



INTERNATIONAL LAW
JOURNAL

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

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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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

INHERITANCE RIGHTS OF PARTNERS WITHIN A LIVE-IN RELATIONSHIP IN INDIA

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Abstract

Live-in relationships are an emerging trend in India and seen as a trial marriage by some. These relationships are defined as the continuous cohabitation of two partners who are not married to each other but living together and sharing a common household in a legally acceptable way. Some may believe, apparently, that these relationships are casual and have no laws or rules governing them; however, they carry with themselves their own set of responsibilities and possible legal liabilities. By the Apex Court, these relationships have been declared legal, and guidelines exist for partners and their children to ascertain their right for maintenance and inheritance. Nevertheless, this is still a hotly debated issue with many grey areas, like the need for official documentation, ancestral property rights, and being against the institute of marriage.

The primary objective of this research paper is to address, where no proper legislation or guidelines exist, the complexities of inheritance rights of partners in live-in relationships. Thereby, an attempt is made to understand the effectiveness of existing legal frameworks to address some of these complexities. Finally, this research paper argues that there is a need for framing a new, gender-sensitive law which can address any discrepancy in the current framework.

Introduction

The right to property is one of the most sacred and important right humans have. It is very difficult to imagine a society, or at least a prosperous one, where the idea of property doesn't exist and isn't held in high esteem.¹ In India, this right is protected by the Constitution² and the Supreme court has held

¹ Hoffman FS, "The Right to Property" (1909) 19 Ethics 477

² "The Constitution of India, -, 26 January 1950. See Article 300A Which States That – 'No Person Shall Be Deprived of His Property Save by the Authority of Law.'" (*Constitution of India*)

that right to own private property is an essential human right which cannot be denied.³ Generally, an individual might acquire their own property or inherit it from their forebears and partners. In India, these inheritance rights become heavily intertwined with the institution of marriage under various personnel laws like the Hindu Succession Act, 1956, or the Indian Succession Act, 1925. One important right that arises for women are certain rights to the matrimonial property they accrue from the marriage with their spouse. Even though these inheritance rights may be insufficient and patriarchal in many places, but they do recognize the immense contributions made by women to the household economy that often go unnoticed.⁴ The same rights ensure stability and financial security of a partner entering old age and provide justice to their contributions in marriage. But one problem arises in all this: what would happen to these rights if the partners just didn't happen to be married but were in a live-in relationship?

Live-in relationships can be defined as “Continuous cohabitation for a significant period of time, between partners who are not married to each other in a legally acceptable way and are sharing a common household.”⁵ These relationships have existed forever and have no specific legislation, customs, or social rules governing them. They're also subject to much controversy as they're seen by some as immoral and against the institution of marriage, especially in a society which believes in the age old adage that ‘marriages are made in heaven’. In recent times, however, the society is slowly accepting that relationships between a couple are not limited to just marriage. With the rapid globalisation of the economy, and multinational firms introducing health insurance benefits for live-in partners,⁶ there has been subtle but prominent change in the attitudes of the people. So much so that even the Supreme Court has held that though live-in relationships may be immoral, they're not illegal⁷ and such relationships remain in the ambit of right to life under Article 21 of the Constitution of India.⁸

³ “SC, DB, Appeal(Civil), 60-61 of 2020, Judgement Date: Jan 08 2020” Supreme Court judgement civil appeal

⁴ , Vijender. “MATRIMONIAL PROPERTY LAW IN INDIA: NEED OF THE HOUR Kumar, ““MATRIMONIAL PROPERTY LAW IN INDIA: NEED OF THE HOUR” (2015) 500–523 Journal of the Indian Law Institute 57, no. 4 (2015)

⁵ “Narayan CL, Narayan M, Deepanshu M. Live-In Relationships in India—Legal and Psychological Implications. Journal of Psychosexual Health. 2021;3(1):18-23.” [2021]

⁶ Now gift your live-in partner a mediclaim, Devina Sengupta, “Now Gift Your Live-in Partner a Mediclaim,” (March 2011) <<http://articles.economictimes.indiatimes.com>.

⁷ Bharata Matha v. R. Vijaya Renganathan C.A. No. 7108/2003 MANU/SC/0400/2010, (S.C. May 17, 2010).

⁸ S. Khushboo vs Kanniammal & Anr on 28 April, 2010” Criminal appeal No. 913 of 2010

While the court's progressive view provides some legitimacy to live-in relationships, there is a notable discrepancy in Indian law regarding the rights to property in such unions. The current legal framework primarily focuses on addressing property rights within the context of marriage, leaving live-in partners in a vulnerable position when it comes to property rights. In the *Protection of Women from Domestic Violence Act, 2005 (DV Act)*, relationships which are "in the nature of marriage" have been awarded certain monetary reliefs,⁹ but there is no clear indication of any inheritance rights given. In the absence of specific legislation, Indian courts have relied on judicial interpretations and principles of equity to adjudicate property disputes involving live-in partners. However, the lack of clear statutory guidance can lead to inconsistency and uncertainty in the outcomes of such cases. There is an urgent need for clarity in regards to property rights in live-in relationships to ensure women of India and any marginalized groups do not suffer as these relationships grow further in popularity.

Legal Status and property rights of partners in a Live-in Relationship

The Apex court has time and time again reiterated that while live-in relationships may not be socially acceptable, they are not prohibited by law¹⁰. With rapid globalization and spread of diverse values, the concept of relationship has evolved and is no longer restricted to marriage between a heterosexual couple. The problem with the evolving nature of human relationships is that, more often than not, the law fails to keep up. This is indeed true of the Indian legal system which has time and time again failed to give these relationships their due right. Even so, there have been attempts made to formalize such unions including the Uttarakhand's Uniform Civil Code (UCC) bill albeit with much controversy and lack of effective implementation.

Overall, there is still large ambiguity in the current framework for partners in a live-in-relationship to inherit property. The best way to do so would still be through testamentary succession, where a woman would be entitled to inherit the separate property of a partner through being nominated. In a particular case, the Supreme Court had granted rights to a woman based on the nominations of the deceased live-in partner, providing some validity to property rights in a live-in relationship.¹¹ This is a step forward in the sense that it acknowledges to some extent the rights of a live-in partner;

⁹ See, Sections 2(a), 12 read with Sections 18, 19, 20, 21 and 22 of *Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE*.

¹⁰ *Lata Singh v. state of UP & Another* 2006, writ petition (crl.) 208 of 2004

¹¹ *Vidyadhari, MANU/SC/0629/2008*.

nevertheless, the emphasis on wills underscores the necessity for more comprehensive legal structures to simplify inheritance rights for unmarried couples.

In an attempt to shed clarity on live-in relationships, the Supreme Court for first time in *Dhannu Lal v. Ganeshram*¹² held that couples who cohabit together for a long time would be assumed to be married for the purpose of law. Additionally, it was determined that the woman involved in such a relationship would be intitled to receive the property upon her partner's demise.

In other similar cases involving live-in relationships, Supreme court has long held a “presumption of marriage” in cases of long-term cohabitation.¹³ Yet, much hurdles exist in legally establishing rights of the partners. For example, in the case of *D. Velusamy and D. Patchaimal*¹⁴, the Supreme Court had established that for a live-in relationship to be recognized “in the nature of marriage,” (a) the couple needs to hold themselves out to society as being akin to spouses, (b) be of legal marriage age, (c) be otherwise eligible to enter a valid legal marriage including being unmarried, (d) and cohabited together for a significant period of time with shared finance and resources. For a live-in partners attempting to establish their relationship as “akin to marriage,” they can be sure to expect a long legal battle which could exhaust anyone’s spirit. Even though the judiciary has hinted that the “presumption of marriage” must be strong in cases of long-term cohabitation and much evidence needs to be there to prove the contrary¹⁵, the entire process is still lengthy and causes much harassment to the mourning partner. This is surely an insult to the donative intent of the deceased who would have wanted happiness for their partner.¹⁶

In addition to this, the requirement of the partner having to be unmarried is also questionable. In the case of *Indra Sarma v. V.K.V. Sarma*¹⁷, it was held that the appellant was not eligible to have her live-in relationship called “in the nature of marriage” as she was aware the respondent was already married. In this case, the Supreme Court had found it apt to not award any rights to a live-in partner. The reason being that the live-in partners couldn’t have been legally wed otherwise, as prior to 2018,

¹² *Dhannulal & Ors vs Ganeshram And Anr* on 8 April, 2015 SCC(2015) CA(3410)

¹³ *Badri Prasad v. Dy. Director of Consolidation AIR 1978 SC 1557, 1557.*

¹⁴ *D. Velusamy vs. D. Patchaiammal* (10 SCC 469). 2010.

¹⁵ *Badri Prasad vs Deputy Director, Consolidation and other.* (AIR 1978 SC 1557).

¹⁶ *Supra note 38, at 1511.*

¹⁷ *CrI. App. No. 2009 of 2013; Decided on 26-11-2013 (SC): 2013 (14) SCALE 448.*

bigamy was outlawed and adultery was an offense under Section 497 of the Indian Penal Code.¹⁸ Adultery, though no longer a criminal offense,¹⁹ is still considered a civil wrong and is a grounds for divorce. This being the case, however, it is still a question if live-in partners who are not aware of their partner's marital status can avail their rights. Another discrepancy with the "unmarried" requirement under this law is that it ignores a major population chunk, especially Muslims. There are religions in India who are allowed to be in polygamous marriages. It would be much harder to say that the a live-in partner is in the wrong here as the partners here are also allowed to have a valid marriage. The basis of this law cannot be justified when it treats different communities with different practices as the same.

Adding on this point, the large diversity of India's population and its various personnel laws for which inheritance is granted comes with its own set of problems. For example, to be eligible to succeed Hindu ancestral property, the deceased's partner is required to have had marriage with proper solemnization in accordance with Hindu customs and laws. This raises a deep question for live-in partners, as they may not be eligible to receive property as normal partners would under section 6 and 8 of the Hindu Succession Act, 1956.²⁰ In a country like India, where many Hindus are part of joint families which own assets together and earn together, it may be pointless to provide channels for inheriting just separate property. The Supreme Court, unfortunately, for similar cases has held that children born out of live-in relationship may have a right to inherit property but not Hindu ancestral coparcenary property.²¹

All in all, once a live-in partner has gone through the difficult task of establishing their relationship as "in the nature of marriage," they may be able to claim the separate property of their partner like in in *Dhannu Lal v. Ganeshram*. This would be remarkable example of a progressive justice system; however, the delay and the legal battle could cause immense mental harassment. This is especially the case with the Indian judiciary with its above 25 million pending cases and unreliable precedent consciousness, where there is "Delayed Justice, if Justice at all."²² This is also nothing to say of property which is divided under personal laws like the Hindu ancestral property.

¹⁸ Indian Penal Code 1860, ss. 511

¹⁹ *Joseph Shine vs Union Of India* on 27 September, 2018, WRIT PETITION (CRIMINAL) NO. 194 OF 2017.

²⁰ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India)

²¹ AIR 1927 P.C. 185.

²² *Us TZ| UPSOL, "The Agonizing Pace of the Indian Judiciary" (JURIST - Commentary - Legal News & Commentary, May 15, 2020)*

A Need to address the Uncertainties in the existing Legal Structure

As one can see, the issue of succession rights in live-in relationships is a complex one, requiring a thorough legal framework to address the uncertainties involved. One may argue though that the difficulty in getting inheritance rights for a live-in partner is only rightfully a natural hurdle as the state may want to protect the institute of marriage with its many additional rights. In addition, people entering this sort of relationship may only do so in the first place to ensure there is a lack of legal liability and strings created between them. This idea was observed in *Alok Kumar vs State*²³ when the Delhi High Court was establishing the validity of live-in relationships. In the case, it was held that these relationships are a “walk-in and walk-out relationship,” and no legal obligations are created in these relationships with partners being free to leave at any point. While these relationships are declared legal,²⁴ the government is under no obligation to protect these.

This opinion of a ‘no-strings attached’ relationship, though popular, does nothing to stop the reality where people still end up in these relationships. For when they do, it is often the women who end up at disadvantage and end up doing unpaid activities like household chores, cooking, and child-rearing. For such reasons, it may be prudent for the government to create special provision which benefit and protect women in live-in relationships, as is envisioned in our Indian Constitution.²⁵

Either way, the problem exists is that in which scenarios should the inheritance rights of a partner must be recognized. Is the duration of a relationship along with factors like parties being of marriage age a good enough requirement, or is there something more crucial? Something recently observed in Indian courts with such cases is their application of principles similar to "palimony," as observed in the *Marvin v. Marvin*²⁶ case by the California Supreme Court. In it, it was held that family law is not applicable to live-in relationship and focus should be given to any express or implied contract instead, with the latter inferred through the conduct of the parties.

Attempting to apply this principle of *Marvin v. Marvin*, the courts must note that partners of live-in

²³ *Alok Kumar v. State*, CrI. M.C. No. 299/2009 MANU/DE/2069/2010, (Del. H.C. Aug. 9, 2010).

²⁴ *Bharata Matha v. R. Vijaya Renganathan* C.A. No. 7108/2003 MANU/SC/0400/2010, (S.C. May 17, 2010).

²⁵ The Constitution of India, -, 26 January 1950.

See Article 15 (3) which states that – “Nothing in this article shall prevent the State from making any special provision for women and children.

²⁶ *Marvin v. Marvin* L.A. No. 30520. Supreme Court of California. December 27, 1976

relationships may only enter this form of relationship for the sole purpose of not creating any legal ties. When there is no intention to create any legal relationships, no contract is formed²⁷, and hence the conduct of the parties implies no contract. But one factor that is often missed is the amount of unpaid work that is contributed by a partner in the relationship. If the women of India work on household chores and child-rearing without any pay, there needs to be some consideration provided back for such services. If nothing is returned, then unjust enrichment, where one party is benefited at the expense of another, would occur. Under these circumstances, the Supreme Court of Wisconsin has held that if no contract exists between a domestic couple, unjust enrichment could bring a cause of action.²⁸ This scenario is extremely important in India as women bear the burden of such unpaid labor. Therefore, the Indian Courts must benefit women with maintenance and inheritance rights in such scenarios, especially after years of such labor and do so without much hassle and delay. Also, this concept should also equally apply to Hindu coparcenary property to properly award any contributions by a live-in partner towards it.

When it comes to proposing other legislative solutions, scholars such as Professor Waggoner²⁹ and Professor Spitko³⁰ have proposed a scheme that considers donative intent of the intestate, reciprocity, reliance, and administration ease. The Indian Courts have taken clue of these, and the Velusamy's case guidelines look like the ones suggested by these scholars. With adopting these principles, India has truly tackled the changing dynamics of contemporary relationships, while advocating for fairness and simplicity in the realm of succession rights. Ultimately, the complex and ever-changing landscape of legal discussions surrounding succession rights in live-in relationships necessitates a careful and thorough approach that strives to strike a fair balance between legal certainty and just outcomes.

Conclusion

In conclusion, live-in relationships are a valid and legal form of cohabitation that allows couple to explore their partner and leave them at will in most cases. In spite of this idea, many legal hurdles may arise, and it is often the women who end up at a disadvantage in these relationships. The Apex

²⁷ Balfour v Balfour [1919] 2 KB 571

²⁸ 137 Wis.2d 506 (1987).

²⁹ W. Waggoner et al., *Family Property Law: Cases and Materials on Wills, Trusts, and Future Interests* 107 (2d ed. 1997).

³⁰ E. Gary Spitko, *An Accrual/Multi-Factor Approach to Intestate Inheritance Rights for Unmarried Committed Partners*, 81 OR. L. REV. 255, 260 (2002).

Court has tried to shed clarity on the rights of live-in partner; however, the guidelines are still unclear and leave a lot to be discussed. In these modern times, social norms are ever-changing, so the idea of relationships cannot be kept static and law should adapt. Even though no one can deny the importance of the institution of marriage, it may be okay in many cases to provide maintenance or inheritance to parties in a live-in relationship to protect vulnerable sections of society. To decide if such inheritance may be granted in such unions, the courts must adjudicate on factors like legal intentions of the parties and any unjust enrichment, if any, had occurred. By enacting clear and inclusive laws, India can ensure that all individuals, regardless of their relationship status, are afforded the rights and protections they deserve in matters of inheritance.



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