



# An Analytical Study On Right Of Child Born Out Of Live In Relationship In Ancestral Property As Per Personal Law

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**Abstract:** Live-in relationships are quite uncommon in India due to the inherent social stigma that is associated with them. As a result of industrialization and an increased acceptance of western society, an increasing number of individuals, on the other hand, are opting for live-in relationships rather than marriage. All of the legal protections that are afforded to married couples are also available to unmarried couples who share a home together. For example, rights to upkeep and ownership, as well as rights to other types of property, are included in this category. In the case of *Dhannulal v. Ganeshram (2015)*, the Supreme Court of India declared that a woman in a common-law relationship has the potential to inherit her spouse's inheritance in the event that her partner passes away. In another court case, known as *S.P.S. Balasubramanyam v. Suruttayan (1994)*, it was decided that "if a man and woman are living under the same roof and cohabiting for some years, there will be presumption under section 114 of Indian Evidence Act, 1872 that they live as husband and wife and the children born to them will not be illegitimate." This ruling was made in accordance with the Indian Evidence Act, which states that In the case of *Revanasiddappa v. Mallikarjun (2011)*, the court found that a child who was born as a result of an extramarital affair has the same legal status as a child who was born to a married couple. This issue is addressed head-on in the third paragraph of Section 16(3) of the amended Hindu Marriage Act of 1955. The legal standing of a youngster, as well as the laws that apply to them, are discussed in this article, along with pertinent case laws. To put it another way, a live-in relationship is one in which the individuals involved are not married but do share a house as well as certain other responsibilities.

**Key words:** Live in relationship, Laws, Acts, Personal law, Case laws, Property rights.

## 1.1 Introduction

India is second to none when it comes to the diversity of its peoples and the many different traditions they practise. Although if individuals are more open than they have ever been about their live-in relationships, it is an interesting truth to note that the notion of live-in relationships has been around for a long time. In certain parts of Gujarat, back in the day, they called it the MaitriKarar, which literally translates to "friendship agreement." Because young people in today's society are less interested in committing to a conventional partnership and more focused on developing their own identities, marriage has been supplanted in large cities throughout the country by live-in relationships. According to the law, a live-in relationship is a type of cohabitation in which two individuals who are not married share housing and pursue a long-term personal partnership in the same manner that married couples do. Live-in relationships are a form of cohabitation. There has been a discernible shift in people's opinions towards live-in relationships, with younger people being more amenable to the notion than their elders. This is especially true among younger individuals. The younger generations have a propensity to believe that the best way to avoid marriage failure is to remain in a committed live-in partnership rather than getting married. The Relation does not impose any obligations on any of the Live-In Partners. It is common for landlords in India to refuse to rent or lease their homes or flats to couples who are living together since cohabitation is considered to be socially unacceptable there. The parents of many different couples are likewise opposed to the arrangement. The social position of a child is the same regardless of whether or not they were born in accordance with the law. In Indian law, a child's capacity to inherit property is intricately connected to and contingent upon the question of whether or not the child has been recognised as a genuine member of the family. It is time to do research into and put some light on the topic of whether or not a child who was born outside of a marriage has any legal standing or rights. In India, there are no particular restrictions that limit a person's capacity to have a "live-in" relationship with another individual.

The kid's right to legitimacy, which is already one of the child's most fundamental rights, is elevated to the position of primary importance when the child is born into a cohabiting relationship. The right to legitimacy serves as the cornerstone upon which every other type of legal protection for adolescents is built. There is no piece of legislation that specifically acknowledges the status and rights of couples who engage in live-in partnerships, and as a result, there is no law that especially clarifies the circumstances surrounding children who are born to partners in such relationships.

The following considerations are taken into account by Indian courts while deciding whether or not a child has genuine parental rights.

- In the eyes of the law, a child born to a married couple is their legal rightful heir.
- A kid is genuine if he or she is born into a married couple under the law.

- Illegitimate children are those that are born to parents who are not married legally.
- A kid is considered illegitimate if neither the father nor the mother is legally married to the other at the time of the child's birth.

There has been a gradual blurring of the line between legitimate and illegitimate offspring in many nations, which has resulted in the traditional method of determining whether or not a child is legitimate having been drastically altered under virtually all national laws. As a result of this, the traditional method of determining whether or not a child is legitimate has been drastically altered.<sup>1</sup>In the early days of English Common Law, the term "filius nullius" was used to refer to a kid who was born outside of a marriage. With the enactment of the Family Law Reform Act in 1969, the legal position on illegitimate offspring began to evolve, resulting in a blurring of the boundary between the two categories of people. When it came to the question of inheritance, the illegitimate child was considered very similarly to the legitimate children.<sup>2</sup> The widely held notion of illegitimacy was thereby rendered obsolete as a direct result of the Children Act of 1989. In India, the only way to prove that a kid is legitimate is to establish that he or she was born during the time that his or her parents' marriage was still recognised by the state. The Indian Evidence Act of 1872 includes a provision that states this same thing under section 114.<sup>3</sup>

## 1.2 Literature Review

- Challenge to Society: The Socio-Legal Aspects of Live-in Relationships, by Vijay V. Muradande (B.A., LL.M).
- Mr. Yuvraj D. Patil, BS.L., LL.M., "The Socio-Legal Aspects of Living Together"
- Author: Shashi Bhushan Topic: The socio-legal position of live-in relationships in four countries: France, the Philippines, Scotland, and India

## 1.3 Research Gap

India's current legal framework is inadequate to deal with the problem of live-in relationships. Legal acknowledgment of the notion of live-in relationships is limited in India. A middle ground must be found to do right by all parties involved in such interactions.

## 1.4 Research Objectives

- To understand the social and legal framework of live-in relationships in India.
- Examining the benefits and drawbacks of recognizing live-in relationships and the degree to which they should be recognized legally.

<sup>1</sup> Legitimacy of Bastardisation Law: A Critical Overview, PP. S-8, 2011.

<sup>2</sup>Filius nullius means: "a son of nobody".

<sup>3</sup> Live-In Relationship: Impact on Marriage and Family Institutions, 4 SCC, J-19 ,PP J-29,2012.

- Examine the Indian legislation regarding live-in relationships and the rights of those involved.

## 1.5 Research Methodology

The whole research is based on Doctrinal type of research. The contents of this research have been taken from various: Textbooks, Acts, Articles, Journals, Websites.

## 1.6 Analysis and Discussion

It is impossible to deny a boy who was born to a couple who lived together their rightful part in the family's ancestral holdings.

According to India Today, the apex court overturned a verdict from the Kerala High Court after making the observation that the "law presumes in favour of marriage and against concubinage." This was done as a reaction to the fact that if a man and woman cohabited for a lengthy period of time, their son cannot be refused the interests in the ancestral estates. This was done in response to the reason that If a man and a woman have cohabited in the same home for a substantial amount of time as husband and wife for a period of time, there is a presumption that they are married. This is something that has been proven beyond a reasonable doubt. Section 114 of the Evidence Act allows for the formation of such a presumption, as stated by a bench comprising of justices S Abdul Nazeer and VikramNath.

The trial court order that granted a share in ancestral properties to the heirs of a man who was born as the result of a long-term relationship between a male and a female was overturned by the High Court of Kerala in its judgment from 2009, which was being appealed before the Supreme Court at the time.

In the process of settling partition litigation, the supreme court took issue with the fact that the lower court had been slow to begin the processes leading up to the final decision, as required under the rules of the Civil Procedure Law. In a partition case, all of the courts across the country should immediately begin the process of issuing the final decree shortly after they have issued the initial ones. This will prevent any delays in the administration of justice. The SC ordered its Registry to send a copy of its judgement to the Registrar Generals of all high courts. The Registrar Generals of all high courts were then directed to distribute the directions on the immediate drawing up of final decrees in partition cases after passing the preliminary decrees in order to avoid delay.

- A. Due to the presumption that she is a legally wedded wife, it may be unclear whether a live-in partner is included as a sharer of a joint household family (JHF) property. This is because the preceding examination of the property rights of live-in partners was taken into consideration. According to what we have learned up to this point, a person who had a live-in partner, also called as a cohabitant, would be considered as if they were married for all purposes pertaining to the law if they had a partner who also lived with them. Is it

thus the case that a female cohabitant or live-in partner in such a scenario has any claim to the joint property of a Hindu family? According to the decision that was made in the case of—“*Rajagopal Pillai and Others v. PakkiamAmmal and Others*,”<sup>4</sup> the presumption that is provided for in section 114 of the Evidence Act of 1872 is extremely robust and unquestionably tilts in favour of legality (1967, Mad HC). It is up to the other side to disprove such a conclusion, which puts them in the position of having the burden of proof. Under Hindu law, the assumption that the two people were husband and wife allowed the wife to stake a claim on the couple's share of the common property held by the community. Both the lower court and the High Court of Madras ruled in favour of the surviving spouse's widow after she brought her lawsuit against the dead spouse's estate. In addition to this, it was affirmed by the highest court in the land. In accordance with the Hindu Women's Right to Property Act that was passed in 1937<sup>5</sup>, the widow was eligible to receive one-sixth of the total property that belonged to the joint Hindu household. This was illustrated in the previous scenario by the distribution of one-sixth of the property. The precedent that was made by this case has long since established that a woman who resides with a Hindu man is legally entitled to a portion of the couple's common assets. This precedent was set by the fact that this case was brought about.<sup>6</sup>

- B. The law in most countries recognises unmarried couples who have a child together as husband and wife, and such children are regarded as legitimate by the law.<sup>7</sup> This is the case even if it can be established that the pair is not married. It is fair to conclude that children who are born into a household in which the adults are cohabiting but not married are entitled to a share in the Hindu joint family property into which they are born (if he satisfies the necessary conditions).<sup>8</sup> As a result, we are of the opinion that a child who is born within the context of a cohabiting relationship should not be barred from inheriting the property of a Hindu joint family.<sup>9</sup>
- C. In a historic ruling, the issue of the woman's (or her cohabitant's) and her children's rights to their own property was addressed (born out of such live-in or cohabitation relationship). *E B Venkatasubramanian and Others v. SreeRangammal (dead) and Ors (1985, Mad HC)*<sup>10</sup>, cohabiting partners are held to be husband and wife even when it is argued by the opposing party that no marriage was ever solemnised between the two of them. "They are entitled to relief of partition and separate ownership of one-half share in the suit property which is joint Hindu family property with damages recognised," the court declared. "They are entitled to relief of partition and separate ownership of one-half share in the suit property." The Hindu Succession Act was enacted in 1956, which is relevant information for the purposes of the support claim because the deceased person died away on August 23, 1985. Because the suit property is held in joint family ownership, the widow of a coparcener is entitled to receive financial support from the estate of her

<sup>4</sup> (1976) 1 SCC 299 (India).

<sup>5</sup> 1967 SCC Online Mad 100 (India).

<sup>6</sup>“The Hindu Women's Rights to Property (Amendment) Act”,; 1938, No. 11, Gazette of India.

<sup>7</sup> (2008) 2 SCC 238 (India).

<sup>8</sup> AIR (1994) SC 133 (India).

<sup>9</sup>“(2010) 10 SCC 469: AIR 2011 SC 479 (India).

<sup>10</sup> 1985 SCC Online Mad 242 (India).

late husband, which is now controlled by his surviving coparceners. So, the judge in this case decided that it is not necessary to show evidence of a legally binding marriage ceremony and that there should be no discrimination made based on the type of property that was at issue. As opposed to what was the norm in the past, the law now acknowledges that a woman can become a co-owner of JHF property through either testamentary or intestate succession, but not through survivorship. Formerly, this was not the case. Hence, to summarise, if a live-in partner is thought to be legally married, then she will be a sharer in the joint Hindu family property and her children will be coparceners. This is because she will be considered to be married under the law.

### **1.7 Research findings**

Legislation in this area would be more successful if it mandated the registration of all live-in relationships, providing concrete proof of the existence of the relationship and opening the door to legal recourse for everybody involved. • Moreover, study participants suggested that people should be aware of their negative impacts and repercussions. Individuals need to be made aware that no laws currently exist to safeguard their rights in the case of a live-in relationship. Only via established legal precedents can they seek safety or remedy.

### **1.8 Conclusion**

In response to the concerns expressed before, I concur with the sentiment that the assignment of property rights might be risky. Even though less than 1% of people are in live-in relationships, the law needs to clearly define criteria for determining partners' statuses with regard to property inheritance and exceptions to the ban on such relationships in order to curtail fraud committed for property inheritance and other offences. This is in order to prevent live-in relationships from being considered illegal. It is strongly recommended that lawmakers accommodate the realities of the current world by making it possible for common-law and civil-law couples who reside together to apply for marriage status. In the event that a disagreement develops about the property rights of one of the partners, this will make it much simpler to settle the situation. As a result, it is strongly recommended that any law concerning live-in couples be crafted without taking into account gender.

### **1.9 Recommendations**

There is an urgent need for legal recognition of live-in relationships that would provide rights to all individuals involved, establish responsibilities for each, and limit the scope of such partnerships. For this reason, I have compiled a short list of suggestions:

- The norms and values of traditional Indian society should inform any legislation regarding cohabitation.

- Although it is important to provide live-in relationships legal recognition, they should not be awarded all the perks of marriage. Legal recognition of a live-in relationship between a married person and another person who has not yet filed for divorce is inappropriate.
- The law should provide some reasonable safeguards to ensure the affected party's rights are upheld. Any children born of a cohabiting couple might cause them legal trouble. Legal papers, such as a declaration, are required for an unmarried couple to legitimize their kid and establish their parental tie. As a corollary, in order to have a valid claim to custody or visitation, both parents must participate in the child's upbringing (visits). Having a valid inheritance claim on your name also requires legitimation.
- A written will is the most reliable method for passing wealth on to offspring. After a certain amount of time has passed, the relationship between the two people in a live-in situation should be recognized legally, giving the couple and any children born of the relationship the same rights to support, custody, inheritance, and succession as married couples and their legitimate children. This would protect the rights of the couple and any children born of the relationship in the event of the breakup of the relationship or the death of one of the partners.
- There is a pressing need for new legislation that would examine the unique problems and difficulties of live-in relationships, as well as grant rights and obligations to the couples involved, with the goal of reducing the abuse of existing laws and the risk of violence against women in such relationships.

### 1.10 Scope of Future

Thus, a live-in relationship is frowned upon in India. In spite of the widespread belief among India's religious conservatives that live-in relationships are unethical, the Indian legal system does not treat them as such. In India, the Supreme Court's rulings were essential in creating a legal framework for the rights of children born to unmarried parents. Similarly, the legal status of a kid born in a live-in relationship has just been clarified by the Kerala High Court. A kid born into an unmarried couple should be accorded the same legal rights as a child born into a married pair. The law will recognize such a kid as a genuine citizen.

### 1.11 Limitations

Rights under Hindu Property Law are the exclusive focus of this study. Both jointly owned property among Hindu families and individually obtained property are highlighted.

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