LIVE-IN RELATIONSHIPS IN INDIA-RECOGNITION UNDER HINDU PERSONAL LAW

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INTRODUCTION

Live-in relationships refers to a cohabitation of a male and a female without the without being bound by the legal obligations of marriage. Marriage is nothing but the socially recognized form of association between a male and a female. Any other union other than this form is considered unholy, immoral. A marriage especially under the Hindu personal laws is considered as sacrament and of the highest order of purity. It comprises of centuries old customs and usages which have been continuously and uniformly observed for a long time and has obtained the force of law among Hindus in any local area, tribe, community, group or family.

Live-in relationships are the new trend of the 21st Century generation which does not want to enter into a legal relationship per se. Today's generation is more career oriented and therefore do not consider the prospect of marriage as a viable option. These relationships are also more viable towards providing financial stability to the partners such as cost sharing. It allows both of them to explore the possibilities of compatibility towards a permanent relationship in the guise of marriage in the future.

When it comes to Hindu personal laws, there seems to have no explicit provisions relating to live-in relationships and its consequences. However the distinguished courts of our country have from time to time given its interpretations suiting the circumstances of the cases coming before it. However it continues to be a battle field of dispute which is mystified by the fogs of ambiguity.

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THE CONCEPT OF LIVE-IN RELATIONSHIP

The definition and ambit of live-in relationship is not clear. 'Live-in relationship' means those relationships where there is no marriage between the parties, in the sense of solemnization of a marriage under any law. Yet the parties live as couple, represent to the world that they are a couple and there is stability and continuity in the relationship. Such a relationship is also known as a 'common law marriage'.

The Indian courts have clarified the concept of live-in relationships and its applicability through some of its judgments. In the case of **Payal Sharma v. Superintendent**, **Nari Niketan, and others**[2], Justice M Katju and Justice R.B. Mishra stated, "In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality."

In the case of **S. Khushboo v. Kanniammal**[3], the Supreme Court gave its landmark judgment and held that there was no law which prohibits Live-in relationship or pre-marital sex. The Supreme Court further stated that live-in relationship is permissible only in unmarried major persons of heterogeneous sex.

Therefore, it is quite clear that contrary to the conservative views that the Indian society hold, the apex court and the high courts have gone forward with a positive mentality in trying to protect this emerging culture of live-in relations while at the same time warning the parties engaged in such relationships to be aware of the consequences that such non legal bond carries.

There may be various reasons for live-in relationship emerging in a country like India which is known to be a very conservative state especially when it comes to the association between opposite sexes. This concept has emerged especially in urban metro cities like Mumbai, Bangalore and Delhi where people tend to be more liberal in their mindset and seem to care too little about the tenets and sacredness of their culture and rituals of their community or religion. Moreover, they may want to test their compatibility before they commit to a legal

[2] AIR 2001 All 254.
[3] AIR 2010 SC 3196

union; maintain their single status for financial reasons; individuals already married to another person, the law does not allow them to marry; partners may feel that marriage is unnecessary; hate to be divorced; not allowed by family due to inter-religion, age difference etc. There have been cases quite recently where some organizations have made an effort to bring together widowed or divorced old men and women and arranged for live-in relations by mutual consent in the fag ends of their lives. The intention is to dispel loneliness, neglect and isolation that these senior citizens face from their children and the society at large.

LIVE-IN RELATIONSHIP UNDER HINDU PERSONAL LAWS.

From the Vedic Period the value and significance of marriage as an institution was reiterated and the Aryan ideal of marriage was held in high respect. Marriage was considered to be a necessary samskara (sacrament) for all Hindus. Thus the importance of marriage has been well recognized in Indian society relating to Hindu Personal Law. The institution of marriage is considered very important for not only society as a whole but also for the well-being of a family. The existence of laws and acts such as the HMA 1956, The Special Marriage Act 1954 give legal backing and teeth to this institution .Thus it is apt to say that in India ,marriage has been given legal and social recognition .

On the other hand live-in partners have no means of recognition as such. Some countries have recognized the concept of a live-in relationship and granted it legal recognition by introducing the concept of "registration" of a live-in relationship which is merely a cohabitation contract. This system is followed in countries like Canada and China. Some countries like the United States of America specify that a live-in cannot be equated to marriage in the legal status, yet they recognize a cohabitation agreement between partners. However this is not the case in India. Yet there has been a gradual change in this. Although live-in relationships have not been granted legal status or recognition, this concept is slowly emerging and is visible in recent legal developments.

In 2003, the Supreme Court set up the Malimath Commission for reforms in the Criminal Justice System. The report submitted by this Commission entitles a female live-in partner to the right to claim alimony. This has further been reiterated by a report from the National

Commission for Women in 2008, which reiterates the same demand in order to protect women in, live-in relationships.

However, it threatens the notion of husband and wife and the cognition of marriage that enjoys high level of sanctity when it comes to India. It also tends to crop up adultery, as there is no such proscription that live-in partners should be unmarried. Thus, a person might be married and still live with someone else under the garb of live-in relationship.

If the rights of a wife and a live-in partner become equivalent it would promote bigamy and it would arose a conflict between the interests of the wife and the live-in partner. This promotes bigamy, as the person who is getting into live-in relationship might be already married. The position of the wife is disadvantageous in such situation. While the right of legally wedded wife remains at stake, the right of live-in female partner too does not become secure. It is noteworthy that both adultery and bigamy are grounds for divorce under Sections 13(1) (i) & 13(2)(i),(ii) of the Hindu Marriage Act, 1955.

In the case of **Payal Katara v.Superintendent, Nari Niketan Kandri Vihar Agra and Others**[4], Rajendra Prasad, the person with whom plaintiff was living in was already married. While the court recognized the right of cohabitation of the plaintiff, the big question was what about the right of the wife of the person with whom plaintiff was cohabiting? The question that seeks an answer with the elevation of live-in relationship is what will be the status of wife, if a person who is in live-in relationship is already married as law also seek to protect the right of live-in partner under statutes like Protection of Women from Domestic Violence Act, 2005.

Even if rights of maintenance etc. are provided to the live-in female partner, there is no guarantee that she can actually avail those rights. Marriage grants social recognition, but there is no proof of live-in relationship; a person can easily deny the fact of live-in relationship to evade liability. In sum and substance the rights of woman remains precarious. This might be the condition even when the children born under such relationship are recognized under Hindu Marriage Act, 1955.

[4] (2006) 8 SCC 726

Taking cue from the provisions under Section 16 of the Hindu Marriage Act, 1955 which deals with legitimacy of children of void and voidable marriages, indirectly ascribing a legal status to children born out of live-in relations and their property and maintenance rights; the Hon'ble Supreme Court in the case of **SPS Bala subramanyam v Sruttayan**[5], the SC had said, "If a man and woman are living under the same roof and cohabiting for a number of years, there will be presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate." This was a landmark case wherein the apex court upheld the legitimacy of the children born out of live-in-relationships.

The Courts in India have continued to support the interpretation of law in a manner to ensure that no child is "bastardised" for no fault of his/her as was seen in **Bharata Matha & Ors. v R. Vijaya Renganathan & Ors**[6]. Wherein the Supreme Court of India had held that child born out of a live-in relationship may be allowed to succeed inheritance in the property of the parents, if any and subsequently given legitimacy in the eyes of law. However, it also made clear that such rights does not extend to other ancestral/coparcenary properties to claim inheritance. Using the ratio of **Jinia Keotin & Ors v Kumar Sitaram Manjhi & Ors**[7]., the Court held that the main purpose of Section 16 of the HMA1955 dealing with legitimacy and property rights of children of void and voidable marriages is to provide children who otherwise would have been branded illegitimate certain degree of legitimacy in the eyes of law; Inferential reasoning to grant any further rights under this section would amount to court re-legislating under the guise of interpretation.

Maintenance which is often explained as the obligation to provide for another person forms an integral aspect of the legal angle of live-in relationships with respect to the rights of the live-in partners and the children born out of such a union. Under the Hindu Adoptions and Maintenance Act, 1956, Section 21 "a legitimate son, son of predeceased son or the son of predeceased son of pre-deceased son, so long he is minor and a legitimate unmarried daughter or unmarried daughter of son or the unmarried daughter of a pre-deceased son of pre-deceased son, so long as she remains unmarried shall be maintained as dependents by

[5] AIR (1994) SC 133
[6] AIR (2010) SC 2685
[7] (2003) 1 SCC 730

his/her father or the estate of his/her deceased father." A child born out of a live-in relationship is however, not covered under this Section of the given Act and consequently, denied maintenance rights under this statute. However, **Savitaben Somabhai Bhatiya v State of Gujarat** [8]made an exception where the live-in partner who had assumed the role of second wife was not granted any maintenance whereas the child was granted maintenance.

Property rights basically refer to the inheritance rights of children born out of sexual union revolving around live-in relationships. Under the Hindu Succession Act, 1956, a legitimate child, both son and daughter form a Class-I heir to the joint family property. On the other hand, under Hindu law an illegitimate child inherits the property of his mother only and not putative father as the illegitimacy makes it difficult to carry out such inheritance from the father' side

Legitimacy forms a pre requisite for inheritance rights under Hindu law and reasonable period of time is the primary condition to be fulfilled for this purpose. Consequently, the Courts in the past have always ensured that any child born from a live-in relationship of a reasonable period of time should not be denied inheritance rights The Supreme Court in **Vidyadhari *v Sukhrana Bai***[9] passed a landmark judgment wherein the Court granted inheritance to the children born from the live-in relationship in question and ascribed them the status of "legal heirs".

The issue of property rights has been dealt with in an incomplete manner under the HMA, 1955. Section 16 of this Act which talks about legitimacy of children of void and voidable marriages addresses this aspect of live-in relations in an indirect and incomprehensive manner which has often led to contradicting judgments and legal complications.

Justice Ganguly of the Supreme Court had deliberated on the issue of live-in relationships and child property rights stating that the legislature has used the word "property" in Section 16(3) of the HMA, 1955 and is silent on whether such property is meant to be ancestral or self-acquired and in light of such ambiguity, the concerned child's property rights cannot be arbitrarily denied. Clauses (1) and (2) of Section 16 expressly declare that such children shall be deemed to be legitimate in the eyes of law. Thus, subsequent discrimination against them and unequal treatment with respect to other legitimate children who are entitled to all the

[8] (2005) 3 SCC 636
[9] AIR (2008) SC 1420

rights in the property of their parents, both self-acquired and ancestral will amount to the amendment made to this section losing its value. Consequently, the Judge stated **Parayan Kandiyal Eravath Kanapravan Kalliani Amma (Smt.) & Ors. V/s K. Devi and Ors**[10]**,** wherein it was held that the HMA 1955; a beneficial legislation, has to be interpreted in a manner which advances the object of the legislation. The intention of the HMA, 1955 with respect to Section 16 and the following amendment eliminating distinction between children born out of valid/void/voidable marriages is to bring about social reforms and conferment of social status of legitimacy on innocent children which would be undermined by imposing restrictions on rights guaranteed under this section.

In Hindu law, the Hindu Minority and Guardianship Act (HMGA), 1956 clearly states in Section 6 that the father is the natural guardian of his minor legitimate children and as laid down in **Gita Hariharan v Reserve Bank of India**[11], the mother becomes the natural guardian in his absence which means when the father is incapable of acting as the guardian. However, Section 6(b) of the same Act seems to be dealing with live-in relationships in an indirect manner as it grants the custodial rights to the mother (natural guardian) in case of children born out of illegitimate relations.

Consequently, on a positivistic interpretation of the law, it can be concluded that in case of a break up between the live-in partners, by virtue of being the natural guardian, the husband will acquire the custodial rights of the concerned child. This has been deemed to problematic by various courts and in the landmark judgement **Gita Hariharan v Reserve Bank of India**[12] the Supreme Court driving home the equality of the mother to fulfil the role of a guardian held that – "Gender equality is one of the basic principles of our Constitution, and, therefore, the father by reason of a dominant personality cannot be ascribed to have a preferential right over the other in the matter of guardianship since both fall within the same category."

Section 13 of HMGA, 1956 goes on to talk about the welfare of the minor to be of paramount consideration and thereby negates the effect of previous provisions if in contravention of the said section. In **Shyam Rao Maroti Korwate v Deepak KisanRaoTekam**[13], it was held that the word, "welfare" used in section 13 of the Act has to be construed literally and must be

[10] AIR (1996) SC 1963
[11] (1999) 2 SCC 228.
[12] *Id.*
[13] (2010) 10 SCC 314

taken in it wide sense and such an interpretation is in concurrence with the development of the child as an independent individual. "Apart from this, there is the Guardians and Wards Act 1890 (GWA) which is complementary to HMGA 1956. These Acts are to be read together and implemented in the matter of child custody and appointment of guardian for the minor in a harmonious manner" Therefore, even in live-in relations, the law might guarantee natural guardianship to the male partner however, at the time of a break-up, subjective interpretation of law in favor of the child prevails.

CONCLUSION

Based on the current scenario it can be concluded that even though there are certain provisions such as Section 16 of the HMA 1955 which grant legitimacy to children born out of live-in relationships, their rights to ancestral property and maintenance remain questionable and vary from case to case. The same can be held about custody of a child born out of a live-in relationship which is open to interpretation despite the presence of Section 6 (b) of the HMGA 1956. Owing to this they are bound to encounter a lack of clarity in life regarding his or her legal status, origin and subsequent rights. This can lead to instability in the child's life- both mentally and emotionally.

To avoid this, clear laws should be made and amendments to ambiguous terms in present laws must be made to grant clarity on the status and rights of children born in a live-in relationship. This will ensure uniformity and help establish emotional, mental and physical security for such a child.

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