in relationship especially for woman and children.

### **1. Protection against Domestic Violence for Women in Live-in Relationship: -**

In the case of Indra Sarma vs. V.K.V. Sarma (2013)<sup>8</sup> this case has proved to be very helpful in giving recognition to live in relationships in society and giving the protection of women who live in relationships under the Protection of Women from Domestic Violence Act, 2005. The court interpreted that section 2(f) of the protection under the protection of women from domestic violence act 2005, in which this is defined as 'Domestic Relationship', and this word was interpreted by the court and said that in a relationship between two individuals who live or have lived together in shared all the emotions, they connected in a physical relationship, and they shared all the responsibility of the household as a married couple, and that type of relationship comes under the 'a relationship in the nature of marriage'.<sup>9</sup> Moreover, the court passed the judgment on that the live-in relationship was not formally bound in the nature of marriage, but still they fulfil the criteria of marriage, as they share emotional connection as well as physical connection with household responsibility and financial dependencies or the duration of the cohabitation. Furthermore, the court added that all these criteria meet the 'nature of marriage' woman in such cohabitation that they are entitled to receive protection under the Protection of Women from Domestic Violence Act 2005. On the other side, the court found that V.K.V. Sarma was already married to another woman because of that Indira Sarma was not entitled to receive maintenance under the Protection of Women from Domestic Violence Act 2005.<sup>10</sup>

### **2. Property and inheritance rights of woman respected to the live-in relationship: -**

In Badri Prasad v. Dy. Director of Consolidation (1978)<sup>11</sup>, the Supreme Court of India addressed critical issues regarding to live-in relationships, particularly the legal recognition of long-term cohabitation without marriage and its validity. The Supreme Court held that Badri

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<sup>8</sup> Payal Sharma V/S Superintendent, A.I.R. 16876 , 17 May 2001.

<sup>9</sup> Aparna Bhat, *Live-In Relationships: Judicial Recognition And Legal Protections*, 14 J. Indian L. & Soc'y 221 (2018).

<sup>10</sup> Protection Of Women From Domestic Violence Act, No. 43 Of 2005, India Code (2005).

<sup>11</sup> Badri Prasad V. Dy. Director Of Consolidation, 1978, Air 1559 (Sc).

Parsad and the woman who lived together for more than 50 years it is not small period of time when two persons live together in such a number of periods it is a very serious kind of cohabitation between them, and they live like a husband and wife could be presume to be in a valid marriage/nature of marriage. And the woman was granted inheritance rights over the Badri Parsad property as a legally wedded wife.

This case was landmark judgments on live-in relationships. Here was court just interpreted the laws but not give the proper legislation to clarify the property and Inheritance rights of woman under live in relationship, for that need of uniform legal provisions.

### **3. Rights of Personal Liberty and Cohabitation Under Article 21: -**

Article 21<sup>12</sup> in India provides protection to live in relationship. Article 21 the constitution in India that talks about the rights to life and liberty and provides binding of all rights. It has been said that not every person will be deprived of his freedom. As time gone, the judiciary began to interpret it to include the right to privacy as well as the right to livelihood. In article 21, personal freedom has been linked to live in relationship. The high court of India has given many judgments in which it has been stated that two persons can live together without getting married, they have the right to live together without the interference of the society or the state. And in personal freedom the freedom to choose one's spouse and how one wants to live has been transcended by social and legal constraints. Article 21 also states that every Indian has the right to privacy. Along with privacy is the right to make one's own decisions without interference from anyone. In the case of K.S. Puttaswamy vs. Union of India (2017)<sup>13</sup>, the court said that privacy under article 21 is paired with live in relationship and was spoken to protect live in relationship. And stated that people living in live in relationship have the right to privacy and have the right to cohabit without fear of anyone and no one can interfere in their private life unless there is a compelling reason.

### **4. Protection Against Exploitation in Consensual Cohabitation: -**

In this case, Alok Kumar vs. State<sup>14</sup>, was in a live-in relationship with a woman for several years. The lady files a criminal complaint against the Alok Kumar under Section 376 of the Indian Penal Code, which pertains to offense of rape. The main issue before the court was whether the consensual live-in relationship could lead to any illegal allegation of the basis of

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<sup>12</sup> India Const. Art. 21.

<sup>13</sup> K.S. Puttaswamy Vs. Union Of India, 2017, A.I.R. Sec 1.

<sup>14</sup> **Alok Kumar V. State**, 2010 SCC.

false promises like marriage. The court interpreted that consent was very important for every relationship, whether it is marriage or a live-in relationship, and in that case both of the partners are consensually agreed for a live-in relationship. Further, the court interpreted that Section 376 of the IPC mentioned that there have been instances where false promises of getting married leading to the physical relationship have come under the "rape." But in this particular case,<sup>15</sup> the court found that it determines the difference between a consensual relationship and fraudulent promises that come under the repeal charges.<sup>16</sup>

### **5. Judicial approach in the matter of the legitimacy and inheritance rights of children in live in relationship:**

The court point at out the important legal question regarding the legitimacy of the children born from long-term live-in-relationship. According to the society the concept of the legitimacy relates to the marriage, if the any child born out of the without marriage relationship, they face social stigma and legal disadvantages. Unfortunately, in India increasing the concept of the live in relationship because of that the Indian courts recognize the legitimacy of the child without the formal marriages. In the case of *Bharata Matha & Ors. v. R. Vijaya Renganathan & Ors.* (2010)<sup>17</sup> The way the Supreme Court looked at Section 16 of the Hindu Marriage Act in this case was both forward thinking and a bit careful. They tried to find a middle ground between the old-fashioned views on marriage and family and the new reality of live-in relationships. the court interpreted the Section 16, in that mentioned which the legitimacy of child born from marriages that are void or voidable, the Court decided to include children from live-in relationship as well, making the law more relevant to today's social norms.

According to Section 16, kids born from a void or voidable marriage are seen as legitimate in every way when it comes to their parents. The tricky part for the Court was figuring out if this rule could also cover live-in relationships, which are not classified as void or voidable in the traditional marriage sense. The court in the judgment limited the scope of inheritance of property for those children who born out of Live in relationships only the parents' self-acquired property is there for inheritance not ancestral property. The ruling's limit on inheritance rights to just self-acquired stuff has been called out for not really doing enough to make sure kids

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<sup>15</sup> Sujata Sharma, *Live-In Relationships And The Indian Judiciary: A Case For Legal Reforms*, 10 Nujs L. Rev. 357 (2017).

<sup>16</sup> Shweta Kakkar, *The Legality Of Live-In Relationships In India: A Critical Analysis*, 4 Int'l J. L. Mgmt. & Hum. 201 (2019).

<sup>17</sup> *Bharata Matha & Ors. v. R. Vijaya Renganathan & Ors.*, (2010) 11 SCC 483.



from live-in relationships get equal treatment. People who disagree with this think that drawing a line between self-acquired and ancestral property is kind of random, and not letting these kids claim ancestral property just keeps the unevenness going. In lots of cases, especially in traditional families, ancestral property is a big part of a family's wealth, and by leaving out kids from live-in relationships from these assets, the law still treats them as if they are not as important heirs.

#### **6. Judicial interpretation in the matter of the adoption of the child in live-in relationship: -**

Indian people mostly believe in the traditional value, norms and they follow these practices because of that most of the Indian laws are fare in the presumption of the only married couple adopt the child.<sup>18</sup> Increasing the culture of the live in relationship in India along with the question about the adopt the child have come into the place. In India The Juvenile Justice (care and protection of children) Act, 2015, identify the framework for the adoption of the child, but this act only focus on the married couple can adopt the child but what about the live in couples want to adopt the child. <sup>19</sup>The court are doing best job for identify the issue whether live in couples can be grant the adoption rights and check the circumstance like interests of the child and the social perspective on the non-traditional family structures. Or another authority of adoption The Central Adoption Resource Authority give some guidelines for adoption but in that also prioritize the married couple. In the case of *Gayatri Devi vs. State Of Kerala* (2016)<sup>20</sup> The court mentioned that the current framework of The Central Adoption Resource Authority and The Juvenile Justice (care and protection of children) Act, 2015<sup>21</sup>, gives some legal preference to only on the married couples when in the matter of the adoption. Further court added that live in relationship are recognize by the court but still in that certain legal contexts are sensitive's issues like adoption faced societal and legal obligation. The court interpreted that the issues like adoption in the live in relationship need laws to accommodate.<sup>22</sup>

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<sup>18</sup> **Rajesh Sharma**, *Adoption Laws in India and Non-Marital Relationships: Bridging the Legal Gaps*, 12 South Asian L. Rev. 145, 152 (2016).

<sup>19</sup> **Anita Khandelwal**, *Revisiting CARA Guidelines: A Barrier for Live-in Couples Seeking Adoption?*, 15 J. Socio-Legal Stud. 300, 305 (2020).

<sup>20</sup> **Gayatri Devi v. State of Kerala**, AIR 2016 Ker 212, (India).

<sup>21</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).

<sup>22</sup> **Manoj Kumar Sinha**, *Changing Family Dynamics and the Law: Live-in Relationships and Adoption in India*, 13 Nat'l L. Sch. Rev. 111, 115 (2018).

### **7. Need for Gender Neutrality in Live-in Relationship: -**

The legal framework for live in relationship in India are more favorable to the women perspective under the laws like the protection for women under The Protection of Women from Domestic Violence Act, 2005. Need more gender neutrality under the specific laws related to the male perspective and LGBTQ2+ partners, discrimination between the male and female. As the give the maintenance right to the women but along with that give equal right to the male. All the custody rights are more focus on the women are more capable but give chance to man to prove them.

### **The Uttarakhand Uniform Civil Code (UCC) 2024 guidelines on the women and children rights: -**

The government of Uttarakhand gave a ruling on live-in relationships when the uniform civil code was implemented. The reason for the need to pass this bill was that there was an interfaith live-in couple involved; the couple's family was being threatened, so they sought protection in court. After this judgment, immediate relief was granted to the couple and also set a precedent in the UCC structure in Uttarakhand<sup>23</sup>. The judgment of Uttarakhand was given by the high court in that some key provisions were made in the Uttarakhand bill. The provisions of the UCC act have been made based on the judgment in which it was given. A special provision regarding live-in relationships was made in the UC Act, which is the first time any such legal provision has been made. In this case, the court ruled that a couple living in a live-in relationship must be registered under the UC Act within 48 hours to get police protection and will be kept for 6 weeks. Police officers from a nearby police station had arrived to provide security to the couple, who live in a relationship in India.

One of the most important sections under the Uttarakhand UCC bill is the mandatory registration for live in relationship. Under the UCC bill section 385 deals with that couples in who live in relationship are required to submit a formal statement to the registrar, who check all the details and everything about the live in relationship registration process. This provision applies to the live in partner who are residents of Uttarakhand or they are living within the Uttarakhand state authority. This registration must be done within the 39 days of entering in the live in relationship if they fail to do so than they must pay some fines or face some legal consequences like imprisonment. This section main focus on the protection of women who live

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<sup>23</sup> Uttarakhand Uniform Civil Code, 2024.

in a live in relationship, they face some vulnerability without the any safeguards and mandatory registration are required because of prevent any further problems like claim the maintenance rights after the deserted, after the registration relationship is recognized legally Section 385<sup>24</sup> provides in many cases where in the live in relationship after some of year the part away or be left without giving any resources or protection to woman , this section highlights this issue and ensuring that women deserted by their parents can claim maintenance from him with help of competent court. According to the section 379<sup>25</sup> women's right to seeking for the maintenance. This section focuses on the promoting gender equality in that women who live in a live in relationship they are also treated similarly to married women. In the most of the cases where the women is abandoned, with the help of this section she can approach before the court she can secure her financial stability.

The Uttarakhand Uniform Civil Code ,2024 (UCC) bill section 384<sup>26</sup> deals with the whenever live in partners want to terminate of live in relationship they can do with following the formal procedure , in that partners have to give statement of termination in that mentioned the few important things like why they what to terminate, they face some issues or anything<sup>27</sup>. Register checks the all the information about that if the one partner gives his/her statements than the Registrar inform other partner and after the all the procedure of checking register confirm the separation and it is legally documented. These sections give the legal clarity and protect women's right in the situation where the partner abandoned without giving any notice or any recourse. In the marriage for the divorce, follow some legal proceedings in the same way here for the termination of live in relationship this section provides some structure for legal separation of live in relationship.

The section 380<sup>28</sup> of UCC bill in that mentioned some restrictions under which live in relationship cannot be registered. The section highlights to prevent the misuse of the legal framework, which are, make for to protect live in relationship partner. Here are some conditions are mentioned: -

1. Marriage status: In that live in relationship cannot be registered by the partners if they are already married to another woman or man and prevent bigamy or polygamy.

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<sup>24</sup> Uttarakhand Uniform Civil Code Bill, § 385, 2024 (India).

<sup>25</sup> Uttarakhand Uniform Civil Code Bill, § 379, 2024 (India).

<sup>26</sup> Uttarakhand Uniform Civil Code Bill, § 384, 2024 (India).

<sup>27</sup> **Pushkar Singh Dhami**, *Address on the UCC's Impact*, Dehradun, Feb. 7, 2024,

<sup>28</sup> Uttarakhand Uniform Civil Code Bill, § 380, 2024 (India).



2. Age of partners are also important, in that minors are prohibited to register themselves under the section 380. In this section mention that both the partners are above the minimum age means must be adults, and age limit also fixed by the government the age for women is 18, for men is 21.
3. If the person enters in a live in relationship through coercion, force, or any Ford then it cannot be registered under the UCC. This provision prevents manipulated into a relationship and protect the individual right, focus on the relationship is based on the mutual understanding and consent.
4. This section prohibit against the Degrees of prohibited relationship, thus type of relationship violates the public policy or societal morality, such as a where the two individuals are same blood line this come under the prohibited degree, and this is not allowed by the UCC.

These are the restrictions are maintaining the individual rights, personal freedom, societal norms, and values.

What the section 379 of The Uttarakhand Uniform Civil Code (UCC) 2024 bill mention that, so in the section 379 firstly they talk about the legitimacy of the children, children born from the live in relationship they are also recognize as legitimate child according to this section. According to section 379 The Uttarakhand Government give same legal rights as married couple children have. Further, they want to reduce the social stigma and legal obligation so for that that to give full rights as normal people have in Uttarakhand.<sup>29</sup>

Section 379 talks about the inheritance rights for the child born from the live in relationship. This section ensuring that child born from the live relationship they are entitled to receive inheritance of property rights from father and as well from mother. This section ensuring the legal right upon the inheritance of the property rights for child born from the live in relationship. This provision provides the safeguard and the most important financial support of child.<sup>30</sup>

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<sup>29</sup> India Today, *Uttarakhand's UCC: Legal Protection for Children Born from Live-In Relationships* (Aug. 2024), <https://www.indiatoday.in>.

<sup>30</sup> Divya Saxena, *Legal Rights of Children from Live-In Relationships*, The Hindu (Sept. 2024), <https://www.thehindu.com>.

### **Conclusion: -**

In the end this provision makes some mandatory rules for the child like live in couple must register their birth child to the government. In addition, both the parents name and address mention in the birth certificate. Section aims to protect the child right in the education, healthcare, and social welfare without facing any societal pressure or troubles. Or court, recognize rights for the children with the help of judicial president. The Uttarakhand Uniform Civil Code gives some important guidelines for child born from the live in relationship. Because of that slowly society accepts the live in relationship in India.

