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A CRITICAL ANALYSIS OF THE LEGAL RIGHTS OF CHILDREN BORN FROM LIVE IN RELATIONSHIPS IN THE INDIAN CONTEXT

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ABSTRACT

A critical analysis of the legal rights of children born in live-in relationships in the Indian context reveals significant complexities and evolving judicial interpretations. Live-in relationships, though socially stigmatized, have gained legal recognition in India, primarily through progressive judicial pronouncements. However, the legal rights of children born from such relationships remain a contentious issue. The Indian judiciary, particularly the Supreme Court, has made strides in addressing the legitimacy and rights of these children. In landmark cases, the Court has affirmed that children born out of live-in relationships are entitled to the same rights as those born within wedlock. This includes rights to inheritance, maintenance, and protection under the law. The judiciary's stance aligns with the broader principles of the Indian Constitution, which emphasizes equality and non-discrimination. However, practical challenges persist in the enforcement of these rights due to societal biases and the lack of specific legislative frameworks. This research article critically examines the various legal rights afforded to children born from live-in relationships in India. It delves into the rights concerning inheritance, guardianship, and social protection, highlighting how the legal framework addresses or falls short in recognizing the entitlements of these children.

INTRODUCTION

Centuries ago, the eminent Greek philosopher Aristotle asserted that humans are inherently social beings, finding comfort and belonging within society, particularly in familial settings.¹ However, the passage of time has witnessed a gradual erosion of the Aristotle's statement. Presently, individuals challenge the once unquestioned validity of societal norms, seeking alternatives and creating their own set of principles that diverge from traditional social constructs. Despite marriage enduring as a long-standing social institution, contemporary society witnesses the emergence of a new phenomena aimed at liberating individuals from conventional constraints.

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¹ Akhilesh Pathak, *Duality of Human Marriage* 112 (Raj Publications, India, 1st edn., 2019)

Yearning for increased autonomy, people have embraced significant shifts, notably the rise of Live-in Relationships, as a means to transcend the limitations imposed by the institution of marriage.

Live-in relationships have been stigmatized in India since the pre-independence era, although attitudes towards them vary between urban and rural areas. While such relationships are not generally taboo in cities, they are viewed more conservatively in villages.² In India, live-in relationships are not deemed illegal but are often considered immoral. The absence of legislation addressing this issue poses significant challenges, particularly concerning the rights and obligations of the parties involved.³ Without clear legal guidelines, issues related to inheritance and succession of property in cases where partners die intestate remain unresolved. Courts have stepped in to interpret and clarify several of the legal disputes and question in these kinds of arrangements in the absence of specific laws. With the passage of time, there has been a noticeable rise in the number of individuals opting for relationships alternative to the marriage. While this trend has long been accepted in Western countries, it is gradually gaining acceptance in India as well.

Ensuring the rights and welfare of children is paramount within any legal framework, and this concern becomes particularly pronounced in situations where there are no specific laws addressing certain family structures, such as live-in relationships.⁴ In such scenarios, the legal status and future of children born within these relationships can become uncertain, leaving them vulnerable and potentially exposed to various legal challenges. The absence of clear legal provisions addressing the rights and responsibilities associated with children born out of live-in relationships creates a significant gap in the legal framework, which can have far-reaching implications for their upbringing and well-being.

Recognizing the urgency of addressing this issue, the Indian judiciary has played a pivotal role in interpreting and applying existing legislation to safeguard the rights of children born out of live-in relationships. Despite the absence of specific laws pertaining to such relationships, the judiciary has taken proactive steps to fill this legal void by extending the protective umbrella of existing

² Lobo, *Marriage and Divorce in India: Changing Concepts and Practices* 66 (Manohar Publishers and Distributors, Allahabad, 3rd edn., 2019)

³ Mandeep Kaur, "Legal Perspective on Live-In Relationships in Present Scenario" 6 *International Journal of Research and Analytical Reviews* 939 (2019)

⁴ Child Rights and Why they Matter, available at: <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter> (last visited on April 1, 2024)

laws to cover children in these circumstances.⁵ Through judicious interpretation and application of relevant statutes, courts have sought to ensure that children born out of live-in relationships are not deprived of their inherent rights and entitlements merely due to the unconventional nature of their parents' union.

By invoking principles of equity, justice, and the best interests of the child, the Indian judiciary has underscored the importance of protecting the rights of children irrespective of the marital status or relationship dynamics of their parents. Through landmark judgments and legal precedents, courts have affirmed the equal rights of children born out of live-in relationships to inheritance, maintenance, and other essential entitlements, thereby affirming their status as legitimate members of society deserving of legal recognition and protection.

LEGITIMACY OF CHILDREN BORN OUT OF LIVE IN RELATIONSHIP

Children born within a valid marriage are considered legitimate under Indian law, entitling them to all legal rights and obligations outlined in various legislations. Both the HSA, 1956 and the ISA, 1925 explicitly recognize the legal rights of such children. Section 16 of the HMA, 1955 specifically addresses the status of children born from void marriages, effectively removing any stigma of illegitimacy and granting them legitimacy.⁶ However, Indian laws currently do not explicitly recognize the legal position of children born from Live-In Relationships. In the absence of dedicated legislation governing Live-In Relationships, recourse can be taken to Section 16 of the HMA to establish legitimacy for such children. Consequently, children born from Live-In Relationships can rightfully claim a share in their father's property. Moreover, the Live-In couple retains the ability to confer their rights in movable and immovable property, particularly in respect to self-acquired assets.

The legal framework regarding children born from live-in relationships is protected under Section 16 of the HMA. According to this provision, children born out of such relationships are not considered illegitimate. Legitimacy forms the foundation for all other rights that a child is entitled to in India.⁷ In the landmark case of **S.P.S. Balasubramanyam v. Suruttayan**⁸, the SC ruled that if a male and female cohabit while residing in same residence for an extended period, a

⁵ Naveen Talawar, "Live-In Relationship in India" 4 *International Journal of Law Management and Humanities* 474 (2021)

⁶ The Hindu Marriage Act, 1955(Act 25 of 1955), s.16

⁷ The Hindu Marriage Act, 1955(Act 25 of 1955), s.16

⁸ 1994 AIR 133

presumption of marriage arises under Section 114 of the Indian Evidence Act. Consequently, children born out of such relationship are taken as legitimate, further solidifying the protection and rights afforded to children born from live-in relationships under Indian law.

In cases such as **Tulsa v. Durghatiya**⁹, the SC of India has firmly established that Child born out of the arrangement of live in relationship will be considered same as the child born out of the relation of marriage. However, court has highlighted few points that needs to be considered while deciding upon the legitimacy of the children born out of such relationship. It was outlined in this case that for the child to be considered as legitimate it is essential that the parents of the child has lived in same residence and cohabited for a long period of time and society perceived them as the husband and the wife.

The relationship should not merely be transient or characterized by sporadic cohabitation, as emphasized by the SC in its judgment in the famous case of **Madan Mohan Singh and Ors. v. Rajni Kant and Anr**¹⁰. This legal precedent underscores the importance of stability and long-term commitment in determining whether the child born from such relationship is legitimate or not, ensuring that they are afforded the same rights and status as children born within the confines of a formal marriage.

The Courts in India have interpreted the existing laws to ensure that no child is unfairly stigmatized due to the circumstances of their birth, as demonstrated in the case of **Bharatha Matha and Ors. v. R. Vijaya Renganathan and Ors**¹¹. Here, the SC underscored that children born from live-in relationships should not suffer discrimination and may rightfully inherit their parents' property, thereby gaining legitimacy under the law.

In the judgment of **Revanasiddappa v. Mallikarjun**¹², the court established a crucial precedent by emphasizing the principle that the legitimacy of the relationship between parents should not affect the status of the child born from that relationship. Justice AK Ganguly aptly remarked that regardless of the parents' relationship status, the child is innocent and entitled to all the privileges and rights accorded to children born from valid marriages.

⁹ AIR 2008 SC 1193

¹⁰ AIR 2010 SC 2933

¹¹ AIR 2010 SC 2685

¹² 2023 SCC OnLine SC 1087

In the case of **Vidyadhari v. Sukhrana Bai**¹³, the SC established a significant precedent by affirming that children born from live-in relationships, as per Section 16 of the HMA, should be recognized as "legal heirs" and thus entitled to inherit the property of both parents. However, the interpretation of the legal status of children born from such relationships has been subject to ongoing debate and scrutiny. In the case of **Parayankandiyal Eravath Kanapraavan Kalliani Amma vs. K. Devi**¹⁴, the concept of deeming a child legitimate for certain purposes while maintaining illegitimacy for others was challenged, highlighting the need for clarity and consistency in legal interpretations.

MAINTENANCE OF CHILDREN BORN OUT OF LIVE IN RELATIONSHIP

Maintenance of children is a profoundly significant aspect of live-in relationships, often requiring careful consideration and legal framework. In these relationships, where couples cohabit without entering into a formal marriage, issues surrounding the well-being and financial support of any children involved can be complex and sensitive. Unlike in a traditional marital setup where responsibilities and rights regarding children are more clearly defined, the dynamics in a live-in relationship can vary widely.

Maintenance is a duty imposed on an individual to provide financial support to another, often referred to as alimony.¹⁵ This responsibility becomes crucial in the context of children born out of live-in relationships. According to Section 21 of the Hindu Adoption and Maintenance Act, 1956, dependents such as a legitimate son, the son of a predeceased son, or the son of a predeceased son of a predeceased son, are entitled to maintenance as long as they are minors. Additionally, legitimate unmarried daughters or the unmarried daughters of a son, or the unmarried daughters of a predeceased son of a predeceased son, are also eligible to be maintained by their father or from the estate of their deceased father. However, children born out of live-in relationships were originally not included under this provision, thus denying them the statutory right to maintenance. In a notable effort to uphold social justice, the Indian judiciary addressed this gap in the landmark case of *Dimple Gupta v. Rajiv Gupta*. In this case, the SC of India ruled that even an illegitimate child born from an illicit relationship is entitled to maintenance under Section 125 of the Criminal Procedure Code (Cr.P.C.). This section mandates the provision of maintenance to children,

¹³ AIR 2008 SC 1420

¹⁴ AIR 1996 SUPREME COURT 1963

¹⁵ Dr. Prativa Panda, "The Status of Live-in Relationship in India: A Legal and Judicial Approach" 8 *International Journal of Legal Studies* 45 (2019)

irrespective of their legitimacy, as long as they are minors. Furthermore, this maintenance obligation extends beyond the child's attainment of majority if they are unable to support themselves, thus ensuring a broader interpretation of social welfare and justice.

The case of **Savitaben Somabhai Bhatiya v. State of Gujarat**¹⁶ presents an exception to the general principle of maintenance in live-in relationships. Here, the live-in partner, who had taken on the role of a second wife, was denied maintenance. However, the child born from this relationship was granted maintenance. This distinction underscores the judiciary's approach to protecting the rights of children born out of such unions, while maintaining a different standard for the partners involved. Refusing maintenance to a child born from a live-in relationship can be contested under Article 32 of the Indian Constitution, as it violates fundamental rights, particularly the Right to Life and Personal Liberty guaranteed under Article 21. Denial of maintenance can strip an individual of the right to live with dignity, a principle supported by the Kerala High Court in **P.V. Susheela v. Komalavally**¹⁷. This viewpoint was reinforced by the SC in **Dimple Gupta v. Rajiv Gupta**, where the court affirmed that a child born out of an illicit relationship is entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973. This provision mandates maintenance for children, regardless of their legitimacy, until they reach adulthood, and further, if they are unable to sustain themselves due to any disability, they are entitled to maintenance beyond the age of majority. The SC's stance in this case highlights the importance of ensuring that children born out of live-in relationships are not deprived of their fundamental rights and can lead a dignified life.

Treating a child born from a live-in relationship differently from a child born within a marriage, despite both being regarded as legitimate under the law, constitutes a breach of Article 14, which ensures equality before the law. This principle was established in the case of **Bharatha Matha and Ors. v. R. Vijaya Renganathan and Ors**¹⁸. The SC in this case emphasized that any form of discrimination between these children is unjust and violates their fundamental right to equality. The ruling underscored that all children, irrespective of the nature of their parents' relationship, should be afforded the same legal rights and protections. Discriminatory practices that deny equal treatment based on the circumstances of birth undermine the constitutional guarantee of equal protection and equal treatment under the law. The judiciary's interpretation in this landmark case highlights the importance of upholding the principles of fairness and non-discrimination, ensuring

¹⁶ AIR 2005 SC 1809

¹⁷ I(2000)DMC376

¹⁸ AIR 2010 SC 2685

that every child is treated equally and with dignity, irrespective of their parents' marital status.

In India, each personal law contains provisions for the maintenance of children, ensuring their welfare and support regardless of their parents' marital status. The outdated and stigmatizing term "illegitimate" has been discarded in legal discourse, no longer applied to children born to unmarried couples who have cohabited for an extended period. Instead, legislation prohibits derogatory labels such as "whoreson" or "fruit of adultery," presuming legitimacy for the child's benefit. Efforts have been made within the legal framework to eradicate the concept of illegitimacy, as previously discussed regarding the recognition of children born out of live-in relationships.

The courts have affirmed the legitimacy of children born in various circumstances, including those from marriages deemed legal, invalid, or voidable, as well as live-in relationships (excluding inheritance rights from ancestors). Furthermore, research indicates that children born from live-in relationships retain legal entitlements, including the right to seek maintenance under the Hindu Adoption and Maintenance Act (HAMA), 1956, and the Code of Criminal Procedure (CRPC), irrespective of their statutory legitimacy or court-recognized status.

Illegitimate children, too, are afforded the right to maintenance under these statutes, emphasizing the legal obligation of a Hindu to provide support for their offspring throughout their lifetime. Section 20 of the HAMA, 1956, specifically addresses the maintenance of children, asserting that as long as the child is a minor, they may claim maintenance from either parent, regardless of legitimacy. Additionally, under the HAMA of 1956, parents are obliged to support their unmarried daughters who are unable to sustain themselves financially.

INHERITENCE RIGHTS OF CHILDREN BORN OUT OF LIVE IN RELATIONSHIP

Property rights encompass the inheritance rights that children hold, particularly regarding ancestral property. Under the HMA, 1955, children born from legitimate marital relationships are entitled to inherit such properties. However, complications arise when addressing the inheritance rights of children born out of live-in relationships. In these relationships, partners cohabit for extended periods without legally or socially formalizing their union through marriage. Recent judicial rulings have extended ancestral property rights to children born from these live-in arrangements. Nevertheless, children resulting from one-night stands or transient relationships do

not receive such inheritance rights. Legitimacy has historically been a prerequisite for inheritance under Hindu law. Thus, courts have consistently ensured that children born from live-in relationships of significant duration are not deprived of inheritance rights, aligning this practice with Article 39(f) of the Indian Constitution. The SC, in the landmark case of **Vidyadhari v. Sukhrana Bai**¹⁹, affirmed this position by granting inheritance rights to children born out of live-in relationships, recognizing them as "legal heirs." This judgment underscored the judiciary's commitment to ensuring that all children, irrespective of the nature of their parents' relationship, are treated equitably regarding inheritance, thereby upholding their dignity and constitutional rights.

Legitimacy has consistently been a fundamental requirement for inheritance rights. Consequently, the judiciary has ensured that children born from sustained live-in relationships are not deprived of their right to inherit, in alignment with Article 39(f) of the Indian Constitution. This principle was notably upheld in the SC 's historic ruling in **Vidyadhari v. Shukrana Bai**²⁰, which granted inheritance rights to children born from live-in partnerships, recognizing them as legitimate heirs. A pivotal moment in this legal evolution occurred in **Balasubramanyam v. Suruttayan**²¹, where the SC for the first time conferred legal legitimacy on children born from live-in relationships. The Court articulated that when a man and woman cohabit under the same roof for a considerable period, a presumption of marriage arises under Section 114 of the Evidence Act. Consequently, the children born from such unions are deemed legitimate and entitled to inherit ancestral property. Further reinforcing this stance, in a 2008 ruling, the SC affirmed that children born from live-in relationships should enjoy equal inheritance rights as legal heirs. This was exemplified in the case of **Lalita Toppo v. State of Jharkhand**²², where the Court stated that a couple living together and being perceived by society as married, sharing a household over a long duration, should be considered married. As a result, children born from such relationships are accorded the same inheritance rights as those born from traditional marriages. This progression in legal interpretation ensures that all children, regardless of the nature of their parents' relationship, are treated equitably concerning inheritance rights, thereby safeguarding their dignity and constitutional entitlements.

In the case of **Ravaanasiddappa v. Mallikaarjun**, the Hon'ble SC asserted that children born from a woman in a live-in relationship are entitled to inherit the property of their biological father as

¹⁹ AIR 2008 SC 1420

²⁰ *Ibid*

²¹ 1994 SCC (1) 460

²² Petition(s) for Special Leave to Appeal (Crl. No(s). 9080/2013

'his legal heirs.' This decision, along with several other judicial pronouncements, reinforces the stance that no child should be denied their inheritance rights merely due to being born out of a live-in relationship, provided the relationship lasted for a reasonable period. Similarly, in the landmark case of *S.P.S. Balasubramanyama v. Sruttayana*, the SC observed that when a man and woman cohabit under the same roof for a substantial period, it is presumed that they are living as husband and wife, and any children born from such a union will be considered legitimate. This judgment was significant in interpreting legal provisions in line with Article 39(f) of the Indian Constitution. The Court emphasized that children born from live-in relationships should be given the same opportunities and facilities to grow in a healthy environment and in conditions of freedom and dignity, protecting their childhood and youth from exploitation. The SC's interpretation affirms the legitimacy of progenies from live-in relationships, ensuring their rights to inherit property and safeguarding their interests, thus upholding the principles of fairness and equality enshrined in the Constitution.

In the case of **Uday Gupta v. Aysha and Another**²³, the petitioner's argument before the SC contended that the High Court had erred in its observation that not all customary rites need to be followed for a valid marriage. The petitioner asserted that such an observation could undermine the very institution of marriage. However, the SC clarified that the observation was specific to the marriage in question and not intended for universal application. Referencing various judgments, the Court noted that the law typically presumes in favor of marriage and against concubinage. When a man and woman have lived together continuously for many years, the law tends to presume that they are married, although this presumption can be rebutted with incontrovertible evidence. The Court further remarked that Section 16 of the HMA, 1955 aims to promote social reform by granting legitimacy to a group of children who would otherwise be considered illegitimate. Thus, if a man and woman mutually agree to live together and do so for a substantial period as husband and wife without being legally married, there is a presumption of marriage, and their children should not be considered illegitimate.

The Madras High Court has also upheld that children born from such cohabitation have property rights. Before 2010, children born from cohabitation were deemed illegitimate. However, in the landmark case of **Bharata Matha v. R. Vijya Renganathan**²⁴, the SC granted these children legal status, affirming their inheritance rights. Additionally, the Hindu Succession Act of 1956 provides

²³ *AIR ONLINE 2014 SC 271*

²⁴ *AIR 2010 SC 2685*

women the right to inherit ancestral and self-acquired property regardless of their marital status. This legislative framework ensures that children born from non-traditional relationships are afforded the same legal rights and protections as those born within traditional marriages, promoting equality and upholding their dignity.

CONCLUSION

The Indian judiciary has played a crucial role in interpreting existing legislation to uphold and protect the rights of children born within live-in relationships. Section 16 of the HMA, 1955, stands as a significant piece of legislation in this context, serving as a groundbreaking provision that safeguards the legal rights of children born from both void and voidable relationships, thereby encompassing children born from live-in arrangements. This provision serves as a cornerstone for ensuring the legitimacy and legal entitlements of such children, irrespective of the marital status of their parents. By recognizing the rights of children born from live-in relationships, the judiciary has effectively addressed the inherent complexities and challenges surrounding their legal status and entitlements. Through judicial interpretation and application of existing laws, the Indian judiciary has underscored the principle of equality before the law, ensuring that children born from live-in relationships are entitled to the same rights and privileges as those born within formal marriages. This interpretation reflects a commitment to protecting the welfare and interests of children, regardless of the circumstances of their birth, and reinforces the notion of equality and justice within Indian society.

The need for comprehensive legislation that clearly defines and protects the rights of children born from live-in relationships is paramount. Such legislation should ensure equal treatment in matters of inheritance, maintenance, and social security. Additionally, awareness and societal acceptance are crucial to mitigating the stigma associated with live-in relationships and safeguarding the interests of affected children. This critical analysis underscores the necessity for a balanced approach that harmonizes judicial activism with legislative action, thereby ensuring that the rights of all children, irrespective of their birth circumstances, are upheld in accordance with constitutional mandates and international human rights standards.

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