

## A LEGAL STUDY ON STATUS OF A CHILD BORN IN A LIVE-IN RELATIONSHIP IN INDIA

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The building blocks of the nation, tomorrow's future and the most basic unit of the society and modern era are Children. Their destiny is often governed by the various aspects of relations in the society and the people surrounding them in every sphere. In the wake of such societal influence, it places a huge responsibility on the couple who enter into various kinds of relations to keep in mind the repercussions of their act which essentially is the procurement of child, since that innocent being will be judged from day one itself. Section 16 of the Hindu Marriage Act talks about the legitimacy of a child born out of a void or voidable marriage but nothing specifically addresses the issue of a child born out of a live in relationship. Next, section 112 of the Indian Evidence Act, 1872 talks about the legitimacy of the child who is born out of a relationship which is certified to be a valid marriage. But again, no act talks about the child born out of a live in relationship and it is because of such lacunae that these individuals face identity crisis later and are placed in a different segment of the society altogether. Also since there are no specific laws which govern live in relationships, there are no specific legislations too for children born out of such relations. The need of the hour is to ascertain the rights and statuses of these children especially since the development and protection of child rights remains the main objective of any state or legislation. Thus the legal framework has to be cautious in this regard and the judiciary has to pronounce judgements for the clarity of such stands to give these children a better identity in the socio-legal setup. Else their future will be in jeopardy and their identity will always be "Legitimate in law, Illegitimate in fact"<sup>1</sup> which will bog them down.

Also, since the number of couples entering into such live-in relations is high, be it out of choice or out of circumstance, the legal status of such children born should be clearly defined. Article 39(f) of the Indian Constitution also stresses on the fact dealing with the social welfare of the child, being the prime agenda of any welfare state. In the light of the above discussed, the courts have taken up the steering wheel in their hands to steer through such confusions and have given landmark judgements which make the stand very clear

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<sup>1</sup> Status of child born out of live-in relationship, available at [www.legalservicesindia.com](http://www.legalservicesindia.com)

about these children, i.e. the children born out of such live in relationship are not only very much legitimate, but they also have maintenance and inheritance rights. This approach of the courts clearly shows that the Indian Judiciary does not wish to penalise the child or make him deprived of any need or right because of this faulty parents. In the case of *Tulsa vs. Durghatiya*<sup>2</sup> it was clearly held by the Supreme court that children born out of live in relationships are no more illegitimate. In *Vidhyadhari vs. Sukrana Bai*<sup>3</sup> the Supreme Court passed a landmark judgement saying that the children born out of live in relationship are not legitimate but are also 'legal heirs'. The person in this case had indulged in bigamy, wherein the court ruled that the second marriage was void, since the first marriage was legally subsisting, but the children born out of the second marriage were considered valid and legitimate. In the case of *Mohd. Bauker vs. Shurfoon Nissa Begum*<sup>4</sup>, the Privy Council gave a breakthrough judgement. It held that children of Muslim parents will be considered legitimate without any direct evidence of marriage being culminated if there is continual cohabitation. If it can be demonstrated that the couple was cohabiting for a long period of time, then such cohabitation will lead to presumption of marriage and thus the child born will be very much legitimate. Next, in *Pyala Mutyalamma vs. Pyala Suri Demudu*<sup>5</sup>, the Supreme Court held that the High court had erred in not granting maintenance to the appellant under section 125 of CrPC and so the impugned judgement was set aside by the Supreme Court and the appellant wife was made entitled to maintenance, subsequently the child was also granted maintenance.

The Indian Judiciary has used its supreme power to render justice through various social norms and judgements. The Supreme Court has held in the landmark case of *Dimple Gupta vs. Rajiv Gupta*<sup>6</sup> that illegitimate children born out of illicit relationship have rights of maintenance under section 125 of the Code of Criminal Procedure, 1973 which talks about giving maintenance to children who are either legitimate or illegitimate or minor and till the time they attain majority and after which, they cannot maintain themselves.

In the case of *Parayan Kandiyal Eravath Kanapraavan Kalliani Amma vs K. Devi*<sup>7</sup> the Supreme Court held that where the legislation in dispute is the Hindu Marriage Act 1955, then it has to be construed in a way which is beneficial for the couple and the child born. The next case is that of *Madan Mohan Singh vs. Rajni Kant*<sup>8</sup>, which is a landmark case while dealing with the aspect of live-in relationship. In this case, the dispute was regarding the inheritance of property of a freedom fighter. The deceased had children from his

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<sup>2</sup> (2008) 4 SCC 520

<sup>3</sup> (2008) 2 SCC 238

<sup>4</sup> (1859) 8 MIA 135

<sup>5</sup> (2012) 12 SCC 189

<sup>6</sup> (2007) 10 SCC 30

<sup>7</sup> (1996) 4 SCC 76

<sup>8</sup> Civil Appeal No. 6466 of 2004 decided on August 13, 2010

wedlock and children from his live in relationship which he entered into after his death. The children from the marriage contended that there was no evidence to prove that their father was in any kind of live in relationship. But this case clearly and squarely fell within the domain of presumption of marriage on ground of long cohabitation and the Court thus ruled that such assistance of presumption was very valid and for other relationships to be at par with this, the couples have to make sure there is no “walk-in and walk-out” practice. So the onus to prove anything on the contrary, was on the sons from the marriage. The inheritance rights of the children from live in relationship was hence upheld. This case had far fetching implications on children born out of live in relation and entitled them to inheritance rights. The next issue which is very vital for such children is the right to property. Different propositions have been laid down in various judgements with this regards. The major question here is whether such children have right over only self-acquired property of their parents or even coparcenary rights exist.

In the cases of *Bharat Matha vs. R. Vijaya Renganathan and Ors*<sup>9</sup>, *Jinia Keotin and Ors. vs. Kumar Sitaram Manjhi and Ors*<sup>10</sup> and *Neelamma and Ors. v. Sarojamma and Ors.*<sup>11</sup> the Supreme Court re iterated the position of the children born out of such relationship with respect to property rights. The Court ruled in all three cases that, children born out of void or voidable marriages or illegitimate children or for that matter, children from live in relationships were *not* entitled to claim rights in the Hindu joint, ancetsral or coparcenary property, but could claim their share and entitlement only in the self-acquired property of their parents as per section 16 of the HMA 1956, i.e. the amended Act. The court held that the section expressly mandates that there is no scope to include such children within the ambit of the section 16 or for that matter, the amended subsection 3 of the same section. The court said that the way this amendment has been carried out, including such children within this ambit of this provision will frustrate its purpose and also will lead to the court re-legislating the statute in the garb of interpretation which is against the intention of the enactment of this legislation.<sup>12</sup>

The matter in Bharatha Matha case was like this- The disputed respondent was a woman who was both married and simultaneously was staying in a live in relationship. So when the man of the live in relationship died, there was a dispute regarding the inheritance of the property by the children procured in the live in relationship. The children demanded coparcenary rights in the property of their father, i.e. the deceased man of the live-in relationship. But the court held that this cannot be construed to be a valid presumption of marriage even though there has been long periods of cohabitation, since the woman was

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<sup>9</sup> AIR 2010 SC 2685

<sup>10</sup> (2003) 1 SCC 730

<sup>11</sup> (2006) 9 SCC 612

<sup>12</sup> available at [www.womenslinksworldwide.org](http://www.womenslinksworldwide.org)

already married to someone else and this live in took place during the subsistence of the valid marriage. So even the children of this cohabitation were not legitimate and they had no right to property whatsoever. Thus coparcenary right was denied on account of section 16 of the HMA 1956. So it was held that such children will be entitled to only parent's property i.e. self-acquired.

In *Ramkali v. Mahila Shyamwati*<sup>13</sup> the court explicitly ruled that the quintessential pre requisite for making use of the statutory benefit given under section 16, is the presence of a "de-facto" or a "de-jure" marriage to have solemnized. In case where there is no evidence on record to prove the same, either ways, i.e. by fact or by law, then the children begotten from such a relationship are considered illegitimate and there is no benefit of section 16 of the Act given to them under any circumstance.

In the case of *Laxmi Sahoo v. Chatarbhuji Sahoo*<sup>14</sup>, there was a suit filed by the wife of the respondent claiming the validity of the marriage and that the minor daughter born was out of that marriage. She alleged that her husband deserted her and thus she was entitled to maintenance under section 125 of CrPC. But the petition was dismissed since the proceedings before the family court revealed altogether a different set of facts. It was seen that there was valid marital bond and that the child was also not born out of this relation. Consequently, her appeal was quashed on account of contrasting witnesses in this matter. The court held that if there was a valid marriage proved between the appellant wife and the respondent husband or even presumption of marriage for that matter, then the child would have benefited under section 16 of HMA 1955. But there was no marriage existence and so the status of the child born also clouded in a mystery ad no rights were given to her.

Likewise in *Chodon P. Shyamalavalli v. K. Jisha*<sup>15</sup> it was necessary to demonstrate that there was proper and valid solemnization of marriage and then only the children begotten from such a union could be benefited under section 16 of HMA. But where there was no such validity, no such benefits could be availed.

*Kuppan v. Kuppusamy Gounder*,<sup>16</sup> was decided in the High Court of Madras. This case was also on similar lines of property inheritance. The issue was the claiming of the property by the plaintiffs-appellants under section 16 of the Act. The was trouble in proving the actual solemnization of the marriage in this case which made claiming of property difficult. Finally the court ruled that since there was no proper evidence or record to prove the validity of the alleged marriage post the divorce, hence the children born out of this disputable relationship were not entitled to the benefits of this section and hence could not

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<sup>13</sup> AIR 2000 MP 288 II

<sup>14</sup> AIR 2003 Ori 8

<sup>15</sup> AIR 2007 Ker 246

<sup>16</sup> A.S.NO.1325 of 1995

claim such property right in any manner whatsoever. However, these propositions and rulings was totally changed in another ruling, *Revanasiddappa and Anr. Vs. Respondent: Mallikarjun and Ors*<sup>17</sup>, where the Supreme Court clearly said that it would not agree with the interpretation of section 16(3) as given in the previous judgements and that the judgements were given by taking a very narrow interpretation of the section. The word “property” used in this provision by the Act does not say if it ancestral or self-acquired. Also the provision says that it is mandatory that such children are strictly entitled to the property of their parents and no other person or relation. Section 16(3), enshrines that such kind of children will not be entitled to any of the property of any other person who is not in relation with them as parents on account of their illegitimacy. However, there is no bar on the entitlement of his parent’s property by the virtue of this prohibition. Moreover, a deep look of clause (1) and (2) will tell us that such children have been declared as completely legitimate and if that be the case, then there is no scope of any discrimination against them and they will be at par with other legitimate children, and be entitled to all the rights in the property of their parents, both self-acquired and ancestral. With changes in the social fabric and dynamic needs of the people, it is imperative to understand that what was illegitimate yesterday is very much legitimate today and thus law needs to be changed accordingly. The court thus held that the purpose of such beneficial legislation was to give the children a secured future and this amended section does not limit anything apart from the fact that the property should be of their parent’s and nobody else’s. Thus, the children born out of live in relationship have a right to their parent’s property, both coparcenary and ancestral. In *Pashupati Nath Singh v. State of Bihar*<sup>18</sup>, the matter of dispute was with regard to “compassionate employment” of the son from the second marriage which was declared as invalid. The District Compassionate Appointment Authority rejected his claim on the ground that since the marriage was void, so the son is also illegitimate and not entitled to any appointment for service. But on appeal, the court reversed the decision and ruled that the required criteria for such employment as given in the policy is that the person should be “a son”, with no other restrictions and since he was very much a son even though from second wife, he was entitled to be legitimate under section 16 and thus his claim for such compassionate employment cannot be disregarded. So we see that the courts have taken a beneficial approach when it comes to the children’s rights over property. This is in consonance with the rights given in Article 300A of the constitution which talks about the right to property. Though it is no more a fundamental right, yet it continues to be a constitutional which no individual can be deprived of, merely on the basis of such stone cast legislation.<sup>19</sup>

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<sup>17</sup> (2011) 11 SCC 1

<sup>18</sup> CWJC No.5272 of 2011

<sup>19</sup> Status of children born out of live in relationships, available at [www.legalservicesindia.com](http://www.legalservicesindia.com)