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COMPARATIVE ANALYSIS OF SUCCESSION LAWS IN LIVE IN RELATIONSHIP IN INDIA, USA AND EUROPE

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While historically, marriage is considered to an important part and responsibility of a person's life, the idea of marriage and relationships has evolved along with society which has begun to undermine the importance of marriages. While the idea has existed in many Western countries for some time, since the late 20th Century, the idea of live-in relationships has grown in India even when it is not considered widely socially acceptable to enter into such a relationship despite it not being recognized or protected by law.

The paradigm shift in the prominence of such relationships has triggered a large number of legal consequences globally, prompting jurisdictions to deal with the recognition and safeguarding of the rights resulting from these non-marital unions. However, since such relationships are not regulated or brought under the statutory law aside from the Protection of Women from Domestic Violence Act, 2005, the popularization of the concept has brought to the forefront many problems arising due to the gap in the laws which has left the parties to the mercy of the courts without any possibility of knowing how the court could interpret the existing laws to deal with their matters. One of these problems is with regard to the succession of property to a child born out of such a relationship where the absence of any law to deal with the rights of such children.

In this article, we shall study the legal position on the status of live-in relationships in India and what are the succession rights arising out of such relationships. We shall also study the American and European legal positions on succession rights arising out of such relationships which have already considerably evolved due to the high presence of relationships not in nature of marriage and compare these to the Indian laws to better understand how can the law be equipped to deal with succession rights in such cases.

LEGAL RECOGNITION OF LIVE-IN RELATIONSHIPS

Live-in relationship, also known as cohabitation is a situation where two individuals agree live together in a relationship in nature of marriage even when they have not entered into marriage as per any customary rights or ceremonies or any other lawful means as opposed to the more acceptable form of traditional marriage.

Engaging in a live-in relationship is not considered illegal under Indian law for a long time with no specific law or judgement expressly prohibiting it. In 1978, in the case of *Badri Prasad v. Dy. Director of Consolidation*¹, the Supreme Court also raised a rebuttable presumption of marriage in the case where a couple had been living together as husband and wife in society for a long time. However, the courts refrained from giving a legal recognition to the live-in relationships as this presumption was a rebuttable one and thus relationships without actual marriage would not be considered in the nature of marriage.

The first statutory recognition given to the live-in relationships in India was in 2005 even though it was not through a legislation pertaining to live-in relationships and term live-in relationship was not mentioned. Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) defined Domestic relationship as "*a relationship between two persons who live or have lived together in a shared household at any point in time, when they are related by consanguinity, marriage, or through a relationship such as marriage, adoption, or are family members living together as a joint family.*"² thus including within its scope relationships where individuals are not married but are in a relationship in nature of marriage and granting them protection from domestic violence.

In the landmark case of *D Patchaiammal v. D Velusamy*³, the Supreme Court in 2010 defined 'a relationship in the nature of marriage' and laid down certain conditions including:

- 1. Age:** The court said that in order to be covered within this definition, the couples must of a legal marriageable age which is 21 years for men and 18 years for women. However, in 2018 the Supreme Court diverged from this interpretation in the case of

¹ *Badri Prasad v. Dy. Director of Consolidation* 1978 AIR 1557.

² The Protection of Women from Domestic Violence Act, 2005 (43 of 2005) s 2(f).

³ *D Patchaiammal v D Velusamy*, 2010 SCC OnLine SC 1188.

*Nandakumar vs The State of Kerala*⁴, and said that live-in relationship would be valid even if husband is under the marriageable age if the wife is an adult.

2. **Voluntary Cohabitation:** The couple must have entered into the relationship with free consent as it is essential for a couple in live-in relationship to have independently deciding to live together. This ensures protection of individuals from fraud, coercion, undue influence, misrepresentation etc.
3. **Significant period:** The court introduced the condition of a significant period for a relationship to be included within the scope of the term ‘in the nature of marriage’ and granted protection under PWDVA, 2005. Thus, the court differentiated the live-in relationships to be considered domestic relationships from the “walk-in and walk-out relationship” where the relationship has lasted only for a limited period. However, the court failed to define what should be considered as a significant period leaving it open to the interpretation of the court.
4. **Must be qualified to enter into a legal marriage:** The court imposed this condition in order to ensure that the provision is not misused by people who are already married and are incapable of entering marriage so instead enter into a live-in relationship.

However, the position of the court has not been consistent regarding the recognition of such relationships as there is a reluctance to do so due to various social taboos attached to it. While the Uttarakhand Government has included such relationships within the ambit of the Draft Uniform Civil Code of Uttarakhand, 2024 which could become a template for a Uniform Civil Code at the National Level, the approach seems to be questionable as it has made it mandatory to register such relationships with the government and the failure to do so has been made punishable with imprisonment which could mean increased restriction on such relationships.

SUCCESSION LAWS IN CASE OF LIVE-IN RELATIONSHIPS IN INDIA

In the *Chanmuniya v. Virendra Kumar Singh Kushwaha*⁵ case, the Supreme Court emphasized that men who cohabit with women for an extended period, even without formalizing their relationship through legal marriage, should be held responsible for providing maintenance if they abandon the woman. The court expressed the need to prevent individuals from exploiting legal loopholes to enjoy the benefits of a de facto marriage without fulfilling the associated duties and obligations. Despite the willingness to prevent exploitation of extended non-marital

⁴ *Nandakumar v State of Kerala*, 2018 SCC OnLine SC 492.

⁵ *Chanmuniya v. Virendra Kumar Singh Kushwaha* 2011 (1) SCC 141.

relationships by being in a de facto marriage without the associated obligations, the rights of succession of property have not been extended to domestic partners who have not entered into a marital relationship but have been together for an extended period of time.

In the case of *Vidyadhari v. Sukhrana Bai*⁶, the Supreme Court granted a Succession Certificate to the 2nd wife who had been nominated by her deceased partner and held that just because a woman is legitimate wife, it does not entitle her to a succession certificate automatically.

However, no rights have been granted to an unmarried domestic partner for ancestral property or by rules of inheritance by law and the same has not been taken up for redressal by any of the Courts in the country. Therefore, a domestic partner who is not a wife can succeed only the self-acquired property only by way of a will or a gift. Therefore, a partner would be at complete mercy of the other partner to get property after their death even when the relationship was of the nature of a de facto marriage.

Subsequently, on August 13, 2010, in the *Madan Mohan Singh v. Rajni Kant*⁷ case, a widower entered into a second relationship after his wife had died and the two were cohabitating for a long time and had issues but after his death, his children out of marriage claimed the entire property. The Supreme Court readdressed the legal aspects of live-in relationships and the legitimacy of children born from such unions. The court, while dismissing an appeal in a property dispute, asserted that there is a presumption of marriage for those in a long-term live-in relationship, rejecting the characterization of such unions as mere 'walking-in and walking-out' arrangements. The court held that the children born out of second relationship could inherit the property as there was an assumption of valid marriage between them u/s 114 of Indian Evidence Act and their children would be considered legitimate. However, this judgement appears to be in direct conflict with the statutory law as legitimacy is exclusively granted through a valid marriage, and nothing less than a valid marriage suffices. Section 16 of the Hindu Marriage Act, 1955, is designed to address this by conferring legitimacy, specifically for inheritance purposes, upon children born from void or voidable marriages. The provision illustrates a somewhat liberal legislative stance in cases where a marriage, while initially validly solemnized, subsequently fails to have a legal validity at a later stage, rendering it either void or voidable. However, it must be noted that this legitimacy, in terms of inheritance rights,

⁶ *Vidyadhari v. Sukhrana Bai* 2008 (2) SCC 238.

⁷ *Madan Mohan Singh v. Rajni Kant* 2010 (9) SCC 209.

is limited to the parents and doesn't extend to other relatives. This nuanced approach highlights a more permissive legislative attitude when a marriage, once valid, loses its legal standing. However, a live-in relationship is not considered equal to a marriage, and individuals in such partnerships do not attain the legal status of husband and wife. Therefore, while attempting to provide succession rights to such children, the court failed to properly take into account the statutory laws.

In the case of *Bharata Matha v. R. Vijaya Renganathan*⁸, concerning the legitimacy of a child born from a live-in relationship and their inheritance rights, the Supreme Court ruled that there was no presumption of valid marriage based on long cohabitation and the children born out of such a relationship would remain illegitimate and no question of inheritance of coparcenary property would arise. However, such a child may inherit personal property from the parents, if any and would get a share from coparcenary property on partition which would be smaller than the share of legitimate child if such a partition takes place after father's death. He can also be granted a share by the father on partition between father and legitimate sons but cannot ask for partition on his own. Therefore, in India, such children are considered illegitimate with respect to their father and would be eligible only for his personal property and cannot inherit his coparcenary property.

However, in the case of *Dhanistha Kalita v. Ramakanta Kalita*⁹, the Guwahati High Court held that the position of a child with respect to her mother would always be that of a legitimate child and all her children would have equal right to her property irrespective of the source of the property, thus separating the treatment such a child w.r.t. to the mother from the treatment w.r.t. the father.

SUCCESSION LAWS FOR LIVE-IN RELATIONSHIPS IN USA

The USA does not have a specific law to deal with children born out of live-in relationships but rather treats all the illegitimate children under the category of children born out of wedlock. In USA, while initially the illegitimate children were treated differently from the legitimate children, changes were brought not through statutory laws but through court action as such a differential treatment was repeatedly challenged in various states of USA as violative of the Equal Protection Clause which comes under the 14th Amendment of US of Constitution.

⁸ *Bharata Matha v. R. Vijaya Renganathan* AIR 2010 SC 2685.

⁹ *Dhanistha Kalita v. Ramakanta Kalita* AIR 2003 GAU 92.

The first challenge to the constitutionality of a statutory classification rooted in illegitimacy under the Equal Protection Clause occurred in 1968 with the case *Levy v. Louisiana*¹⁰, when it was brought before the Supreme Court following which the said Louisiana Statute was struck down. While this case pertained not to the succession but to the right of an illegitimate child to recover for the wrongful death of her mother but this is considered as a first step towards an equal treatment of children irrespective of their legitimacy for the purposes of succession and served as a precedent for later cases.

However, an opposite stance of taken by the Supreme Court in *Labine v. Vincent*¹¹, where the court held that there was a state interest in not allowing such a succession as punishment to the child would act as an encouragement to the parents to enter into a wedlock. This created a conflict between the right of illegitimate children to claim equality with legitimate children and the state interest in encouraging the marriage between the parents.

This conflict was resolved by the cases of *Weber v. Aetna Casualty Insurance Co.*¹² and *Trimble v. Gordon*¹³, where the courts relied on the balancing test to balance between legitimate interest promoted through state classification and the fundamental rights violated through such state classification. While, numerous couples who lean towards living together may opt for marriage once they recognize that the prevailing legal framework generally discriminates against illegitimate individuals. While the societal disapproval of irresponsible relationships outside of marriage has been symbolized by the status of illegitimacy. However, condemning an infant for the actions of adults is both illogical and unjust. Furthermore, imposing disadvantages on illegitimate children goes against the fundamental principle of our legal system, which asserts that legal consequences should be based on individual wrongdoing. Thus, the court shifted the focus from the rational basis test to a more stringent intermediate scrutiny test to decide whether a law differentiating between legitimate and illegitimate children was constitutionally valid or not.

Presently, all the US States allow children born out of wedlock equal rights as legitimate children subject to certain reasonable conditions. In some states, the approach of the Uniform Parentage Act (UPA) has been adopted, where a non-marital child has an equal right to inherit

¹⁰ *Levy v Louisiana* 391 U.S. 68 (1968).

¹¹ *Labine v Vincent* 401 U.S. 532, 537 (1971).

¹² *Weber v Aetna Casualty Insurance Co.* 406 U.S. 164 (1972).

¹³ *Trimble v Gordon* 430 U.S. 762 (1977).

as a marital child and does not have to prove the father-child relationship unless the same is brought under challenge to prevent false claims of inheritance.

However, in many other jurisdictions, to secure inheritance rights for a non-marital child from their father, certain requirements designed to prevent false claims against decedents' estates and ensure the integrity of the probate process must be satisfied. For a non-marital child to qualify for inheritance under these statutes, they must establish a legally recognized father-child relationship. According to these laws, the required relationship can be confirmed if, before the father's death, either (1) the child's parents participated in a marriage, or (2) paternity was legally acknowledged or established through adjudication. In certain states, even after the father's death, paternity may be established if clear and convincing evidence is presented.¹⁴

Further, certain states such as Vermont, Maryland and Iowa place a relatively stricter condition that the paternity must be acknowledged in a general and notorious manner. Thus, despite there being a Uniform Parentage Act, there is a lack of a uniform approach to establish paternity to deal with the matters of succession in case of a child born out of a live-in relationship. However, it has been unanimously acknowledged that once the father-child relationship is established, there is no difference between the legitimate and illegitimate children of the same parent.

SUCCESSION LAWS FOR LIVE-IN RELATIONSHIPS IN EUROPE

Unlike USA, where the recognition of rights of illegitimate children for succession of property came from Judicial challenges to statutory laws, in Europe the action came in form of both legislative and judicial recognition of the legal status of Children Born out of Wedlock. Further, the approach of European Countries has also been consistent in terms of granting equal status to all the children irrespective of their parents' marital status.

The European Court of Human Rights has relied on Article 8 juncto 14 of the European Convention on Human Rights (ECHR) to provide for equal treatment of illegitimate children w.r.t. the legitimate children. In the case of *Marckx v Belgium*¹⁵, a challenge was brought to the Belgian law, under which there was no automatic mother-child relationship between an unmarried mother and her child upon birth. The maternal affiliation could only be established

¹⁴ Browne C. Lewis, 'Children of Men: Balancing the Inheritance Rights of Marital and Non-Marital Children' (2007) Law Faculty Articles and Essays 1001.

¹⁵ *Marckx v Belgium* 06/13/1979, Series A, n. 31.

through voluntary recognition or judicial proceedings initiated by the child or their legal representative. The only means by which an illegitimate child could attain equality with a legitimate sibling were through "legitimation" or "legitimation by adoption." The court remarked that relying on adoption subjected the child entirely to the discretion of their parents, resulting in a violation of Article 14 in conjunction with Article 8 and Article 1 of the First Protocol.

The court further emphasized the existence of positive obligations in ensuring effective 'respect' for family life, particularly under Article 8. It mandated that domestic laws include legal safeguards facilitating the child's integration into their family from birth, thus avoiding discrimination based on birth. Further, the requirement of adoption, typically used to establish legal relationships with another person's child, was considered inherently discriminatory. In assessing discrimination, the court stipulated that it must have a "legitimate aim" and a "reasonable relationship of proportionality between the means employed and the aim sought to be realized." Furthermore, the legitimate aim must align with the general public interest.

The same position was accepted by the Court in *Johnston and others v. Ireland*¹⁶. Further, it was held that illegitimate children must not face denial or restriction of their substantive rights against the rights of legitimate children. Nevertheless, the "general interest of the community" may necessitate a restriction on their rights. However, such a restriction must be carefully assessed in relation to the rights of the individual and will only be deemed acceptable if the outcome of that assessment reasonably and objectively justifies the differentiation in treatment. This helps in prioritizing the public interest, especially in preventing fraudulent inheritance claims.

Further, the Council of Europe has also shown proactiveness in protecting the rights of such children with the enactment of the 1975 European Convention on the Legal Status of Children Born Out of Wedlock which intended to improve the situation of children born outside wedlock by harmonizing the laws of the member States. Article 9 of the Convention unequivocally stated that a child born out of wedlock shall have the same succession rights from parents' property as if he had been born out of a marital relationship.¹⁷ Following this enactment, most European States do not differentiate between legitimate and illegitimate children and even in

¹⁶ *Johnston and others v Ireland* 01/24/1986, Series A, n. 112.

¹⁷ European Convention on the Legal Status of Children Born Out of Wedlock, 1975, art 9.

those jurisdictions which differentiate between the two (Austria, Greece and Italy), such differentiation has minimal consequences on succession rights. On the other hand, some states either don't have the concept of illegitimate children at all (Baltic States, Georgia) while states like France have legally abolished the concept in its entirety.

Such provisions are extended even to children born to a married person outside of marriage. While initially such children were discriminated against in France, after the ECtHR's decision in *Mazurek v France*¹⁸, which found such a provision to be violative of ECHR Article 1 of Protocol No 1 read with Article 14, Article 760 of the French Civil Code, has been annulled. Thus, Europe has followed a very child-centric approach where it has focused on ensuring that the child is not discriminated against in any circumstance due to no mistake of his own.

However, there is no specific provision in the laws of European Union for the succession rights of an unmarried partner and such a right is to be determined by the state laws. In Britain, Inheritance (Provision for Family and Dependents) Act 1975, provided for a reasonable financial provision out of the estate of the deceased to be made for the civil partner. While some of the European Countries, the cohabitating partner can be granted succession rights similar to that of a spouse in case of long periods of relationship. Further, the Civil Partnership Act, 2004¹⁹ which was passed for the purposes governing same-sex relationships provided for the succession of property to the civil partner. However, the act was amended by way of The Civil Partnership (Opposite-sex Couples) Regulations 2019, which extended the act to include within its purview even couples of opposite sexes, thus allowing civil partners in live-in relationships to claim their partner's property by way of succession.

CONCLUSION AND SUGGESTIONS

The legal recognition of live-in relationships in India has been very limited and the court has not been consistent in terms of its approach in deciding such cases which has caused various hardships for the people in such relationships in absence of a statutory recognition. This has led the Indian courts to follow a narrow approach with regard to the succession rights arising out of such relationships. While maintenance rights of the partner and the children find emphasis, succession rights remain confined only to legal wife and children born from such marriage. This has left partners reliant on wills and gifts while the child is to be considered

¹⁸ *Mazurek v France* Application 34406/97 (2000).

¹⁹ Civil Partnership Act, 2004 (33 of 2004) s 131.

illegitimate and would enjoy rights lower than that of a legitimate child and cannot become a part of the coparcenary.

In contrast to India, however, in the USA such succession rights are considerably recognized by American law. However, the USA's journey, marked by constitutional challenges and a state-by-state approach was followed in the recognition of succession rights arising out of such relationships which granted equal rights to all children irrespective of the marital status of the parents. However, the approach regarding the establishment of a father-child relationship required to grant such rights has been inconsistent, once such relationship is established, there is no difference between legitimate and illegitimate children.

European laws have been far more uniform in their approach, with legislative measures and judicial decisions by focusing on elimination of discrimination against illegitimate children and given first priority to the rights of the children. Further, 1975 European Convention on the Legal Status of Children Born Out of Wedlock unequivocally provided for equality of the status of children irrespective of the marital status of the parents.

As India is in need of a regulation to deal with the succession rights arising out of such relationships, the approach followed by America and Europe could provide a guide to the possible measures to protect the interest of children. It must be understood that a law governing the succession rights should not discriminate between children based on the marital status of the parents as the children cannot be penalized for the actions of their parents and must be treated on par with the legitimate children of the parents for the purposes of intestate succession.

Further, while certain distinction is required to be maintained between a marriage and a live-in relationship, certain rights must also be granted to a partner in limited circumstances to protect their interest. This could be done by the application of the test provided in *D Patchaiammal v. D Velusamy*²⁰ to establish whether the relationship is in the nature of marriage or not. Further, there could be a minimum time period required to be completed at the time of the death of her partner before a partner could be eligible for succession. Further, in order to maintain the differentiation between non-marital and marital relationships, such succession could further be

²⁰ *D Patchaiammal v D Velusamy*, 2010 SCC OnLine SC 1188.

limited to an amount required by such a partner to maintain themselves based on her financial capacity. This provision becomes essential in India due to a significant gap in the earnings between men and women and the presence of a large number of cases where one partner is completely financially dependent on the other.

