



## BREAKING THE TABOO: LEGAL RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS

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### ABSTRACT

*Live-in relationships are considered taboo. Due to the Orthodox view of society, the children born out of such relationships face legal, social and emotional issues. The situation has improved compared to prior times due to judicial interpretations. Various constitutional provisions, such as Article 14, 21, and 39(f), safeguard the rights of such children, ensuring equality, dignity, and social recognition. This article focuses on the issue of legitimacy, succession, and maintenance of the children born out of wedlock. Although the legislature enacts no explicit law, various judicial interpretations recognise children's rights. Children born to live-in relationships are being recognised as legitimate, and they claim inheritance rights to their parents' self-acquired property. The Supreme Court has given a broader interpretation, underscoring that the child should not face any kind of discrimination because of the parents' mistake and should be treated equally with children born of legal marriage in all respects. This paper also undermines the comparative analysis of the live-in relationships with other countries through their statutory framework. Even the Indian Courts have interpreted widely, but due to the absence of specific legislation, there are various inconsistencies.*

**Keywords:** Live-In Relationships, Legitimacy of Children, Illegitimate, Inheritance, Maintenance, Property, Custody, Equality, Legal Recognition, Constitutional Provisions.

### INTRODUCTION

The trend of live-in relationships is growing rapidly as individuals seek personal independence and avoid the social and legal responsibilities of marriage while still maintaining a close personal relationship. However, people with an orthodox mentality view this as unacceptable

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because it violates cultural and social norms. They consider this concept of living in a live-in relationship as stigmatised and create it as a taboo. However, over time, courts have recognised live-in relationships and gradually granted the rights that married couples enjoy. In *Payal Sharma v. Nari Niketan*<sup>1</sup>, the court stated that a man and a woman can live together if they wish to. Although it may be considered immoral by society, it is not illegal. Though the court didn't find it illegal, this wasn't deemed legal either. Protection of Women from Domestic Violence Act, 2005 provides under section 2(f) "a relationship like marriage" which is considered as a live-in relationship. In 2001, the Court laid down certain grounds for live-in relationships to be legal in the case of *Velusamy v. D. Patchaimal*<sup>2</sup>, which laid down the following criteria:

- The couple must present themselves to society as spouses.
- They must have attained the legal age for marriage, being 18 for women and 21 for men.
- They must be capable of entering into a valid marriage, including being unmarried.
- They must have voluntarily cohabited and treated each other as spouses for a significant period.

When they live together under the same roof, they develop physical relations, giving birth to the young ones. The controversy arose regarding the status and rights of children born of live-in relationships. Whether such children are deemed legitimate or illegitimate, and whether they possess the same rights as children born out of wedlock, remains a matter of debate.

## **CONSTITUTIONAL PROVISIONS**

The Indian Constitution doesn't specifically provide provisions for the children born out of live-in relationships, but has some articles ensuring the protection of their rights.

Article 14 guarantees equality before the law and equal protection of laws. Hence, children cannot be distinguished because of the relationship of their parents. They should get equal rights as children from legal wedlock.

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<sup>1</sup> *Payal Sharma v Superintendent, Nari Niketan*, AIR 2001 All 254.

<sup>2</sup> *D. Velusamy v D. Patchaiammal*, (2010) 10 SCC 469.

Article 21 provides the Right to Life and Personal Liberty, which also involves the right to live with dignity. Therefore, it protects the children by securing an identity, recognition, and dignity, and social existence without discrimination.

The State should ensure that, as per Article 39(f), the children should be given freedom and dignity so that their childhood and youth are protected against moral and material abandonment. Here, moral includes emotional support, care, affection, guidance and social recognition. And material includes food, shelter, education, medical care and financial maintenance.

### **STATUS OF CHILDREN**

Although live-in relationships are recognised by law, children born to them are often labelled as illegitimate. These children face social stigma, emotional hardship, discrimination, and limited inheritance rights: they can inherit from the mother's property, but only if the father acknowledges paternity, which is rarely straightforward.

When a child is born, they do not know whether they are born to a legally wedded couple, so irrespective of the child's mistake, they should not suffer any kind of challenges. The law's primary concern is to grant status and rights to such children, regardless of whether they are born in or out of wedlock. Section 16 of the Hindu Marriage Act, 1955, states that a child born out of a void or voidable marriage is deemed legitimate. Yet, the law doesn't explicitly state the status of children born of live-in relationships. Courts have, through judicial interpretation, expanded this scope.

In *S.P.S Balasubramanyam v. Suruttayan*<sup>3</sup>, the Supreme Court held that "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 their children will not be illegitimate." Similarly, in *Tulsa v. Durghatiya*<sup>4</sup>, the court reaffirmed that children born of a live-in relationship are not illegitimate if their parents cohabited for a substantial period, implying a recognition as husband and wife. The courts have issued several rulings consistently protecting children's status in such relationships.

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<sup>3</sup> *S.P.S. Balasubramanyam v Suruttayan*, (1992) 1 SCC 304.

<sup>4</sup> *Tulsa v Durghatiya*, (2008) 4 SCC 520.

## INHERITANCE RIGHTS

The inheritance rights of children born to live-in relationships have been a prominent legal issue. The Hindu Succession Act, 1956, does not specifically govern the property rights of such children. Illegitimate children, or those born out of a live-in relationship, cannot be denied their share of their father's property. Section 16(3) of the Hindu Marriage Act clarifies that illegitimate children can claim only their parents' property, not any other. *Jinia Keotin v. Kumar Sitaram Manjhi*<sup>5</sup> established that children born out of void or voidable marriages are legitimate and can inherit their parents' property, self-acquired property, but not ancestral property. In *Narayan Bhaklu Sahu v. Netram Narayan Sahu*<sup>6</sup>, it was reiterated that such children are entitled to their father's separate property but cannot claim coparcenary property.

Further, in *Bharatha Matha v. Vijaya Renganatham*<sup>7</sup>, the court noted that the legislature used the word "property" in Section 16(3) without specifying whether it refers to ancestral or self-acquired property. It explicitly states that such children are entitled only to their parents' property, not to that of any relatives. The court also declared that the perception that children in such relationships are illegitimate 'ipso jure' needs to change. Their legitimacy has been recognised by legislation, along with their rights to their parents' property. In cases involving joint family property, children are not entitled to ancestral property unless it has been partitioned, after which it becomes their father's separate property. Therefore, they deserve a share akin to that of legitimate offspring.

Later in 2023, the Supreme Court gave an expansive interpretation in the case of *Revanasiddappa v. Mallikarjun*<sup>8</sup>. The court emphasised that "The relationship between parents may not be sanctioned by law, but the birth of a child in such a relationship must be viewed independently. Such a child is innocent and entitled to all rights granted to children born in valid marriages. Judicial interpretation must aim to remove stigma and protect these children's rights, aligning with constitutional principles." In this case, it is expressly mentioned that the rights of children in the property cannot be restricted just because of the parents' mistake. Although it doesn't provide a birthright in coparcenary property, it states the entitlement of the share through the parents.

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<sup>5</sup> *Jinia Keotin v Kumar Sitaram Manjhi*, (2003) 1 SCC 730.

<sup>6</sup> *Narayan Bhaklu Sahu v Netram Narayan Sahu*, AIR 2020 Chh 173.

<sup>7</sup> *Bharatha Matha v R. Vijaya Renganathan*, (2010) 11 SCC 483.

<sup>8</sup> *Revanasiddappa v Mallikarjun*, (2023) 10 SCC 1.

## MAINTENANCE

Under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, and Section 145 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 125 of CrPC), it is the father's obligation to maintain his minor children and unmarried daughters. This duty is personal, legal, and absolute, based on the parent-child relationship. However, he is not obliged to maintain adult children, married daughters, or widowed daughters unless specific conditions are met. In *Dimple Gupta v Rajiv Gupta*<sup>9</sup>, the Supreme Court held that even if the child is illegitimate, born out of an unlawful connection, the child would still be eligible to seek maintenance under Section 125 of the CrPC.

Under Section 21, the father must maintain a widowed daughter if she cannot support herself, provided she has no maintenance from her husband, children, or in-laws. Maintenance covers food, clothing, housing, education, and medical needs. For unmarried daughters, expenses for marriage are also included (Section 3(b)). Both parents are responsible for maintenance. In *P.V Susheela v. Komalavally*<sup>10</sup>, denying maintenance violates the right to life under Article 21 and can be challenged under Article 32 of the Constitution.

## CUSTODY

It is very easy to enter into live-in relationships, as there is no legislation governing them. But the situation worsens when they have a child and want to be separated due to the dispute between them; the question arises of the custody of the child. The scenario of custody is similar to the married couple. Under Hindu law, the Hindu Minority and Guardianship Act, 1956, clearly states that, under section 6(a), the natural guardian of the child is the father. If the child has not completed the age of five years, then the custody lies with the mother. In the same section, clause b, it is provided that in case of an illegitimate child, the natural guardian is the mother.

According to positive judicial interpretations, the child is legitimate, so the child's ultimate natural guardian will be the father. It has been laid in *Githa Hariharan v Reserve Bank of India*<sup>11</sup> that in the absence of the father, the mother will become the natural guardian of the child.

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<sup>9</sup> *Dimple Gupta v Rajiv Gupta*, (2007) 10 SCC 30.

<sup>10</sup> *P.V. Susheela v Komalavally, I* (2000) DMC 376 (ker).

<sup>11</sup> *Githa Hariharan v Reserve Bank of India*, (1999) 2 SCC 228.

## COMPARATIVE ANALYSIS

In other countries, the legal landscape differs markedly. In the UK, the Family Law Reform Act 1987 eliminated discrimination between legitimate and illegitimate children, granting them equal rights. In the US, the Supreme Court in *Levy v. Louisiana*<sup>12</sup> declared that children born outside marriage possess the same legal rights as children born in marriage. This led to the eradication of discrimination against the children, irrespective of their parents' marital status. In France, *Pacte Civil De Solidarité* provides the legal foundation by recognising non-marital unions and providing legal security and recognition to couples and children.

Through the Provincial Family Law Acts, Canada recognises common-law relationships, providing rights and support to children.

In Australia, the Family Law Act 1975 recognises de facto relationships and grants equal protection to children regardless of parents' marital status.

In India, live-in relationships are not provided under any law, but are interpreted broadly through the judiciary under a wider vision. The protection is mainly through the Hindu Marriage Act, 1955. It is heavily relied on judicial interpretations. The legal framework would help to bridge the gap by ensuring the proper legal protection for the children.

## NEED FOR STATUTORY FRAMEWORK

Although the judicial approach has widened the perspective, there are still various conflicting interpretations. The Parliament of India needs to introduce legislation to avoid the inconsistency among the decisions. The legal codification would lead to the legal status of such unions, better protection of the children with respect to status, maintenance, inheritance, and guardianship. Also, there will be uniformity in decision-making from the bottom to the top level of the judiciary. There will be an increase in social acceptance, leading to the eradication of the taboo of live-in relationships and children's rights.

## CONCLUSION

As live-in relationships are being legally recognised, the children born out of them also deserve equal recognition and rights. There are various constitutional provisions ensuring the protection

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<sup>12</sup> *Levy v Louisiana*, 391 U.S. 68 (1968).

of the rights of children born out of legal wedlock. But, to remove the inconsistencies, there needs to be a legal provision highlighting the recognition of live-in relationships and children born out of them. They would be able to gain an equal social status without undergoing any kind of discrimination. This is the sole solution to eradicate the taboo of children born to live-in relationships.