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**“INHERITANCE RIGHTS IN A LIVE-IN RELATIONSHIP: AN EXAMINATION
OF THE INDIAN LEGAL FRAMEWORK”**

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ABSTRACT

Abstract: Live-in relationship is a form of union where a couple shares a common household without being subjected to marital rights and obligations. However, this concept of relationship is stigmatised in Indian society, where living with someone before marriage is not socially acceptable. This type of relationship does not find any place in the current legal framework of the country. Despite the efforts of the Indian courts which have observed on numerous occasions that such type of cohabitation is not illegal, the rights attached to such a relationship are almost non-existent with a few exceptions. This article seeks to analyse the current legal status of live-in relations in India and explore the rights available with a person in a live-in relationship.

INTRODUCTION

Indian society has always resisted the idea of a couple living together before marriage. Shared cohabitation, without being subjected to marital nuptials, has consistently been a piece of debate. Live-in relations are considered to be a taboo and have never been given direct legal

recognition. None of the personal law statutes such as HMA¹, SMA², ISA³, HSA⁴, ICMA,⁵ etc. have recognised the concept of live-in relation directly. Marriages in India take place as per the personal laws of the religion of the parties or by the provisions of SMA. These respective laws govern the rights and obligations flowing out of these marriages. The Indian courts, through their verdicts, have equated long-term live-in relationships with marriages. However, such recognition comes without any rights and duties. Since there are no laws in India that govern relationships like that of live-in relationships, it becomes difficult to trace any rights or obligations that a couple may have. Specific provisions, like that of maintenance for women and rights of children born out of such relationships, are there to aid live-in relationships but they are not enough to cover the entirety of such relations.

This paper focuses its study on the legality of live-in relationships while addressing the rights and obligations flowing out of them, specifically focusing on inheritance rights. The article further tries to explore the options available with partners in a live-in relationship to inherit property from one another and also provide some explanation regarding the nature of live-in relationships within the current legal framework. The article ends by suggesting some provisions that can be a part of new legislation governing live-in relationships.

LEGALITY OF LIVE-IN RELATIONSHIPS

The idea of *consortium omnis vitae* is well preserved in the Indian household. The obligation of spouses to live together as a married couple and afford each other the benefits accruing out of such an alliance is a significant element in a successful marriage.⁶ Nevertheless, couples in India have started living together without being subject to marital obligations. Such relationships which have a stark resemblance to legally valid marriages are commonly referred

¹ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

² The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

³ The Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925 (India).

⁴ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

⁵ The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

⁶ Indra Sarma v. K V Sarma, AIR 2014 SC 309 (India).

to as Live-in relationships where couples agree to live together for an extended period without any rights and obligations flowing out of such a union.⁷

Live-in relationships are socially unacceptable in India as they go against the traditions of the society. Such relationships allow a couple to share emotions and intimacy without the burden of societal norms. However, society cannot fathom this idea of a relationship, especially in India, where a union of a man and a woman is a sacred bond. Keeping this in mind, the society creates a presumption that shared cohabitation between a couple for an extended period would be considered as a marital relation unless evidence to the contrary is produced.⁸ This presumption dates back to the late colonial era where the privy council in *Andrahenndige Dinohamy v. Wijetunge Liyanapatabendige Balahamy*,⁹ observed that when man and woman have been living together continuously for some time, the law presumes that they are living together as a married couple and not in a state of concubinage.¹⁰ This line of reasoning was reaffirmed by privy council in 1929.¹¹

The courts have been following the same line of argument. In *Tulsa v. Durghatiya*,¹² the court noted that a conjoint reading of sections 50 and 114 of the evidence act¹³ reveal that a marital relationship can be presumed from the conduct of the parties in a relationship and the circumstances surrounding them. Similarly, the court in *Badri Prasad v. Dy. Director of Consolidation*¹⁴ recognised a couple living together for the past fifty years as a married couple.

However, this presumption of marriage is rebuttable. Justice Faizal Ali in *Thakur Gokal Chand v. Parvin Kumari*¹⁵ has observed that the presumption in favour of a marriage can be rebutted if evidence to the contrary surfaces.

⁷ Sonali Abhang, *Judicial Approach to 'Live- In-Relationship' In India- Its Impact on Other Related Statutes* 19(12) IOSR-JHSS (2014), <http://iosrjournals.org/iosr-jhss/papers/Vol19-issue12/Version-4/F0191242838.pdf>.

⁸ Sunishth Goyal, *Status And Implications Of Inheritance Rights For Live-In Relationships And Their Children In India* 3(3) International Journal of Law and Legal Jurisprudence Studies 233, http://ijlljs.in/wp-content/uploads/2016/07/Short_Article_-_Inheritance_rights_for_live-in_relations_in_India.pdf.

⁹ A. Dinohamy v. W.L.Blahamy, AIR 1927 P.C. 185 (India).

¹⁰ *Id.* at 187

¹¹ Mohabhat Ali v. Md. Ibrahim Khan, AIR 1929 P.C. 135 (India).

¹² (2008) 4 SCC 520.

¹³ Indian Evidence Act, 1872, No. 34, Acts of Parliament, 1872 (India).

¹⁴ AIR 1978 SC 1557.

¹⁵ AIR 1952 SC 231.

In another case, the apex court upheld the presumption in favour of marriage. The court in *Madan Mohan Singh v. Rajni Kant*¹⁶ stated that when partners in a live-in relationship continue to cohabit with each other for an extended period, then the law presumes a marital relationship between them. Such relationships are not “walk-in and walk-out” relationships and have to be taken as seriously as a marriage. However, the Delhi High court, in the same year gave a different opinion on live-in relationships. Justice Shiv Narayan Dhingra in *Alok Kumar v. State*¹⁷ stated that there are no legal obligations in a live-in relation. It is a “walk-in and walk-out” relationship, and either of the parties can terminate a live-in relationship without the other party’s consent, and one may walk out at any point in time. While the Supreme court has a traditional view of a live-in relationship where there exists a presumption of marriage, the Delhi High court has a more pragmatic approach. The idea behind live-in relationships is to enjoy the company of a person without being subject to obligations flowing out of a marriage. A couple may choose to enter into a live-in relationship before getting married, to test their compatibility. However, putting a stamp of marriage on such an alliance defeats the purpose of a live-in relationship.

At present, there is no legal framework governing the concept of live-in relationships. However, there is a provision in the Domestic Violence Act, which has an implied existence of a live-in relationship. Section 2(f) of the PWDVA¹⁸ defines “Domestic relationship” as follows:

“A relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

The term ‘relationship in the nature of marriage’ does include live-in relationships. This was clarified by the courts while discussing the issue of domestic violence.¹⁹ Apart from that, the Apex court has provided some illustrations where a relationship might be considered as a live-in relationship.²⁰ Following the same lines, the apex court in the case of *D. Velusamy v. D.*

¹⁶ (2010) 9 SCC 209.

¹⁷ 2010 SCC OnLine Del 2645.

¹⁸ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

¹⁹ Aruna Parmod Shah v. Union of India, MANU/DE/0626/2008

²⁰ Indra Sarma v. K V Sarma, AIR 2014 SC 309 (India).

*Patchaiammal*²¹ laid specific criterion which must be fulfilled to recognise a relationship as a “relationship in the nature of marriage”. The court held that people in such relationships must have qualified to enter into a legal marriage, and that includes the age of the couple as well. Apart from that, the court also observed that the couple must cohabit in a shared household for a considerable period and must portray themselves as married in front of society.²² The court further clarifies that not all live-in relationships are in the nature of a marriage. Relationships that exist merely for some days or weekends would not qualify as live-in relation. In case a man has a “keep” whom he maintains financially and uses only for sexual purposes, such a partner would not be a part of live-in relationship within the meaning of ‘domestic relationship’.²³

Social stigma is attached to live-in relations. However, there exists a difference between law and morality. Live-in relationships might be regarded as immoral by society, but these relations are not illegal.²⁴ Even though the courts have cleared the air on the legality of live-in relationships, many pressing issues are yet to be addressed. The courts have repeatedly mentioned that a couple must cohabit together for a “considerable period of time”. If live-in relationships are walk-in and walk-out relations, then at what point can a partner step out of such associations, keeping in mind that sharing a household for a few days or just one night does not qualify as live-in relations. Another question that needs to be answered is that exactly how the parties are supposed to portray themselves as married in front of the society to qualify as a live-in relation and does a mere testimony from a person in the neighbourhood suffice as evidence to prove a live-in relation? Similarly, other crucial issues such as infidelity, desertion, bigamy are yet to be addressed.

INHERITANCE RIGHTS IN LIVE-IN RELATIONS

INHERITANCE RIGHTS OF CHILDREN

It is a settled position of law that live-in relationships are not illegal. There exists a rebuttable presumption of marriage in favour of such relations. Nevertheless, in the absence of any legal

²¹ (2010) 10 SCC 469

²² *Id.* at 477.

²³ *Id.* at 478.

²⁴ *Payal Sharma v. Nari Niketan*, 2001 (3) AWC 1778 : AIR 2001 All 254.

framework governing live-in relationships, the legal position of inheritance rights is ambiguous and unclear. However, children born out of such relations will still be able to inherit property from their parents. The Supreme court held that children born out of relationships other than legally valid marriages should be recognised as legitimate.²⁵ However, an essential prerequisite for a child to be branded as legitimate is that the parents must have shared a common household for a considerable period of time. The society must recognise them as husband and wife, and their relationship should not be like that of a “walk-in and walk-out” relationship.²⁶

The legal fiction created by section 16 of HMA makes it possible for children born out of such marriages to inherit their parent’s property. However, it has to be noted that to invoke section 16 of the Hindu Marriage Act, 1956, there must be either a *de jure* or a *de facto* marriage in place, which when hit by sections 11 or 12 of HMA becomes void or voidable.²⁷ It is clear from the nature of live-in relationships that no ceremonies or traditions are to be followed to be able to enter into such a relationship. The court in *Ramkali v. Mahila Shyamwati*²⁸ defined a *de facto* marriage as a situation where a couple resides together for an extended period of time as husband and wife with habit and repute. However, proof of such a union would be required to grant legitimacy to the children born out of such marriages. Therefore, a live-in relationship can be termed as a *de facto* marriage.

Even though section 16 HMA may grant legitimacy to a child born out of a live-in relationship, such fictional legitimacy can only be acquired for the purpose of having succession rights in the property of its parents.²⁹ Only the self-acquired property of the parents can be transferred and not their ancestral property.³⁰ The rule contained in section 16(3) HMA, postulates that children are prohibited from receiving properties of persons other than their parents. However, the Supreme Court in *Revansidapa v. Malikarjun*³¹ observed that the use of the word “property” indicates no distinction between ancestral property or self-acquired property. Thus, children will be able to acquire both self-acquired property as well as ancestral property.

²⁵ Parayankandiyal Eravath Kanapraavan Kalliani Amma v. K.Devi, (1996) 4 SCC 76.

²⁶ Tulsa v. Durghatiya, (2008) 4 SCC 520.

²⁷ Reshamlal Baswan v. Balwant Singh Jwalasingh Punjabi, (1994) (0) MPLJ 446.

²⁸ AIR 2000 MP 288, II (2000) DMC 522, 2000 (3) MPHT 514

²⁹ Bharatha Matha v. R. Vijaya Renganathan, (2010) 11 SCC 483

³⁰ Jinia Keotin v. Kumar Sitaram Manjhi, (2003) 1 SCC 730

³¹ (2011) 11 SCC 1

INHERITANCE RIGHTS OF PARTNERS

Some other sets of rights are also available in Live-in relationships. A woman can claim maintenance under section 125 of Cr.P.C.,³² and for that purpose, she need not prove the existence of a marriage.³³ The apex court, in another case, found that in case of a live-in relation, the man should be liable to pay maintenance to the woman if he deserts her. A person should not be allowed to escape such obligations owing to the legal loopholes present in the system.³⁴ The court further observed that a woman is entitled to claim any relief under PWDVA, when in a live-in relationship.³⁵

In the current legal framework, a person may nominate anyone in their will. However, a will can only be made for the self-acquired property of a person. The Apex court, in the case of *Vidyadhari v. Sukharna Bai*,³⁶ granted a succession certificate to a live-in partner because the deceased partner nominated the other partner. The law states that a person may create a will in favour of one or more persons to transfer the property on the death of the testator. The will can be revoked at any time during the lifetime of a testator. Any person who is competent to contract under the Indian Contract Act, 1872 can make a will and subsequently, any person who is capable of holding property can become a legatee under a will. Another way by which a person may inherit a property in a live-in relationship is by the method of gifts under Transfer of Property Act, 1882. As opposed to a will, a gift is a voluntary transfer of property that is made during the lifetime of a person, i.e. *inter-vivos*.³⁷ Both moveable and immovable property can be transferred. However, to transfer immovable property by way of a gift, a person must register the gift deed.³⁸ Both of the methods, as mentioned earlier, can be used by partners in a live-in relationship. However, these methods cannot substitute the rights that married couples have. Separate legislation needs to be devised which will govern inheritance rights as well as tackle other ambiguities that are present in the current legal framework.

³² Code of Criminal Procedure, 1973, No. 34, Acts of Parliament, 1973 (India).

³³ *Abhijit Bhikaseeth Auti v. State of Maharashtra*, (2009) ALL MR (Cri) 1005

³⁴ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141; (2011) 2 SCC (Cri) 666

³⁵ *Id.* at 149

³⁶ (2008) 2 SCC 238

³⁷ *Vimala v. Narayanaswamy*, ILR 1995 KAR 2276

³⁸ *Wg. Cdr. (Retd.) R.N. Dawar vs Shri Ganga Saran Dhama*, AIR 1993 Delhi 19, 1992 (24) DRJ 532

There is no provision in the current legal framework which grants a person any inheritance rights in a live-in relationship. The Indian courts have dealt with the legality of live-in relations, but they have not addressed the question of other rights and obligations that flows out of such an association. Majority of the courts have tried to shape such a long-term relationship in the form of marriage but without any rights. In this case, inheritance by way of will or gift is the best way to transfer a property in a live-in relationship.

AMBIGUITIES IN THE CURRENT LEGAL FRAMEWORK

The courts have taken the liberty of delineating the status of children born out of such relationships and have decided upon the right of maintenance for women. However, in this process, they have equated the nature of a long-term live-in relationship with a socially recognised marriage. This is problematic on various levels. Firstly, it undermines the nature and object of a live-in relationship, which is to enjoy the company of a person without any societal pressure or obligations. The union of two consenting adults is a sacred bond which binds them together for eternity. To escape this religious view of a relationship, a couple decides to enter into a live-in relationship. Morality is subjective and living according to the ideals of the society is not always the best approach.

Secondly, a relationship in the nature of a marriage comes with a set of rights and duties. In the absence of legalisation of live-in relationships, it is tough to trace any rights. The courts have recognised inheritance rights for children and maintenance for women. Section 125 Cr.P.C only talks about children and women. Imagine a scenario where a couple is in a live-in relationship, and the woman deserts the man, who is financially incapable of maintaining himself. He has no recourse available as there is no legal framework governing such relationships, and there exists no remedy in the current legal setup. If a relationship is equated with marriage, then such a relationship should come with similar rights and obligations as that of a marriage, but the current legal framework does not include any such provision.

Thirdly, by equating a live-in relationship with marriage, the law presumes that a live-in relationship can be entered into by a male and a female-only. This inference comes from the fact that same-sex marriages, marriages between the people of LGBTQIA (Lesbian, Gay,

Bisexual, Transgender, Queer or Questioning, Intersex and Asexual)³⁹ communities are still not recognised under any law in the country. Even though same-sex sexual relations between consenting adults have been decriminalised,⁴⁰ the current legal framework does not have any provisions that guarantee any rights to such people in a relationship. The personal laws of our country only allow marriages between heterosexual couples. Thus, by equating live-in relationships to marriages, the law excludes people who are not heterosexuals.⁴¹

Although it is not illegal to enter into a live-in relationship, it is still frowned upon by society. In the absence of any legislation to govern such relations, a person under a live-in relationship cannot protect its interest. Identification of partners in a live-in relationship has the potential to shape the behaviour of society as well.⁴² Giving legal recognition to such relationships will help in the transition of the ideology of society which restricts them to accept any modern idea of a relationship.

EVOLVING A LEGAL FRAMEWORK

Since Live-in relationships have been treated as marriages by the Indian courts, a suitable name for new legislation governing live-in relationships might be “The De Facto Marriage Act”⁴³ which would be secular in nature. The act would not only codify the necessary rights and obligations for people having a live-in relationship but will also lay down specific criteria for qualifying for entering into a live-in relationship. A primary qualification for a person to enter into a live-in relationship should be that an unmarried adult,⁴⁴ who is not prohibited from marrying due to any relation by blood must share a common household to live together⁴⁵. The courts have construed long-term live-in relationships as marriages. However, a more

³⁹ Jonathan Branfman, “(Un)Covering” in the Classroom: Managing Stigma Beyond the Closet Vol. 26 No.1, Feminist Teacher (2015) <https://www.jstor.org/stable/10.5406/femteacher.26.1.0072>.

⁴⁰ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

⁴¹ Khushboo v. Kanniammal, (2010) 5 SCC 600; (2010) 2 SCC (Cri) 1299

⁴² E. Gary Spitko, *An Accrual/Multi-Factor Approach to Intestate Inheritance Rights for Unmarried Committed Partners* 81 Or.L.Rev. 255 (2002)
<https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1246&context=facpubs>.

⁴³ Lawrence W. Waggoner, *Marriage is on the Decline and Cohabitation is on the rise: At what point, if ever, should Unmarried Partners Acquire Marital Rights?* Vol. 50 No.2, Family Law Quarterly (2016) <https://www.jstor.org/stable/44155209>.

⁴⁴ Dalavayi Nagarajamma vs State Bank Of India, AIR 1961 AP 320, 1962 32 CompCas 120 AP

⁴⁵ Lawrence W. Waggoner, *Marital Property Rights in Transition* Prob. Law. 18 (1994) <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2680&context=articles> 0

appropriate term to reflect the nature of live-in relationships might be “ideal-marriage-like” or just use the phrase “living together as a couple”. The guidelines laid down in the *Velusamy*⁴⁶ case can be used as the foundation of the new legislation, but the element of marriage must be removed. This legislation would further allow the people from the LGBTQIA community to enter into legally valid relationships as the nature of a live-in relationship is gender-neutral.

To enact such a law, the legislature might make it mandatory to register such relationships. To claim any property of the deceased partner, a person can produce the registration certificate along with the necessary evidence which shows that the couple enjoyed an emotional and intimate relationship. This additional condition follows the law laid down by the courts in various judgements, where several factors are adduced to prove a live-in relationship. Keeping in mind the nature of live-in relationships, a person may enter into such an alliance, just to get hands on the property of another person. To tackle this situation, the legislature might create a direct relationship between the percentage of the estate inherited by the surviving partner and the duration of the relationship.⁴⁷ For example, if the couple spends at least three years but less than four years together, then the surviving partner would get 18% of the intestate estate. If a couple spends more than four years, but less than five years then the surviving partner would get 24% of the intestate estate, and if they spend more than 15 years together then the surviving partner would get 100% of the intestate estate.⁴⁸

Legislation of this nature can take into account all the parameters of a live-in relationship. Having a gender-neutral definition of a couple under this act will enable the people from all strata of the society to enjoy a conjugal relationship. Protections against all kinds of abuse by ‘a person’ under this act would protect the interest of every person, irrespective of its gender. Having inheritance rights would provide a sense of security to a partner under such a relationship. Due to the social stigma attached to live-in relationships, there exist many who hesitate to enter into such relations. Enactment of laws of this nature would bring a change in the attitude of the society and would increase the acceptance rate of such relationships by empowering people to form alliances without any backlash from the community.

⁴⁶ D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469

⁴⁷ Spitko, *supra* note 42, at 344.

⁴⁸ *Id.* at 345

CONCLUSION

The legal position regarding the inheritance rights of a partner in a live-in relationship is quite unclear. In the absence of any legal framework, there are a lot of confusions and ambiguities in the current law. As far as transfer of property is concerned, the law does not recognise a partner in a live-in relationship as a spouse which means that a partner does not have any right in the property of the other partner. The Indian courts have been trying to recognise a long-term live-in relationship as a marriage but without any rights and obligations. The failure to recognise and support the relationships other than traditional marriages has created substantial uncertainty regarding the rights and obligations of individuals. The lack of legally recognised alternatives to marriage has led to disparate and unfair treatment of similarly situated couples. The Indian society still considers such relations as an 'unpure' form of union and believe there must be a socially acceptable form of relationship, which is generally marriage.

The legalisation of live-in relations would entail a new set of laws for governing these relations, including protection in case of desertion, bigamy, inheritance. Inclusion of such a framework can help mitigate the existing defects in the domestic relations law. With the changing attitude of Indian society, live-in relationships are becoming increasingly popular. In this situation, the recognition of rights and obligations flowing from a live-in relationship or relationships of a similar nature becomes very important. The legalisation of such a relationship will help in the inclusion of same-sex relationships, which are stigmatised in Indian society as well. Special legislation needs to be devised, where the partners to such a relationship can register themselves as 'domestic partners' instead of husband and wife while also including the rights and obligations for this special status.