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Cohabitation without Legal Commitment? Legal Status of such relationship and Child Rights -Live-In Relationships in India

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ABSTRACT

Live-in relationships are increasingly gaining root in the Indian family and marriage structure. The traditional norms in the institution of marriage are challenged by the new developing concept of live in relationship. Till date, no laws have been framed to recognize and regulate live in relationship in India. But judicial precedents have granted few and limited protection, rights in such relations, especially concerning women's and children. This paper analyzes the legal status of live in relationship in India, focusing on legitimacy, inheritance, and social acceptance of children's born from such relationships. An attempt to draw a vivid distinction between marriage and live-in relationships is also made. Though there is no sui generis law on the subject of discussion, the paper discusses the legal provisions applicable to live-in relationship scenarios. Contradictory interpretations and conflicting implications arise in the absence of such legal changes being explicitly cognizant of and responsive to diverse forms of live-in relations prevalent in contemporary society. This study examines the present law and legal protection also highlights how the judicial precedents paved the way for a new era of live-in relationships.

KEYWORDS

Live-in relationships, Judicial precedents, Child rights, Legal recognition, Acts & provisions.

INTRODUCTION

The live-in relationship is a domestic cohabitation between an unmarried partner. It involves cohabiting together without any legal obligations or responsibilities towards each other. There is no law tying the partners together, and consequently, either of them can walk in and out of the relationship as and when they want. Nowadays, live-in relationships are gradually being recognized among the youths of our nation. The reason perhaps lies in the realization that the foundation of a relationship is compatibility and not adjustment. Another reason for its growing relevance may be its convenience, i.e., there is no binding obligation, and either partner can end the arrangement without any legal hassles.

The traditional Indian society has stigmatized non-marital live-in relationships, but the increasing number of live-in couples indicates the trend of social acceptance. The idea of pre-marital cohabitation would still upset a decent proportion of the Indian population. Nevertheless, discussions on live-in relationships in contemporary Indian society are an indication of a changing society. Despite growing acceptance, due to lack of societal and legal norms this concept faces social and legal challenges, many legal issues have been raised in the courts regarding the legality of such relationships and the impact of such relationships on Indian society. Since no legislation explicitly governs this subject matter, the definition and ambit of such a relationship are not clear.

Although, the concept is not recognized as a legal union in India. However, the Supreme Court of India has said that a live-in relationship without tying the knot is not a criminal offence or illegal. If we look at the judicial approach, the Courts have always been active and played a decisive role in protecting the rights and interests of individuals in such relationships through various judgments. However, the main issue which is involved in such relationships is the extent of giving legal recognition to them. When legal recognition seems to be necessary for some aspect, it may give rise to other legal problems and affect the rights of the third party involved directly or indirectly in such relationships such as the child born from such relationships.

RESEARCH METHODOLOGY

In this article, the research methodology is doctrinal in nature. The primary focus is on to comprehend the concept, laws, Act, books, news, and cases pertaining to a live-in relationship in India and understand the dynamics of this new social order. Thereafter,

an attempt has been made to study the problems and challenges faced by the couples with the help of descriptive and analytic methodology. Lastly, in the context of the problems being faced by those who volunteer to embrace this emerging trend of cohabitation, the paper argues on the need for framing a separate, secular and gender-sensitive law for the couple opting to cohabit in a live-in relationship.

RESEARCH OBJECTIVE

This is what the study intends to accomplish:

- Analyze the existing laws of India regarding the rights and positions of children born out of live-in relationships with particular reference to legitimacy, inheritance, maintenance and custody
- Assess the status of children in live-in relationships to determine what is lacking or unclear within the existing legal framework.
- Evaluate relevant judicial pronouncements and case law that have influenced the jurisdiction pertaining to live-in relationships.

General overview:

Aspect	Marriage	Live – in – relationship
Definition	A legally and socially recognized union between two people.	A relationship where a couple lives together without marriage.
Legal Status in India	Governed by personal laws (Hindu, Muslim, Christian, etc.) and secular laws like the Special Marriage Act, 1954.	Not governed by specific statutes; recognized under Article 21 (Right to Life) and interpreted by judiciary.
Registration	Mandatory or recommended under relevant marriage laws.	No registration required or provided for live-in relationships.
Recognition by Law	fully recognized and enforceable under Indian laws.	Recognized by courts for limited purposes (e.g., protection from abuse, maintenance, child legitimacy).
Judicial Backing	Supported by statutory and religious laws.	Recognized through landmark judgments by Supreme Court and High

		Courts (e.g., <i>Indra Sarma v. V.K.V. Sarma</i>).
Societal Acceptance	Broadly accepted	Still controversial with acceptance varying widely across regions and communities.
Children's Legitimacy	Children are legitimate with full legal rights.	Children are also considered legitimate as per Supreme Court (<i>Tulsa v. Durghatiya</i>).
Maintenance Rights	Provided under CrPC §125, (BNSS,2023) personal laws, and protection acts.	Can be granted under the Protection of Women from Domestic Violence Act, 2005 (if conditions met)
Inheritance Rights	Spouses and children have automatic inheritance rights.	Partners have no automatic rights, but children can inherit from parents.
Protection from Abuse	Covered under domestic violence and cruelty laws.	Covered under Protection of Women from Domestic Violence Act, 2005, if relationship qualifies.
End of Relationship	Requires formal divorce proceedings.	Can be ended mutually without legal procedures
Applicable Across India?	Yes, recognized throughout India.	Recognized by courts, but not uniformly accepted across all states. Some conservative states may resist.
Notable Judicial Observations	Courts emphasize sanctity and permanence in marriage.	Courts recognize cohabitation as part of right to life and privacy, especially for consenting adults.

JUDICIAL PRECEDENTS

In the landmark cases of **S. Khushboo v. Kanniammal** ¹, the supreme Court ruled that a living relationship is included within the purview of the Right to Life as defined in Article 21 of the Constitution of India. The Court added that two adults living together is not considered unlawful and is permissible as a live-in

¹ *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600.

relationship.

The Hon'ble Supreme Court was quoted saying living together in a marital relationship does not constitute an offense. "What is the offense when two adult individuals want to live together? Does it amount to crime? Living together is not an offense. It cannot possibly be an offense," observed the three-judge bench. The court even brought in evidence from folklore stating even Lord Krishna and Radha lived together.

Indra Sarma v. V.K.V. Sarma² The Court extended the PWDVA 2005 benefits even to women in live-in relationships, subject to certain prerequisites. The Supreme Court affirmed that a woman who, without knowledge that a man is already married to someone, begins to cohabit with him will nevertheless be regarded as residing in a "domestic relationship" for the purposes of the Act. Hence, his refusal to provide her with any sustenance will "domestically abuse" her within the meaning of the law and she will be able to claim reliefs which include maintenance and compensation.

The decision of the Supreme Court in **Revanasiddappa v. Mallikarjun and Others**³ represents a crucial development in Hindu laws relating to successions. Interpretation of Section 16(3) of the Hindu Marriage Act and its alignment with Hindu Succession Act undertakes the correction required to ensure that all children, whether born in wedlock or outside, and irrespective of their parent's marital status at the time of birth, enjoy equal rights to their parent's property.

If live-in relationships continue for a long period of time and the couple present themselves to the society as husband wife, they get recognized as being legally married. As early as 1978, in **Badri Prasad v. Deputy Director Consolidation**⁴, SC observation was made that "If man and woman who live as husband and wife in society are compelled to prove, after half-a-century of wedlock by eye-witness evidence that they were validly married fifty years earlier, few will succeed. A strong presumption arises in favor of wed-lock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favor of legitimacy and frowns upon bastardy."

² *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

³ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1.

⁴ *Badri Prasad v. Dy. Director of Consol.*, (1978) 3 SCC 527.

To get recognized as “in the nature of marriage,” certain conditions were set by the Supreme Court in the case of **D.Velusamy v. D. Patchaiammal** ⁵

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried.
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

Hence, **Legal rights of a women in live in relationship**

- Right To Protection Against Domestic Violence in Live-In Relationships - Protection of Women from Domestic Violence Act of 2005.
- Right To Maintenance in Live-In Relationships - Can ask for maintenance under Section 125 CrPC, Now in Section 144 BNSS, 2023.
- Right To Shared Household in Live-In Relationship - Section 2(s) in The Protection of Women from Domestic Violence Act, 2005

Rights of Children Born from Live-in Relationships:

The ambiguity surrounding live-in relationships extends to the status of children born from such unions. However, judicial interpretations have granted them certain rights:

1. Legitimacy and Legal Recognition

Section 16 of the Hindu Marriage Act, 1955 essentially validates children born from marriages that might otherwise be void or voidable—and over time courts have broadened this idea to cover kids born from live-in relationships. In one well-known decision, **Revanasiddappa v. Mallikarjun** ⁶, the Supreme Court made it clear that children shouldn't be sidelined because of their parents' marital choices. Generally speaking, this ruling leans toward a more inclusive notion of legitimacy.

Then came the **Tulsa v. Durghatiya** ⁷ case. Here, the Court opined that a child born in a non-traditional relationship

⁵ *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

⁶ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1.

⁷ *Tulsa v. Durghatiya*, (2008) 4 SCC 520.

should no longer be tagged as illegitimate, provided the parents have shared a home long enough to prove genuine commitment. It's not an automatic fix, though—the parents must have cohabited for a significant stretch to show their relationship is sincere.

Another landmark was **S.P.S. Balasubramanyam v. Suruttayan**⁸ arguably the first instance where the legitimacy of children born from a live-in setup was fully endorsed. The Court stated that if a man and a woman live together under one roof for several years, they are effectively seen as a couple, and their children cannot be considered illegitimate.

On top of that, there's also the Court's take on Article 39(f) of the Constitution of India. This article—when you think about it—guides policies to ensure that kids have the chance to grow up in conditions that are both healthy and dignified. It really emphasizes that childhood and youth should be shielded not just from exploitation but also from any sort of moral and material neglect.

2. Inheritance Rights

Children born from live-in relationships have rights to their parents' self-acquired property but not necessarily ancestral property, as per **Bharatha Matha v. R. Vijaya Renganathan**⁹

The distinction between self-acquired and ancestral property remains a barrier, and the law has yet to fully embrace equal inheritance rights for children from live-in relationships.

The Supreme Court in **Revanasiddappa v. Mallikarjun**¹⁰ approved the inheritance to the four children born out of the live-in relationship by considering them as 'legal heirs'. Therefore, the Court has guaranteed that no child may be denied their inheritance who are born out of a live-in relationship of a significant period of time. The Supreme Court held that a child born out of parents in a live-in might be allowed to inherit the property of the parents if any, but does not have any claim upon Hindu ancestral coparcenary property.

3. Maintenance

⁸ *S.P.S. Balasubramanyam v. Suruttayan*, (1994) 1 SCC 460.

⁹ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483.

¹⁰ *Revanasiddappa v. Mallikarjun* [2011] 4 S.C.R. 675.

Under the Hindu Adoption and Maintenance Act, 1956, children have the right to claim maintenance. It is crucial to take into account the possibility that a child will be born into a lifetime relationship. In terms of roommates' and their offspring's rights, a living relationship's legal component includes maintenance, which is commonly understood as the duty to support another individual. An illegitimate child born into a live-in relationship is entitled to maintenance under "Section 125 of the CrPC," Now 144 Bhartiya Nagarik Suraksha Sanhita which provides for the maintenance of children, whether legitimate or illegitimate, while they are juveniles and after they reach the majority, where such a child has not yet been able to support themselves. The Court of Kerela decided in **PV Susheela v. Komalavally**¹¹, the refusal to provide child support to an unmarried couple may be subject to Article 32 for violating fundamental rights protected by the Constitution, such as Article 21 that guarantees the right to life and liberty and the denial of taking these rights away.

4. Custody

Hindu Minority and Guardianship Act, 1956, Section 6 provides that "the mother becomes the natural guardian in case of absence of the father, i.e., when the father is unable to act as the child's guardian." The father is his legitimate minor children's natural guardian. Live-in relationships are touched upon indirectly by Section 6 Sub-Section (6) of the said Act, giving the mother custodial rights in cases of children born out of illegitimate relationships. It has been noted that particular laws are required to deal with the custodial-related issue of children born out of cohabitation in the form of custodial rights. Custody rights are significant when a couple splits up and goes their separate ways. Because live-in relationships are not legally regulated in any specific way, if a court is faced with a custody dispute of this type, it may deal with the case as if it were a case of an unmarried single mother or unmarried child of a married couple.

RECOMMENDATIONS

1. **Legislative Clarity-** The government should enact laws that are clear about defining and regulating live-in relationship for the legality and protection of individuals.
2. **Inheritance Law Reform-** The law of inheritance should be reformed so that children born out of live-in relationships enjoy comparable rights to ancestral property.

¹¹ *P.V. Susheela v. Komalavally*, 2007 SCC On-line Ker 436 (Ker.).

3. **Public Awareness/ Sensitized Campaigns-** Public awareness/sensitized programs should be introduced because they may help to change social stigma attached to live-in arrangements and promote participation and acceptance of families outside of the traditional structure.
4. **Legal Document Mechanisms-** A way of registering live-in relationship should be established for legal matters such as maintenance of an individual or child, custody and inheritance.
5. **Progressive Precedents-** Courts should be continually progressive in interpretation of laws so to enable respect for rights of individuals in live-in relationships and their children.
6. **Gendered Policy-** There should be specialized legal protections for women in live-in relationships to prevent abuse and exploitation.
7. **Uniform Guidelines for Jurisdiction-** The court system should provide consistency for the purpose of recognizing live-in relationships that would be standard across India.
8. **Include in Census & Surveys-** Accepting data/analyses in governmental surveys should include live-in relationships in order to develop evidence-based policy.

CONCLUSION

Although a live-in relationship may seem like a new and objectionable idea in India, it is actually growing everywhere. In this current lifestyle, which is partly taking shape due to the rapid impact of globalization, people seem averse to taking any responsibilities or being involved in a full-time devoted relationship. For youth, voluntary relationship between couples based on the wider acceptance of domestic cohabitation and pre-nuptial agreements, a total acceptance of sexual preferences, and so forth is trendy. Live-in relationships are presented to them as a good way to live like marriage, just without all the complications and worries; Quite the opposite, it takes a lot more responsibility and social-legal understanding. Nowadays, society and organizations, in addition to the judiciary, have started to legitimize the live-in relationship as the country opens its doors to western culture, ideas, and lifestyles slowly.

Given the current circumstances, it is reasonable to draw the conclusion that, although certain laws, like Section 16 of the Hindu Marriage Act 1955, Create legal security for children born into live-in relationships; their claims on ancestral property and support may not be recognized or enforced, depending on the facts of each specific situation. The Indian courts have played an

important role by recognizing the legal status of children born to partners who lived together. Similarly, there are disputes as to who is allowed custody of children born into live-in relationships, even with provisions from "Section 6(b) of Hindu Minority and Guardianship Act 1956" in place. In the current legal environment, it is appropriate to expect a child of a living relationship to experience uncertainty of their legal status, their place of birth and their future entitlements throughout their life. Throughout their lives, a child born of a living relationship could be emotionally and mentally stressed due to uncertainty in their legal status, their place of birth, and their subsequent entitlements. The new legal status, that would be brought to a child of a live-in marriage, must provide clear guidance to children of the same relationships and modify current terminology of ancient legal statutes to reflect the entitlements and status of children born of live-in relationships. Arguably, this would best suit the emotional, mental, and physical stability.

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