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Analysis of Property Rights Concerning Live-in Relationships

ARITRA SARKAR¹ AND HARIKA TEJAVATH²

ABSTRACT

Live-in relationships are not very common in India especially due to the social taboo that is ingrained with it. However, due to modernization and adoption of western culture we can see more and more people opting for live-in over marriage. As the cases of live-in increase, so do the issues related to it. So, it becomes important for the courts and the legislature to take up the matter impartial from any traditional social opinion.

The courts have decided that couples living in live-in relationships will be presumed legally married provided it is not a walk-in-walk-out relationship. The law held that live-in relationships are legally valid and the partners enjoy all kinds of rights which the married couple does. For example, the right to maintenance, property rights, etc.

The supreme court in the case of Dhannulal v. Ganeshram (2015), decided that a woman in a live-in relationship would be eligible to inherit the property after the death of her property. Further, it was held in the case of S.P.S. Balasubramanyam v. Suruttayan (1994) 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."

It was decided in the case of Revanasiddappa v. Mallikarjun (2011), that the child born out of such a relationship is innocent and is entitled to all the rights and privileges available to children born out of wedlock. This is the crux of section 16(3) of the amended Hindu Marriage Act, 1955. Observing these cases, the topic aims at analyzing the rights which a partner in, as well as the child/children out of a live-in relationship, holds upon the property.

I. INTRODUCTION

As time changes, society changes its norms and values. What was once illegitimate/illegal is now legitimate/legal and what was legitimate/legal now may be illegitimate/illegal in the

¹ Author is a student at National Law University Odisha, Cuttack, India.

² Author is a student at National Law University Odisha, Cuttack, India.

future.³

In the same way, marriage as an institution was considered pious and sacred but people are attracted to the idea of live-in relationships. A live-in relationship is simply, a couple who are unmarried yet share a bonding towards each other and stay together, under the same roof just like a normal married couple.⁴ But is that valid? A lot of questions were raised against this practice as nowhere in law has this relationship been defined or mentioned.

(A) The legality of Live-in Relationship

There are series of judicial pronouncements favoring the legality and recognition of the live-in relationship. Where partners live together as husband and wife, a presumption would arise as to wedlock.⁵ The partners must live together as spouses⁶, and such presumption of wedlock, as per s. 114 of Evidence Act, 1872, is not rebutted.⁷ It was held in the case of *Payal Sharma v. Nari Niketan*⁸, that live-in may be immoral but not illegal. Further, the relationship must be long term to be termed as live-in, but not a walk-in-walk-out relationship.⁹

In the case of *S. Khushboo v. Kanniammal*¹⁰, it was held that a live-in relationship comes under the purview of “right to life under article 21”. But when there is a mere sexual relationship with a partner who is considered as “keep”, such a case is not in the nature of marriage.¹¹ In the landmark case of *Indra Sharma v. V K V Sarma*¹² the supreme court provided certain conditions to presume live-in as wedlock. They are - (i) Duration of the period (ii) Shared household (iii) Pooling of financial arrangements (iv) Domestic arrangements (v) Sexual relationship (vi) Children (vii) Socialistic in public (viii) Intention and conduct of parties.

(B) Rights of Live-in Partners

There are certain rights and protections extended to live-in partners as well. Domestic Violence Act, 2005 for the first time acknowledged live-in partner under the expression

³ *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 (India).

⁴ *D Velusamy v. D Patchaiammal*, (2010) 10 SCC 469: AIR 2011 SC 479 (India).

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

⁶ *Andra Hennadige Dinohamy v. Wijetunge Liyanapatabendi Blahamy*, 1927 SCC Online PC: AIR 1927 PC 185 (India).

⁷ *Badri Prasad v. Director of Consolidation*, (1978) 3 SCC 527: AIR 1978 SC 1557 (India).

⁸ *Payal Sharma v. Nari Niketan*, (2001) SCC Online All 332 (India).

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

¹⁰ *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 (India).

¹¹ *D Velusamy v. D Patchaiammal*, (2010) 10 SCC 469: AIR 2011 SC 479 (India).

¹² *Indra Sharma v. V K V Sarma*, (2013) 15 SCC 755 (India).

“wife”. This extended the protection under this act to live-in partners as well.¹³ Further maintenance claim under s. 125 of CrPC, 1973 was also extended to females who were in a live-in relationship.¹⁴ The property rights with respect to live-in relationships are analyzed below in detail.

II. RESEARCH METHODOLOGY

The findings of the paper were based on the doctrinal study of statutes and cases and hence a doctrinal methodology was applied.

(A) Research Objectives

The legality of a live-in relationship is validated by the courts but the problem concerning property rights to the partner is still a question. Whether the partner is entitled to share in the ancestral property or only the self-acquired property is debatable. Some judges criticize the legitimacy of the child born out of a live-in relationship and this itself questions the aspect of the right of that child over the property of the live-in parents. The objective of the paper is to study these problems and analyses the property rights as well as the proper explanation of “property” as such with respect to live-in relationships.

(B) Statement of Problem

The legality of live-in relationship is validated by the courts but the problem with respect to property rights to the partner is still a question. Whether the partner is entitled to share in ancestral property or only the self-acquired property is debatable. Some judges criticize the legitimacy of the child born out of live-in relationship and this itself questions the aspect of right of that child over the property of the live-in parents. The paper is a study on these problems and analyses the property rights as well as the proper explanation of “property” as such with respect to live-in relationships.

(C) Research Questions

1. What is the status of a live-in relationship under the Hindu Marriage Act?
2. Whether the partners in a live-in relationship are entitled to the right over the property of one another?
3. Whether that property includes ancestral as well as self-acquired property?
4. Can the partners become sharers in each other’s joint hindu family property?

¹³ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

¹⁴ Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, (India).

5. Whether the child/children born out of a live-in relationship is legitimate as per Hindu laws?
6. Whether that child/children are having a right to become a coparcener in the joint hindu family property of its live-in parents?

(D) Scope and Limitations

The scope of the research is only limited to rights under Hindu Property Law. It focuses on Joint Hindu Family Property as well the self-acquired property. The paper excludes all other kinds of property laws from its purview.

III. PROPERTY RIGHTS OF PARTNERS IN LIVE-IN RELATIONSHIP

As we have studied what are the grounds on which a common cohabitation between male and female living as a spouse, will be presumed to be wedlock.¹⁵ Now, the question arises as to the property rights of a live-in partner. Few judgments have ruled in favor but their rulings have been criticized by political parties and other members.¹⁶

As the presumption of marriage is attracted by section 114 of the Indian Evidence Act, 1872, the judges would consider the partners as a legally wedded couple. The opposing party has the burden to rebut this presumption.¹⁷

Thus, under such presumption, a live-in partner was held to be entitled to the property of the other. In the case of *Vidyadhari v. Sukhrana Bai* (2008, SC)¹⁸, the court's view gave hope to many live-in partners as the judges decided that partners who have been living together for a reasonably long time can inherit each other's property. However, the live-in male partner here, having been already married, the court decided that the woman may not inherit the property but the children can claim inheritance as the legitimate heir.

The above case dealt with the self-acquired property of the deceased. And the ruling was not in favor of the wife in this case as she was the second wife of the deceased.

Further, in the case of *Dhannulal v. Ganeshram* (2015, SC)¹⁹, the couple were living together in one house along with other family members. The couple were not legally married but were living together as spouses, for a very long time. Even the other family members had accepted them as wife and husband. But when the male partner died and the property was inherited by

¹⁵ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141 (India).

¹⁶ One India Staff, *BJP criticises live-in relationship Act*, ONE INDIA (Oct. 10, 2008, 08:04 PM), <https://www.oneindia.com/2008/10/10/bjp-criticises-live-in-relationship-act-1223649294.html>.

¹⁷ Indian Evidence Act, No. 1 of 1872, India Code (1872).

¹⁸ *Vidyadhari v. Sukhrana Bai*, (2008) 2 SCC 238: AIR 2008 SC 1420 (India).

¹⁹ *Dhannulal v. Ganeshram*, (2015) 12 SCC 301 (India).

the female partner then the opposing party claiming to be the actual legal heir contended that the couple was never married and hence, the mistress would not be entitled to inheritance. The court studied a lot of cases where it was held that live-in partners if living together as spouses under the same roof with a long-term commitment towards each other were presumed to be legally wedded couples. As the opposing party was unsuccessful in rebutting this presumption, the property inherited by the female spouse was held to be valid.

Though the above case did not specify as to the property type of the deceased, it just held that a live-in partner can inherit the property of another only on the occasion of his demise. This case complemented the above ruling.

Here we are not clear if the property inherited to a live-in partner is self-acquired property or ancestral property but in a landmark case of *Tulsa & Ors v. Durghatiya & Ors* (2008, SC)²⁰, the property was jointly held by three brothers (*R, S, D*) in which one of the brothers claimed partition and left with his share. But the other two jointly held it. The plaintiffs being the heirs of the deceased member(*D*) who used to hold the joint ancestral property and the defendant, *L* was mistress/live-in partner to *R*. After the death of *S*, as the deceased left with no legal heir, *R* held the property during his lifetime. After *R*'s death, the property was in dispute. The plaintiffs possessed claiming to be heirs. But the property was owned by the defendant and was transferred by a sale deed. The question arose whether the defendant was a legally wedded wife? The court held that in the affirmative. Although the court did not expressly mention, it was implied that the ownership of the defendant was valid as if she was a legal heir thereof.

Based on the observations on the above-mentioned landmark cases, it is clear that the property rights of the live-in partners are settled by the courts to be favorable to women and the status of men is unclear. Further, only those partners are entitled to property rights who are benefitting from the presumption of marriage²¹ i.e., the partner(s) must provide sufficient evidence that they were living together as a spouse for a long time with a commitment to that of a married couple.

IV. PROPERTY RIGHTS OF CHILDREN OF LIVE-IN PARTNERS

The status of a live-in relationship is unknown as the Indian legislations do not recognize live-in relationships and thus do not provide for a definition. Thus, the status of children born through a live-in relationship is also shrouded in a haze. However, section 16 of the Hindu

²⁰ *Tulsa & Ors v. Durghatiya & Ors*, (2008) 4 SCC 520 (India).

²¹ Indian Evidence Act, No. 1 of 1872, India Code (1872).

marriage act, 1955²² gives a little clarification on this issue and says that children born out of the void or voidable marriages are legitimate children but one thing must be noted that section 16 of the Hindu marriage act is used only when there is a marriage and the marriage is void or voidable but in cases of live-in relationships there is a presumption of marriage which is can be set aside if proof to the contrary is given. The courts have clarified to some extent to live-in relationships through its judgments and said that if two people are staying together for a long time then they will be presumed to be legally married under the law unless there is any proof to the contrary.

The courts also had to clarify a few aspects regarding the status of children in a live-in relationship the apex court in the case of *SPS Bala Subramanyam v. Sruttayan*²³ said that, if a man and woman live together for many years then a presumption of them to be husband and wife arises between the two and the children born to them will also be legitimate.

Also, in the case of *Bharata Matha and Ors. v. R. Vijaya Renganathan and Ors.*²⁴ The supreme court held that the child born to live-in partners will have the status of a legitimate child and will also be eligible to enjoy the inheritance rights with respect to his/her parent's property only. However, the court also said that the child will not have the right to share or inherit the ancestral property. The court used the ratio of *Jinia Keotin and Ors. v. Kumar Sita Ram Manjhi and Ors.*²⁵ and said that the main purpose of section 16 of the Hindu Marriages Act, 1955 to give legitimacy and property rights to children born from partners with void or voidable marriages who otherwise will be branded illegitimate in the eyes of law. But if the court tries to give any further rights by way of inference then that will lead to legislation in the name of interpretation.

Maintenance as explained under section 21 of the Hindu Succession and Maintenance Act, 1956 does not apply to children born to live-in partners. But in the case of *Savitaben Somabhai Bhatiya v. State of Gujarat*²⁶ the supreme court said that the female partner in the live-in relationship who had taken the role of the second wife was not allowed maintenance but the children born to her was allowed maintenance. Thus, the court made an exception in this case.

According to the Hindu Succession act, a Hindu child will form a class-I heir to the joint family. But under the Hindu legitimacy law, an illegitimate child will succeed the property of

²² Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

²³ SPS Bala Subramanyam v. Sruttayan, AIR (1994) SC 133 (India).

²⁴ Bharata Matha and Ors v. R Vijaya Renganathan and Ors, AIR (2010) SC 2685 (India).

²⁵ Jinia Keotin and Ors v. Kumar Sita Ram Manjhi and Ors, (2003) 1 SCC 730 (India).

²⁶ Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636 (India).

his /her mother and never the father's property because of the illegitimacy.²⁷

The supreme court gave the children, born out of a live-in relationship the status of a legal heir in the case of *Vidyadhari v. Sukhrana Bai*²⁸. Contrary to the case of *Jinia Keotin and Ors. v. Kumar Sita Ram Manjhi and Ors.*²⁹ Justice Ganguly commented on this issue in the case of *Revanasiddappa v. Mallikarjun*³⁰. This case dissents with the approach of all other cases relied upon in this matter. This case has declared that a child born out of a live-in relationship can inherit and have rights over self-acquired as well as ancestral property like JHF property. However, the judges in this case wanted a higher bench to decide upon this matter firmly. J. Ganguly said that section 16 of the Hindu Marriage Act does not provide whether the word "property" will mean self-acquired property only. Therefore, one cannot deny a child born out of a void or voidable marriage his fair share in the ancestral property but J. Ganguly also clarified that the Hindu Marriage act deals with children born out of voidable marriages. In the case of *Parayan Kandiyal Eravath Kanapravan Kalliani Amma (Smt.) and Ors. v. K. Devi and Ors.*³¹ it was said that the Hindu marriage act is a beneficial legislation and it should therefore be interpreted in such a way that it promotes the objective of the act.

Custodial rights of the child born to live-in partners in cases of a breakup in the live-in relationship is another problematic issue. According to section 6 of the Hindu Minority and guardianship act 1956, the father is the natural guardian of the child and the mother becomes the guardian when the father becomes incapable of being a guardian of the child. This is a grave injustice to the mother as it violates the basic principles of equality. In the case of *Gita Hariharan v. Reserve Bank of India*³², the supreme court stated that "Gender equality is one of the basic principles of the constitution.....the father by reason of a dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category."³³

²⁷ Arindam Baruah, *Live-In Relationships in India – Recognition under Hindu Personal Law*, J. CONTEMP. ISSUES L., July 2016, at 6, <https://jcil.lsysticate.com/wp-content/uploads/2016/08/Arindham-Baruah.pdf>.

²⁸ *Vidyadhari v. Sukhrana Bai*, AIR (2008) SC 1420 (India).

²⁹ *Jinia Keotin and Ors v. Kumar Sita Ram Manjhi and Ors*, (2003) 1 SCC 730 (India).

³⁰ *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1 (India).

³¹ *Parayan Kandiyal Eravath Kanapravan Kalliani Amma (Smt) and Ors v. K Devi and Ors*, AIR (1996) SC 1963 (India).

³² *Gita Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 (India).

³³ Arindam Baruah, *Live-In Relationships in India – Recognition under Hindu Personal Law*, J. CONTEMP. ISSUES L., July 2016, at 7, <https://jcil.lsysticate.com/wp-content/uploads/2016/08/Arindham-Baruah.pdf>.

V. ANALYSIS OF JHF PROPERTY W.R.T LIVE-IN RELATIONSHIP

(A) Partners

Considering the above analysis of property rights of live-in partners, there might be a doubt as to whether a live-in partner is included as sharer of a joint hindu family (JHF) property by virtue of the presumption of being a legally wedded wife.

As we have analyzed so far, that a live-in partner or also known as a cohabiting partner will be presumed to be legally married in the eyes of law. So, in such circumstances will the female live-in partner or cohabiting partner be entitled to any share in the joint hindu family property? Yes, in the case of *Rajagopal Pillai & Ors v. Pakkiam Ammal & Anrs (1967, Mad HC)*³⁴, it was held that the presumption under section 114 of evidence act, 1872, is so strong and only falls in the favor of legality. It is the burden of the opposing party to adduce evidence and rebut that presumption. In this case, the partners were presumed to be legally wedded wife and husband and the wife was claiming the share in the joint hindu family property. The trial court held in favor of the wife of the deceased and the same was again reaffirmed by the high court of madras. The same was again reaffirmed by the supreme court as well.³⁵

The widow in the above case was given one-sixth of the share in the joint hindu family property as per section 3(2) of the Hindu Women's Right to Property Act, 1937.³⁶ This age-old case proves that the female live-in partner is entitled to be a sharer in the joint hindu family property if she has the benefit of presumption in the eyes of law.

(B) Children

As we have seen previously that many courts have said that children born to live-in partners are not illegitimate and the partners are treated as a husband and wife unless proved otherwise.³⁷ Therefore, it can be fairly ascertainable that the children born to live-in partners should be entitled to property rights of joint hindu family property³⁸ and the child should be able to become a sharer or coparcener (if he satisfies the necessary conditions).³⁹ Therefore, in our opinion, a child should not be made ineligible for the property rights of a joint hindu family property just because the child was born out of a live-in relationship.

³⁴ Rajagopal Pillai & Ors v. Pakkiam Ammal & Anrs, 1967 SCC Online Mad 100 (India).

³⁵ Rajagopal Pillai & Ors v. Pakkiam Ammal & Anrs, (1976) 1 SCC 299 (India).

³⁶ The Hindu Women's Rights to Property (Amendment) Act, 1938, No. 11, Gazette of India, 1938.

³⁷ Vidyadhari v. Sukhrana Bai, (2008) 2 SCC 238 (India).

³⁸ SPS Bala Subramanyam v. Sruttayan, AIR (1994) SC 133 (India).

³⁹ D Velusamy v. D Patchaiammal, (2010) 10 SCC 469: AIR 2011 SC 479 (India).

(C) Both Women and Children

There is one landmark case, which deals with the property rights of the woman (live-in partner/cohabiting partner) and children (born out of such live-in or cohabitation relationship). In the case of *Sree Rangammal (died) & Ors v. E B Venkatasubramanian & Ors (1985, Mad HC)*⁴⁰, where the woman was cohabiting partner was presumed to be legal wife even if claimed by other opposing parties that no marriage solemnized between these two. The court held- “the children were held to be legitimate and they are entitled to relief of partition and separate possession of one-half share in the suit property which is joint hindu family property with damages acclaimed. As for the claim of maintenance, the deceased died on 23rd August 1985 and the Hindu Succession Act came into force in 1956. The suit property being a joint family property and herself being a widow of a coparcener, she is entitled to maintenance from the estate of her deceased husband which is in the hands of his surviving coparceners”. So, the court held in this case that proof of marriage being solemnized is not required and no distinction between nature or kind of property is made.

As the cases were of old times, now the law provides the wife is a sharer in JHF property by testamentary or intestate succession but not survivorship.⁴¹ So, this sums up that a live-in partner if benefitted by the presumption of being legally married, then she will be a sharer and their children are coparceners in the joint hindu family property.

VI. CONCLUSION: CRITICISM AND SUGGESTIONS

Live-in relationships obtained a legal validity in India through judicial pronouncements but will it ever be equated to the level of marriage is still not clear. Though the concept of marriage has been diluted over the centuries from the sacred union to a contractual obligation, it doesn't mean live-in partners are free from criticisms. They are as follows: -

1. The concept of live-in itself is much more complex in a nation like India when compared to western nations due to various laws seeing the married couple as one and society not encouraging any other kind of relationship as a substitute to marriage.⁴²
2. Live-in endorses bigamy and adultery which might affect the married wife.⁴³
3. In the case of live-in relationships, children are often vulnerable as none of the partners are willing to take responsibility.⁴⁴

⁴⁰ *Sree Rangammal (died) & Ors v. E B Venkatasubramanian & Ors, 1985 SCC Online Mad 242 (India).*

⁴¹ *The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).*

⁴² Supriya Yadav, *Live-in Relationships in India*, 2 WARWICK Student L. REV. 54,59 (2012).

⁴³ Payal Sharma v. Nari Niketan, (2001) SCC Online All 332: AIR 2001 All 254 (India).

4. The live-in female partners are provided with rights and claims equal to that of a married wife which is beneficial for the protection of women, perhaps the law is only inclined towards one gender which must be balanced.⁴⁵
5. The partners are having no obligation or duty towards the other partner, at the end, it turns out to be a walk-in-walk-out relationship if nothing works out.⁴⁶

In respect of the above criticism providing property rights is risky. Less than 1% of the population are live-in partners, still, it seems the judiciary must come up with proper guidelines for determining the status of the partners with respect to property inheritance and exceptions to legality of live-in to avoid fraud committed for property inheritance and other offenses.

It is suggested that the legislators consider the changing culture and provision for live-in partners to claim the status of marriage under personal law⁴⁷ or under civil marriages law⁴⁸ to be made. This will be convenient to deal with cases of property rights of such partners. Additionally, it is highly recommended that if a law is made concerning live-in relationships it should be gender-neutral.

⁴⁴ Revanasiddappa v. Mallikarjuna, (2011) 11 SCC 1 (India).

⁴⁵ Rupam Jagota, *Live-in-Relationship - A Twist to Pedigree*, 1 INDIAN J. L. & Just. 146, 155 (2010).

⁴⁶ Alok Kumar v. State, (2010) SCC Online Del 2645 (India).

⁴⁷ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

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