
LEGAL RIGHTS & STATUS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS

Harshita Dixit, Maharaja Agrasen Institute of Management Studies

"We may not have it all together but together we can have it all. "

Introduction

Cohabitation, often referred to as a live-in relationship, is an arrangement where two people who are involved in a long-term or permanent romantic and sexual relationship decide to live together without marriage. Since the live-in relationship has been legalized in India, it is essential to know the duties and responsibilities that come with it.

There is no specific law in India regarding live-in relationship matters. There is no legal regulation that establishes the rights and obligations of the parties living in a relationship and the status of children born to such couples. There is no legal definition of a live-in relationship, and thus the legal status of this type of connection is also unverified. Indian law does not confer any rights or obligations on the parties to a live-in relationship. However, the court clarified the concept of a live-in relationship through various judgments. Although the legislation is still unclear about the status of such relationships, few rights have been granted by interpreting and amending existing legislation to prevent abuse of such relationships by partners.

Later, in the landmark case of *Revanasiddappa v. Mallikarjun*¹, the court held that regardless of the legitimacy of the relationship between the parents, a child born of that relationship must be considered separately from the relationship between its parents. Justice AK Ganguly observed that a child born of such a relationship is innocent and entitled to all the privileges and rights available to those children born of valid marriages.

¹ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1 (India).

However, there are still many unresolved questions regarding live-in relationships and their legitimacy and inheritance rights, which have not been sufficiently assessed by the courts.

Property rights in India are governed by the Hindu Succession Act, 1956 ("HSA") and the Indian Succession Act, 1925. A legitimate child, which includes both a son and a daughter, falls under Class I heirs and is entitled to inherit a share of joint family property. Whereas an illegitimate child can only inherit his mother's property and is not automatically entitled to his putative father's inheritance. Therefore, the inheritance rights of children in the case of a relationship living in an apartment depend on the legitimacy of these children in the eyes of the law.

According to section 112 of the Indian Evidence Act, 1872, whether a child is legitimate or not depends on whether the child was conceived during the existence of a valid marriage. Before 2010, children born from a live-in relationship were considered "illegitimate" for legal purposes. However, the Supreme Court in *Bharata Matha v. R. Vijaya Renganathan*² held that children born out of a live-in relationship were legitimate and upheld their right to inherit property.

Although the Hindu Marriage Act, of 1955 does not directly recognize a live-in relationship, Section 16 of the HMA indirectly confers legitimacy on such children and gives them the right to inherit.

In *Vidyadhari v. Sukhrana Bai*³, the Supreme Court held that under Section 16 of the HMA, children born in a live-in relationship should have the status of "legal heirs" and are entitled to the right to inherit property. both parents.

Another problem that exists is that while the Supreme Court has reiterated time and again that children born out of cohabitation cannot be said to be illegitimate, the court has added requirements to determine such legitimacy.

In *Tulsa v. Durghatiya*⁴, he stated that children will be considered legitimate for purposes of succession only if the parents have lived together under the same roof and have lived in

² *Bharata Matha and Ors v. R Vijaya Renganathan and Ors*, AIR (2010) SC 2685 (India).

³ *Vidyadhari v. Sukhrana Bai*, (2008) 2 SCC 238; AIR 2008 SC 1420 (India).

⁴ *Tulsa & Ors v. Durghatiya & Ors*, (2008) 4 SCC 520 (India).

continuous cohabitation for a considerable period. It distinguished such a relationship from a "come and go" relationship.

However, there is ambiguity because of the phrase "considerable time" used by the courts. Courts have failed to settle the debate about what constitutes a "substantial amount" to confer legal status on such a relationship. The length of the period of continuous cohabitation remains debatable. Therefore, the judiciary needs to settle the debate on the question of the time period in such a way that a clear distinction can be made between the relationships "reside" and "I leave-leave".

Furthermore, such a requirement for a reasonable period of cohabitation defeats the purpose of the law set out in the Marriage (Amendment) Act 1976, which aims to prevent discrimination against an illegitimate child based on the relationship between its parents. The difference between the treatment of an illegitimate child born out of a void and voidable marriage and children born out of cohabitation where couples have not lived together for a considerable period of time does not make much logical sense.

Held at Parayan Kandiyal Eravath Kanapraavan Kalliani Amma (Smt.) & Ors. vs. K. Devi⁵ and Ors that the interpretation of HMA 1955 which was intended to be beneficial legislation should be done in the light of the objective of the Act. The aim of the HMA to bring about reform in society is very evident from the amendments made in the Act such as removing the distinction between a child born out of a void, voidable and valid marriage. Thus, the aim of Section 16 is to bring about reforms in society by granting inheritance rights to children born out of illegitimate relationships.

Therefore, it is more logical to grant the right of inheritance both to self-acquired and to the property of the parents' ancestors to children born from such a relationship. It is also important to remove a requirement such as "continuous cohabitation" for a "considerable time" to establish the legitimacy of living in a relationship and the children born of it. This is necessary to further the objectives of the Act. Although the legal status of housing has been repeatedly determined by the courts in several judgments, no specific law has been adopted by the legislature.

⁵ Parayan Kandiyal Eravath Kanapraavan Kalliani Amma (Smt) and Ors v. K Devi and Ors, AIR (1996) SC 1963 (India).

To solve these problems, we need special statutory legislation that could clarify the position of these children and establish their rights. This will ensure consistency in laws and help ensure the emotional, physical, and mental stability of children.

The Justice Malimath Committee proposals in 2003 were one of the first times the committee suggested that the definition of Section 125 of the Criminal Code 1973 must be amended accordingly to include a woman who cohabited with a man. wife for a significant period during the existence of the first marriage.

The Supreme Court of India in the case of *Tulsa & Ors vs Durghatiya* (2008)⁶ recognized the right to property to a child born in a live-in relationship and held that such a child will not be considered illegitimate in cases where the parents of such a child have lived together for a considerable period of time.

Section 16 of the Hindu Marriage Act, 1955 and Section 26 of the Special Marriage Act, 1954 reserve the right to the legitimacy of a child or children born of a void or voidable marriage, and a live-in relationship also falls within this ambit. A child or children born out of cohabitation have the same inheritance rights as a child or children born out of legal marriage, but these rights are very limited and only apply to the spouse's property. parents and such rights do not extend to coparcenary rights in a Hindu undivided family.

Similar views were taken in the case of *Bharatha Matha & Anr vs R. Vijaya Renganathan & Ors* (2010)⁷ where the Supreme Court of India held that a child born in a void or voidable marriage is not entitled to exercise inheritance rights over ancestral property. however, such a child may claim a share in any independently acquired property.

The Supreme Court of India in the case of *Revanasiddappa & Anr vs Mallikarjun & Ors* (2011)⁸ considered the right to property as a constitutional right of an illegitimate child and upheld the right to inheritance of children born out of the home relationship.

The Supreme Court clarified that children born out of a live-in relationship cannot be termed illegitimate. The mother was believed to be the natural guardian of the child. However, it also means that the father is not required to fulfill any responsibilities related to the child. Courts

⁶ *Tulsa & Ors v. Durghatiya & Ors*, (2008) 4 SCC 520 (India).

⁷ *Bharata Matha and Ors v. R Vijaya Renganathan and Ors*, AIR (2010) SC 2685 (India).

⁸ *Revanasiddappa v. Mallikarjuna*, (2011) 11 SCC 1 (India).

have also held that a child born to parents in a live-in relationship may be allowed to inherit the property of the parents if any but has no claim to the co-parcenary property of the Hindu ancestors.

Because there are no special laws that recognize the status of a couple in a live-in relationship. Therefore, the law on the status of children born from a live-in relationship is also extremely uncertain. As mentioned above, the rights of a child born of a live-in relationship are:

- 1) Legitimacy
- 2) Custody
- 3) Maintenance
- 4) Ownership

In the case of *SPS Bala Subramanyam v. Scruttayan*⁹, the Supreme Court held that if a man and a woman live together in a live-in relationship and have lived together for several years. Then according to Section 114 of the Act on proving that they lived together as husband and wife and the child born of them will be illegitimate.

In another case *Dimple Gupta v. Rajiv Gupta*¹⁰ it was held that an illegitimate child born out of an illicit relationship is also entitled to maintenance under Section 125 CrPc, 1973.

And in the *Bharat Matha* case the Supreme Court held, that a child born of common life is a legitimate child and has the right to access the property of his parents with the exception of undivided ancestral property.

A man and a woman living together in a live-in relationship are partners and have no status as spouses. Without any status of marriage, one cannot claim any rights like property rights, maintenance rights, religious rights, conjugal rights, etc. such rights are absent during cohabitation hence various committees have recommended equal rights for cohabiting women as married women.

In 2008, the Indian National Commission recommended the Ministry of Women and Child Development include a cohabiting partner in the right to maintenance under Section 125 CrPc,

⁹ *SPS Bala Subramanyam v. Sruttayan*, AIR (1994) SC 133 (India).

¹⁰ Criminal Appeal No.1139 of 2002

1973. This was supported by the judgment of *Abhijit Bhikase v. the State of Maharashtra and others*.¹¹

In the Malimath Committee or Criminal Justice System Reforms Committee (a committee set up by V.S. Malimath), it was observed that if a man and a woman live together as husband and wife for a considerable period of time, then the women should enjoy the legal status of married women.

In another case of *Chanmuniya v. Virendra Kumar Singh Kushwaha*¹², it was held that a man who has lived with a woman for a long time, though not undergoing any of the legal necessities of a valid marriage, should be liable to pay maintenance to her if he deserts her.

It was further held that a woman in a live-in relationship is entitled to claim any maintenance or relief under the protection of women under the Domestic Violence Act 2005.

In another case of *Lalita Toppo v. State of Jharkhand*¹³, it was held that live-in partners can claim compensation regardless of whether he is married or not.

Conclusion

In any case, we can conclude that the concept and legal status of live-in relationships in India have evolved only with time and various judgments of the Hon'ble Supreme Court and Supreme Court play the most important role in it.

However, the subject is not statutory as there is no separate legislation for housing provisions in India. Although the concept of a live-in relationship is a matter of morality in India, it is not illegal under the law. The Hon'ble Supreme Court ruled that the coexistence of two big people is their right to life and therefore it cannot be considered illegal. To protect living women and children born of a live-in relationship, the court defined it as a "relationship like marriage" under the Protection of Women from Domestic Violence Act 2005.

In the landmark case of *Indra Sharma vs VKV Sharma*¹⁴, 2013, the Hon'ble Supreme Court of India held that a live-in relationship requires effective and adequate protection, especially for

¹¹ CrI. W.P No. 2218 of 2007

¹² *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141 (India)

¹³ CRIMINAL APPEAL NO(S). 1656/2015

¹⁴ *Indra Sharma v. V K V Sarma*, (2013) 15 SCC 755 (India).

the female partner and children born out of such relationships, as it can last for a long time and can lead to vulnerability and dependency.

India is a state where morality is an extremely important thing to follow. With this in mind, the legislature cannot support premarital sex that is part of a live-in relationship. This is because a live-in relationship is a very personal matter and people who have an opinion for or against it can express it. Therefore, the parliament must pay attention to this issue and enforce the proper legislation of the law for it. This will help the partners to be safe and live their life as it is their right to live.