



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 4 AND ISSUE 4 OF 2024

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 4 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-4-of-2024/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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## A CRITICAL STUDY ON 'COHABITATION AND PROPERTY RIGHTS' WITH SPECIAL REFERENCE TO PARTITION BETWEEN UNMARRIED COUPLE

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**BEST CITATION** – S. KIRUTHIGA DEVI & MS. PREETHI. R, A CRITICAL STUDY ON 'COHABITATION AND PROPERTY RIGHTS' WITH SPECIAL REFERENCE TO PARTITION BETWEEN UNMARRIED COUPLE, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (4) OF 2024, PG. 803-807, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT:

The concept of live-in-relationship has developed from the western countries. Initially, Indians has never accepted the concept of cohabitation by unmarried couple. But later as the society develops slowly, they have recognized the live-in-relationship as legal and not a criminal offence. Legally married couple gets protection from the legislation and this ensures the partition rights, inheritance and also succession from the ancestral property. The Law always ensures that the legally married couple are protected and gets every rights to protect themselves. But always the cohabiting unmarried couples are placed in the repelling poles of the married couple in India. Partition rights are not vested with the man or women in the unmarried relationship only the child born out of the relationship are protected. The concept has adopted from the western culture but the western countries has protect the rights of the unmarried couple by the prenuptial agreement or cohabitation agreement which lays down certain conditions to get protection by law. So, India can adopt the same from the other countries and can protect the property rights of the unmarried couple in cohabitation.

**Key Words** : Property, unmarried couple, property rights of women, right to inherit property, cohabitation agreement, comparison.

### INTRODUCTION:

The two unequal rights can't be balanced on the same scales of a Themis. Similarly, the property rights of a married couple and unmarried couple can't be balanced equally especially in the case of the Partition. Both the concept of rights is different one. For proving the marriage, one has to prove the long-term of cohabitation as live-in couples as stated in *Badri Prasad vs. Deputy Director of consolidation*<sup>1209</sup>, in this the marriage is presumed to be legal in the eye of law. Cohabitation is a relationship where two people live together under the same roof for the long time without getting married. This kind of live-in relationships are increasing gradually and

accepted by the society beyond all the taboo, and it has become more common in recent years. Nowadays, it is incumbent to understand the property rights for the unmarried couple as it is indispensable to legal and financial issues arise after their separation or end up of their relationship. This research paper explores the property rights of unmarried couples, with particular emphasis on partition issues and relevant case laws will illustrate the legal complexities and the need for reforms to provide clarity and equity among unmarried relationships.

### LEGAL STATUS AND RECOGNITION OF LEGALLY MARRIED COUPLE AND THEIR PROPERTY RIGHTS:

In India, a married couple's legal status and property rights are governed by

<sup>1209</sup> 1989 SC1872 (4)

various laws, including the Hindu Succession Act, the Indian Divorce Act, and the Special Marriage Act. When it comes to legal separation the judicial system never fails to ensure the equity among the parties regarding the maintenance and partition of the property on valid legal terms. **Section 14 of the Hindu Succession Act**<sup>1210</sup> gives Hindu women the absolute right to ownership of property, including movable and immovable property.

A married woman can acquire property through inheritance, partition, gift, purchase, or by her efforts. She is also entitled to her husband's property as a primary heir, and her share is similar to that of her son. In this way, married women acquire property by partition rights. At the time of separation, the wife is legally entitled to claim maintenance from her husband's property, even if the husband dies intestate, the wife is entitled to equal partition as of her son.

#### **LEGAL STATUS AND RECOGNITION COHABITING UNMARRIED COUPLE AND THEIR PROPERTY RIGHTS:**

At present, many countries have not recognized live-in-relationship as equal to legally married couples in providing property rights. When it comes to property rights of the cohabiting unmarried couple they are considered as two separate individuals. The Supreme Court of India has ruled that a live-in-relationship is not illegal or a criminal offense and considered to be legitimate since 1978 when the relationship meets every condition of marriage. The court has also ruled that a couple who live together for a long time are considered married and are entitled to the same legal rights, including property rights.

As of married couple, unmarried couples don't have the right to inheritance but the Supreme Court has given certain rights and recognized the live-in-relationship in the society such as right to live together and the right to get

maintenance after the end up of the relationship.

the Supreme Court has ruled that women in live-in relationships are entitled to maintenance under *Section 2(f) of the Protection of Women from Domestic Violence Act, 2005* - domestic relationship 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 particular section impliedly stated and interpreted as unmarried couples agree to live together and conduct a long going relationship like marriages, without getting married formally. So even women in live-in-relationship are legally protected.

In the case **Lata Singh v. State of U.P.**<sup>1211</sup>, held that live-in relationship is permissible only in unmarried major persons of heterosexual sex. The live-in relationship if continued for such a long time, cannot be termed in as walk in and walk out relationship and there is a presumption of marriage between them. The live-in-relationship are recognized legally and the legislation has to provide certain legal protection.

#### **PROPERTY RIGHTS OF WOMEN IN LIVE-IN-RELATIONSHIP:**

**Article 21**<sup>1212</sup> of the **Constitution of India**, which provides the right to life and personal liberty, serves as the constitutional foundation for the legal recognition of live-in relationships. Even though, a woman in a live-in-relationship will not have right to the property as of the legally wedded women. But during the period of the relationship if a woman contributes financially to purchase a property or maintain a shared property, then she is entitled to claim for partition. This situation is decided based on the equity principles and the evidence of the

<sup>1210</sup> Section 14 in The Hindu Succession Act, 1956

<sup>1211</sup> (2006) 5 SCC 475

<sup>1212</sup> No person shall be deprived of his life or personal liberty except according to procedure established by law.

contribution can prove it. In cases when partners agree on ownership or distribution of assets acquired together, courts may also recognize explicit or implied agreements. But in *Vidhyadhari v. Sukhrana Bai*<sup>1213</sup>, in order to give cohabiting couples hope, the Supreme Court ruled that those who have lived together for a reasonable period of time might inherit property from a live-in spouse. In this instance, a succession certificate has been provided to the live-in partner who was selected by the deceased.

Further in the year of 2010, in **Velusamy v. D. Patchaiammal**<sup>1214</sup>, the supreme court held that **a woman in a live-in-relationship can acquire the property rights over the period of the entire relationship. The entitlement to the property rights is based on the proven contribution to the acquisition of the property.**<sup>1215</sup>

The Law Commission of India once more advised in 2012 that live-in partnerships be included and that those in such relationships be given legal protection. But there is no legal statute protecting the property rights of the cohabiting married couples.

#### **PARTITION OF PROPERTY AMONG UNMARRIED COUPLE:**

Partition is the right claimed by the heirs of a person, but when it comes to the situation of the unmarried couple there is no specific legislation or common legislation stating the issues of partition of property for the couple in a live-in-relationship. Generally, the unmarried couple can claim the title of the property only under certain common circumstances.

1) If one partner is considered to be the legal owner of the property and that property is registered in their name. The property usually in the possession of the titled owner unless there is a documented agreement or any record of the contribution to the benefits of the property by another partner.

2) If the unmarried couple own the possession and title of the property jointly then either of the couple can claim for the partition even after their separation.

3) If the couple in a live-in-relationship contributes an unequal share to register a property then each of the partner is entitled for the particular interest they have contributed.

The Principle of equity can be applied for the equitable claim – In India, the Doctrine of Equity came into applicability only after the independence. Equity principles guide courts in delivering equitable outcomes in diverse areas of law, including contract law, property law and family law. The applicability of the equitable claim can be given as the judicial remedies to the couples in live-in-relationship in order to protect their property rights specifically partition right.

In the *Dhannulal and Others vs. Ganeshram and Another*<sup>1216</sup>, the top court stated that after the death of a woman's live-in partner, she has the **right to inherit property**. In this case, the family members of the deceased contended that the woman should not be entitled to inherit property although she was living with the deceased for 20 years because she was not married to the deceased. The bench delivered the judgment considering its earlier decisions that if a man and a woman have been cohabiting for a long time, such a relationship is presumed to be a marriage by the court.

Additionally, the Supreme Court ruled in *Vidyardhari & Ors. vs. Sukhrana Bai & Ors.*<sup>1217</sup> decided on January 22, 2008, that a woman in a live-in relationship with a male has the right to inherit her partner's property.

#### **COMPARITIVE ANALYSIS OF COUNTRIES US, UK AND INDIA:**

##### *UNITED STATES OF AMERICA:*

US has protected the live-in-relationship via consensual sex legislations in history of America in good old days. As the society changes and develops then the law should also

<sup>1213</sup> AIR 2008 SC 629

<sup>1214</sup> (2010)10 SCC 469

<sup>1215</sup> *Velusamy v. D. Patchaiammal* (2010)10 SCC 469

<sup>1216</sup> 2015 (12) SCC 301,

<sup>1217</sup> (2008) 2 SCC 238

develop along with it according to its own citizens. Then develops the common law marriage doctrine and which expedite for living together contracts. To protect the rights of the living-in-relationship couple further the law develops and implements the concept of 'prenuptial agreements'<sup>1218</sup> Now, at present there exist a concept of 'agreement on cohabitation'<sup>1219</sup> which mentions about the rights and liabilities of the couple unmarried.

In the case of *Fenton v. Reeds*<sup>1220</sup> based on the common law marriage doctrine the court has recognized the long term live-in-relationship as marriage. But the Common law doctrine was not followed by many states of America and not applied for the live-in-relationship.

'California Supreme Court has made decision in *Marvin v. Marvin*<sup>1221</sup> held that unmarried couples may enter into written and oral contracts that cover rights often associated with marriage.

And in the United States If a couple has cohabitated for a very long a time without getting married, it would be considered an Constructive or implied contract. In US the legislation is very strong and in favour of the unmarried couple. So the Partition of property rights are guaranteed by the legislation to the unmarried couple based on the cohabitation agreement.

#### UNITED KINGDOM:

In UK, the unmarried couple are called as 'common law spouses' and governed by the Civil Partnership Act, 2004. This Act imposes

<sup>1218</sup> Note - A prenuptial agreement is a contract entered into by two people who are about to marry. A prenuptial agreement often called a prenup or prenupt is used to specify how property index will be divided in the event of a break up.

<sup>1219</sup> Note - cohabitation agreement is a form of legal agreement reached between a couple who have chosen to live together. Unmarried couples who are living together have the option of creating a number of legal documents often called cohabitation agreements that can help protect their rights as a couple while at the same at the sametime safeguarding their individual interests and assets. Since unmarried couple, who live together may one day split up, especially outside of the legal bonds and social institution of marriage. The legal requirements for a valid cohabitation contracts or much like the requirements for any valid contract.

<sup>1220</sup> 4 Johns.52(N.Y.Sup.ct.1809)

<sup>1221</sup> *Marvin v. Marvin* 18Cal.3d660(1976)

certain conditions upon the unmarried couples to claim certain rights including property rights. The conditions are as follows:

- 1) The Live-in-couples should be above the age of Sixteen years.
- 2) The either of the couple should not be in the relationship already married legally.
- 3) They should not be in the ambit of the prohibited relationship.

The aforementioned Act of 2004 protected same-sex couples until 2019, but the 2019 Amendment Act allowed heterosexual couples to also apply for the act's protection by registering and establishing a civil partnership.

#### INDIA:

In India, the marriage is considered as traditional concept and the majority of the Indians are following only the traditional way of living, this creates the unrecognition of live-in-relationship in society. Living in an unmarried relationship or having sex before marriage is not considered taboo or sinful in Western countries; rather, it is accepted as a regular aspect of daily life. It is also true, though, that only those nations are able to create these kinds of laws since their societal frameworks differ greatly from India's.

In contrast to other nations, India is home to a diverse range of religions and distinctive civilizations and customs, which convey distinct ideas regarding nonmarital sex and unmarried cohabitation.

Furthermore, despite India's lengthy and rich traditional past, which included a structured social framework that was observed assessing social norms from the outset, such a design cannot be carried forward to achieve the same without alterations. The liberalization of section 377 of the Indian Penal Code, 1860, which makes same-sex relationships and sexual activity illegal, is one prominent example *Navtej Singh Johar v. Union of India*.<sup>1222</sup>

<sup>1222</sup> AIR 2018 SC 4321

A significant step toward legalizing and opening the door for same-sex weddings in India is the decriminalization of same-sex sexual relations. This is the current situation in India.

#### **FINDINGS :**

Legalizing living relationships in India is currently a hot topic, and it is believed that enforcing a well-organized law that defines live-in relationships thoroughly and offers a well-oriented regulatory structure clearly defining the ambit of those relationships which are in the nature of marriage may garner the unanimous consent of Indian society. It is commonly stated that laws are instruments of social change, changing themselves according to the needs of society. So, India can follow and initiate legislations to protect the cohabitation agreement as in US and UK. When the Cohabitation agreement is implemented then the terms and conditions can also be added for the partition right of the property for the couple in live-in-relationship without effecting any of the person.

#### **CONCLUSION:**

Though the Act like Hindu Succession Act, the Indian Divorce Act, and the Special Marriage Act and even other Acts govern and protect the property right of a married couple. The parliament has to amend the existing Act by adding provision protecting the property rights of the unmarried couple as the unmarried relationship has been recognized legally or they have to enact new laws in order to protect the property rights especially the partition of the unmarried couple.

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