

LACK OF UNIFORM LEGAL PROTECTION FOR CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS IN INDIA

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Abstract

Live-in relationships are becoming more common in India as society moves toward new definitions of family and changes other social customs and beliefs. Despite a large body of supportive case law by the courts, there remain gaps in terms of providing children from live-in relationships with legal protection in family law areas such as child support (maintenance), inheritance, custody issues, and other matters. In criminal proceedings (for example, child support), Section 125 of the CrPC provides for “neutral” (all religions receive the same protection) financial support regardless of the parents’ religious affiliation, but the rights to other types of support (for example, the right to inherit or have coparcenary rights) are still substantially dependent on how courts interpret Indian personal law. Courts in India continue to issue decisions emphasizing that there should be no prejudice to a child because of their parent’s marital status, which has also led to the Supreme Court of India so much more clearly articulated that children from live-in relationships are entitled to an inheritance from both parents; however, these rulings are mostly judge-made law with little to no legislative support, resulting in disparities in outcomes for children, evidence issues about who their father is and enforcing support. There are issues with the lack of a national registry for recording live-in relationships, results of variations between different personal laws, and other issues further complicating providing children with consistent protection across India. The authors of this paper believe that legislative reform is necessary and call for a national live-in law, reform of laws relating to succession to make equal rights to property available regardless of personal law, and for a greater degree of uniformity in how to implement constitutional guarantees of fairness, dignity, and welfare for all children.

Key Words – Live-in relationships, Child rights, Legitimacy, Maintenance, Inheritance, Coparcenary rights, Custody and welfare, Personal law disparities, Constitutional equality, Legislative reform.

Introduction

With the rapid urbanization, education, and global social trends prevailing in modern India, a marked change is seen in the way people engage with each other in the context of an intimate relationship. Among the many changes witnessed in the nature of such relationships is the phenomenon of ‘live-in’ relationships. ‘Live-in’ is generally considered a relationship between two consenting adults who engage in a marriage-like relationship without formally entering into a marriage. As

opposed to marriage, which is governed by the provisions of the law, ‘live-in’ relationships do not per se create any enforceable rights and obligations between the couple. However, the Courts have recognized ‘live-in’ relationships under various circumstances, especially where the relationship is akin to a settled and permanent one.

The increase in the number of live-in relationships indicates the changing attitudes towards personal freedom, assessment of compatibility before marriage, and reluctance

to accept marital obligations. Although the live-in relationship grants the parties greater freedom, the socio-legal issues that arise when children are born out of such relationships are complex. When children are born out of such relationships, the uncertainty about their legal status, maintenance, succession, and social acceptance arises, as the relationship was not legally recognized. Although the judicial pronouncement has protected the legitimacy of the child, the protection is not comprehensive.

The children born out of a legally recognized marriage enjoy the rights to succession, support, and responsibility, as established under the personal and secular laws. However, the children born out of a live-in relationship face uncertainty, as the codification of the rights of the child born out of such a relationship is lacking.

¹¹⁸¹This paper contends that the absence of uniform legal protection for children born of live-in relationships in India leads to unequal treatment and non-uniform enforcement of children's rights, particularly with regard to maintenance, inheritance, and custody. An effective legislative regime is essential to ensure that children of live-in relationships do not suffer discrimination on the basis of their parent's marital status.

Conceptual Framework

The handling of children born out of live-in relationships must, therefore, be viewed in the context of a broader conceptual and constitutional context. In particular, there exists no statutory definition of the concept of "live-in relationship" in India, thereby leaving the judiciary to interpret the concept. However, the development of judicial approach to the concept can be seen to be oriented towards the protection of the child, even at the expense of formal marital considerations. In the case of *Vidyadhari v. Sukhrana Bai*¹¹⁸², the Supreme Court held that the children had the right to inheritance from a relationship that had existed

for a number of years, thereby establishing that the legitimacy of the child must not be called into question on the basis of the actions of the parents. In the case of *Bharata Matha v. R. Vijaya Renganathan*¹¹⁸³, The Supreme Court interpreted the provisions of S. 16 of the Hindu Marriage Act to protect the rights of children to inherit from a void marriage, thereby establishing that the child must not suffer on the basis of the actions of the parents.

Such developments in the judicial approach are rooted in the Constitution. Article 14 of the Constitution provides for equality before the law and equal protection under the laws. This implies that children cannot be discriminated against on the basis of the marital status of the parents. Article 21 of the Constitution, which provides for the right to life and liberty, has been construed to include the right to dignity and a safe and happy life. Additionally, Article 39(f) under the Directive Principles of State Policy provides that children must be given opportunities and facilities to develop in a healthy manner and be protected from exploitation and moral abandonment.

Despite these constitutional provisions and progressive judicial pronouncements, the absence of a unified legislative framework continues to raise doctrinal and practical issues. The courts often resort to presumptions of marriage based on cohabitation over a long period. These presumptions are based on judicial precedents in *A. Dinohamy v. W.L. Blahamy*¹¹⁸⁴, *Mohabhat Ali v. Muhammad Ibrahim Khan*¹¹⁸⁵, and *Badri Prasad v. Dy. Director of Consolidation*¹¹⁸⁶. These decisions were based on the long duration of cohabitation, which led to presumptions of lawful marriage. Subsequent decisions in *Tulsa v. Durghatiya*¹¹⁸⁷ and *Vidyadhari v. Sukhrana Bai*¹¹⁸⁸ have strengthened the legitimacy and inheritance claims of children born from these relationships.

¹¹⁸³ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483 (India).

¹¹⁸⁴ *A. Dinohamy v. W.L. Blahamy*, [1927] A.C. 838 (P.C.).

¹¹⁸⁵ *Mohabhat Ali Khan v. Muhammad Ibrahim Khan*, (1929-30) 57 I.A. 204 (P.C.).

¹¹⁸⁶ *Badri Prasad v. Dy. Director of Consolidation*, (1978) 3 SCC 527 (India).

¹¹⁸⁷ *Tulsa v. Durghatiya*, (2008) 4 SCC 520 (India).

¹¹⁸⁸ *Vidyadhari v. Sukhrana Bai*, (2008) 2 SCC 238 (India).

¹¹⁸¹ Is Live-in Relationship Legal in India?, *LawBhoomi* (June 4, 2025),

¹¹⁸² *Vidyadhari v. Sukhrana Bai*, (2008) 2 SCC 238 (India).

The judicial approach to these issues reflects a gradual shift from a moralistic evaluation to a more pragmatic approach based on constitutional provisions. However, in the absence of clear legislative provisions that harmonize personal laws and inheritance rights, children born out of these relationships continue to remain dependent on judicial discretion. Such fragmented provisions negate the principle of uniform equality and underscore the urgency for comprehensive legislative reform in this area.

Legitimacy of Children

Legitimacy of children born out of such relationships has always been a matter of concern for Indian jurisprudence. Legitimacy has generally been associated with the existence of a valid marriage between the child's parents. Nevertheless, the Indian courts have, over time, adopted a more welfare-centric approach, avoiding discrimination against children based on the legitimacy of the union between their parents. In this direction, one of the most relevant provisions of the Indian Evidence Act, 1872, is Section 112, which raises a presumption of legitimacy if the child was born during the subsistence of a valid marriage between the parents or if the parties had cohabited for a considerable period of time. Such provisions have also been extended to situations where the parties have entered into a long period of cohabitation, which has all the characteristics of a marriage, excluding the element of a mere walk-in-walk-out relationship.

Further, under Section 16 of the Hindu Marriage Act, 1955, children born out of void and voidable marriages are given legitimacy. Though the said section was applicable only to defective marriages, the spirit of the said provision has been extended in some cases to protect children born out of long-standing live-in relationships. Such children have been given legitimacy with regard to the claim over the self-acquired properties of the parents. However, they do not get any claim over

coparcenary properties, which creates a classification amongst the modes of inheritance.

Despite all these progressive interpretations, gaps in the law persist. For example, the law does not clearly indicate the duration or conditions that should exist in a live-in relationship to warrant the presumption of such relationships. This ambiguity in the law results in inconsistent court decisions. Secondly, the social stigma associated with living together, rather than marrying, may complicate the burden of proof of a long-term relationship, thereby indirectly affecting the protection of children from such relationships.

Financial Protection and Maintenance Rights of Children

The right to maintenance is one of the most significant legal protections available to children of live-in relationships. In Indian law, a welfare approach has been adopted for the protection of the interests of the child, so that he/she does not go unprovided simply because his/her parents are not married. Section 125 of the Code of Criminal Procedure, 1973, offers a secular solution by providing maintenance for legitimate and illegitimate children.¹¹⁸⁹ In this, the child has the right to be provided for by both his/her parents, if he/she is unable to provide for himself/herself.

Moreover, the Protection of Women from Domestic Violence Act, 2005, also provides for the relationship "in the nature of marriage" through the concept of a domestic relationship. This way, children living in such households are likely to be protected and financial relief is also granted to them. Nevertheless, the implementation of these provisions is subject to variations and depends to a large extent on the interpretation of the courts regarding the concept of a live-in relationship.

Despite all these legal provisions and remedies, there are many inconsistencies. For example, proving the identity of the father becomes

¹¹⁸⁹ Women's Rights in Live-in Relationships in India, SCC Online (2026)

much more complicated when there is no marriage certificate to rely on. Furthermore, the main intention of Section 125 is to provide maintenance support to the child and does not completely address other aspects of the holistic well-being of the child. Thus, despite the maintenance rights of the child existing on paper, many complexities and difficulties can impede the effective enforcement of such rights for a child who was born from a live-in relationship.

Inheritance and Property Rights of Children Born out of Live-in Relationships

One of the most debated aspects of legal protection for children born out of live-in relationships in India is inheritance and property rights. While maintenance ensures the economic sustenance of children in the present, inheritance ensures their economic sustenance in the future. The lack of a codified law on live-in relationships has led to a fragmented and religion-based approach to inheritance patterns that put children in a precarious position.

According to the Hindu Succession Act, 1956, a legitimate child is entitled to a share of the self-acquired properties of the parents. Further, children of void and voidable marriages, and children of live-in relationships, are also considered legitimate, as interpreted by the judiciary, in light of Section 16 of the Hindu Marriage Act, 1955. This is a clear example of a hierarchy of laws, wherein the children of such marriages are not granted full parity with children of valid marriages. While they are granted a right to their parents' self-acquired properties, they are not granted a right to coparcenary properties.

The same status under other personal laws is inconsistent to a greater extent. Muslim personal law, for example, holds that a child born out of wedlock does not have a right to inherit from the father unless legitimacy is acknowledged. Similarly, both Christian and Parsi personal law maintain a more rigorous framework that is directly related to formal

marriage. The Parsi Marriage and Divorce Act, for example, places great emphasis on formal marriage as a basis for legitimacy, thereby indirectly negating the right of children born out of wedlock to inheritance.¹¹⁹⁰

Significant progress was made when the Supreme Court ruled in 2026 that children born out of settled and marriage-like live-in relationships had greater rights to ancestral lands. Although the ruling is a step forward towards substantive equality, the implementation of the ruling varies because of the continued use of the facts of the case. There was no comprehensive codification of the law, and the ruling was not automatically applied.

Custody and Welfare Protections of Children Born out of Live-in Relationships

The issue of custody and welfare protection is the most sensitive area of legal protection that children of live-in relationships are entitled to. While maintenance and inheritance are related to financial matters, the issue of custody is directly related to the emotional, psychological, and mental development of the child. In India, the general principle governing the determination of custody is that of "best interest of the child," which has been emphasized more and more, irrespective of the marital status of the parents. In the absence of special provisions relating to children of live-in relationships, a number of complexities and difficulties arise.

Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2015, has a child-centric approach, where the welfare, rehabilitation, and protection of the child are of primary concern, rather than any legal distinctions. In one such judgment, the Kerala High Court has observed that children born out of a stable living-in relationship are considered at par with married couples for the welfare and protection of the child under the Act.¹¹⁹¹ It has a child-centric approach, where the child's welfare and protection are of primary concern,

¹¹⁹⁰ Shreya Atrey, *Children Born of Void and Voidable Marriages and Their Inheritance Rights: A Constitutional Perspective*, 12 NUJS L. Rev. 327 (2019).

¹¹⁹¹ Rights of a Child Born in a Live-in Relationship, G.S. Bagga (2021)

rather than the legitimacy of the child's birth. In other words, the Act does not concern itself with the legitimacy of the child's birth, but the vulnerability of the child.

Likewise, the Guardians and Wards Act, 1890 deals with the appointment and declaration of guardians in instances where disputes occur. Under this Act, biological parents are presumed to be the natural guardians of their minor child. However, it has been held on multiple occasions that the decision regarding the custody or guardianship of the child should be made on the welfare of the child, which takes precedence over the strict rights of the parents. While determining custody in instances where cohabiting couples have separated, the court considers factors such as financial security, emotional bonding, moral surroundings, educational opportunities, and overall well-being of the child. The legitimacy of the child or the formal validity of the relationship between the parent and child is not considered; instead, the overall welfare of the child takes precedence.

Another practical difficulty lies in the absence of standardized documentation recognizing live-in partnerships. Without marriage certificates or formal registration, administrative authorities may hesitate to process school admissions, passport applications, or guardianship documentation when parental disputes surface. Although courts eventually uphold the child's rights, the procedural hurdles create uncertainty and emotional strain.

Therefore, while Indian law, through the Juvenile Justice Act and the Guardians and Wards Act, formally prioritizes the welfare principle over legitimacy concerns, the lack of a unified and explicit statutory framework addressing live-in parentage results in uneven application.

State Variations and the Impact of the Uniform Civil Code

Perhaps the biggest hurdle faced in the quest for uniform protection of children of live-in relationships in India is the lack of a centralized

legal structure, which varies depending upon the interpretations of the judiciary and, in a few cases, even the legislative actions of the states. This leads to discrimination based upon location rather than constitutional authority.

One major change in this regard is the implementation of the Uniform Civil Code in Uttarakhand in 2024. Under the Uttarakhand model, there is a mandatory registration requirement for live-in relationships. Once the relationship is registered, there is also a clearer form of legal recognition. After registration, children born out of such relationships have equal property rights.¹¹⁹² This minimizes any ambiguity that may have existed in the past regarding inheritance and legitimacy. This is a higher form of protection because it is codified rather than left to the courts to decide. By making registration mandatory, there is documentary evidence to prove cohabitation and eliminate any dispute regarding parentage and the length of the relationship.

On the contrary, in the rest of India, the protection offered to children born out of live-in relationships is subject to judicial interpretation. There can be a presumption of marriage and legitimacy on the strength of cohabitation over a period of time. But there is no legislative mandate compelling the courts to recognize the legitimacy of such children. Hence, the same set of circumstances can lead to different conclusions in different courts. This is reflected in a lower level of protection, as there is no automatic grant of rights. Kerala High Court decisions on the issue of legitimacy and welfare rights of children under the Juvenile Justice Act of 2015 have been progressive. This is reflected in decisions recognizing the legitimacy and welfare rights of children born out of stable live-in relationships. This reflects a medium level of protection to such children, as the decisions are child-centric. But the decisions are limited to judicial precedent and do not have universal applicability.

¹¹⁹² Uttarakhand UCC Article (2025)

The larger vision of a Uniform Civil Code, which is a part of the Constitution's Directive Principles of State Policy under Article 44, is of a common code applicable to all personal laws such as marriage, divorce, succession, and guardianship. The Uttarakhand model could provide a template for future change by illustrating the advantages of codification in terms of removing confusion and providing greater protection to children. In the absence of such a law being introduced across the country, however, the provisions of this law remain restricted to Uttarakhand.

Judicial Role and Challenges

Indian courts have been instrumental in molding the legal status of children born out of live-in relationships. In *SPS Balasubramanyam v. Suruttayan*¹¹⁹³, the Supreme Court ruled that if a man and a woman lived together for a long period of time as husband and wife, a presumption of a valid marriage existed under Section 114 of the Evidence Act. This presumption protects the legitimacy of children born out of such relationships unless disproved.

In the case of *Madan Mohan Singh v. Rajni Kant*¹¹⁹⁴, the Supreme Court emphasized that if a couple lived together for a long time, it strengthened the presumption of a valid marriage and the legitimacy of children born out of such a marriage. The duration of their stay together was a critical factor in the court's judgment. These cases, in total, indicate that if a couple lived together, it gave rise to a presumption that would safeguard the children's rights.

More recently, the Supreme Court's 2026 ruling recognizing broader ancestral property rights for children born from sustained, marriage-like live-in relationships represents a progressive expansion of inheritance entitlements. The judgment moves toward substantive parity with children born within formal marriages. However, despite its progressive spirit, the decision remains part of a patchwork framework, as

implementation still depends on factual determination and subsequent interpretation by lower courts. Without statutory codification, judicial advances may not translate into consistent nationwide protection.

In spite of progressive judicial pronouncements, there exist major structural and doctrinal gaps in the protection of children born of live-in relationships in India. First and foremost, one of the major hurdles in the protection of children born of live-in relationships in India lies in the absence of a nationwide mechanism for the registration of live-in relationships and a statutory presumption of paternity, which exists in legally recognized marriages. In the case of legally recognized marriages, the law presumes legitimacy and parental responsibility. This reduces the evidentiary burden¹¹⁹⁵. In the case of children born of unregistered cohabitation relationships, there exist procedural hurdles in the determination of parentage, particularly in the event of a dispute arising after separation.

The problem of enforcement adds to the complexity of the situation. For example, to establish long-term cohabitation, documentary evidence such as joint residence proofs, financial evidence, and witness testimony is required. This is not always readily available. Similarly, while DNA tests are scientifically reliable, they can be costly and emotionally taxing. Furthermore, the social stigma associated with such relationships might deter a mother from seeking legal redress, which is a roundabout way of impacting the child's rights.¹¹⁹⁶ In terms of interstate movement, a child recognized in one jurisdiction under a progressive precedent might not enjoy the same rights in another jurisdiction due to varying judicial approaches.

By way of comparison, the maintenance rights under Section 125 of the Criminal Procedure Code show how uniform and religion-independent treatment is possible. Yet the

¹¹⁹³ *S.P.S. Balasubramanyam v. Suruttayan*, (1994) 1 SCC 460 (India).

¹¹⁹⁴ *Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209 (India).

¹¹⁹⁵ Legal Conundrum of Live-in Relationship in India, 20 *Law & World* 1 (2023)

¹¹⁹⁶ Are Live-in Relationships Legal in India?, iLeaders (2022)

scope is limited only to the financial support aspect and has not been extended to the broader scope of inheritance rights, coparcenary rights, and guardianship.

Reform Proposals

To solve the above issues of ambiguity, the need for legislative reforms is a necessity. A main enactment on the concept of live-in relationships and the registration thereof would help resolve the issues with regard to evidence. Such a main enactment would clearly state the parameters on which the relationship is recognized, the presumptions with regard to parentage after a certain period of stay, and the automatic inclusion of children irrespective of the compliance with the registration formalities.

Amendments to the Hindu Marriage Act and the Hindu Succession Act would be required to ensure the coparcenary rights and ancestral inheritance rights to children born out of settled live-in relationships without any distinction between the categories of legitimacy.

This inclusion of the provisions in the future national Uniform Civil Code will ensure the equal treatment of marital and non-marital children in all states of the nation. Instead of focusing on the rights of partners, the focus should be on the welfare of children, which is a constitutional requirement. The codification of the provisions will help in minimizing litigations, making it easier to prove requirements, and making administrative issues easier in school admissions, passports, and property registrations.

Conclusion

The legal regime pertaining to children born in the course of cohabiting relationships in India has been one of gradual but imperfect development. While judicial efforts have strengthened the legitimacy, maintenance provisions, and inheritance rights of children born in cohabiting relationships, the lack of comprehensive statutory provisions and procedural difficulties undermines the

constitutional promise of equality, dignity, and child well-being.

In order to uphold the spirit of Articles 14, 21, and 39(f) of the Constitution, it is imperative that a comprehensive legislative framework is developed. This roadmap should include the formulation and implementation of a central law on the concept and regulation of live-in relationships, the harmonization of laws on succession to ensure equal inheritance rights, and finally the integration of these laws into a Uniform Civil Code applicable to the entire country. Only then can the State ensure that no child is discriminated against on the basis of the marital choices made by their parents, and in this manner, uphold the core spirit of the Constitution on the values of justice, equality, and human dignity.

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