

Live-in relationship and children human rights in India: An apprehension to children wellbeing

Ms. Vaishali Mathur

Research Scholar

Department of Law, Manipal University Jaipur

Dr. Mona Mahecha*

Assistant Professor

Department of Law, Manipal University Jaipur

Email ID – mona.mahecha@jaipur.manipal.edu

All human beings are born free and equal in dignity and rights. We are all equally entitled to our human rights without discrimination. These rights are all unified, interrelated, interdependent and indivisible.

UDHR (Universal Declaration of Human Rights)

Abstract

Live-in relationship means a couple cohabitation without any marriage ritual, Societal restriction, without any responsibilities and duties. This current perception has been in the air for the last two decades. In the landmark decision of *Tulsa & Ors vs Durghatiya & Ors* The Honourable Supreme Court predicts that the children born out of live-in relationships are known as legitimate children. Even though the destination is still far off. The human rights of children born out of live-in relationship like right to life, right to live with dignity, right to societal protection, right to name, recognition and identity, right against neglect, right to property, right to live with dignity, right to live with family, right to protection against maltreatment abuse and exploitation, right to freedom of expression and thoughts. The researcher sought to elucidate the international humanitarian law and UNCRC recognized human rights which are connected to live-in relationships. The author ferreted out violation of human rights of children born out of live-in relationships. In India there is no specific legislation for live-in relationship and rights of children born out of live-in relationship. This instigates from the violation of human rights of children born out of such cohabitation. To prevent these a specific law or legislation acclaim for children born out of live-in relationship by law makers.

Keywords: Live-in relationship, Cohabitation, Social security, Violation, Human Rights

Introduction

United Nations Universal Declaration of Human Rights (UDHR) in Article 25(2) recognized the prerequisite of special protection and support for children. Because the entire development depends on these protecting rights. The United Nations General Assembly acknowledged the United Nations Declaration of the Rights of the Child, which pronounced ten ideologies for the protection of children's rights- The Right to food, shelter and medical care, right to protection against physical and mental abuse, mistreatment and exploitation, carelessness and neglect, right to social protection and security, right to get attention and care by parents, right to identity including nationality, right to equality before law, right to special protection by law, right to get free education and participate in cultural and entertaining activities not at home but also society, school or community. But above that, the major right of children is if any pronoun right violates then get relief immediately and directly. Hillary Clinton published in 1973 a document stated that children's rights were a slogan in need of an explanation. International Covenants on Civil and Political Rights (ICCPR) adopt equal rights for all children. The Convention on the Rights of the Child is accepted by the United Nations General Assembly and extensively admired as a momentous accomplishment for children's human rights, distinctive the scope of children in future as societal, economic, political, financial, civil, cultural, educational perpetrators. United Nations International Children's Emergency Fund UNICEF equipped the draft 'foundation of knowledge'. The Child Rights International Network CRIN classifies children human rights into two categories-

Developing Rights-Monetary, societal and educational rights of children

Third generation rights or basic or developed right-Right to life, right to live with dignity, personal liberty and security, right to food and housing, right of education etc.

Categories of children human rights

Children have two types of human rights under international human rights law. Children have the similar absolute universal human rights as adults with the right to protection, freedom from discrimination, special care and protection. Children have detached individual human rights that they provide because they are children. These rights include the right to live with dignity, right to live with a healthy family atmosphere, right to live with personal liberty and security, the right to freedom of their views and thoughts, right to freedom of thought, right against abuse, exploitation, neglect behaviour or any kind of mistreatment.

Live-in relationship and Children human rights

Children's rights are human rights that are adapted clearly to the children's basic needs to welfare of the children. The aim of these Children's rights is accomplishing the requirement of the growth and expansion of the children. To describe the children's human rights for children born out of live-in relationship certain rights are violated originate from inequality and unfairness. The rights as described in the Convention with references to live-in relationship

Right to equality (Article 2) of UNCRC

Article 2 of universal human rights of children has equal rights and should not be discriminated against. Every child deserves equal behavior irrespective of their gender identity, sexual orientation, race, society, gender, sex, religion, physical appearance, ability, socio-economic position, nationality, belief, ideology, or other personal characteristics. No child should be maltreated because of the appearance, race, colour, gender, language, religion, or thoughts. Children born out of live-in relationships are deprived of certain rights as compared to marriage. In India, live-in relationship children are recognized as legitimate but there is no definite law that recognizes the status of the live-in couples, so the position of such children is also not vibrant. In the case of SPS Balasubramanyam v. Suruttayan detained that if a man and woman live in live-in relationship for a long time then they will be considered as legally wedded under Section 114 of the Indian Evidence Act. The children born out of such a live-in relationship shall be legitimate. In the case of Smt. Parayankandiyal Eravathkanapraavan Kalliani Amma & Ors. Vs. K. Devi & Ors. the children born out of live-in relationship are entitled inheritance property and deemed to be legitimate for all purposes. But in the case of Neelamma v. sarojamma such children entitled to get only inheritance property, not self-acquired property. but the changing scenario comes recently in the case of Bharata Matha & Ors. v R. Vijaya Renganathan & Ors where the Supreme Court of India had held that a child born out of a live-in relationship may be allowed to inherit inheritance in the property of the parents.

Right to get welfare (Article 3) of UNCRC

When live-in relationship terminates the live-in partners ensure to welfare of such children first. If they make decisions which affecting the children directly or indirectly, they must deliberate about the best benefits of the child. The law makers, police authorities and the judiciary must contemplate their verdicts and law pronouncement affect children's future as well as their personalities and growth.

Right to life (Article 6) of UNCRC

Article 6 of UNCRC is about the right to life of children, with the right to develop and grow. This right differentiate that every child has the inherent and essential human right; this is the most imperative right to life. This article 6 connects government declarations to make the law for the presence and growth of the child. In the case of Revanasiddappa v. Mallikarjun observed that children born out of live-in relationships are not guilty, they are innocent. They are entitled to enjoy all the rights equal to children born out of valid marriages. This is the root of Section 16(3) of the amended Hindu Marriage Act, 1955.

The Right to Identity (Article 7) of UNCRC

In the case of SPS Balasubramanyam v. Suruttayan detained that if a man and woman live together for a certain time period then (Evidence act section 114 the law) will presume as legitimate child. In the case of Bharatha Matha v R Vijaya Renganathan & Ors The Apex Court held that a child born in a live-in relationship is distinguished as a legitimate child, and they are entitled to get the right to property of his parents' excluding ancestral undivided property. Article 7 UNCRC describes the children's recognition. Children have the right to identity including their legal and social status of their parents. The nationality, parental identity and recognition of such children registered in a government public record.

The Right to freedom of expression (Article 13) of UNCRC

Article 13 of UNCRC defines that all children are allowed the right to freedom to express their feelings, views and opinions. Guardians must make decisions in favour of their children. If live-in couples make any decision during a live-in relationship, and their decision directly affects children's studies, environment where children live, their growth, personalities, development, behaviour, mental health, then the condition is that the welfare and interest of children must be considered primarily. All the Children have the freedom of thoughts and

expression but this right is certain limitation, they are not harmful or negative for other people. All the children have the right to say what they think, but the opinions must be unspoken, in a respectful manner, not biased, whether at home, at school and by the government authorities and the courts proceedings also.

The Right to physical and mental Health (Article 24) of UNCRC

Article 24 UNCRC describes the special care and protection for children. When Live-in couples separate, the children born out of such relationships are also affected directly. Many children suffer mental trauma and mental disease like depression. Live-in couples get separated because of their own interest, clash of ego, lack of mutual understanding adversely affect the children's physical and medical health. Lack of mental support like joint family members in marriage.

The Right to live in safe Environment (Article 28) of UNCRC

Article 28 of UNCRC defines children have right to secure, safe and healthy life with family. Article 28 encompasses freedom from exploitation, violence, maltreatment, abuse or neglect. Living in a relationship is a concept without any legal responsibility. No special law about rights and duties of live-in partners. In several cases, live-in couples' behavior changes after some years, the peace and harmony of the relationship vanishes. The environment of home is not safe and virtuous for children. The mutual conflict increases day by day, this has an antagonistic effect on children's physical and mental growth as well as their personalities.

The Right to live in a Family Life (Article 16) of UNCRC

According to article 16 of UNCRC Every child has the right to live with their family. The family environment is also full of care, affection, support, love, security, and healthy. Children born out of live-in relationship faces many problems not only out of home but also inside. Many live-in couples walk in live-in relationship just for check the compatibility or no legal dilemma in this relationship. After they became parents many of them don't want to take responsibilities of their child. Very soon they want to terminated their relationship. Children psychology define that children's mental growth and their behavior depends on their parents' relationship also. The children should not be separated from their parents, accepting that the parents' behavior is rude, neglectful, abusive or uncaring. Beside this, their home atmosphere is anxious and unhealthy. All Children have the right to be attention, care, affection and protect by their parents. Children have right to live with their family. Right to privacy is also contains in this right. Many Children incompetent to have family life because of neglection or disaffection of their parents. Those children have the right to special protection, attention, care and must be protect properly. Abandonment and neglect children have a right to special attention, protection and care.

The Right to be protected from violence (Article 34) of UNCRC

Article 34 of UNCRC defines that every child is protected from physical and any kind of violence including family members. Several times children born out of live-in relationship neglect and are isolated by society. Children also suffered this maltreatment and neglect by other children in the school, society and community. and this article protected by any maltreatment, sexual exploitation, neglect, abusement.

Right to growth and development (Article 18) of UNCRC

Article 18 of the UNCRC describes the parents as jointly responsible for growth and development of children. They must give priority to children's welfare. Live-in relationship is a walk- in and walk-out relationship, many situations when live-in partners want to separate, children welfare, their future matter the most for their overall growth. The right of custody of such children is involved in this right.

Right to dignity (Article 19) of UNCRC

Article 19 of UNCRC defines the right to dignity of children. In India a child born in a live-in relationship must be recognized as a legitimate child. The court stated that the children born out of such a relationship have a definite identity recognized in their birth certificate authorized as government record. In this birth certificate the child's name, their parents name, and profession of their parents specified. if a live-in relationship terminated then a single mother having no societal and financial support. Society never accepts her and everyone mistreats her. In the recent case, the honourable court specified that if a female live-in partner believes that without the support of a man she can't survive in the society, then it represents the disappointment and loopholes of our system. After this, the father of the child has stated his wish to take care of his child, The committee was ordered to return the child to his live-in parents. The Indian Constitution article 14 and 21 defines that every individual has a right to live with dignity. Such children are conferred with rights such as the right to property, right to maintenance and right to life. This landmark decision of the Kerala High Court supported various preceding verdicts of the Supreme Court in the matter of children born out of a live-in relationship.

Right to care (Article 21) of UNCRC

Article 21 UNCRC defines that Children are entitled to acquire special care and attention if they don't have family and parents. Children's character and growth depend on their home environment. Live-in couples live in nuclear families in metropolitan cities, they have no time for their kids. Due lack of care and attention the

children misguide many times and indulge their future. So, they need to pay special attention and care for growth and development in the right direction.

Right to Additional care and assistance (Article 23) of UNCRC

Article 23 of universal All children have the right to special care. Such children have the right to additional care and assistance. The children born out of a live-in relationship, live only with their parents only. Many live-in couples turn into single parents after termination of their live-in relationship. Such children are entitled to get superfluous attention, care and existence.

Right to social security and social insurance (Article 26)

Universal Declaration of Human Rights, Article 26 entitles mothers and children to ‘special care and assistance’ and ‘social protection’. Many female live-in partners were never recognized nor accepted by society after termination of live-in relationships. Children born out of such relationships are also isolated by society. Even if the law legalised live-in relationships, the children never get a social status in the society. Such children should be treated as special children and entitled to special assistance, care and support by society.

Right to education (Article 29)

Universal Declaration of Children Human rights Article 29 defines Right to education is the most significant human right of every child. Children have the right to get free education and the right to participate in cultural activities. The children born out of live-in relationships are entitled to participate in cultural, societal and communal activities.

Right to belief (Article 30)

UDHR article 30 defines the thoughts and opinions of every child should be appreciated. If live-in couples belong to a different religion, the children born out of such a relationship are free to accept their own religion, own thoughts, beliefs, religion, culture, custom etc.

Right to live in a healthy environment (Article 31)

Universal Declaration of Children Human Rights article 31 defines Children have the right to play, rest and free time, and the right to live in a healthy environment. In Live-in relationship, live-in couples are busy with their careers and progress. Due to lack of care and spending golden time with family, the children do not enjoy their healthy family life.

Right against abuse or sexual exploitation (Article 34) of UNCRC

Article 34 of UNCRC defines the children’s right against abuse, maltreatment, sexual exploitation. If children are mistreated by someone, children are entitled to get security. It has been seen that after separation live-in couples turned into single parents. Single parents can’t care for their children properly. When an outsider pretends to false love, affection and care the innocent children get struck easily. To escape this exploitation and abuse, live-in couples give attention and care to their grown-up children whether the separation takes place. They do their responsibilities in a better way.

Right to information about rights (Article 42) of UNCRC

Article 42 of UNCRC defines the right to information and knowledge about children rights. Children must have the right to information about their parents, their identity, their nationality, their religion.

Conclusion and suggestion

In India a live-in relationship is considered social taboo. The traditional Indian society contemplates the concept of live-in relationships as immoral but it is valid in the eye of law. The Supreme Court of India has played a momentous role to found a legal status for the children born out of live-in relationships through its decisions. In the landmark decision the Kerala High Court eradicated the doubt about the legal status of a child born in a live-in relationship. Even though there is no separate legislation of live-in relationship, honourable people give their pronouncements through their decisions timely, so Nobody can misuse and manipulate live-in relationship. But there is an urgent need for making different guidelines and codification for children born out of live-in relationships. There must be a distinct law coding the status and rights of children born out of such relationships should be protected.

References

- Convention on the Rights of the Child, <https://www.unicef.org/child-rights-convention/convention-text>
- Geneva Declaration of the rights of the child, 1924; <https://www.humanium.org/en/geneva-declaration>
- History of child rights, UNICEF; <https://www.unicef.org/child-rights-convention/history-child-rights>
- History of child rights, UNICEF; <https://www.unicef.org/child-rights-convention/history-child-rights>.
- The universal declaration of human rights at 70: children’s rights, Katrina Lee-Koo, Australian Journal of International Affairs 2019, vol 73, No.4, 326-330, <http://doi.org/10.1080/10357718.2019.1631251>
- Child rights governance: An introduction, Anna Holzhueter, Jonathan Josefsson, Bengt Sandin First Published June 18, 2019 ResearchArticle<https://doi.org/10.1177/0907568219854518>
- An Analytical Study on Rights of Children and the Constitution of India, Jyotiraj Pathak, march 9 2012.

- Violation of child rights: in Indian perspective, Dr. Anindita Choudhury, <http://www.journalcra.com/article/violation-child-rights-indian-perspective>
- Bajpal Asha, (2006). "Child rights in India: Law, Policy and Practice, New Delhi, 2nd Edition, pp.10 to 30