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CHILDREN BORN IN LIVE IN RELATIONSHIPS HAVE RIGHTS TOO!**Introduction**

Gone are the days when living together was frowned upon. The number of live-in relationships has increased exponentially as a result of globalisation and the accompanying modernisation of culture. In today's society, live-in relationships are becoming more common.

There has been a lot of controversy and discussion over the years about the legitimacy of a couple that is in a live-in relationship. When their children claim ownership of the land, the situation becomes more serious.

In basic terms, a "live-in partnership" is a relationship in which both spouses enjoy their individual independence and live in the same house together without being married. It entails two couples cohabiting in a safe and peaceful manner without any obligations or responsibility to one another. In this situation, no statute binds the two people who are living together and they are free to leave at any time without legal repercussions.

Since there is no clear legal concept of a live-in partnership, the legal status of such a relationship is unclear. The parties in a live-in partnership may not have any rights or responsibilities under Hindu law. The legal status of children born as a result of such a relationship is still unclear, which is why, in recent years, the courts have defined the definition of live-in relationships through a number of decisions.

Until proven otherwise, any man and woman who have been cohabiting for a long time are considered to be legally married under the constitution, according to the courts.

The court will rule on a woman's right to maintenance in a live-in relationship in compliance with the Protection of Women from Domestic Violence Act, 2005 and will do so based on the facts of the case.

Though the average person is still hesitant to consider this type of partnership, the Protection of Women from Domestic Violence Act of 2005 gives a woman protection and maintenance while also giving an aggrieved live-in spouse the right to alimony.

When a marriage is formed in stages, following the rules and religious traditions, it establishes privileges and responsibilities that cannot be easily dismantled. People in live-in relationships can easily end the relationship because there is no barrier that exists when they are married because they are bound by certain laws and procedures. As a result, it is common for one party to feel deceived, which is why the court and legislator have come to the rescue by enacting legislation. In countries where it is recognised, a live-in partnership that creates rules and obligations similar to marriage is referred to as a "common law marriage."

As a result, there is a pressing need in India for legislation governing live-in relationships.

Because of the old and traditional values practised in India, a large percentage of females are still dependent on males and our country still views marriage as the best forming part of society. Live-in partnerships can also be classified in the sense that certain individuals are in them by choice or due to a circumstance. When people live together by accident or deception, they fall into the category of the case. In spite of that, if they want to live together, they will not face any legal issues because they do not need any kind of recognition, but the other will face difficulties due to a misunderstanding of the status of marriage.

Four rights are crucial for a child born from a live-in relationship:

- Legitimacy
- Maintenance
- Property
- Custody

Legitimacy

When a child is born from a live-in relationship, the first question that is asked is whether or not he is legitimate. Despite the growing trend of couples living together, the children born from these unions face severe legal consequences. Marriage, also known as wedlock, is a socially and ritually recognised marriage or contract between two people that establishes certain legal rights and responsibilities against one another. Only children born to a married couple are legally entitled to and accepted in society, according to current law and social structure. Marriage is very important in Islam because it is a civil contract between the two parties, and it is considered good not only for the individuals but also for the family. Be as that may, life without a spouse has not been accepted until recently.

"If a man and woman are living under the same roof and cohabiting for some years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife, and the children born to them will not be illegitimate," the Supreme Court said in *SPS Balasubramanyam vs. Suruttayan*¹. This was a landmark case in which the Supreme Court upheld the validity of children born from a live-in relationship for the first time. The court interpreted the law of such a child to be consistent with Article 39(f) of the Indian Constitution,

¹Indiankanoon.org. 2021. *S.P.S. Balasubramanyam vs Suruttayan on 13 October, 1993*. [online] Available at: <<https://indiankanoon.org/doc/279063/>> [Accessed 13 April 2021].

which establishes the State's duty to provide children with sufficient opportunities to grow normally and to protect their interests.

The parents must have lived under one roof and co-habited for a considerable period of time for society to accept them as husband and wife, and it should not be a "step in - step out" relationship for a child born out of a live-in relationship to not be considered as legitimate. The Indian courts have continued to uphold this interpretation of the law, ensuring that no child is harmed through no fault of his or her own. The Supreme Court had ruled that a child born out of a live-in partnership could inherit the parents' property and thus be granted legal legitimacy.

The validity of a child has always been a point of contention, and it has always been a major consideration when determining inheritance rights under Hindu law. Courts have consistently held that a child born outside of a live-in partnership is entitled to an inheritance if born after a fair period of time.

Maintenance

The duty to care for another individual is also defined as maintenance. In the case of a child born from a live-in relationship, it is extremely necessary. A legitimate son or the son of a predeceased son, as long as he is a minor, or a legitimate unmarried daughter or unmarried daughter of a son or the unmarried daughter of a predeceased son, shall be held as dependants by his/her father or the estate of his/her deceased father, according to Section 21 of the Hindu Adoptions and Maintenance Act, 1956. An infant born as a result of a live-in partnership was not protected by this section of the Act, and thus was denied the right to be retained under this law. In other words, under Section 21 of the Hindu Adoption Act, 1956, a son, whether legitimate or illegitimate, is entitled to maintenance from his or her father or from his or her deceased father's estate when he or she is a minor.

In the landmark case of *Dimple Gupta vs. Rajiv Gupta*², the Indian judiciary used its power to achieve social justice goals. Even an illegitimate child born out of an illegal relationship is entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973, which provides maintenance to children, whether legitimate or illegitimate, when they are minors and even after they have reached majority, if they are unable to support themselves.

When it comes to maintenance rights, courts tend to regard children from both legal and illegitimate marriages equally, which has led to calls for fair treatment of those children when it comes to property rights.

The denial of maintenance to a child born out of a live-in relationship may also be questioned under Article 32 of the Indian Constitution, as it is a violation of the constitutional rights guaranteed under Article 21 of the Constitution, which guarantees the Right to Life and

² Indiankanoon.org. 2021. *Dimple Gupta (Minor) vs Rajiv Gupta on 12 October, 2007*. [online] Available at: <<https://indiankanoon.org/doc/1686487/>> [Accessed 13 April 2021].

Personal Liberty. The Kerala High Court held in *PV Susheela vs. Komalavally*³ that such a refusal may deprive a person of his or her right to live a dignified life.

Even though it is now claimed and proved by the courts that children born out of live-in and marital relationships are treated fairly, there has always been unfair treatment of children born out of these relationships. Also, after several declarations that treating them differently would be a breach of Article 14, children born outside of live-in situations are treated fairly. As a result, even after so many court decisions, children's rights have become and continue to be a source of contention.

Property

Children's inheritance rights are referred to as property rights. A legitimate child, both son and daughter, forms the Class-I heirs in the Joint Family Property under the Hindu Succession Act, 1956. An illegitimate child, on the other hand, inherits only his or her mother's house, not the putative father's.

In Hindu law, legitimacy has always been a prerequisite for inheritance rights. As a result, the courts have always ensured that any child born after a fair time of live-in partnership is not denied the right to inherit, which is consistent with Article 39(f) of the Indian Constitution. In *Vidyadhari vs. Sukhrana Bai*⁴, the Supreme Court made history by granting the right of inheritance to children born from a live-in partnership and assigning them the status of "valid heirs."

Section 16's clauses (1) and (2) specifically state that such children should be considered legitimate children in the eyes of the law. As a result, discrimination against them, as well as unfair treatment of other legitimate children who are legally entitled to all of their parents' land, both self-acquired and ancestral, would result in an amendment to this clause.

According to the Supreme Court, a child born out of a live-in partnership is not entitled to inherit Hindu ancestral coparcenary property and may only claim a share of the parents' self-acquired property, if any. Unless specified in the will, a child born out of wedlock and in a short-term relationship has no claim to the ancestral land.

Illegitimate children must be considered as legitimate for all practical purposes, including succession to their parents' estate, according to Section 16 of the Hindu Marriage Act, 1955. They cannot, however, achieve the properties of any other relation based on this law, which is restricted in its application to the parents' properties.

Custody

In contrast to married couples, the problem of custody is a major legal barrier faced by people in live-in relationships. It is simple to enter such a relationship due to a lack of regulations, but it is extremely difficult to exit. Owing to the lack of clear legislation for such a situation, custody disputes involving a child born out of a live-in partnership that arise at the time of separation are handled similarly to those involving marriage.

³ *Indiankanoon.org*. 2021. *P.V. Susheela vs Komalavally on 5 March, 1999*. [online] Available at: <<https://indiankanoon.org/doc/1020588/?type=print>> [Accessed 13 April 2021].

⁴ *Indiankanoon.org*. 2021. *Vidyadhari & Ors vs Sukhrana Bai & Ors on 22 January, 2008*. [online] Available at: <<https://indiankanoon.org/doc/350765/>> [Accessed 13 April 2021].

The father is the natural guardian of his minor legitimate children, according to Section 6 of the Hindu Minority and Guardianship Act of 1956. However, Section 6(b) of the same act appears to deal with live-in relationships in a roundabout way by granting the mother custodial rights in the case of children born into illegitimate relationships.

Even if there may be circumstances under which the court grants custody of the child to the male partner in a live-in relationship, interpretation should be performed solely in the child's best interests. It is important to remember that culture changes, and while there have been cases where the court has ruled in favour of live-in partnerships, there have also been cases where the court has ruled in the opposite direction. As a result, the legislation must take into account the fact that a new type of partnership has emerged as a result of India's rapid economic growth and cultural modernization. Finally, the effect of the live-in relationship on children must be examined and remembered, since this is the most important aspect.



Conclusion

It is important to remember that as society evolves, the law will continue to be modified and reformed. Despite the fact that certain court rulings have recognised live-in partnerships, an equal number of rulings have done the exact opposite. It is up to the law to take a firm position on this new form of relationship, which is accelerated by India's booming economy and cultural modernization. After that, the crucial question of the effect of live-in relationships on children must be thoroughly examined.

Clear legislation should be enacted, and vague words in existing laws should be amended. They should make the status and rights of children born from a live-in relationship clear. This will ensure consistency and aid in the social, behavioural, and physical development of such a child.

Children born inside of marriage are preferred and recommended by society because they are entitled to and can claim ancestral property as well as the right to obtain self-acquired property. Even, because of the effects of globalisation and because families have broken up, life partners have to remain outside and alone in various cities in different countries around the world away from their partners, there has been a steady growth of live-ins all over the world, not just in India. There are people who hold old beliefs, but there are also opportunities for improvement. The law should be made explicit and changes made to the vague words in current laws to bring a clear idea and eliminate all the confusions and loopholes. The status and rights of children born out of a live-in partnership should be clarified by the courts.

Live-in relationships have long been a source of contention, with some believing that they pose a challenge to our basic social structure. It is not considered a crime since there is no law prohibiting this type of partnership as of yet. The Indian judiciary took action, issued interpretations, and declared those agreements legal in order to provide justice to those who are victims of live-in relationships. India has yet to legalise it, which entails enacting specific legislation. There is currently no law or statute that regulates issues such as inheritance,

preservation, and guardianship in live-in relationships. However, the 2005 legislature recognised the right of spouses in a live-in partnership to seek immunity under the Protection of Women from Domestic Violence Act. It has recognised live-in relationships by different decisions in order to protect individuals involved in the relationships from violence. Simultaneously, courts have consistently refused to take any meaningful measures toward legalising the practise by authorising any compulsory arrangements between unmarried partners, citing a potential clash with society's overall strategy. It becomes clear that the Indian judiciary is unable to handle all kinds of relationships as if they were marriages. The 2005 Act only benefits couples who have been together for a long time and have a healthy relationship. It is the judiciary's responsibility to ensure that the law evolves to meet the changing needs of society. While courts have attempted to clarify the status of live-in relationships through various decisions and case laws, various aspects remain vague, necessitating the urgent need for separate sets of rules and regulations and codification with regard to such relationships.



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