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**SHARED HOMES, SPLIT CLAIMS: CONSTRUCTIVE TRUSTS IN  
LIVE-IN RELATIONSHIP PROPERTY DISPUTES**

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**Abstract**

In today's age, live-in relationships have gained a great deal of prominence in our society. Such relationships are characterised by the absence of any kind of formal legal structure. This, in turn, gives birth to a plethora of disputes over property and beneficial interests that mostly arise when such associations end, or expectations of the parties diverge. The doctrine of constructive trust, based on the values of equity and fairness, has become an indispensable tool to address such challenges. Constructive trust, unlike an explicit trust, is put forth by the courts in the form of an equitable remedy to prevent unjust enrichment or inequitable retention of property by any single party. Equity intervenes in such situations by gauging true beneficial ownership where one of the parties has made contributions, financially, emotionally, or otherwise, to the property in question for any purpose, and it would be unfair for the legal owner to deny the other's rightful interest in the property. This reformative approach allows courts to lay emphasis on principles of equity, justice, and fairness based on the real life and shared space of the parties instead of rigid statutory formalities. Nonetheless, the practical application of such constructive trusts in the paradigm of live-in relationships remains inconsistent across different jurisdictions and legal systems, which leads to unforeseen outcomes, increasing the vulnerability of the cohabitants.

**INTRODUCTION**

An essential social unit is the family, and by examining its structures and roles, members' rights can be established and protected. Over time, the concept of an ordinary family has changed, leading to a variety of family types based on how they are formed and operate. Since marriage has long been the standard for starting a family, it is regarded as the cornerstone of society. However, the way families are formed is progressively evolving as

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society does. As societies have developed, unmarried cohabitation has also increased in many cultures. The following characteristics set modern families apart from the traditional family: more instances of “family behaviour” taking place outside of official, legal family structures; changes in authority structures and attitudes toward roles within the family; and increased fluidity, detachability, and interchangeability of family relationships.<sup>2</sup>

As evidenced by a rise in court cases and partly legislative recognition, India has also seen a steady increase in this alternative type of intimate partner connection. While the courts have typically addressed the female partner's claim to maintenance in these circumstances, they have ordinarily said little about the partners' property rights. In all welfare states, the right to own property is a fundamental human right.<sup>3</sup> Access to and ownership of property result in a meaningful existence since it gives one the ability to make decisions.<sup>4</sup> These choices pertain to the property's usage and disposal. As a right in rem, when someone is the legitimate owner of a piece of property, everyone else is subject to the owner's decisions.<sup>5</sup> Property rights should not be denied because doing so puts one in an inferior position to others. Subordination like this is incompatible with the idea of equality. Additionally, those with secured property rights have some protection against unfair exploitation as well.

However, in most jurisdictions, property obtained by cohabiting couples is not protected by statute. De facto unions and unmarried cohabitations are not legally recognised and frequently do not provide any legal privileges. Nonetheless, certain legal systems acknowledge de facto unions and grant them similar rights and obligations, which might differ in extent and complexity. Legal repercussions must be applied to property disputes in order to safeguard the weaker party. Women typically pay a higher price when a relationship ends and frequently do not benefit economically from family advantages on an equal basis with the other members. This is particularly noticeable when the state offers little to no financial security in the event that a partnership ends.<sup>6</sup> Thus, protecting the rights of unmarried cohabitating couples protects women's rights in addition to human rights.

<sup>2</sup> Fineman M, Progress and progression in family Law, University of Chicago Legal Forum.,1(2004).

<sup>3</sup>BernanardFarnois Joseph Vaz and Others v. Government of Karnataka and Others (2025) INSC 3.

<sup>4</sup> Baker E, Property and its relation to constitutionally protected liberty, University of Pennsylvania Law Review, 134(4) (1986).

<sup>5</sup> Thomas Erskine Holland. Elements of Jurisprudence,3rd ed (Oxford: At the Clarendon Press 1886).

<sup>6</sup> General Recommendation on Article 16, CEDAW, Para 23.

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### Constructive Trust – A Saving Grace

An express trust is established by a manifestation of an intention to create a trust,<sup>7</sup> whereas a constructive trust is imposed by law.<sup>8</sup> It does not require any formalities to arise, but as it is a trust, it must undoubtedly demand that one person or group of people hold the legal title to identifiable property and another one hold the equitable or beneficial title.<sup>9</sup> These trusts are created in two main categories of instances: first, when fraud occurs, and second, when the presumption of a trust is necessary to establish or maintain a distinct, equitable claim in the property in question, even when fraud is not always attributed to the party.<sup>10</sup> The idea of constructive trusts can be traced back to equity courts, where the remedy was initially imposed to rectify situations where it would be unfair for one party to claim property that, in all fairness, belongs to another. Such trusts, in the absence of an express consent or intention requirement, can be imposed irrespective of the parties' wishes. The main aim behind this flexible construction is the prevention of unjust enrichment in various myriad cases, like fraud, breach of fiduciary duty or where someone has contributed to a property held by someone else, similar to cases of live-in relationships.

Essentially, when courts arrive at the conclusion that denying another person's right in the property would be unconscionable for the legal owner of the property, they may declare, applying the principle of constructive trust, that the supposed 'owner' holds the property in the position of a constructive trustee for the benefit of the counterparty. Owing to the remedial nature of the trust, it's designed in a way so as to provide a just solution to a particular scenario based on specific facts and circumstances surrounding it.

### The Live-In Paradigm

The history of equity is replete with concerns about the disruption of pre-existing property rights in response to a sense of unconscionability, which are not supported by a set of regulations that allow for a precise prediction of the legal outcomes that would follow from a certain course of action. There is an unusually high dependence on discretionary solutions as a result of the difficulties that arise when attempting to sort out the financial circumstances of two people who have lived together for a significant portion of their life rather than as

<sup>7</sup>The Indian Trust Act, 1882, §6.

<sup>8</sup>The Indian Trust Act, 1882, §80.

<sup>9</sup> R. H. Maudsley, *Constructive Trusts*, 28 N. IR. LEGAL Q. 123 (Summer 1977).

<sup>10</sup> Elias Merwin, *PRINCIPLES OF EQUITY AND EQUITY PLEADING* (Indianapolis and Kansas City The Bowen-Merril Company 1895).

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individuals conducting business at arm's length.<sup>11</sup> This emphasises the importance of providing as much detail as possible regarding the basis for exercising this discretion. Due to the bias in wealth distribution caused by our society's infrastructure, one partner in a spousal or spouse-like relationship, typically the woman, usually receives less of the wealth amassed during the relationship than has been justly earned by that partner's contribution to its existence.<sup>12</sup>

In the leading case of *Boucher v. Koch*,<sup>13</sup> the approach of constructive trust had been taken to compensate for the efforts of the female counterparty in the preservation of a property held by Mr Koch. The unmarried parties were together for twenty years. They spent the majority of their time on a farm, which the male partner had owned before their relationship. The female performed "normal household duties" and helped with farming operations, even though the "farm" was never fully established as a farming business. At the conclusion of the relationship, the land was valued by the court of appeals at \$50,000. The trial judge held that the plaintiff was entitled to \$5000 under a constructive trust for her contributions to the property.<sup>14</sup> This case highlights clearly that where one partner has made either direct or indirect contributions in any way, a constructive trust can be successfully established to allocate a beneficial interest in proportion to the efforts put in by the party.

Constructive trust can be beneficial when property was obtained during the relationship, and the property's administration and ownership are separated. Due to the fact that the party with the title accepted the contributions of the other party, the courts in these circumstances decide how the property should be divided.<sup>15</sup> The basis for establishing a constructive trust is the element of *common intention*.<sup>16</sup> Usually, courts tend to look for evidence that showcases the common intention of both parties to share the property.<sup>17</sup> Another crucial element is the concept of *detrimental reliance* linked to the doctrine of *promissory estoppel*. Essentially, if one partner in the relationship, based on a reasonable belief owing to the shared intention, acted to their detriment, then equity can demand acknowledgement of their interest. Courts

<sup>11</sup> Ralph E. Scane, Relationships Tantamount to Spousal, Unjust Enrichment, and Constructive Trusts, 70 CAN. B. REV. 260 (June 1991).

<sup>12</sup>*Id.*

<sup>13</sup> *Boucher v. Koch*, (1988) 14 R.F.L. (3d) 443 (Alta. C.A.).

<sup>14</sup>*Id.*

<sup>15</sup> *Pettit v Pettit* [1970] AC 777.

<sup>16</sup> *Gissing v Gissing* [1971] AC 886.

<sup>17</sup> Stenger R, Cohabitation and constructive trust: A Comparative Approach, *Journal of Family Law*, 27 (2) (1988).

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analyse the overarching behaviour of the parties, financial or emotional arrangements, alongside any other intra-agreements to gauge whether the imposition of a constructive trust is justified in the first place. The entire mechanism behind this has been deliberately made flexible in recognition of the principles of equity, justice and fairness.

### **Inconsistencies in the Application of Constructive Trusts**

The practical application of constructive trusts in the realm of informal relationships like live-in arrangements has been inconsistent and marred with obstacles within and across different jurisdictions. The issues arise based on various factors, including but not limited to evidentiary conflicts, doctrinal loopholes, jurisdictional diversions and other practical difficulties.

### **Evidentiary and Methodology Issues**

The primary challenge arises with respect to the burden of proof. This implies that the party seeking the remedy of constructive trust must necessarily establish unjust enrichment or some kind of wrongdoing, which ultimately requires explicit evidence of common intention and contributions alongside any kind of reliance. In most of the cases, the ambiguous behaviours of the parties involved and a lack of proper documentation make it impossible to meet the standard of proof. Further, in almost all live-in arrangement owing to the nature of the relationship, parties rarely discuss, let alone record their intentions. As a result, outcomes are difficult to predict as the courts have to refer to only imputed intentions based on the discretionary conduct of both partners. In the case of *Moyna Khatun v. State of Punjab*, the Punjab and Haryana High Court acknowledged the existence of contractual arrangements in live-in relationships.<sup>18</sup> However, such agreements may not always be valid with respect to property disputes unless they are backed by evidence of intention or contribution.<sup>19</sup>

### **Doctrinal and Jurisdictional Inconsistencies**

Since the introduction of the remedy of constructive trusts into the legal paradigm, there have been divergent approaches to it. For instance, a lot of emphasis is laid on financial contributions despite courts recognising the existence of non-financial contributions. In the process of calculating beneficial interest, priority is accorded to the financial input of the party, which clearly discriminates against contributions that are mainly domestic in nature.

<sup>18</sup> *Moyna Khatum And Anr vs State Of Punjab And Ors* (2021) SCC OnLine P&H 920.

<sup>19</sup> *Id.*

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Further, there has been an inconsistent acknowledgement of the doctrine of detrimental reliance and promissory estoppel, leading to different thresholds and divergent protection for the vulnerable parties involved in the arrangements.

In jurisdictions like England, there is a limited scope of judicial discretion. While countries like Australia and Canada follow a comparatively flexible approach, leading courts grant relief based on principles of equity. In the case of *Lloyds Bank v Rosset*, the courts upheld the requirement of an express agreement alongside the presence of significant contributions specifically for the acquisition of property for the successful recognition of a constructive trust.<sup>20</sup> Further in *Stack v Dowden*, the House of Lords discussed that the entire discourse between the parties is crucial for determining beneficial interest in the property and not financial inputs alone.<sup>21</sup> Under the American jurisprudence as well, the California Supreme Court in the leading case of *Marvin v. Marvin* upheld that either express or implied contracts between parties to a non-marital relationship are valid with respect to property disputes.<sup>22</sup>

### **Practical Enforcement Difficulties**

In various countries like India, live-in relationships are not fully acknowledged or covered by law, further creating conflicts in property disputes and the grant of equitable relief. Under the Indian legal framework, maintenance and property rights of women in live-in arrangements have been recognised under the Protection of Women from Domestic Violence Act, 2005.<sup>23</sup> Moreover, the Supreme Court in the case of *D. Velusamy v. D. Patchaiammal* has outlined several pre-requisites for recognising live-in equations on the same ground as marriage, which has a direct impact on the beneficial interest of women in property matters.<sup>24</sup> Despite this recognition, live-in relationships and the associated cohabitation face a social as well as legal stigma in India, as well as various other jurisdictions. Further, even in cases where the constructive trust is established, recovery of the assets and their subsequent enforcement becomes a complicated procedure, particularly in cases where the parties are uncooperative. Owing to the informal nature of their relationships, parties are unaware of their rights, which also causes a delay in actions in terms of bringing claims to the courts.

### **Conclusion and The Way Forward**

<sup>20</sup> *Lloyds Bank v Rosset* (1991) 1 AC 107.

<sup>21</sup> *Stack v Dowden* (2007) UKHL 17.

<sup>22</sup> *Marvin v. Marvin* (1976) 18 Cal.3d 660.

<sup>23</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>24</sup> *D. Velusamy v. D. Patchaiammal* (2010) 10 SCC 469.

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Informal arrangements such as live-in relationships have become a common form of partnership between people who don't want to fall within the bounds of a marriage in the traditional sense. Alongside providing flexibility and personal liberty, they pose various risks, particularly with respect to property rights, in case a dispute arises between the couple. Devoid of a clear legal acknowledgement and remedial mechanism in place, individuals in such arrangements find it very difficult to establish their claims over the property to which they have made huge contributions. Stable and equitable rights are crucial for the protection of both parties from any form of unjust enrichment and also ensuring that their status in the relationship is justly recognised.

Enhancing property rights for couples through explicit statutory provisions, acknowledgement of all forms of contributions and greater access to equitable relief like constructive trust becomes imperative. Another way is through cohabitation contracts. These agreements are based on the idea of community property, which states that any assets accumulated during a partnership belong to both spouses equally and must be split equally between them upon separation. Cohabitation agreements may provide that the properties will be shared amongst the cohabitants equally or in a predetermined way. Consequently, these agreements carry out the expressed or inferred commitments of cohabitation, as well as obligations in the event of death, divorce, or relationship dissolution.<sup>25</sup> It has been upheld in the leading case of *Marvin v. Marvin* that, in terms of their income and property rights, individuals who choose to live together and have sexual relations are just as capable as anybody else.<sup>26</sup> No policy prohibits the courts from upholding agreements that allow the parties to arrange their economic affairs as they deem appropriate.<sup>27</sup> In the property obtained throughout their partnership, both cohabitating partners have a beneficial stake. Therefore, to guarantee substantive equality in society, a just settlement of the properties between the two is necessary. This will further align the legal framework with the realities of modern relationships and promote equity by providing protection to cohabitating individuals who might be left without any way out in case of disputes in their relationship.

<sup>25</sup> Hannah J, The law & living together : A cohabitation agreement is essential protection for unmarried couples. *Family Advocate*, 32(3) (2010).

<sup>26</sup> *Marvin v. Marvin* (1976) 18 Cal.3d 660.

<sup>27</sup> *Id.*

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